IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

FOR THE COUNTY OF YAVAPAI

SUPERIOR COURT
YAVAPAI COUNTY, ARIZONA
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SANDRA K MARKHAM, CLERK
BY: Stephanie Kling

STATE OF ARIZONA,
Plaintiff,
vs.
JAMES ARTHUR RAY,
Defendant.

Case No. V1300CR201080049

REPORTER'S TRANSCRIPT OF PROCEEDINGS

BEFORE THE HONORABLE WARREN R. DARROW

TRIAL DAY THIRTY-SEVEN

APRIL 27, 2011

Camp Verde, Arizona

ORIGINAL

REPORTED BY
MINA G. HUNT
AZ CR NO. 50619
CA CSR NO. 8335

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Proceedings had before the Honorable WARREN R. DARROW, Judge, taken on Wednesday, April 27, 2011, at Yavapai County Superior Court, Division Pro Tem B, 2840 North Commonwealth Drive, Camp Verde, Arizona, before Mina G. Hunt, Certified Reporter within and for the State of Arizona.

5

1 PROCEEDINGS
2 THE COURT: The record will show the presence
3 of Mr. Ray, the attorneys, the jury. And
4 Mrs. Hamilton has returned to the witness stand.
5 Mr. Li, you may continue cross.
6 MR. LI: Thank you, Your Honor.
7 CROSS-EXAMINATION (Continued)
8 BY MR. LI:
9 Q. Good morning, Ms. Hamilton.
10 A. **Good morning.**
11 Q. And I mangled your attorney's name
12 yesterday. It's Michael Kellen, not Callas. So I
13 apologize.
14 Folks who went to Angel Valley -- they
15 had to sign a waiver; correct?
16 A. **They did.**
17 Q. And this included the people who went to
18 the Spiritual Warrior seminar in 2009; correct?
19 A. **That's correct.**
20 MR. LI: If I could have Exhibit 155.
21 Q. I'll walk it up to you first. I'll walk
22 both of them up to you first. 155 and 179. These
23 are two standard waiver forms that you have people
24 who show up to events at Angel Valley fill out;
25 correct?

6

1 A. **That's correct.**
2 MR. LI: If I could have 155.
3 Q. So one of them, 155 is filled out by a --
4 the way you know it's 155 is the little number
5 there. Is filled out by a woman named Jeanne
6 Armstrong?
7 A. **That's correct.**
8 Q. Do you remember Jeanne Armstrong?
9 A. **No. I remember her name being on the**
10 **list. But I never knew which name belonged to**
11 **which person.**
12 Q. So this form here is a waiver form signed
13 by Jeanne Armstrong for the Spiritual Warrior
14 seminar in 2009; correct?
15 A. **That's correct.**
16 MR. LI: Now, if I could take a look at
17 Exhibit 179.
18 Q. This is a waiver form filled out by a
19 woman named Laurie Gennari?
20 A. **It is.**
21 Q. And it's also an Angel Valley standard
22 waiver form; correct?
23 A. **It is.**
24 Q. Now, on the second page of this document,
25 if you could take a look at the second page of the

7

1 document, the Laurie Gennari waiver, there is
2 another form. The first page of this document,
3 Bates No. 719, is dated August 31st '09.
4 A. **Yes. I see that.**
5 Q. We're just blowing it up so the jury can
6 see it as well.
7 And then she signs another waiver form on
8 October 2, 2009; correct?
9 A. **That's correct.**
10 Q. And so she signed two waiver forms,
11 basically, for Angel Valley?
12 A. **She did.**
13 Q. And this is a woman named Laurie Gennari?
14 A. **Yes. That's what I read here. Yes.**
15 Q. Thank you. And these waiver forms are
16 waiver --
17 If we could just highlight the main
18 thing.
19 I won't go into all the legalese. But
20 it's a waiver and release of liability and an
21 acceptance of my -- my acceptance of
22 responsibility; correct?
23 A. **Yes.**
24 Q. So it's both. It's a philosophical
25 statement; correct?

8

1 A. **The second part is a philosophical**
2 **statement that is usually not covered in legal**
3 **terms.**
4 Q. And the first part is pure legalese?
5 A. **Yes.**
6 Q. And it's, essentially, a waiver of
7 liability for folks who participate in events at
8 Angel Valley; correct?
9 A. **It is.**
10 Q. Now, we had stopped yesterday at a point
11 where we were talking about some of the statements
12 that you've made. And I'll come back to this in
13 one second. Some of the statements you've made
14 regarding or you haven't made regarding pesticides
15 and insecticides.
16 Do you remember the conversation we had
17 yesterday?
18 A. **I do.**
19 Q. Okay. So let's start off with -- the
20 accident happens on October 8, 2009; correct?
21 A. **Yes.**
22 Q. And then shortly thereafter, and I'm not
23 going -- I'm not going to write them all down.
24 But, basically, on the 13th of October 2009, you
25 give a press release?

A. **We did.**
Q. And then the 28th you give the AP interview, Associated Press interview? I'm sorry, January 28th, 2010.
A. **Yes.**
Q. And then January 30th, 2010, you give the ABC interview?
A. **Yes, I did.**
Q. And then April 1st, approximately, 2010, you give the Four Corners interview?
A. **Yes, I did.**
Q. And then June 12th, 2010, the "Dateline" interview is played?
A. **Yes.**
Q. And then June 29th, 2010, there is a Primetime ABC episode that is shot at Angel Valley with Dan Harris. They interviewed you, but you weren't -- you didn't make the cut?
A. **Yes. Correct.**
Q. And then ABC local affiliate October 6th, 2010, you give an interview?
A. **October 2010. Yes.**
Q. And The New York Times, October 19th, 2010, you give an interview?
A. **That's correct.**

Q. And then November 17th, 2010, CBS, you give an interview?
A. **Yes.**
Q. And then February 16th, 2011, you give an interview to NPR?
A. **No. That was taken before.**
Q. The interview was sometime before, but the story was run on February 16th?
A. **Yes.**
Q. Okay. So fair to say that from October 13, 2009, all the way till February 16, 2011, you give media interviews; correct?
A. **I want to say again that the interview I did not give on February 16.**
Q. Okay. Then I'll phrase it this way: Between October 13th, 2009, and February 16, media stories were run with your either interview or permitting folks to come to your land to take pictures and all that. Is that fair?
A. **The October 13 was just a written press release, very short, very brief, no interviews, no visit to Angel Valley, no photos, no personal interview.**
Q. All I'm saying, it's fair to say that

from October 13th, 2009, to February 16th, 2011, you had your story put out in the media in various varieties of ways? You're objecting to the term "stories"?
A. **Yes. I --**
Q. I'll rephrase it. All I'm trying to say is there has been a bunch of media stories between October 13th, 2009, and February 16th, 2011; correct?
A. **Yes.**
Q. And those stories have involved you; correct?
A. **Yes. That's correct.**
Q. And either you've made a statement, a press statement, as you did on October 13th, 2009, or you gave interviews to all sorts of media outlets, both local and national?
A. **Yes.**
Q. Okay. And so during this period from October 13th, 2009, and February 16th, 2011, you did not mention pesticides; correct?
A. **I did not.**
Q. Okay. So this whole period here you never mentioned any pesticides at all?
A. **I did not.**

Q. So then you also interviewed -- I'll put it right here. Media. Okay. And then I'll write here, police.
So fair to say that you've given a number -- you've had a number of conversations with various law enforcement folks including Detective Diskin?
A. **Yes.**
Q. And your first interview with Detective Diskin -- formal interview with Detective Diskin that was tape-recorded was October 26, 2009; correct?
A. **That's correct.**
Q. And then you had a number of conversations and email contacts and what have you with the police between October 26, 2009, and the start of this trial; correct?
A. **Yes.**
Q. And you know that this trial started on February 16th; correct?
A. **Yes.**
Q. And during that time period from October 26 to February 16, you never ever mentioned anything about pesticides or insecticides; correct?
A. **No, I did not.**

1 Q. So then the trial starts on February 16,
2 2011, and I gave my opening statement on March 1st,
3 2011.
4 Do you know that?
5 **A. I think that the opening statement was**
6 **made after I received a court order to -- that as a**
7 **witness I was not supposed to follow anything of**
8 **the trial. And that's what I did. So I think I'm**
9 **not very familiar with court -- with trials and**
10 **court procedures. But I think that, yeah, that you**
11 **did an opening statement. That's part of the**
12 **procedure.**
13 Q. Okay.
14 **A. But I did not follow it because I was**
15 **requested not to do that.**
16 Q. Okay. I neglected a few things also.
17 During these police contacts, you, for instance --
18 you know -- you wrote a report to Detective Diskin
19 in November 2010 in which you said -- you mentioned
20 the coverings in pump house, and you said that they
21 were stored in a pump house recently built with
22 logs and a concrete floor that is dry and bug free.
23 Correct?
24 **A. Um-hm.**
25 Q. And you didn't mention pesticides or rat

1 poisoning then?
2 **A. No.**
3 Q. And then also I also neglected there were
4 some lawsuits that you filed during this time
5 period, a lawsuit you filed and a lawsuit that you
6 were defending. And you wrote some documents in
7 September, 2010, in which you did not mention
8 pesticides or rat poison. Correct?
9 **A. That's correct.**
10 Q. All right. So I understand you've been
11 instructed by this court not to watch the media and
12 not to follow anything. So you may not know when
13 the opening statement was given. Is that --
14 **A. No. If you say it's March 1st, the court**
15 **order was issued at the end of February on a Friday**
16 **or so. And I received it in the mail on Monday.**
17 **And that was, as far as I know, still in February,**
18 **February 28 or something.**
19 Q. Okay. So you've watched no media?
20 **A. No.**
21 Q. And you've spoken to no witnesses?
22 **A. No.**
23 Q. So you haven't spoken to Fawn Foster?
24 **A. No.**
25 Q. Not at all?

1 **A. Not about the trial.**
2 Q. Not about the trial. But she works for
3 you?
4 **A. Oh, yeah. I see her regularly. But we**
5 **do not discuss the trial.**
6 Q. You see her every day?
7 **A. Not every day. But she's in many days.**
8 **We know that -- we know what the rules are that we**
9 **have requested to comply to -- to comply with.**
10 Q. And the two of you never, ever speak
11 about this case?
12 **A. No.**
13 Q. That's your testimony?
14 **A. That's my testimony.**
15 Q. So on March 1st, 2010, I'll just
16 represent to you the opening statement was given.
17 **A. Um-hm.**
18 Q. And then about three weeks later,
19 Detective Diskin invites you and your husband into
20 the Prescott Valley Police?
21 **A. Yes.**
22 Q. By this time trial has been going for
23 over a month; right? From February 16 to
24 March 21st, 2011. Is that about right? Make sense
25 to you?

1 **A. Well, I don't know how that works when**
2 **the trial. I thought the trial started March 1st**
3 **as we got the court order. If you say February 16,**
4 **yeah.**
5 Q. Okay. So remember when -- this is not a
6 big deal. But the other day when we were talking
7 about your NPR story --
8 **A. Came out on February.**
9 Q. On the first day of trial. Which is when
10 some of these jurors came in and were being
11 selected. So this trial had been going on about a
12 month. And then you were called in to talk to
13 Detective Diskin about pesticides?
14 **A. Yes.**
15 Q. And about wood?
16 **A. Yeah. About treated wood. Yes.**
17 Q. Treated wood. Yeah. And about rat
18 poisoning?
19 **A. Yes.**
20 Q. So fair to say that between October 8 and
21 March 21st, that's about 17 1/2 months give or
22 take? Nobody from the state ever asked you about
23 pesticides?
24 **A. No, they did not.**
25 Q. And nobody ever asked you about rat

17

1 poison?
2 A. **No, they did not.**
3 Q. And no one asked you about ant killers,
4 for instance?
5 A. **No, they did not.**
6 Q. So by this time, March 21st, 2011, you
7 had read Ted Mercer's statement to the police on
8 October 9th, 2009; correct?
9 A. **I had read that a long time ago when it**
10 **first came out when these papers were published.**
11 Q. Right.
12 A. **I read it.**
13 Q. And if we could just explore that for a
14 second. When the papers were published through the
15 media and through other -- was it through the
16 media?
17 A. **Yes. I think so.**
18 Q. Okay. So the media published a lot of
19 reports, and you read them all?
20 A. **Some of them.**
21 Q. So you read -- and by "the reports," I
22 mean interviews, actual interview transcripts.
23 A. **Yeah. Yeah.**
24 Q. And police reports; correct?
25 A. **I did.**

18

1 Q. So you read Ted Mercer's police report?
2 A. **I did.**
3 Q. And his interview transcript?
4 A. **I did.**
5 Q. And you read Debbie Mercer's interview
6 transcript?
7 A. **At the time I did.**
8 Q. And you read Fawn Foster's interview
9 transcript?
10 A. **At the time I did.**
11 Q. And you read Michael Hamilton's interview
12 transcript?
13 A. **I did.**
14 Q. And did you read Sarah Mercer's
15 transcript as well?
16 A. **I did because I was concerned about her.**
17 Q. And you read, basically, everybody -- did
18 you read all of the available information?
19 A. **No. I couldn't. It was more than I**
20 **could handle.**
21 Q. Okay. But you certainly read every
22 interview transcript and what have you having to do
23 with Angel Valley; correct?
24 A. **I did.**
25 Q. Because obviously you have an interest in

19

1 Angel Valley?
2 A. **Yes.**
3 Q. So on March 21, 2011, 17 months after the
4 accident and about a month into the trial and about
5 three weeks after my opening statement,
6 Detective Diskin, who is not here right now, asked
7 you about rat poison; correct?
8 A. **He did.**
9 Q. And you told Detective Diskin that you
10 did not believe in pesticides; correct?
11 A. **Primarily, yes. That's correct.**
12 Q. And that it was against your philosophy?
13 A. **Yes.**
14 Q. And that despite that fact, despite that
15 it was against your philosophy, you did use rat
16 poison in the pump house?
17 A. **As I shared with you yesterday, we only**
18 **did that when it was really -- when it was the last**
19 **thing that we could do other than allowing an**
20 **infestation of some kind of rats, for example, to**
21 **happen.**
22 **But sometimes you have to step away from**
23 **what you prefer to do. And in those situations we**
24 **just had to say, well, we don't want to use it, but**
25 **at this point we don't have a choice.**

20

1 Q. Okay. And that's what you told
2 Detective Diskin. Essentially, you told him that
3 you used rat poison in the pump house because the
4 benefits outweighed the risks?
5 Do you remember saying that?
6 A. **Yes. Yes.**
7 Q. And you told Detective Diskin that you
8 used the least toxic rat poison that you could
9 find; correct?
10 A. **We did.**
11 Q. And that poison that you told
12 Detective Diskin about was called "Just One Bite"?
13 A. **Yes.**
14 Q. Now, during this interview on
15 March 21st, 2011, you did not mention or you did
16 not tell Detective Diskin that Angel Valley used
17 insecticide as well?
18 A. **Can you be more specific, please?**
19 Q. Sure. On March 21st, 2011, when you were
20 speaking to Detective Diskin, you did not tell him
21 that Angel Valley uses insecticides, ant killer?
22 A. **Ant killer. Is that what you're**
23 **referring to?**
24 Q. Yes.
25 A. **Yes. We did -- he did ask us what we use**

21

1 **against ants. So we did mention it.**
2 **Q.** So you say you mentioned ant killers
3 on -- in your interview with Detective Diskin on
4 March 21st, 2011?
5 **A. His question was, what had we ever used**
6 **for any kind of treatment for anything, including**
7 **ants. If I remember correctly, he also asked us,**
8 **do you do anything for ants?**
9 **Q.** And you told Detective Diskin that the
10 only poisons you had ever used was for rats in the
11 pump house because the benefits outweigh the
12 dangers?
13 **A. That is -- yeah.**
14 **Q.** And you did not say, and we use ant
15 poison as well?
16 **A. We -- he asked us what we had used over**
17 **the years. So we went home. And after the**
18 **conversation of which he has made a report -- and**
19 **no. It was not recorded -- we went home and --**
20 **okay. He asked us what, if anything, we used ever**
21 **for anything. So that is what we then reported and**
22 **sent him the material for.**
23 **Q.** Thank you. I guess my question is that
24 on March 21st, 2011, when you were speaking to
25 Detective Diskin --

22

1 **A. Yes.**
2 **Q.** -- about the types of poisons that might
3 have been used at Angel Valley, you mentioned using
4 the rat poison?
5 **A. Yes.**
6 **Q.** Just One Bite?
7 **A. Yes.**
8 **Q.** But you did not mention the fact that you
9 used ant killer; correct?
10 **A. I don't recall specifically. As I say,**
11 **we asked -- we tried to the best of our ability to**
12 **answer his question what we have ever used for**
13 **anything. And that we reported, including the**
14 **different things that we have used over the years**
15 **for ants, if it occurred.**
16 **Q.** Okay. So if Detective Diskin wrote a
17 report and did not mention -- doesn't say anything
18 about you talking about ant poison, AMDRO or
19 anything, would he be incorrect?
20 MR. HUGHES: Objection, Your Honor. Lacks
21 foundation.
22 THE COURT: Overruled.
23 THE WITNESS: The report does not record every
24 specific word that's being said. And I did not
25 write the report. So I cannot say.

23

1 **Q.** BY MR. LI: And it wasn't tape-recorded
2 either, was it?
3 **A. It was not.**
4 **Q.** So is it your testimony to this jury
5 today that you did mention ant poison, ant killer
6 to Detective Diskin in your interview on
7 March 21st, 2011? Is that your testimony?
8 **A. To the best of my recollection, we**
9 **mentioned anything we did. And we may not have**
10 **mentioned AMDRO. But as we were at home and**
11 **preparing to give him material that he could work**
12 **with. Then we said, oh. Well, the ants, the spray**
13 **that we do, the diatomaceous earth. And yes. The**
14 **one time we remember we used AMDRO. So we just**
15 **gave him everything we had.**
16 **Q.** I'm going to ask for just a little bit of
17 your patience a bit here. And I'm going to ask for
18 a little specificity. Okay?
19 So I understand that there is a lot of
20 thinking that went into this, what you would tell
21 Detective Diskin at some point. But I'd like to
22 focus you right now on March 21st, 2011.
23 Okay?
24 **A. Yes.**
25 **Q.** This is an interview, the unrecorded

24

1 interview, you had with Detective Diskin and your
2 husband.
3 **A. Yes.**
4 **Q.** The purpose of the interview was to talk
5 about the various woods pesticides and what have
6 you that were used at Angel Valley; correct?
7 **A. That is correct.**
8 **Q.** And you told the detective, and you wrote
9 it down in a report, that you used Just One Bite in
10 the pump house; correct?
11 **A. That's correct.**
12 **Q.** Did you tell him in this meeting,
13 October -- I mean March 21st, 2011. Did you tell
14 him that you used ant poison?
15 **A. I just -- I already shared with you that,**
16 **to the best of my recollection, we mentioned**
17 **anything we did. And then we worked it out for**
18 **him. So I have -- I have no more than I can add to**
19 **it.**
20 **Q.** I'm sorry, ma'am. I'm very sorry. I
21 just need an answer. Yes or no? Did you tell him
22 that you used ant poison? Did you tell
23 Detective Diskin on March 21st, 2011, that you used
24 ant poison at Angel Valley? If you don't recall,
25 that's okay. But I just -- I just need an answer.

1 A. **Then can only say that I do not recall.**
2 Q. You don't recall one way or another
3 whether you told Detective --
4 A. **That's correct.**
5 Q. -- Diskin about ant poison on --
6 A. **That's correct.**
7 Q. March 21st --
8 A. **That's correct.**
9 Q. -- 2011?
10 A. **That's correct.**
11 Q. Okay. So if it's not in the report,
12 would you agree with me that you probably didn't
13 tell him about ant poison on March 21st, 2011?
14 A. **No. I do not agree with you.**
15 Q. Okay. Now, yesterday you told this jury
16 that you -- and I wrote this down. You were not
17 the person who put the rat poison in the pump
18 house?
19 A. **To which occasion are you referring to?**
20 Q. Before you took the photographs. Back
21 in 2008, 2007, 2009, you were not -- you testified
22 that you were not the person who put the poison in
23 the pump house?
24 A. **No. I was not the person.**
25 Q. You were not the person. Did you tell

1 Detective Diskin on March 21st, 2011, that you --
2 Amayra said she placed the rat poison in a dish on
3 the floor to prevent rodent infestation?
4 Let me rephrase that.
5 A. **Can you repeat that?**
6 Q. Yeah. Sure. Did you tell
7 Detective Diskin that you placed rat poison in a
8 dish on the floor to prevent rodent infestation?
9 A. **In the pump house?**
10 Q. Yes.
11 A. **That was not normally my task.**
12 Q. I understand, but did you tell
13 Detective Diskin on March 21st, 2011, that you had
14 placed rat poison in a dish on the floor to prevent
15 rodent infestation?
16 A. **I don't -- I don't recall. If it is in**
17 **the report that I said that, maybe I have. Then I**
18 **say today that that was not normally my task. But**
19 **I knew that at certain periods it has been done by**
20 **staff.**
21 Q. Okay. So I just -- I just need to
22 understand. So yesterday you told this jury that
23 you did not put the rat poison in the pump house;
24 correct?
25 A. **Yes.**

1 Q. And is it correct that on
2 March 21st, 2011, you told Detective Diskin that
3 you placed rat poison in a dish on the floor to
4 prevent rodent infestation?
5 A. **If that is in the report --**
6 Q. Would it help you to see the report?
7 A. **I believe you, Mr. Li.**
8 Q. Do you want to see it?
9 A. **No. If you read it to me, I believe what**
10 **you're saying. The only thing that I can say is**
11 **that I might have said we do that. "We," meaning**
12 **we from Angel Valley do that at times. That's the**
13 **only thing I can say.**
14 Q. Maybe I can just show you the report.
15 A. **I -- I -- I believe what you're reading.**
16 **I can't tell you whether that is -- whether that is**
17 **what I really said or whether that is what**
18 **Detective Diskin understood, that he took a "I" for**
19 **a "we" or that I said "I" instead of "we."**
20 **The only thing I can do today is sharing**
21 **with you and with the jury that I would not usually**
22 **do that. Staff would usually do that. But I would**
23 **always be aware of when things were going on. If**
24 **we would have mice or rats somewhere, it would**
25 **always be mentioned. I would always be aware of**

1 **when anything was being used. That's all I can say**
2 **about this.**
3 Q. Now, when you spoke to
4 Detective Diskin -- as I said, as we had discussed
5 earlier, you had read Mr. Mercer's interview in
6 which he said there were chunks of rat poison on
7 the ground. There were some chunks of rat poison.
8 You had read that?
9 A. **I had read that.**
10 Q. And So when you were interviewing with
11 Detective Diskin on March 21st, 2011, you knew that
12 there was another witness who had already said that
13 there was rat poison in the pump house; correct?
14 A. **I knew.**
15 Q. And you told Detective Diskin that you
16 put rat poison in the pump house because it was --
17 the benefits outweighed the cost, basically?
18 Outweighed the risks?
19 A. **Okay. May I add something to that?**
20 Q. Sure. Please.
21 A. **One misunderstanding can be that in**
22 **English when you say "you," it can be me or it can**
23 **be we. And that I have some at times been mixing**
24 **up, because in my native language there is a**
25 **distinctive difference between when you mean you or**

1 you.
2 So that can be if you talk about what I
3 said during the interview with -- of the
4 conversation with Detective Diskin, whether it
5 regarded me personally or Angel Valley, that could
6 be one of the -- yeah -- misunderstandings. I
7 don't know.
8 Q. Okay.
9 A. I can only -- as I said, the best thing I
10 can do today is tell you from, in all honesty,
11 what -- what for me is truth from what I recall and
12 from what I know.
13 Q. While counsel is looking at the emails,
14 if Fawn Foster said that she would never put rat
15 poison on a plate, who would be the person who
16 would put rat poison on a ceramic plate?
17 A. Any rat thing that has ever been done
18 until today, if it is needed, is put on a plate or
19 on some kind of a dish, on some kind of a
20 container. So --
21 Q. I guess my question is, let's say, Fawn
22 Foster says, I would never put rat poison on a
23 plate, and Ted Mercer says, almost laughs, I would
24 never put rat poison on a ceramic plate. Who would
25 be the person who puts rat poison on a ceramic

1 plate?
2 A. If -- if a plate is seen as a dining room
3 thing that you eat from, no. You would not use the
4 same plates that you eat from to put the rat stuff
5 on. But if they say that, I'm not really clear
6 what they mean. Because I have never seen at Angel
7 Valley any rat product that was not on some kind of
8 a plate or dish or container. It has never ever
9 been straight on the floor or wherever it is done.
10 Q. So if Ted Mercer testified to this jury
11 that he saw the rat poison on the floor in two
12 separate locations and not on a plate, would he be
13 incorrect?
14 A. I don't have a tendency to call somebody
15 is lying. But I would think he would be incorrect
16 Yes.
17 Q. Okay. So do you -- I mean, I don't want
18 to force words into your mouth, but do you think
19 he's lying?
20 A. I don't want to say that to a person. If
21 that is his perception. I have never seen it, and
22 I have never wanted that to happen.
23 Q. Okay. I'm really sorry to just push you
24 on this. But just one more time. Are you saying
25 that Mr. Mercer is lying to this jury?

1 A. I do not want to say yes or no to that
2 question.
3 Q. Okay. But what you think he told this
4 jury, you think what he told this jury is untrue?
5 A. I have never seen it.
6 Q. So you have never seen it, and it's
7 possible that it happened, and it's possible that
8 he's telling the truth; right? Because you've
9 never seen it.
10 A. I have never seen it.
11 Q. So it's possible he's telling the truth,
12 or is he just making it up?
13 A. I can't speak for him.
14 Q. After the March 21st interview with
15 Detective Diskin, you wrote an email to
16 Detective Diskin and you attached a number of
17 photographs.
18 A. I did.
19 Q. And I'm going to place in front of you
20 what's been marked as 910.
21 And I believe counsel has no objection to
22 its admission.
23 MR. HUGHES: That's correct.
24 THE COURT: 910 is admitted.
25 (Exhibit 910 admitted.)

1 Q. BY MR. LI: The top is just sort of the
2 forwarding email to everybody. But the bottom
3 email was sent on March 22nd, 2011, at 5:00 p.m.;
4 correct?
5 A. Yes.
6 Q. The subject line is requested photos --
7 photos requested?
8 A. Yes.
9 Q. One pump house?
10 A. Yes.
11 Q. I'm going to put this on the screen so
12 the jury can see and you can also see it there.
13 A. Yes.
14 Q. So up here is the sort of forwarding
15 information. It talks about -- you know -- sending
16 it from Detective Diskin, Ross Diskin, to the state
17 lawyers.
18 But the part I'd like you to focus on is
19 here. So this is the email you sent to
20 Detective Diskin after your interview on
21 March 21, 2011; correct?
22 A. Yes.
23 Q. And in this interview -- I'm sorry. And
24 in this email, you attach I think, five
25 photographs?

A. **Yes.**
Q. And I'm not going to show you all five of them, but I'll show you three of them. The first two are just the pump houses exterior shots.
A. **Yes.**
Q. And I believe Mr. Hughes showed you some of those pictures on direct examination.
A. **Yes.**
Q. And then you have, interior with pump and two tanks, table where sweat lodge covering would be piled beneath it. I'm going to put on the Exhibit 797. This is that photo; right?
A. **Yes.**
Q. And then you say, interior with storage table behind tanks with mice and rat bait below on the floor?
A. **Yes.**
Q. And that's this photograph; correct?
A. **That's correct.**
Q. And that's Exhibit 798. And then, finally, mice and rate bait detail. And this is Exhibit 799. And that's this photo; correct?
A. **That's correct.**
Q. Now, there are no photographs or mention or anything about ant killer in this particular

email, is there?
A. **No.**
Q. And so you either discussed ant killer with Detective Diskin but didn't send any further information, or you simply just never discussed ant killer with Detective Diskin on March 21st, 2011?
A. **We did discuss it. We did discuss and other products we might use.**
Q. But you certainly didn't send anything in this email about ant killer; correct?
A. **No, I did not.**
Q. So your testimony now, I believe, is that you told Detective Diskin that what you were intending to do with these photographs that were going to get shown to the jury, was to stage what it would have looked like; correct?
A. **That's correct.**
Q. And so does it say in that email that you are staging these photographs?
A. **It -- it does. Because not in the email that -- not in the words I stated. But in the photos that you see, the attachments, every photo has the date that the photo was taken. And then you can see that the photos were taken on March 22nd of 2011.**

Q. Okay.
A. **So it was -- that was -- that was the request. What would you normally do? I said, I don't have anything to show, but I can -- I can show it by taking photos now.**
Q. Okay. So Detective Diskin on March 21st, 2011, asked you to stage some photographs for him?
A. **It is more that I offered to do that to show.**
Q. Okay. So you had a conversation with Detective Diskin in which you said, I'll stage some photographs for you to show you what it would have looked like on the night of the accident?
A. **No.**
Q. So what did you tell him?
A. **I did not -- what it would have looked like on the night of the accident. I told him what it would have looked like in those periods over eight years that we might have used incidentally those products.**
Q. And then I'm going to place in front of you Exhibit 911, which is another email from you to Detective Diskin.
A. **Yes.**
Q. And this is an email you sent on

March 22nd at 6:03 p.m.?
A. **Yes.**
MR. LI: And this is Exhibit 911. And without objection from the state, I'll move it into evidence.
MR. HUGHES: No objection.
THE COURT: 911 is admitted.
(Exhibit 911 admitted.)
Q. BY MR. LI: So in this email you attached a number of photographs of the actual poisons that you were using?
A. **Of the products. Yes.**
Q. And so here it says, Ross. Ross is Detective Diskin; right?
A. **Yes.**
Q. You say -- you know -- here are the photos of the products we always use. Based on our philosophy and respect for all life, we attempt to stay away from anything even close to toxic. If we cannot totally avoid it, we choose the least evasive product. We buy Just One Bite at Ace Hardware. Right?
A. **Yes.**
Q. And just so we're clear, now you're sending an email that encloses information about

1 rat poison; correct?
2 A. **About the product we used. Yes.**
3 Q. And it kills rats; correct?
4 A. **It does eventually. Yes.**
5 Q. Caused them to bleed to death; correct?
6 A. **Yes.**
7 Q. So I'll just show you Exhibit 800. This
8 is one of the -- one of the photos that you sent --
9 A. **Yes.**
10 Q. -- Detective Diskin; correct?
11 A. **Yes.**
12 Q. And these are the cookies that you feed
13 to the rats?
14 A. **Yes.**
15 Q. And in this email here -- did I mention
16 it's Exhibit 800? In this email you do not
17 mention -- at any point on March 22nd, 2011, there
18 is no mention of insecticides at all; correct?
19 A. **Which insecticides are you referring to?**
20 Q. Let me rephrase that. Ant killer.
21 A. **Ant killer, no. Not in this email, no.**
22 Q. And when I say, insecticides, I mean
23 poisons that are meant to kill bugs as opposed to
24 poisons that are meant to kill rats.
25 A. **Okay.**

1 Q. We'll have that understanding. And I'll
2 try to say, ant killer, but every now and then I
3 might say, insecticide.
4 So let's just be clear now. This is
5 March 22nd. You have not -- this is your email.
6 You have still not mentioned ant killer; correct?
7 A. **That's correct. Not in the email.**
8 Q. Now, let's talk a second about Fawn
9 Foster, if we could.
10 A. **Okay.**
11 Q. You know Fawn Foster?
12 A. **I do.**
13 Q. How long have you known her?
14 A. **Three years.**
15 Q. How many?
16 A. **Three years.**
17 Q. And when you first met her, she had just
18 come out of prison; correct?
19 A. **Yes.**
20 Q. And you helped her out?
21 A. **When she came to Angel Valley, it was not**
22 **to help her out. It was just for who she was then.**
23 Q. Yeah. And I guess I'm just saying you
24 were nice to her. And she's expressed her
25 gratitude to you many times, hasn't she?

1 A. **We appreciate her and she appreciates us,**
2 **and that's why we're still together.**
3 Q. And you're friends?
4 A. **We have very good relationship with her.**
5 **Yes.**
6 Q. And you had her talk to the police on
7 October 26, 2009; correct?
8 A. **Yes, I did.**
9 Q. And you know, do you not, that she
10 testified in this case on April 1st, 2011?
11 A. **I know that she testified. Yes.**
12 Q. Okay. And you know, in fact, that she
13 testified in this case on April 1st, 2011, about
14 three weeks ago?
15 A. **I don't know the exact date.**
16 Q. Did she have to come to you and get some
17 time off?
18 A. **Yes, she did.**
19 Q. Okay. So would you have any reason to
20 dispute that she testified in front of this jury on
21 April 1st, 2011?
22 A. **Oh. No reason. No.**
23 Q. And you have heard the Court's
24 instruction that you're not supposed to talk to
25 other witnesses; correct?

1 A. **Yes.**
2 Q. And that the reason, you understand, is
3 because this jury is entitled to testimony, your
4 testimony, that's uninfluenced by anybody else's
5 testimony?
6 A. **Yes.**
7 Q. And so you have been abiding by that
8 rule; correct?
9 A. **I have.**
10 Q. Now, have you ever talked to Fawn Foster
11 about her testimony?
12 A. **No.**
13 Q. You've never talked to Fawn Foster about
14 her testimony at all?
15 A. **I have not.**
16 Q. Have you talked to -- has Mr. Hamilton
17 talked to Fawn Foster?
18 A. **No.**
19 Q. About her testimony?
20 A. **No. Neither of us have.**
21 Q. I'm running out of space. Have your
22 lawyers told you what Fawn Foster said on the
23 stand?
24 A. **No.**
25 Q. Have you done any -- did you watch it on

1 television?
2 A. **I did not.**
3 Q. Done any research, internet research,
4 anything like that?
5 A. **I did not.**
6 Q. Now, did you know that Fawn Foster on
7 April 1st, 2011, said that she had used AMDRO ant
8 killer?
9 A. **No, I don't.**
10 Q. Did you know that she identified the ant
11 killer as AMDRO?
12 A. **I don't.**
13 Q. Did you know that she testified that she
14 used the ant poison in something like 2010 in one
15 cabin where the ants were coming in?
16 A. **Can you rephrase the question?**
17 Q. Yea. Sure. Did you know that when she
18 testified in front of this jury, she said that she
19 had used AMDRO ant poison in one cabin in 2010
20 where the ants were coming in?
21 A. **No. I did not know that she testified**
22 **that.**
23 Q. Did she -- did you know that she had also
24 said she used rat poison that was green and small
25 pellets?

1 A. **No.**
2 Q. And just so we're clear, this Just One
3 Bite here is not green?
4 A. **No.**
5 Q. It's yellow?
6 A. **It is.**
7 Q. And it's not pellets. It's a big cake?
8 A. **Uh-huh.**
9 Q. And so you had provided to
10 Detective Diskin and the state these yellow bricks
11 on March 22nd, 2011; correct?
12 A. **We did.**
13 Q. But then on April 1st, 2011, Ms. Foster
14 testifies that the rat poison is green and
15 little -- you know -- little pellets.
16 A. **Uh-huh.**
17 Q. And you've never discussed that with her?
18 A. **We have not.**
19 Q. Now, on April 4th -- sorry -- April 6th,
20 2011, you gave an interview to Mr. Kelly and
21 Ms. Do.
22 Do you remember that?
23 A. **We did.**
24 Q. Now, this interview was recorded?
25 A. **It was.**

1 Q. I'm going to put a little check mark by
2 the only two interviews in the entire 17 months
3 that have been tape-recorded. One was October 26,
4 2009; correct?
5 A. **Yes.**
6 Q. And the other one was April 6, 2011;
7 correct?
8 A. **Yes.**
9 Q. And those are the two interviews you've
10 given that were tape-recorded?
11 A. **Yes.**
12 Q. And it was tape-recorded by Mr. Hughes?
13 A. **Yes.**
14 Q. He was present?
15 A. **Yes. Yes.**
16 Q. And Ms. Do and Mr. Kelly were present;
17 correct?
18 A. **Yes.**
19 Q. Now, initially you refused to meet and
20 have the interview because it was going to be
21 recorded?
22 A. **Yes.**
23 Q. Yes. You refused to have an interview
24 with the defense, Detective Diskin, Mr. Hughes, if
25 it was going to be tape-recorded?

1 A. **That was the recommendation of our**
2 **attorney.**
3 Q. And you actually had your attorney come
4 to court and tell the Court that you were not going
5 to be interviewed if it was going to be
6 tape-recorded; correct?
7 A. **My understanding was that the range of**
8 **the interview was so unclear. There was a witness**
9 **interview. There was an evidentiary hearing. And**
10 **was another recorded thing.**
11 Q. It's a really -- I just want a yes or no.
12 Did your lawyer come to court and tell this Court
13 that you were not going to be interviewed if it was
14 tape-recorded?
15 A. **Yes.**
16 Q. So you refused to be interviewed if it
17 was going to be tape-recorded; correct?
18 A. **My understanding of the legal proceedings**
19 **is that if there was a formal -- what was it**
20 **called? The term? For a formal interview that had**
21 **to be set up in the time that would need more time,**
22 **and the defense wanted it quickly.**
23 **So our attorney requested that it be**
24 **limited to the subject that we -- in terms of the**
25 **main interest and that was going to be recorded.**

1 Q. And everybody agreed that it would only
2 be about the rat poison and everything?
3 A. **Eventually.**
4 Q. The question I'm asking you, ma'am, is
5 whether you refused to be interviewed if it was
6 going to be tape-recorded?
7 A. **I cannot say yes or no to this question.**
8 Q. In fact, you were ordered by this Court
9 to give a deposition; correct?
10 A. **I don't recall that I was ordered to give**
11 **a deposition. What I recall is that in order for a**
12 **deposition to happen, that would take more time.**
13 **And we were willing to cooperate to give you the**
14 **interview that you wanted. And that was going to**
15 **be recorded.**
16 **And what we came together with was it was**
17 **going to be recorded and it would be limited to the**
18 **insecticide issue that you wanted information**
19 **about.**
20 Q. And we appreciate that. I'm sorry. I
21 don't want to be rude. And I'm really asking just
22 for you to answer this one question.
23 Did you refuse to be interviewed if it
24 was going to be tape-recorded?
25 A. **I did not. Because I was interviewed**

1 **where it was recorded.**
2 Q. Okay. But before that didn't you have
3 your lawyer come to this court and say that you
4 were not going to be interviewed if it was going to
5 be tape-recorded? That's my only question. And
6 then we can move on.
7 A. **Then I cannot say yes or no the way you**
8 **ask the question, Mr. Li.**
9 Q. Is it --
10 A. **You do not tell me what I -- the refused**
11 **to.**
12 Q. Did your lawyer, Tosca Henry, come into
13 this courtroom, sit at this table and tell this
14 Court that you would not give an interview if it
15 was going to be tape-recorded?
16 A. **I was not in this courtroom. I do not**
17 **know where she was.**
18 Q. Did you instruct your lawyer? Did your
19 lawyer tell you that she was going to come to this
20 courtroom and tell this Judge that you would not be
21 interviewed if it was going to be tape-recorded?
22 A. **What I understand from what she has**
23 **communicated with me is that she -- she did not**
24 **recommend a recorded, full-range interview. And**
25 **that she was willing to -- she thought it was**

1 **recommendable if we had an interview that was**
2 **limited to the insecticide issue that you were**
3 **interested, and that if it was recorded, it was**
4 **okay. And I complied.**
5 Q. Ultimately this Court issued an order to
6 bring her into court and explain your position;
7 isn't that right? She had to rush from Cottonwood,
8 I believe, and come here and tell this Court why it
9 was you would not be interviewed if it was
10 tape-recorded.
11 A. **I was not part of those interactions.**
12 Q. But she came -- anything she did in this
13 courtroom would be on your behalf; correct?
14 A. **On my behalf. Yes.**
15 Q. Yeah. So it's not -- she doesn't come in
16 here because she just wants to have a conversation
17 with the Judge and take some time out of her day,
18 does she? It's for you; correct?
19 A. **I did not order her to do anything. But**
20 **did she speak on our my behalf? Of course, she**
21 **did.**
22 Q. And ultimately you were ordered to give a
23 statement, either with a court report present,
24 which is called a "deposition," or tape-recorded?
25 A. **I don't know how that went. I only know**

1 **that I was invited to come over on that day and**
2 **that it was going to be recorded, and I had no**
3 **problem with it, and that the subject would be the**
4 **insecticides or pesticides or whatever. And that**
5 **was fine with me.**
6 Q. So ultimately you did come over here and
7 you did consent to an interview with a tape
8 recorder; correct?
9 A. **Yes.**
10 Q. And in this interview -- now, this is
11 what? About five days after Fawn Foster testified;
12 right?
13 A. **Yeah. Yeah.**
14 Q. And then during this interview, you
15 started talking about -- you mentioned other rat
16 killing products; is that true?
17 A. **We did. Yes.**
18 Q. You mentioned, for instance, d-CON?
19 A. **We did.**
20 Q. And d-CON are these green little pellets?
21 A. **Yes.**
22 Q. And that's actually quite similar to what
23 Fawn Foster said on April 1st, 2011, about the type
24 of rat killer that was being used.
25 A. **If you say so.**

1 Q. And there was another green colored
2 poison that you told Detective Diskin about?
3 A. **Um --**
4 Q. I won't ask you to guess. JT Eaton?
5 A. **We may not -- in our conversation on**
6 **March 21st, I do not remember that we mentioned the**
7 **Eaton.**
8 Q. Okay. But when you sent the photographs
9 to Detective Diskin on March 22nd, on that chart,
10 the email, March 22nd, you sent a picture of Just
11 One Bite, just this yellow stuff; correct?
12 A. **I did.**
13 Q. I'm sorry. Did I interrupt you?
14 A. **I did.**
15 Q. You did not send any pictures of any
16 green poisons at all?
17 A. **At that moment, no.**
18 Q. You didn't send pictures of d-CON? You
19 didn't send pictures of JT Eaton?
20 A. **No.**
21 Q. Now, you also explained in your April 6th
22 interview, 2011, five days after Fawn Foster's
23 testimony, that you had sometimes used rat --
24 strike that.
25 Ant poison; correct?

1 A. **Yes.**
2 Q. And that ant poison was called "AMDRO";
3 correct?
4 A. **Yes.**
5 Q. And, now, did you know that Fawn Foster
6 testified that on April 1st that he had used AMDRO
7 rat poison -- AMDRO ant poison?
8 A. **No. I did not know that.**
9 Q. And -- but you had never mentioned AMDRO
10 rat poison from October 8th to anybody -- media,
11 lawsuits, police, anybody -- all the way through
12 the start of the trial, through opening statement,
13 through your March 21st interview, in your
14 March 22nd email? You never mentioned AMDRO rat
15 poison in that 17 1/2 months or so; correct?
16 A. **No.**
17 Q. You never mentioned it?
18 A. **No. Never mentioned.**
19 Q. And then Fawn Foster on April 1st told
20 this jury about ant poison. And then on April 6th,
21 2011, after 17 months, 17 1/2 months, you tell
22 Detective Diskin that, in fact, you had used AMDRO
23 ant poison and you used it in the exact same cabin
24 that Fawn Foster testified about. Is that right?
25 A. **Yes.**

1 Q. And this is the one time that you've used
2 ant poison in the nine years that you've owned
3 Angel Valley?
4 A. **Yes.**
5 Q. The 70 acres out in the woods, first time
6 you've used ant poison ever?
7 A. **Yes. Mr. Li, am I allowed to say**
8 **something about this?**
9 Q. Sure.
10 A. **On March 21st when Detective Diskin**
11 **approached us about the insecticides, we understood**
12 **that evidently this was something that was of high**
13 **interest. So we did more research on more specific**
14 **other than the Just One Bite.**
15 **Then we were invited for the**
16 **conversation, and we prepared ourselves. Because**
17 **we were also going to be a witness. We knew by**
18 **then that that was going to be a subject. So we**
19 **prepared and went into every little detail what we**
20 **ever did.**
21 **That's where -- and then I made these**
22 **photos that have been of the episode with the car**
23 **and things that we used. And there it showed d-CON**
24 **that we also at times used. So we included that in**
25 **the total of anything we ever did.**

1 Q. Okay.
2 A. **That's how it came up on April 6th.**
3 **Because we had prepared ourselves because we knew**
4 **that you were interested to know every little**
5 **detail. And that's what we did.**
6 Q. Let me show you some of the photographs
7 that you have provided.
8 A. **Yes.**
9 Q. This is Exhibit 883 and 882. I'm going
10 to first put on 882. Now, these are photographs
11 that you provided the state that show the various
12 rat poisons that you used in the truck?
13 A. **Yes.**
14 Q. The first thing is we have a box of
15 d-CON?
16 A. **Yes.**
17 Q. And then we have this JT Eaton?
18 A. **Yes.**
19 Q. And then you have Just One Bite; correct?
20 A. **Yes.**
21 Q. And I'm going to guess this is about half
22 a pound -- maybe a pound or half a kilo of rat
23 poison. Is that about right?
24 A. **Yeah. I've never weighed it.**
25 Q. It's a whole plate?

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1 A. **Yeah.**
2 Q. And you put this date here; correct?
3 A. **I did.**
4 Q. With Photoshop?
5 A. **I did.**
6 Q. And Mr. Hamilton said these were taken
7 for curiosity. He told this jury they were taken
8 for curiosity.
9 A. **Yes.**
10 Q. Were they taken for curiosity or were
11 they taken for an insurance claim?
12 A. **No.**
13 Q. Let me rephrase the question. Were these
14 pictures taken for an insurance claim?
15 A. **No.**
16 Q. They were not taken for an insurance
17 claim?
18 A. **No.**
19 Q. So if Mr. Hamilton told Mr. Kelly and
20 Ms. Do on April 6th, we weren't sure whether we
21 could have any insurance proceeds way back then.
22 We were just looking at just what to do. We were
23 looking at just what to do, would he be telling the
24 truth or not?
25 A. **I don't remember anything about that. At**

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1 **the time we were considering insurance.**
2 Q. Okay.
3 A. **The reason why I took the photos was**
4 **because I was -- we were fascinated. We wanted to**
5 **see what happened with the stuff, and then it**
6 **disappeared so quickly. So we took some more**
7 **photos.**
8 Q. Okay. So you put it -- again, you put it
9 on a plate?
10 A. **I did.**
11 Q. And this is may be a silly question, but
12 why do you use a ceramic plate? Why don't you just
13 use a plastic plate or a -- why do you use a plate
14 that you're going to have to throw away when you're
15 done? I'm assuming you're going to throw it away.
16 A. **I'm not even sure whether that is a**
17 **ceramic plate or a plastic plate. Could be very**
18 **well a plastic plate. I'm sure it's not one of the**
19 **plates we use to eat from, that we use to eat from.**
20 Q. And by that I think that you mean that
21 the rats eat from it but none of your guests do?
22 A. **Not myself. I don't.**
23 Q. Now, I just want to focus for a second on
24 this date stamp here. You can see that. Obviously
25 it's not 3:20 a.m. because it's light out.

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1 A. **Yes.**
2 Q. Correct? And as you know, when you
3 format your camera, you set a date and a time and
4 all of those sorts of things; correct?
5 A. **Yes.**
6 Q. And if you set it wrong, then the time
7 will show up wrong; correct?
8 A. **Yes.**
9 Q. And the same thing is true with the date;
10 correct?
11 A. **Yes, it is.**
12 Q. So if you have the wrong date in the
13 camera --
14 A. **Yes.**
15 Q. -- it doesn't matter what the metadata
16 says. If the camera is set wrong, this date could
17 be completely wrong too; correct?
18 A. **Yes.**
19 Q. The time is definitely wrong?
20 A. **Yes.**
21 Q. The date could be wrong; correct?
22 A. **Technically speaking, what you're saying**
23 **is correct. It's just that when I took the photos**
24 **and I saved them in my -- in my computer, I always**
25 **put the date in the -- in the name of the photo.**

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1 **Because that information about the photo that is**
2 **hidden, I always put the date on the photo itself**
3 **and the name. So that in my computer it not only**
4 **said this, it also said I took them on October 26**
5 **of 2006.**
6 Q. Because you entered that in --
7 A. **Yeah.**
8 Q. -- when you saved the photo; correct?
9 A. **Yes.**
10 Q. And there is probably some metadata there
11 when you entered in the title of the photo;
12 correct? Just how computers work?
13 A. **I don't know.**
14 Q. Okay. Now, Detective Diskin didn't ask
15 you for your hard drive or your camera; correct?
16 A. **No. And that camera I would not have**
17 **been able. That camera is no longer existing.**
18 **So --**
19 Q. It was a very nice camera. It was a Sony
20 TC-9 or something like that? It's, like, a $600
21 camera?
22 A. **No. This was a little TC-9, I think.**
23 Q. Yeah. It's, like, a five, $600 camera?
24 A. **I don't know.**
25 Q. Would you disagree with me, if I had

1 researched what -- how much that camera cost when
2 it came out it was five or $600?
3 **A. If you want to research it, fine. I**
4 **don't know. Sorry.**
5 **Q.** Now, your testimony is that a day
6 later -- about a day later, the rats, however many
7 there were, ate all of that poison?
8 **A. They did.**
9 **Q.** And that they also dragged in some
10 sticks?
11 **A. They did.**
12 **Q.** Do you know why they call Just One Bite
13 "Just One Bite"?
14 **A. Yeah.**
15 **Q.** Why?
16 **A. Because when one rat eats from it. Then**
17 **in four, five days he will be dead. But it doesn't**
18 **mean that he may not take another bite. Or in this**
19 **particular case we had no clue how big the rat**
20 **colony was because they had eaten so much of our**
21 **cables, there could not be just one rat. There**
22 **were more of them. But how many, I don't know.**
23 **Q.** So the answer is, I think you were
24 telling me, is that Just One Bite, it's one bite
25 and it kills them. It take a few days. I

1 understand.
2 **A. I've never checked. Because I cannot see**
3 **whether the one rat that takes the one bite will be**
4 **dead in five days.**
5 **Q.** You've never -- I'm sorry. Go ahead.
6 You've never checked what? Have you researched
7 this product? Because the four or five days
8 thing -- I've researched the product, and that's
9 what shows up. It says one bite in four or five
10 days kills rats.
11 Did you go in the internet --
12 **A. It says on the back that after four or**
13 **five days the -- they will be dead.**
14 **Q.** Did you do any internet research on it
15 before you testified?
16 **A. It says -- no. It says on the -- we did**
17 **internet research when we prepared for that meeting**
18 **on April 6th because we wanted to -- the products**
19 **that we have used we wanted to have it really clear**
20 **what it is and what it was not.**
21 **Q.** So you did do some internet research
22 about the product?
23 **A. On the product?**
24 **Q.** Yes.
25 **A. Yes, we did.**

1 **Q.** That's all I was asking.
2 **A. Yes.**
3 **Q.** So now I'm going to put on the ELMO, this
4 display, Exhibit 883, which is the very next day or
5 the same day. Sorry. So let me -- I'm going to
6 first put 882. And so you can see here your
7 timestamp is 9:43?
8 **A. Yes.**
9 **Q.** And then at 9:49, you load up another
10 plate of poison?
11 **A. We did.**
12 **Q.** And then your testimony is that less than
13 23 hours later, the rats, basically, licked the
14 plate clean?
15 **A. They did. It was amazing.**
16 **Q.** So in the space of a few days, the rats
17 consumed two, three pounds of rat poison?
18 **A. They did.**
19 **Q.** We're talking about that much rat poison?
20 **A. They did.**
21 **Q.** And every single variety, they ate every
22 single bit of it?
23 **A. They did.**
24 **Q.** They ate the Just One Bite?
25 **A. Absolutely.**

1 **Q.** They ate the JT Eaton?
2 **A. There is nothing staged on these photos.**
3 **Q.** I haven't asked about staged yet.
4 And they ate all the d-CON; correct?
5 **A. They did. Yeah.**
6 MR. LI: Your Honor. It's 10:30.
7 THE COURT: We can take a recess now.
8 Ladies and gentlemen, we will take the
9 morning recess. Please remember the admonition.
10 Mrs. Hamilton, remember the rule of
11 exclusion. And please be reassembled at 10 till.
12 That's about 20 minutes. Thank you.
13 (Recess.)
14 THE COURT: The record will show the presence
15 of Mr. Ray, the attorneys, the jury. Mrs. Hamilton
16 is on the witness stand.
17 Mr. Li, you may continue.
18 MR. LI: Thank you, Your Honor.
19 **Q.** Now, Ms. Hamilton, where we left off was
20 we were discussing the second time you put the rat
21 bait in the truck on October 28th, 2008, about six
22 minutes after that other picture was taken.
23 **A. Yes.**
24 **Q.** Okay. So in the six-minute time, you had
25 taken your bag of poisons and put a new --

1 freshened up the plate with more poison; correct?
2 A. **Yes.**
3 Q. And then in, say, about 23 hours or so,
4 you came back and took another photograph; correct?
5 A. **I did.**
6 Q. And the rats had eaten every single bit
7 of all the poisons -- the d-CON the JT Eaton, the
8 Just One Bite, everything? They ate it all?
9 A. **They ate it all.**
10 Q. Just Monday your lawyer provided the
11 photographs -- Tosca Henry provided the actual
12 photographs that consist -- that you put together
13 in these two exhibits.
14 Are you aware of that?
15 A. **Yes.**
16 MR. LI: Your Honor, then I move exhibits --
17 I've shown it to counsel. 945, 946, 947. And 948
18 into evidence?
19 THE COURT: Mr. Hughes?
20 MR. HUGHES: Assuming those are the photos
21 Mr. Li showed me, I have no objection.
22 THE COURT: 945 through -48 inclusive are
23 admitted.
24 (Exhibits 945-948 admitted.)
25 Q. BY MR. LI: And I'm not going to spend a

1 ton of time on these. But I just want to show them
2 to you. These are the same pictures but without
3 the Photoshop date that you put there?
4 A. **Yeah. Exactly the same pictures.**
5 Q. Okay. And so this is the first plate on,
6 you say October 26, that's sometime during the day?
7 A. **Yes.**
8 Q. Not 3:00 a.m.?
9 A. **No. Not 3:00 a.m.**
10 Q. And there is a whole plate of poison.
11 And then that's Exhibit 945. 946 is that same
12 plate about a day later?
13 A. **Yes.**
14 Q. And the rats have really eaten just about
15 everything?
16 A. **Yes.**
17 Q. And the timestamp is 9:43, but it's
18 actually sometime during the day?
19 A. **Yes.**
20 Q. And then six minutes later, you load up a
21 very full plate of rat poison and take a picture?
22 A. **Yes.**
23 Q. And that Exhibit was 947. And then 948
24 is that same plate about 23 hours later, and the
25 rats have eaten every single bit of that poison?

1 A. **Correct.**
2 Q. Now, these exhibits -- these exhibits --
3 945, the first picture, its JPEG number, which is
4 the unique identifying number for the photograph,
5 is 5:24.
6 Are you aware of that?
7 A. **Could very well be.**
8 Q. And then it skips forward on Exhibit 946
9 to 5:40.
10 A. **Yes.**
11 Q. And then 9:47 is 5:42.
12 A. **Yes.**
13 Q. And then 948 is JPEG number 544?
14 A. **Yes.**
15 Q. So what that means is -- it's a lot of
16 mumbo jumbo. But what it means is that you have
17 one picture that you've given that has a unique
18 identifying number of 524?
19 A. **Yes.**
20 Q. And the last one that you gave has a
21 unique identifying number of 544?
22 A. **Yes.**
23 Q. So there is about 20 pictures between;
24 correct?
25 A. **That's correct.**

1 Q. And you've provided 4 of them; correct?
2 A. **Yes. I could have provided all 30, but I**
3 **thought that was a little bit of an overkill.**
4 Q. I understand. I'm just asking whether
5 there is only 4 provided out of the 20 or so that
6 you are aware of?
7 A. **Yes.**
8 Q. And there may be photos in front of --
9 A. **Yes.**
10 Q. -- those. And there may be photos after?
11 A. **There were.**
12 Q. Okay. And Detective Diskin hasn't asked
13 you for any of those photographs, has he?
14 A. **When we were invited for the interview of**
15 **April 6th, when we completed everything we had.**
16 **And so that request did no longer come from**
17 **Detective Diskin. No.**
18 Q. Just so I'm clear on the answer. Maybe
19 we're having a language issue here.
20 Detective Diskin did not ask you for the other 16
21 photographs that are not included?
22 A. **No, he did not.**
23 Q. Thank you. Now, all these poisons and
24 the rats eating it out of the truck and everything
25 like that -- none of this was mentioned from

1 October 8th all the way through really October 6th.
2 I'm sorry. April 6th, 2011; is that correct?
3 A. **That is correct.**
4 Q. So you said, basically, nothing about
5 poisons -- rat poison and ant poison -- all the way
6 through this whole time period; correct?
7 A. **That is correct.**
8 Q. And then -- so you mentioned one kind of
9 rat poison here. But then all this stuff you
10 didn't mention until April 6th?
11 A. **No. Can I add something to that?**
12 Q. Sure.
13 A. **I never saw the relevance of the pack**
14 **rats with the sweat lodge incident.**
15 Q. Okay.
16 A. **So only when you requested more in depth,**
17 **that's when we said, well, okay. We can give what**
18 **we have.**
19 Q. And I appreciate you giving what you
20 have. I guess one of the questions is, we asked
21 you for all the poisons that you might have used on
22 your land. But it's true, isn't it, that
23 Detective Diskin never asked you for all the
24 poisons you might have used on your land until
25 March 21st, 2011?

1 A. **Not until March 21st. That's correct.**
2 Q. 2011?
3 A. **2011.**
4 Q. 17 1/2 months after the accident;
5 correct?
6 A. **Yes. That's correct.**
7 Q. And about a month into trial; correct?
8 A. **Yes.**
9 Q. We asked you whether you had used poison
10 on your land; correct?
11 A. **No. On March 21st Detective Diskin asked**
12 **us what we had used over those years from when we**
13 **get there in 2002 to 2009.**
14 Q. And you understood that that was in the
15 middle of trial; correct?
16 A. **Oh, yes. We knew the trial was going on.**
17 Q. And you understood that Detective Diskin
18 was asking you because we had asked about poison on
19 the land; correct?
20 A. **I did not question Detective Diskin why**
21 **he asked us.**
22 Q. Let's talk for a second about Rotillo
23 Vasquez. You testified about him?
24 A. **Okay.**
25 Q. And he worked as your landscaper;

1 correct?
2 A. **Over the years on and off. Yes.**
3 Q. And he did gardening, weeding, et cetera?
4 A. **Yes, he did.**
5 Q. Did pest control?
6 A. **When it was needed, he would ask us.**
7 **Yes.**
8 Q. You didn't make any arrangements for the
9 state or Detective Diskin to interview Mr. Vasquez,
10 did you?
11 A. **No.**
12 Q. You did, however, make Ms. Foster
13 available to the detective; correct?
14 A. **I did.**
15 Q. Now, were there other landscapers during
16 the time frame of -- you know -- October 2009,
17 other people who worked on the land? October,
18 September, 2009?
19 A. **No. He was the only one.**
20 Q. So he was the only guy who worked on the
21 land in October 2009?
22 A. **At that moment, yes.**
23 Q. And -- I think we've gone over this. But
24 you didn't supervise every single minute of his
25 day, did you?

1 A. **No, I did not.**
2 Q. And you don't know everything that he did
3 every day, did you?
4 A. **No, I do not.**
5 Q. And you didn't take pictures of every
6 product he's ever used?
7 A. **Actually, yes. Because the images that**
8 **you have is everything -- is everything we've ever**
9 **used. So actually, yes. I did.**
10 Q. And I'm not going to argue with you about
11 this. But you didn't take a picture of Rotillo
12 every time he went to his truck and pulled whatever
13 he pulled out of the truck, did you?
14 A. **No.**
15 Q. So you don't know everything single thing
16 Rotillo Vasquez ever pulled out of his truck;
17 correct?
18 A. **No.**
19 Q. Now, you testified to this jury, as has
20 your husband, that Angel Valley uses a number of
21 pest control methods. I think Ms. Polk has kindly
22 illustrated some of them on this chart yesterday.
23 And these are the rats with the One Bite,
24 Eaton, cats, One Bite, orange oil, tea,
25 diatomaceous earth and AMDRO?

1 A. **Yes.**
2 Q. And you have testified to this jury that
3 there are other methods you use as well. So, for
4 instance, in the organic garden, you just let them
5 eat what they want to eat?
6 A. **Basically, yes.**
7 Q. And so your best control methods include
8 just letting them be?
9 A. **Yes. Let nature be. Yes.**
10 Q. It also includes talking to them?
11 A. **It does.**
12 Q. To the rats?
13 A. **Including the rats.**
14 Q. And the ants?
15 A. **Yes.**
16 Q. And, now, Mr. Vasquez, Rotillo. He just
17 kills the pests; right?
18 A. **No.**
19 Q. So Mr. Vasquez. Does he also speak to
20 the rats?
21 A. **I would say no. Because he is not**
22 **exactly on our level thinking exactly the way we**
23 **do. He may not believe that it will work in**
24 **certain situations.**
25 Q. So he, basically, kills the rats?

1 A. **No. When there is a rat problem, we say**
2 **what do we do? And then we do the procedure.**
3 Q. And you give them --
4 A. **We try to get rid of them. We have the**
5 **cats out. We set the traps. And if it's still**
6 **continuing, then we use one of the products.**
7 Q. The cookies that cause the rats to bleed
8 to death?
9 A. **Yes.**
10 Q. And Mr. Mercer, who you've testified
11 takes care of the pest problem as well?
12 A. **Mr. Mercer?**
13 Q. Ted Mercer.
14 A. **Can you be more specific?**
15 Q. Rats in the pump house? Does he take
16 care of those rats in the pump house?
17 A. **Mr. Mercer is not employed at this**
18 **moment.**
19 Q. Thank you. Did he in 2008 take care of
20 the rats, kill the rats, in the pump house?
21 A. **In 2008 when he was on staff, he was the**
22 **one who would be supervising whether the pump house**
23 **will be rodent free.**
24 Q. Okay. So, for instance, it would be
25 Mr. Mercer who was placing rat poison or whatever

1 in the pump house?
2 A. **If they occurred in that year that he was**
3 **on staff, yes. And if they didn't occur, he may**
4 **not even have done that. I don't know -- I don't**
5 **remember exactly when we would place the stuff. We**
6 **would only do it when the rats were there. I have**
7 **not tracked over the years when were moments that**
8 **we needed to do that.**
9 Q. And I guess -- you know -- I don't mean
10 to be rude. But Mr. Mercer -- do you know whether
11 he claims that he can convince the rats, speak to
12 the rats, and tell them not to be in the pump
13 house?
14 A. **I don't know.**
15 Q. He just, so far as you know, he just uses
16 poison?
17 A. **I don't know.**
18 Q. Now, Ms. Foster. She also has taken care
19 of rodents and ants in your -- at Angel Valley.
20 A. **Yes, she does.**
21 Q. And she has used AMDRO ant killer?
22 A. **She has.**
23 Q. And she has used d-CON?
24 A. **She has used. We discussed that.**
25 Q. And JT Eaton?

1 A. **Yes. I think so.**
2 Q. And Just One Bite?
3 A. **Either of the two.**
4 Q. And she doesn't try to convince the rats
5 not to go into guest houses; correct? She just
6 kills them?
7 A. **Oh, no.**
8 Q. She can talk to rats as well?
9 A. **She does it very well.**
10 Q. Does she speak to ants as well?
11 A. **She does.**
12 Q. But when -- when she can't convince them
13 to leave, she kills them?
14 A. **When she can't convince them to leave and**
15 **they are persistent, we have to take measures. And**
16 **after the traps do not work, then we use this**
17 **material. Yes. We discussed that. It's part of**
18 **our policy.**
19 Q. I understand. Focusing on Fawn Foster
20 now, not "we." Fawn Foster. When Fawn Foster --
21 the first thing Fawn Foster tries do is to convince
22 the rats and the ants not to bother Angel Valley;
23 correct?
24 A. **Absolutely.**
25 Q. And when she can't convince them to not

1 bother Angel Valley, she kills them?
2 **A. We talking about what? Ants?**
3 Q. Ants and rats.
4 **A. After the traps do not work, then we use**
5 **these methods that eventually will kill them. Yes.**
6 Q. You have no personal knowledge, do you,
7 ma'am, whether or not Rotillo has ever used an ant
8 killer like Ortho or any number of the pesticides
9 available at Home Depot or Lowe's or Ace or
10 anywhere? You have no idea whether he took a can
11 of that stuff and shook it out on the ground, do
12 you?
13 **A. I do. Because he would not pay out of**
14 **his own pocket something on behalf of Angel Valley.**
15 **And if he would, he would ask us first, and then he**
16 **would ask us to pay him back.**
17 Q. And you're assuming that?
18 **A. I know.**
19 Q. Just like you knew that there were no --
20 you would never, ever, ever, ever burn a log with a
21 nail in it.
22 **A. Okay.**
23 Q. I know this log -- it's not a big deal.
24 It's just a log. But I guess the point I'm asking
25 you is you made an assumption, and you told this

1 jury straight out you knew you would never, ever
2 burn a log with a nail in it.
3 Didn't you tell the jury that?
4 **A. I did.**
5 Q. And that was an assumption that was
6 wrong; correct?
7 **A. Can I add something to that?**
8 Q. Well, first of all, could you answer the
9 question. Yes or no? That was an assumption that
10 was wrong?
11 **A. You're right. I assumed that there was**
12 **no nail in that log.**
13 Q. Okay. Actually, you said something
14 slightly different. You told this jury that you
15 would never, ever burn a log at Angel Valley that
16 had nails in it; correct?
17 **A. That's correct.**
18 Q. And what you were trying to imply to this
19 jury is that you would never, ever use wood that
20 had been used for some purpose; correct?
21 **A. That's correct.**
22 Q. And the reason why you were saying all
23 that is you wanted this jury to believe or
24 understand that all the logs that were burned
25 couldn't have possibly been treated in any way

1 because they were all logs that have never been
2 used; correct?
3 **A. That's correct.**
4 Q. And so you wanted this jury to hear, we
5 would never use a log that's been nailed because
6 that's a log that may have been used in some way or
7 another. And we didn't treat any of the logs -- so
8 you wanted this jury to understand that you did not
9 use any treated wood to heat up the rocks; is that
10 correct?
11 **A. So can you phrase it in one question,**
12 **because I lost -- I lost the line of your question.**
13 **Sorry.**
14 Q. You wanted this jury to believe that you
15 have never, ever used treated wood to heat up the
16 rocks?
17 **A. That's correct.**
18 Q. And the reason why you were talking about
19 nails in logs is because you wanted to make sure
20 everybody understood that you would never use
21 construction wood that had already been used;
22 correct?
23 **A. Correct.**
24 Q. And so that's why you said, well, we
25 would never use a log that has a nail in it.

1 Because that might be a log that's been used. And
2 you wanted this jury to understand that these were
3 all fresh logs; correct?
4 **A. These were all logs that had not been**
5 **used before; right? Is that your question?**
6 Q. Yes.
7 **A. Yes. That's what I wanted to convey.**
8 Q. And part of conveying that was to say no
9 nails. You would never use anything with nails?
10 **A. The reason why there is a nail in there,**
11 **as I explained yesterday, is because when they were**
12 **not used, never used, they were stored with a tarp**
13 **over it. In order to not blow away, we put a nail**
14 **in there.**
15 Q. Would it surprise you if every single log
16 that the detectives collected -- all three other
17 ones -- have nails in them?
18 **A. That is because the tarps. Not because**
19 **they have been used and treated.**
20 Q. So they just happened to get four out of
21 four logs have nails in them? It's okay.
22 Now, yesterday you told this jury -- I
23 had asked you about whether you were helping people
24 out in the dining hall after the accident.
25 Remember that?

1 **A. Yes.**
2 **Q.** And I asked you whether you heard some
3 personnel, emergency personnel, come in and say,
4 all right. Everybody who was in the sweat lodge
5 tonight, and if you're not going to the hospital,
6 just want everybody to keep an eye on each other
7 tonight. Okay? And you said you had heard that?
8 **A. Yes.**
9 **Q.** And then I asked you, well, then you must
10 have heard the next sentence: We're not exactly
11 sure why. Could have been some carbon monoxide
12 with maybe some organophosphates that were mixed in
13 somehow. So we're checking into that.
14 And you first said you probably did hear
15 that?
16 **A. Yes.**
17 **Q.** And then a participant said, what kind of
18 symptoms should we be looking for? Do you remember
19 that?
20 **A. Yes.**
21 **Q.** And then the EMT said, nausea, vomiting,
22 headaches, everything you have, if it doesn't get
23 better. The good news is that some of the patients
24 that are there that are coming in with some --
25 they're already improving. Just keep an eye on

1 each other. If anybody gets worse, either into the
2 hospital or call 9-1-1, and we'll come back. So
3 just keep an eye on each other.
4 And you heard that as well?
5 **A. I did.**
6 MR. LI: Your Honor, at this point, we'd move
7 in and ask to play for the jury, Exhibit 422, which
8 is a clip of exactly that.
9 MR. HUGHES: Your Honor, the state would
10 object. Hearsay.
11 MR. LI: It's not offered for the truth.
12 THE COURT: Sustained.
13 MR. LI: Your Honor, may I approach?
14 THE COURT: No. Sustained.
15 **Q.** BY MR. LI: You did hear somebody say,
16 we're not exactly sure why? Could have been carbon
17 monoxide with maybe some organophosphates that were
18 mixed in somehow, so we're checking into that?
19 **A. I do not remember the exact words.**
20 **That's what I said yesterday. And I maintain that.**
21 **Q.** All right. And then the EMT was asked
22 about the symptoms --
23 **A. Yes.**
24 **Q.** -- and they said nausea --
25 MR. HUGHES: Objection, Your Honor. This is

1 asked and answered.
2 THE COURT: Overruled.
3 You may complete this.
4 **Q.** BY MR. LI: And the EMT said, nausea
5 vomiting, headaches, everything you have, if it
6 doesn't get better.
7 **A. That is what I do remember. Yes.**
8 **Q.** You do remember that. So you remember
9 the first part?
10 **A. Uh-huh.**
11 **Q.** Which was, everybody check on each other?
12 **A. Yes.**
13 **Q.** And then you remember the second part or
14 the third part, really, which is, symptoms --
15 nausea, headache, everybody check in on each other?
16 **A. Yes.**
17 **Q.** But the part you don't remember very well
18 is the part in the middle where the EMT says, we're
19 not exactly sure why? Could have been some carbon
20 monoxide with maybe some organophosphates that were
21 mixed in somehow?
22 **A. Uh-huh.**
23 **Q.** That's the part you don't remember?
24 **A. Yeah. Can I add something to that?**
25 **Q.** I just want to make sure this jury's

1 clear on what you're saying.
2 You remember the first part where he
3 says, check in on each other?
4 **A. Yes.**
5 **Q.** But you don't remember the next sentence
6 where he says this stuff about carbon monoxide and
7 maybe some organophosphates?
8 **A. Correct.**
9 **Q.** Then you remember the third part which
10 where he describes the symptoms -- nausea, vomiting
11 headache, everything, et cetera?
12 **A. Correct.**
13 **Q.** You would not dispute, would you, if
14 there is a tape-recording of this exact
15 conversation, that the statement about the carbon
16 monoxide and organophosphates follows immediately
17 after checked in on each other, keep an eye on each
18 other? Okay? Would you dispute that?
19 **A. Oh, no. I would not dispute it. But can**
20 **I add something to it, please?**
21 **Q.** Yeah. Sure.
22 **A. At that moment on the evening of**
23 **October 8th, I was so focused and concerned about**
24 **the people who were there, I was not so much**
25 **concerned about what caused it. So anybody would**

1 **have made any suggestion in going there, that was**
2 **not where my attention was.**
3 **My attention was these people were in bad**
4 **shape. They were physically not well. They were**
5 **traumatized. I was, myself, very upset. So yeah.**
6 **If it was said, could very well be, but it would**
7 **have gone right past me.**
8 **Q.** The fact that this EMT was suggesting
9 that these folks who are sick and unfortunately had
10 also, two of them had passed away at that point --
11 the fact that this person said that there could
12 have been some poisons involved, some toxicity
13 involved, did not register in your head even
14 though --
15 **A. No, it didn't.**
16 MR. HUGHES: Objection, Your Honor. There is
17 no evidence it was an EMT that said this.
18 THE COURT: As to the form. And Mr. Li, we've
19 covered this area quite a bit.
20 MR. LI: I'll move on.
21 **Q.** The person who said there might are have
22 been some toxicity involved involving carbon
23 monoxide or maybe organophosphates -- the fact that
24 this person who later says call 9-1-1, and we'll
25 come back -- that person, when he said that, it

1 didn't concern you at all?
2 **A. I tell you, Mr. Li, I did not register.**
3 **I have not heard it. My attention was on those**
4 **people. And they were in bad shape.**
5 **Q.** Now, the accident took place on
6 October 8th, 2009?
7 **A. Yes.**
8 **Q.** And then on October 9th, 2009, the police
9 came and took a number of items from the scene?
10 **A. They did.**
11 MR. LI: If I could have Exhibit 493.
12 **Q.** So, for instance, they took four of these
13 D logs, something like that?
14 **A. I guess they did.**
15 **Q.** Okay. Including that one there?
16 **A. I think they did.**
17 **Q.** And they didn't take that?
18 **A. I don't know what they took.**
19 MR. LI: Can I get 512 up?
20 **Q.** So those are these little tags you see
21 in -- the police use when they're collecting
22 evidence. You known. One, two, three, four?
23 **A. Okay.**
24 **Q.** No. 3, for instance. Do you see those?
25 **A. I see. Yes.**

1 MR. LI: If we could pop back out.
2 **Q.** For instance, they took that one, that
3 one, and that one. Fair to say?
4 **A. Yeah. I think they did.**
5 **Q.** Now, you don't -- and then you can see in
6 the rock pit there is a number of tags there too?
7 **A. Yes.**
8 MR. LI: If we can pop it out just for a
9 second.
10 **Q.** There are no tags here, are there?
11 **A. I don't see them.**
12 **Q.** They also took one-by-one sections of
13 the -- I'm not going to pull them out. But they
14 took one-by-one sections of the tarp about this
15 big? I mean, I can pull them out and show them to
16 you.
17 **A. No. I saw where they had cut out pieces.**
18 **Yes.**
19 **Q.** And they took four of those?
20 **A. I think they did.**
21 **Q.** And that's about four square feet out of
22 probably 500 square feet of tarp?
23 **A. I do not know how many square feet it**
24 **was.**
25 **Q.** Okay. But the sweat lodge was very

1 large. It was 23 feet in diameter?
2 **A. Yeah.**
3 **Q.** Maybe from me to you in diameter, and
4 there was a lot of material on it; correct?
5 **A. There was.**
6 **Q.** And they took four one-by-one, give or
7 take, maybe one and a half by one and a half, cuts;
8 correct?
9 **A. That's what they decided to do.**
10 **Q.** And they took a few rocks?
11 **A. They took rocks.**
12 **Q.** He didn't take them all, through; right?
13 **A. No, they didn't.**
14 **Q.** Because you were able to make a memorial
15 out of the rocks -- the remaining rocks; correct?
16 **A. Yes.**
17 **Q.** Now, after they had taken a few rocks --
18 and did you see them take the dirt samples, by the
19 way?
20 **A. On that day?**
21 **Q.** Yes.
22 **A. No.**
23 **Q.** But they did later; right?
24 **A. They did later.**
25 **Q.** Okay. And we'll get to that in a second.

1 Did you know that they took dirt samples
2 that were probably the size of a film canister?
3 A. **I don't know what they did.**
4 Q. Couple of them?
5 A. **I don't know.**
6 Q. And then on the evening of October 9th,
7 Detective Diskin told you that you could do -- that
8 they were done?
9 A. **Yes, they did.**
10 Q. And you told him that you wanted to have
11 some ceremony where you would cleanse the location.
12 A. **We did.**
13 Q. And that you were going to take down the
14 sweat lodge?
15 A. **We did.**
16 Q. And that you were going to just clean it
17 up?
18 A. **Yes, we did.**
19 Q. And he said, okay. I'm done?
20 A. **He did.**
21 Q. So on October 10th, the next day --
22 If we could have Exhibit 213 up.
23 How about Exhibit 560. 231. Sorry.
24 231. You tore down the sweat lodge?
25 A. **Yes.**

1 Q. Took the coverings off?
2 A. **Yes. Thank you.**
3 MR. LI: And then 560, please.
4 Q. And then you burned the wood?
5 A. **We did.**
6 Q. And this is you and your husband?
7 A. **Yes.**
8 Q. Right here; correct?
9 A. **Yes.**
10 Q. And I think you might be able to see in
11 the fire --
12 If you can blow up the fire a bit.
13 There is some blue tobacco pouch or
14 something like that?
15 A. **Yes.**
16 Q. And that was a piece of -- you know -- a
17 tobacco pouch that was on the ground?
18 A. **No. These tobacco pouches they call**
19 **"prayer ties." They have evidently been made**
20 **before the ceremony, and they're hung on the sweat**
21 **lodge structure. And they were still hanging**
22 **there. When we took it down, they were still**
23 **there.**
24 **And in addition, the participants who**
25 **took part of the ceremony in the morning -- they**

1 **were to gather in the dining room. And they**
2 **decided they wanted to make some more prayer ties**
3 **for the ceremony that we did there. So these were**
4 **added too.**
5 **And I don't know whether they put them on**
6 **the fire or whether they hang them again on the**
7 **structure. But these ones are either have been in**
8 **the ceremony on the 8th, or it may also have been**
9 **prayer ties that the people of the group, the**
10 **participants who were still at Angel Valley, that**
11 **they made them that morning and added them into the**
12 **ceremony.**
13 Q. Okay. So just so we're clear, there were
14 some prayer ties that the police had left behind
15 that you burned?
16 A. **As I say, I cannot say whether these were**
17 **newly made that morning or whether there were still**
18 **some hanging there.**
19 Q. Okay. Did you just tell us that there
20 were some still hanging there and that you -- it
21 doesn't have to be this one here. Let me ask you
22 in general. Were there some prayer ties that were
23 on the structure that the police left that you
24 subsequently burned?
25 A. **I cannot swear on that. It should be**

1 **easy to see on the pictures that were taken before**
2 **we took the structure down. Because if there was**
3 **anything hanging from it, you can see it in those**
4 **pictures. So if you can find that -- you know --**
5 **it's visible.**
6 Q. Then your husband cut up the tarps --
7 562, please.
8 And that's your husband there?
9 A. **Yes.**
10 Q. And he's got some kind of knife or box
11 cutter or something like that?
12 A. **He cut them in pieces that could be**
13 **folded and could be taken away.**
14 MR. LI: 563, please.
15 Q. And that's him cutting up the wood? I
16 mean the tarps?
17 A. **The vinyl -- the vinyl. Yes.**
18 Q. And he hauled the wood away; correct?
19 A. **The wood?**
20 Q. Yes.
21 A. **No. Which wood are you talking about?**
22 Q. The wood that was used to burn for the --
23 to heat the rocks.
24 Can we look at 561, please?
25 You recognize this picture?

A. **Oh, yes.**
Q. This is after the ceremony; correct?
A. **This picture was taken -- must have been the very day, because on the right you still see the table with -- with -- must have been the same day after we had completed.**
Q. And so you can see in the background there is some wood?
A. **Yes.**
Q. Correct?
A. **Yes.**
MR. LI: If we could look at 567. Sorry. 576.
Q. That's you; correct?
A. **Yes. Yes. That is.**
Q. Okay. And this picture was taken sometime around October 30th, 2009; correct? It's when the detectives came.
A. **I'm -- I'm not sure. I don't know about the date. What I do know is this picture may have been taken when they came out to make the -- to take more soil samples. Because at that moment I was improving the memorial site.**
Q. Okay. So you see the little evidence tag there with the can -- cannister?

A. **I see it here.**
Q. Okay. So would that make you -- could you conclude from that that this is taken the day the detectives came back to take additional soil samples?
A. **I don't know. Because I was around doing my thing and they were doing their thing. I do not know what they photographed or what they did. I don't know.**
MR. LI: If we could pop back out.
Q. The one thing we do know, though, is this area there is no wood. Correct?
A. **Yeah. We had removed it by then.**
Q. Okay. And you had also on October 9th -- sorry. October 10th for the ceremony, you had raked the land? You cleaned it up?
A. **For the ceremony?**
Q. Let me -- let me rephrase the question. On October 10th, after you had taken down the lodge, after you had you created the heart-shaped structure, after you had done all this stuff, you also smoothed out the land; correct? You raked it?
A. **Yes.**
Q. And you did that probably around

October 10th, 2009; correct?
A. **Yes.**
Q. And then the detectives came out 20 days later, maybe October 30th, and collected samples from land you had already raked; correct?
A. **Yes.**
Q. And so the land had already been disturbed when the detectives came back 20 days later to -- to -- I'm not saying you did anything wrong.
A. **You -- you must understand, the area of the sweat lodge, which now is in the same area, that is covered with sand that we do not take outside of that area where there is more weeds and things like that. So if we do any raking, there is not much soil that moves somewhere else. It's not -- it stays, basically, in the same place. It just looks nicer.**
Q. Fair to say, though, the wood is gone by this time?
A. **Oh, yes.**
Q. Fair to say the tarps are gone?
A. **Yes.**
Q. Fair to say the structure is gone?
A. **Yes.**

Q. Fair to say the rocks had been disturbed -- moved from wherever they were before?
A. **Which rocks are you talking about?**
Q. The rocks from the sweat lodge.
A. **The rocks from the sweat lodge, they're in the heart in the middle.**
Q. I understand. But they've been moved out of the pit from where they were before; correct?
A. **Oh, yes. That happened on October 10th.**
Q. Fair to say that you filled in the pit?
A. **Yes, we did.**
Q. Fair to say that you raked the ground?
A. **We did.**
Q. Fair to say the wood that was used for the kiva was burned?
A. **That's correct.**
Q. Fair to say that tobacco pouches that may have been in the kiva were also burned?
A. **If 50-some people had made pouches to hang in the sweat lodge structure, then -- and they had made more than one, then the detective must have taken a tremendous amount of these pouches, because these were not there when we took it down.**
Q. I understand.
A. **If there was still something hanging**

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1 **there, it was just minimal.**
2 **Q.** That's all I'm asking you, ma'am. I'm
3 just asking you, is it fair to say if there was
4 some tobacco pouches hanging in the frame, that you
5 burned them? That's all. I'm not asking you to
6 defend what the detectives did or didn't do.
7 **A. I'm not defending anybody.**
8 **Q.** So is it fair to say that if there are
9 tobacco pouches in the kiva that you burned them?
10 **A. Any there were, yes. We did.**
11 **Q.** Thank you. Now, you understand we
12 started this discussion, you and I, yesterday
13 talking about the difference between assuming,
14 speculation, and what you actually see with your
15 own eyes?
16 **A. Yes.**
17 **Q.** And you'd agree with me that it's
18 critical for this jury that you provide them -- in
19 order for them to determine the truth, the
20 difference between speculation and fact, that you
21 provide them only information that you've seen with
22 your own eyes; correct?
23 **A. Yes.**
24 **Q.** And that you don't give this jury a bunch
25 of assumptions; correct?

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1 **A. Yes.**
2 **Q.** Because you understand that evidence
3 that's based on assumptions and things that you
4 don't really actually know is not helpful to this
5 jury, to me, to the Court, to the prosecution or
6 Mr. Ray?
7 You understand that?
8 **A. I do.**
9 **Q.** And you also understand that evidence
10 that's been staged, that doesn't actually depict
11 anything that happened on the night of
12 October 8th -- on the day of October 8th, 2009 --
13 you understand that staged evidence is completely
14 useless to this jury; correct?
15 **A. Mr. Li, I -- I have been asked things**
16 **that do not have to make sense to me. If I'm**
17 **requested to provide something, the only thing that**
18 **I'm requested to do is tell what I have seen, what**
19 **I have heard and what is true as I recollect it.**
20 **Q.** You understand that providing this jury
21 with staged evidence and providing this court with
22 staged evidence may have the result of misleading
23 people?
24 **A. It has never been my intent to mislead**
25 **anybody.**

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1 **Q.** I understand that. But you understand
2 that providing incomplete information and
3 inaccurate information may mislead people? Do you
4 understand that?
5 **A. I understand that inaccurate information**
6 **can mislead people. Yes. I do.**
7 **Q.** And you also understand that incomplete
8 information can mislead people; correct?
9 **A. No, I do not. Because there is more**
10 **things that I do not share about my life or my life**
11 **at Angel Valley because it's not relevant to what's**
12 **going on here.**
13 **Q.** And just so we're clear, between
14 October 8th and April 6th, 2011, months into this
15 trial, you did not mention anything about d-CON,
16 JT Eaton, or other kind of rat poisons?
17 **A. No. Because I never saw the relevance.**
18 **Q.** And you did not mention anything about
19 AMDRO; correct?
20 **A. I --**
21 **Q.** Until April 6th, 2011?
22 **A. We were asked everything we have used in**
23 **any kind of situation. So then we said, this is**
24 **all we have ever used in any kind of situation.**
25 **That's all I can do.**

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1 **Q.** And you provided that information on
2 April 6th, 2011, after Ms. Foster testified?
3 **A. No. After I had been requested to share**
4 **everything I knew.**
5 **Q.** But just in terms of the calendar, it is
6 after the date that Ms. Foster testified; correct?
7 **A. From my perspective, there is no**
8 **correlation between Fawn Foster's -- whatever she**
9 **shared and what I presented on that interview on**
10 **April 6th.**
11 **Q.** And I'm not going to quibble with you
12 about that. But I just want to ask you. You gave
13 your interview five days after Fawn Foster
14 testified; correct?
15 **A. Because that's when I was invited to come**
16 **for the interview.**
17 **Q.** Yes or no? Correct?
18 **A. I did. Yes.**
19 **Q.** And then five days later, you told
20 Ms. Do, Mr. Kelly, about the ant poison; correct?
21 **A. Yes.**
22 **Q.** So between October 8th, 2009, and
23 April 6th, 2011, you did not mention ant poison;
24 correct?
25 **A. In our discussion on March 21st, we**

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1 **mentioned everything at that time was presented.**
2 **After that I collected all the material that ever**
3 **was used. And on April 6th I was invited to share**
4 **that with your team. That's all I can say.**
5 THE COURT: Mr. Li and Mr. Hughes I want to
6 see you at bench.
7 (Sidebar conference.)
8 THE COURT: You mentioned and you offered, I
9 think, for the first time the actual audio the
10 person, and Bill always objects. It's not sure who
11 it is. And when we don't -- it's come up before as
12 to the form of the question. But I think you said
13 422, Mr. Li. That's not the exhibit.
14 MR. LI: 742.
15 THE COURT: Okay. 742.
16 MR. LI: I misspoke, Your Honor. I apologize.
17 I have a problem with numbers.
18 THE COURT: And this came up at the beginning
19 of the trial at opening. And there is a legitimate
20 purpose to put that in. But there has to be a
21 limiting instruction, especially in the context of
22 how long you covered that area. So I'm telling you
23 before that I would permit the playing of that.
24 Mr. Hughes, I want you to be able to make
25 a record. But that's my thinking on it now. The

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1 fact that because of this particular person being
2 informed of this and at that time hearing that, it
3 has significance that has nothing to do with the
4 actual truth of it.
5 But, Mr. Hughes, for the record.
6 MR. HUGHES: For the record, I would object.
7 It's hearsay. I don't believe Mr. Li has shown
8 what the significance is with this witness. He
9 hasn't established any foundation that it affected
10 her one way or the other. In fact, she testified
11 that she wasn't paying attention at that time to
12 what possible causation issues were. She was just
13 trying to console people.
14 So for this witness it's not relevant.
15 It's classic hearsay, lacks foundation. We don't
16 know who said it. And for those reasons, Your
17 Honor, it shouldn't be admitted.
18 THE COURT: Mr. Li, go ahead.
19 MR. LI: I disagree. Basically, I'm taking
20 the position that Ms. Hamilton is crafting her
21 testimony to avoid liability. And this is yet
22 another piece of evidence.
23 THE COURT: That's the relevance of it, and it
24 has nothing to do with the truth. So what I'm
25 going to do is I'm going to adjust the lunch hour.

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1 And I want to get the jury back at 1:15. And I
2 want an acceptable limiting instruction.
3 MR. LI: May we play it?
4 THE COURT: Yes. But after lunch.
5 MR. LI: After lunch.
6 THE COURT: So I'm saying we're going to
7 adjust the lunch hour so we're not taking up any
8 more time right now and get the screen back down
9 and everything back down and everything turned on
10 too. But we're going to break and start back up at
11 1:15.
12 (End of sidebar conference.)
13 THE COURT: Ladies and gentlemen, we're going
14 to adjust the lunch hour a bit, start earlier and
15 then begin earlier this afternoon. We're going to
16 go ahead and take the recess at this time.
17 Please remember the admonition in all
18 respects. Please be reassembled at 1:15. We'll
19 start just as soon as we can after that.
20 And, Ms. Hamilton, you will be excused at
21 this time as well. Remember the rule that I've
22 discussed with you several times.
23 And we will be in recess. Thank you.
24 (Recess.)
25 (Proceedings continued outside presence

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1 of jury.)
2 THE COURT: The record will show the presence
3 of Mr. Ray and the attorneys.
4 And I have a proposed limiting
5 instruction. Apparently there is disagreement on
6 whether it would be listener and some of the
7 language there.
8 Mr. Hughes.
9 MR. HUGHES: Yes, Your Honor. We agree on, I
10 think, everything except the very last word,
11 whether the instruction should limit the jury to
12 considering the effect on listeners, which,
13 apparently, would include all the participants,
14 people who were present in the dining hall that
15 night, or whether it would be limited to Amayra
16 Hamilton.
17 At sidebar Mr. Li indicated that he
18 intended to offer it for the relevant purpose. He
19 argued the relevant purpose of the effect on Amayra
20 Hamilton.
21 And I think that's what the instruction
22 needs to limit itself to. If in the future the
23 defense wants to argue the effect on, for example,
24 Ross Diskin, or some other listener, they need to
25 lay foundation that that person heard it, and then

1 further limiting instruction could be given and
2 this one could be amended.
3 But for the purpose stated at the
4 sidebar, the instruction should be limited to the
5 purpose that was stated at sidebar.
6 THE COURT: Mr. Li.
7 MR. LI: Your Honor, there is a number of
8 detectives who were in the room at that time. We
9 believe should also be admissible for purposes of
10 what they heard and the effect that it had on them.
11 I also anticipate that we will be asking
12 Detective Diskin about this same clip. And rather
13 than keep on writing new limiting instructions,
14 with each of the individual listeners, I think it's
15 more effective to simply say, the listeners.
16 THE COURT: I know a prior limiting
17 instruction had that.
18 MR. LI: That was -- the original language was
19 taken directly from the prior limiting instruction
20 relating to Ms. Brown's statements about her state
21 of mind.
22 THE COURT: Right.
23 MR. LI: We just tried to mirror it.
24 MR. HUGHES: Your Honor, in that case
25 involving Ms. Brown, I'm not sure if the limiting

1 instruction said on the listener or limited itself
2 to the effect on Mr. Ray.
3 But in this particular case, unlike with
4 the Ms. Brown case where there would be evidence
5 the jury could infer at least that Mr. Ray heard
6 Ms. Brown's statement, until there is foundation
7 that someone else or Detective Ross Diskin heard
8 the statement, I think there simply lacks that
9 foundation as far as whether the jury could even
10 consider the effect on some other listener.
11 And, again, then "listener" is so vague
12 and broad. Does that include the other
13 participants who were sitting there in the mess
14 hall? If so, what would be the relevance for that?
15 THE COURT: I am going to read it in this
16 fashion: You may, however, consider the statements
17 in determining what effect the statements may have
18 had on Amayra Hamilton. For this witness.
19 It may be -- we'll see -- for this
20 witness that was the only purpose it was really
21 coming in. Although, I don't think I need to say,
22 only consider the statements. It's made clear that
23 it can't be considered for the truth. So I think
24 it will just read: You may, however, consider the
25 statements in determining what effect the

1 statements may have had on Amayra Hamilton.
2 MR. LI: That's fine, Your Honor. Thank you.
3 MR. HUGHES: Thank you, Your Honor.
4 THE COURT: And, Mr. Li, in doing this, this
5 does not reopen a whole area of cross-examination.
6 You've covered that in some detail so --
7 MR. LI: I understand very well, Your Honor.
8 THE COURT: This is an area that has been
9 covered. But it is appropriate to admit this.
10 Then we'll have the jury in a minute.
11 Thank you.
12 (Proceedings continued in the presence of
13 jury.)
14 THE COURT: The record will show the presence
15 of Mr. Ray, the attorneys, the jury. Ms. Hamilton
16 has returned to the witness stand.
17 Mr. Li.
18 MR. LI: Thank you, Your Honor.
19 **Q.** Ms. Hamilton, good afternoon. I promise
20 you I will be very, very brief.
21 On October 8th, 2009, in the evening
22 after the accident, you were in the dining hall;
23 correct?
24 **A. I was.**
25 **Q.** And there were many other participants;

1 correct?
2 **A. Yes.**
3 **Q.** And there were also police; correct?
4 **A. Yes.**
5 **Q.** And there were also, at times, emergency
6 personnel coming in and out; correct?
7 **A. Yes.**
8 **Q.** And you previously told this jury that
9 you heard someone say, all right. Everyone who is
10 in the sweat lodge tonight, and if you're not going
11 to the hospital tonight, just want everybody to
12 keep an eye on each other. Okay?
13 **A. Yes.**
14 MR. LI: Your Honor, at this time we would
15 move Exhibit 742 into evidence, ask that it be
16 played. And I believe this is an appropriate time
17 for an instruction.
18 THE COURT: Any further record?
19 MR. HUGHES: No further record, Your Honor.
20 THE COURT: Then the exhibit number again,
21 Mr. Li?
22 MR. LI: 742.
23 THE COURT: 742 will be admitted at this time
24 and played. And then after it's played, I will
25 have a special instruction for you.

1 MR. LI: Thank you, Your Honor.
2 (Exhibit 742 admitted.)
3 (Exhibit 742 played.)
4 Q. BY MR. LI: Now, Ms. Hamilton, you
5 testified to this jury that you heard the first
6 sentence about keeping an eye on each other
7 tonight?
8 A. **Yes.**
9 Q. But it's your testimony to this jury that
10 you did not hear the second sentence that they
11 were -- could have been some carbon monoxide with
12 maybe some organophosphates that were mixed in
13 somehow. Is that your testimony?
14 A. **My testimony is that it didn't register.**
15 Q. And this is on October 8th, 2009, the
16 night of the incident?
17 A. **Yes.**
18 THE COURT: Could you get the audio? Thank
19 you, Mr. Li.
20 Ladies and gentlemen, as I indicated, I
21 have a special instruction for this last item of
22 evidence, the excerpt that was just played.
23 You have just heard a recording of
24 statements that were made outside of the courtroom.
25 As I have explained on prior occasions, the rules

1 of evidence sometimes limit your ability to
2 consider statements made outside of the courtroom.
3 You may not consider the statements on
4 the recording you just heard in determining whether
5 or not what any of the speakers said is true. You
6 may, however, consider the statements in
7 determining what effect the statements may have had
8 on Amayra Hamilton.
9 MR. LI: Thank you, Your Honor. I have
10 nothing further.
11 THE COURT: Anything further, Mr. Li?
12 MR. LI: No, Your Honor.
13 THE COURT: Okay.
14 Mr. Hughes, you may redirect when you're
15 ready.
16 MR. HUGHES: Thank you.
17 REDIRECT EXAMINATION
18 BY MR. HUGHES:
19 Q. Good afternoon, Mrs. Hamilton.
20 A. **Good afternoon.**
21 Q. I wanted to ask some follow-up questions
22 about a few of the topics that Mr. Li had brought
23 up. Going through my list.
24 First of all, you were asked about the
25 log that has the nail in it. Do you recall those

1 questions?
2 A. **Yes.**
3 Q. And can you tell me when the nail would
4 have been put in that log and for what purpose?
5 A. **The nail was put in the log because when**
6 **the logs were stored, that were not used, we would**
7 **cover them with tarps. And in order to prevent the**
8 **tarps from blowing off, we would nail them in some**
9 **places. That's how it was.**
10 Q. Showing you what's been admitted as
11 Exhibit 141, can you show us -- does that exhibit
12 show the location where the logs would have been
13 stored with the tarps nailed down to the --
14 A. **Yes.**
15 Q. If you can point to it on your screen.
16 A. **In this area. And you can still see some**
17 **blue and silver of the tarps that are blue on one**
18 **side and silver on the other side. And this first**
19 **pile of wood tarps have come off because in this**
20 **Arizona climate, the tarps weather. Sometimes we**
21 **have to replace the tarps.**
22 Q. When you testified earlier that it's your
23 practice not to burn wood with nails in it, what
24 were you referring to?
25 A. **I was referring to when you remodel a**

1 **building, and we have done a lot of remodeling, we**
2 **would sometimes, let's say, replace door, pieces or**
3 **other pieces of wood which would contain nails. We**
4 **would throw them away in the dumpster.**
5 **If we would have leftover pieces of wood**
6 **that had been used but then taken off again with**
7 **the wrong piece or whatever, we would throw that in**
8 **the dumpster. We would never make the effort of**
9 **taking all the nails out so the wood could be**
10 **burned. That would take too much time.**
11 Q. And you were asked about the location of
12 the sweat lodge frame and whether it was in the
13 same spot in 2007 as in 2008.
14 Do you remember those questions?
15 A. **Yes, I do.**
16 Q. Did you have an opportunity to go by the
17 location on your property where the sweat lodge
18 frame was sitting in 2007?
19 A. **Yes.**
20 Q. What would bring you by that location in
21 2007? What sort of activity would you be doing?
22 A. **During the ceremony, you mean?**
23 Q. Well --
24 A. **Can you rephrase that question?**
25 Q. I will. It's not a very good question.

1 Throughout the year of 2007, while the
2 frame was erected, did you ever go down to that
3 part of your property?
4 **A. Oh, yes. This is one of the ways that**
5 **you go around.**
6 Q. And at some point was the frame taken
7 down in 2007?
8 **A. The frame of 2007 was taken down in 2008**
9 **before we re-erected the frame that was built in**
10 **September of 2008.**
11 Q. And after the frame was put up in 2008,
12 did you have, for whatever reasons, the opportunity
13 to drive by where the frame was put up in 2008?
14 **A. Oh, numerous times.**
15 Q. And on your trips past the -- where the
16 frame was in 2007 and then where it was in 2008,
17 were you able to determine whether it appeared to
18 be in approximately the same spot?
19 **A. It was in exactly the same spot.**
20 Q. And then in 2009 was it the same frame
21 that was built in 2008?
22 **A. Yes. Correct.**
23 Q. And the frame, then, that was built
24 in 2008 -- is that the one that was taken down in
25 that ceremony that we've even the pictures of after

1 the events on October 8?
2 **A. Yes, it was.**
3 Q. You were asked by Mr. Li about an Angel
4 Valley flier that indicates that there is a sweat
5 lodge available for guests that holds up to 75
6 people.
7 Do you remember being asked about that?
8 **A. Yes.**
9 Q. Have -- other than for Mr. Ray's groups,
10 have other large groups used that sweat lodge?
11 **A. The largest group that has ever used any**
12 **sweat lodge was 40. Usually they were smaller.**
13 Q. As far as the sweat lodge frame, you were
14 asked whether the pit inside was in the exact
15 center or not.
16 Do you remember being asked that?
17 **A. I do.**
18 Q. Do you know whether the sweat lodge
19 structure itself is an absolute, perfect
20 geometrical circle?
21 **A. Whether it is or whether it's close to**
22 **being -- what is?**
23 Q. Let me ask you this: Do you know whether
24 the pit may be an inch or two or maybe even a foot
25 or two off the exact geometrical center of that

1 lodge?
2 **A. It has never occurred to me while being**
3 **there or driving by that it would strike my eye**
4 **that it would be not centered.**
5 Q. And let me ask you this: It may be a
6 corollary of the flip side of what I've just asked.
7 Have you had an opportunity to look at the pit in
8 the 2008 sweat lodge structure?
9 **A. Yes. I have seen the pit in the 2008**
10 **structure. Yes.**
11 Q. And you tell us whether or not it
12 appeared to be approximately in the center of that
13 structure?
14 **A. To me it appeared to be approximately in**
15 **the center.**
16 Q. Did you have an opportunity to look at
17 the pit in the 2007 structure?
18 **A. Yes.**
19 Q. And can you tell me whether or not it
20 appeared to be in approximately the same place in
21 the center or not?
22 **A. Again, it appeared to me in the center.**
23 Q. How about in 2006?
24 **A. Same.**
25 Q. In 2005?

1 **A. Also.**
2 Q. You were asked some questions about the
3 landscape fabric underneath the area where the
4 sweat lodge is.
5 Do you remember those questions?
6 **A. Yes.**
7 Q. Can you tell us when it was that
8 landscape fabric was put down.
9 **A. In 2005 when we moved from the one place**
10 **they are closer to the creek to the place where the**
11 **sweat lodge has been since 2005, when we prepared**
12 **the -- the bottom, we put down the fabric, and then**
13 **we put sand over it.**
14 **And I do not know how many times, but**
15 **many maybe a few times, only few times over those**
16 **years since 2005, we may have added a little sand.**
17 **Not so much probably. But at least, if we -- in**
18 **situations where the fabric would come out one way**
19 **or another, doesn't look nice, so we would add a**
20 **little more sand.**
21 Q. Do you remember when in 2005 that fabric
22 was put down?
23 **A. In April of 2005. Because that is when**
24 **we constructed the 2005 sweat lodge.**
25 Q. And since April of '05, has that fabric

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1 ever been replaced or changed?
2 A. **No.**
3 Q. I think in response to one of Mr. Li's
4 questions, you indicated that someone from
5 Mr. Ray's staff inspected the sweat lodge in 2009.
6 Do you remember that?
7 A. **Yes.**
8 Q. Can you tell us when in that week the --
9 and by "the week," I mean the Spiritual
10 Warrior 2009. When was that sweat lodge inspected
11 and by whom?
12 A. **I do not know by whom. And I was not**
13 **there when it was inspected. What we did do --**
14 MR. LI: Objection. Move to strike. Lack of
15 foundation.
16 THE COURT: There hasn't been any answer.
17 So Just go ahead and ask a question,
18 Mr. Hughes.
19 Q. BY MR. HUGHES: Do you have any personal
20 knowledge of who it was or when it was the sweat
21 lodge was inspected.
22 A. **I do not know who inspected it. No.**
23 Q. You were about -- you were asked some
24 questions about Exhibit 493. And in response to
25 one of those questions, you said something along

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1 the lines of, you would bet your life that this
2 wood in this area was not treated wood.
3 Do you recall that answer?
4 A. **Yes.**
5 Q. Can you tell us why it is you believe
6 that was not treated wood.
7 A. **Because we were so -- so fussy about**
8 **those kind of things that -- you know — it's**
9 **practically -- no. We haven't taken people by the**
10 **hand. But everybody knew how fussy Michael and I**
11 **were about all these things that had to do with any**
12 **kind of toxicity. So --**
13 Q. When you were doing construction projects
14 on Angel Valley, did you have a dumpster on the
15 property?
16 A. **Oh, yes.**
17 Q. And where in relation to the construction
18 projects was the dumpster located?
19 A. **We -- the dumpster was in different**
20 **locations. It depended a little bit of where we**
21 **had the building project and where the dumpster**
22 **truck had access to put a dumpster. Because**
23 **ideally we would have the dumpster as close as**
24 **possible to the property we were working on. But**
25 **sometimes some of the places are not so easy**

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1 **accessible for the dumpster truck.**
2 **So we -- and then we would have to take**
3 **things from the building project to the area where**
4 **the dumpster was. It has been in different**
5 **locations over the years.**
6 Q. What was the purpose of having a dumpster
7 on the site when you were doing construction work?
8 A. **Because much of our construction was**
9 **remodeling of the existing buildings. So we would**
10 **have quite some stuff that had to go. And then the**
11 **best way to do that is a dumpster. And dumpster is**
12 **being -- you make an arrangement contract with a**
13 **company that is replaces the dumpster. And that**
14 **was the way that worked very well.**
15 Q. Now, yesterday I'd asked some questions
16 about the number of participants that showed up on
17 various years at Angel Valley.
18 Do you remember those?
19 A. **Yes.**
20 Q. And at the time you had to be -- looked
21 at some notes to refresh your recollection?
22 A. **Yes.**
23 Q. And are those notes you prepared back in
24 November of last year?
25 A. **I reviewed them before I did my**

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1 **testimony. So they are more or less the same. But**
2 **they may -- they were more or less participants.**
3 **But the notes I had here was slightly different.**
4 **If you want to have them, you can.**
5 Q. Did you prepare some notes in November --
6 A. **I did.**
7 Q. -- for the attorneys in this case that
8 talked about the number of participants in
9 different ceremonies?
10 A. **I did.**
11 Q. Both Mr. Ray's and other people's?
12 A. **Yes.**
13 MR. HUGHES: Your Honor, may I approach the
14 witness?
15 THE COURT: Yes.
16 Q. BY MR. HUGHES: Showing you what's been
17 marked as Exhibit 138, do you recognize that
18 document?
19 A. **I do.**
20 Q. Okay. And you testified a couple of
21 minutes ago that the largest group that you could
22 recall other than Mr. Ray's group was 40
23 participants?
24 A. **Yes.**
25 Q. Would looking at that document refresh

1 your recollection as to whether that's accurate or
2 not? And to speed things up, you may want to look
3 at the second page.
4 A. **Yeah. I see here that the group in**
5 **October 8 for Doctor -- Reverend Lee Campbell, that**
6 **says here 50 guests. And I went back into**
7 **contract, and I recalculated that it was 40.**
8 Q. Okay. So you believe it was 40 and not
9 50?
10 A. **Yeah. It was 40.**
11 Q. And you said you recalculated based on
12 looking at a contract?
13 A. **Yes.**
14 Q. Can you explain a little bit what you
15 mean which that.
16 A. **Well, it's a contract that we make with**
17 **people is about the number of participants. And**
18 **since our normal accommodation is around 40,**
19 **anytime we would have more people, we would really**
20 **have to pay attention, take extra measures to**
21 **accommodate some extra people.**
22 **I do not remember that in 2008 we did**
23 **take extra measures. The contracted group was 34.**
24 **And I do remember that in that particular sweat**
25 **lodge ceremony, The Reverend Campbell invited some**

1 **people of our staff to join in the ceremony, which**
2 **was very unusual. Because normally, groups would**
3 **do their own ceremony without inviting other people**
4 **in. And this one particular group, the only one in**
5 **all those years, ever invited our staff to be part**
6 **of it.**
7 Q. And then is that 40-person figure -- does
8 that include the participants and also your staff?
9 A. **That includes participants of the group**
10 **of the retreat plus the staff that he invited.**
11 Q. You were asked questions about a disaster
12 training seminar that you attended. Can you tell
13 us when that was.
14 A. **That was in August of 2010.**
15 Q. And who put on the seminar?
16 A. **The lady, Mary Schnack, was who put it on**
17 **or who was leading it.**
18 Q. Well, it sounds like there is a
19 difference or a distinction. So if you could tell
20 me both of the answers.
21 A. **It was a collaboration of the CEO of the**
22 **chamber of commerce and the Mayor of Sedona**
23 **together with Mary Schnack, who has a PR company,**
24 **to set up an opportunity for the people in Sedona**
25 **who may at times when something unexpected happens**

1 **and they are approached by the media, on how to do**
2 **that in the most optimal way.**
3 **And since the lady who was giving the --**
4 **teaching that seminar was the head lady who had**
5 **been coaching us for a few months how to deal with**
6 **the media, she invited me to be part of it. For me**
7 **to training was kind of a repetition what I had**
8 **learned before.**
9 **Since we were still in the middle of**
10 **everything, I felt it would be my benefit to learn**
11 **that. Because it was not -- we were not used to**
12 **dealing with media. That's not our normal thing.**
13 Q. And is Angel Valley in Sedona city
14 limits?
15 A. **No, it is not.**
16 Q. Does Angel Valley work with the
17 government of the City of Sedona on public
18 relations issues?
19 A. **Not really. But since our -- let's say**
20 **in this area Sedona is the place where all the**
21 **metaphysical activity is taking place. We have a**
22 **Sedona address, which happened to be there when we**
23 **got there. And we're a member of the chamber of**
24 **commerce in Sedona.**
25 **And after the incident of October 8th,**

1 **2009, the Mayor of Sedona was approached to give**
2 **some comments. All that led to kind of, yeah. The**
3 **chamber of commerce was approached numerous times**
4 **by the media, by everything. So it was mostly for**
5 **the Sedona community that was impacted by what**
6 **happened.**
7 **So it was kind of logical. And normal --**
8 **our focus is very much on Sedona, because that is**
9 **where the type of work that we do is most, let's**
10 **say, at the surface.**
11 Q. You mentioned that you had worked with
12 this lady after the events of October 8. Can you
13 tell us how it is you came to be working with this
14 lady.
15 A. **Well, it was because I met with the CEO**
16 **of the chamber of commerce and because I had heard**
17 **that she got requested to give information. So I**
18 **met with her. And I said, well, if you -- you**
19 **know -- are there any questions that I could answer**
20 **for you?**
21 **And then she asked me, do you have**
22 **somebody to help you with dealing with media?**
23 **And we said, no.**
24 **She says, maybe it could be if good for**
25 **you have some help or some training. And so she**

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1 **brought us in contact with this lady that had this**
2 **company. And we have worked with her for a few**
3 **months.**
4 **Q.** And I think you told Mr. Li that the
5 first interview that you gave to the media
6 following this was on January 28th, 2010?
7 **A. It was.**
8 **Q.** And why did you wait, then, from October
9 to January 28th to give an interview to the media?
10 **A. Well, first of all, in the beginning we**
11 **were very traumatized ourselves. So it was very**
12 **hard to talk about it with others, to begin with.**
13 **But also there was so much sensation and**
14 **judgment and things going on. And we didn't want**
15 **to be part of that. So I was very cautious -- when**
16 **people from the media would call, I would share**
17 **with them that it was hard for us to talk with**
18 **media, hoping that they would have understanding.**
19 **And they did.**
20 **And eventually we felt like we were ready**
21 **to talk about looking at, okay, when something like**
22 **that happens, what can we all learn from it? And**
23 **by that time, by January, we felt we could talk**
24 **about it from ourselves. And we were dealing with**
25 **people that we felt were not into sensation, were**

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1 **not into throwing out nasty accusations or things**
2 **like that. So that is when we first started**
3 **talked.**
4 **Q.** Mr. Li asked whether in October of 2009,
5 you issued a press release. And you mentioned it
6 was very brief. Can you tell us what is a press
7 release and how do you go about releasing one, or
8 how did you?
9 **A. We -- we -- we were approached by media.**
10 **First few days -- yeah. The first few days we**
11 **said, no. We can't talk. And then we thought if**
12 **we give them at least a little something, then**
13 **okay, then that's done, and then we'll see where it**
14 **goes next.**
15 **Q.** How brief of a statement did you give?
16 **A. Oh. It was typed out. It was half --**
17 **half a page, two paragraphs.**
18 **Q.** In any of the interviews that Mr. Li
19 asked you about, have you ever given information
20 that is inconsistent or contradicts with what your
21 testimony has been today?
22 MR. LI: Objection. Leading.
23 THE COURT: Overruled.
24 You may answer that, Ms. Hamilton.
25 THE WITNESS: Not to my knowledge.

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1 And can I add something to that?
2 **Q.** BY MR. HUGHES: If it would help complete
3 your answer.
4 **A. I had only one focus, to talk about what**
5 **can we learn from it. I never wanted to discuss**
6 **any details. Even when they were asking -- people**
7 **tried to ask me, I would say, no. I don't want to**
8 **go there.**
9 **Q.** You were asked some questions about
10 whether during that time prior to the start of the
11 trial, you were ever asked about the use of rat
12 poison or ant poison or weeds poison on your
13 property.
14 Do you remember those questions? Do you
15 remember being asked those questions?
16 **A. Mr. Li? Yes. But -- I've gotten**
17 **confused here.**
18 **Q.** Prior to the start of this trial, were
19 you ever asked about by anybody -- the media, the
20 defense team or the state -- were you ever asked by
21 anybody about the use of rat poison on your
22 property?
23 **A. No.**
24 **Q.** How about the use of ant killer on your
25 property?

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1 **A. No.**
2 **Q.** How about the use of weed killer on your
3 property?
4 **A. No.**
5 **Q.** Is that an issue that came up for you for
6 the first time after the trial started?
7 **A. The issue came up for the first time when**
8 **Detective Diskin asked us about our history of use**
9 **of whatever is on the property.**
10 **Q.** And you met with Detective Diskin in
11 March 21st; correct?
12 **A. We did.**
13 **Q.** And can you tell us how long of a meeting
14 that was.
15 **A. Maybe 20 minutes. Not long.**
16 **Q.** And do you know whether -- you testified
17 earlier that Detective Diskin asked you about the
18 use of those sort of products on your property
19 since you had the property?
20 **A. Yes.**
21 **Q.** Is that something -- do you recall
22 whether that's what Detective Diskin asked you
23 about, or was he focusing on what was being used at
24 the time of the sweat lodge?
25 **A. No. He asked specifically what have you**

1 **used over all those years, the history.**
2 **Q.** And did he ask you what have you used
3 since the sweat lodge?
4 **A. I don't remember.**
5 **Q.** You were asked about the photos that you
6 took of the poison in the pump house. Do you
7 remember those questions?
8 **A. Yes.**
9 **Q.** Have you ever tried to deceive or stage
10 the date that those photos were taken?
11 **A. Oh, no.**
12 **Q.** In fact, did you disclose digital copies
13 of the photos in that email that Mr. Li showed you
14 and put into evidence?
15 Let me ask you a different question.
16 Did you provide the parties with digital
17 copies of those photos?
18 **A. I did.**
19 **Q.** And would those copies of the photos show
20 when they were taken?
21 **A. They would.**
22 **Q.** And when you were interviewed about the
23 photos, did you or your husband -- were you
24 up-front about when the photos were taken?
25 **A. Oh, yes.**

1 **Q.** Mr. Li asked you some questions as to did
2 you have the sheriff's department talk to Fawn
3 Foster. Do you remember being asked about that?
4 **A. Are you referring to October 26 of 2009?**
5 **Q.** In 2009, Mr. Li asked you if you had --
6 if you or your husband were the ones that directed
7 the sheriff's department to talk to Fawn Foster?
8 **A. Yes. I did.**
9 **Q.** Why is it that you directed the sheriff's
10 department to talk to Fawn Foster?
11 MR. LI: Objection, Your Honor. This is going
12 to call for a hearsay response.
13 THE COURT: Overruled.
14 MR. LI: Your Honor, if I may approach?
15 THE COURT: You may.
16 Mr. Hughes.
17 (Sidebar conference.)
18 MR. LI: I apologize for bringing this up.
19 But he's basically -- she's going to say, well, she
20 said something to me on the 26th. On the night of
21 the accident this is what she said, and I wanted to
22 make sure that the detectives heard it. That's
23 hearsay. I only asked her whether or not she had
24 spoken to Fawn Foster before. I didn't ask her
25 about the substance. I just asked whether she had

1 spoken to Fawn Foster before she recommended that
2 the detectives talk to her. I believe that
3 Mr. Hughes is seeking a hearsay response. And
4 that's what this witness will volunteer.
5 MR. HUGHES: Your Honor, Mr. Li's questions
6 were implying that somehow this witness and Fawn
7 Foster got together in the days after the incident
8 happened and that they cooked up a story that Fawn
9 Foster was to give to the detectives. And that's
10 not what happened.
11 And the line of questioning by Mr. Li has
12 now made it relevant as to why this witness asked
13 the detectives to interview Ms. Foster.
14 MR. LI: All I asked this witness is whether
15 or not she had spoken to Fawn Foster before she
16 recommended the detectives. And she said she
17 couldn't answer yes or no. And then I left it. I
18 didn't keep asking her questions about that.
19 THE COURT: There were many, many questions
20 where answers weren't produced.
21 I thought, Mr. Li, you asked a question
22 to the effect because she had a story to tell or
23 something like that.
24 MR. LI: And I struck that because I
25 understood that that was an argumentative way. I

1 specifically recall that exact question. She
2 looked at me, and I said, you know, you don't like
3 that phrase, and I totally understand that. And I
4 used a different question.
5 THE COURT: I thought a great deal about that
6 whole piece of evidence regarding what might have
7 been an excited utterance. That was the specifying
8 exception noted. But I thought about other
9 grounds. And it was --
10 MR. LI: Your Honor, may I?
11 THE COURT: -- difficult issue. But I
12 don't -- I made it clear, I think, I want this jury
13 to have all the relevant evidence they need. And
14 it is admissible to make a decision. And I don't
15 want to leave something hanging.
16 At the same time, I don't want to upon up
17 a piece of evidence that did not quite fit excited
18 utterance. It just did not. The whole scenario
19 there of I don't want to disturb people or walk
20 around the tent. That's not the environment for an
21 excited utterance at all.
22 MR. HUGHES: There is a new exception now,
23 just the effect on the listener. And that is it's
24 not offered for the truth of the matter. It's the
25 effect that Ms. Foster's statement to Ms. Hamilton

1 had on Ms. Hamilton that explains the reason why
2 Ms. Hamilton had the detectives talk to Fawn
3 Foster. Subjects that Mr. Li went into, he didn't
4 have to ask this witness about Mrs. Hamilton
5 advising the detectives. He went there.
6 THE COURT: Mr. Hughes, that's what I'm trying
7 to work through right now. I wanted -- Mr. Li -- I
8 wanted to complete that thought.
9 MR. LI: It's one thing if all she says is she
10 testifies she heard something from Fawn Foster that
11 she thought the police should know. Okay? If
12 that's all he wants to elicit, that would be fine.
13 THE COURT: That's where I was heading. And I
14 think he needs to be able to lead through that to
15 get that information out.
16 MR. LI: And, Your Honor, I'm okay with him
17 leading her through that. What I don't want her to
18 say is to blurt out some language that she says she
19 heard Fawn Foster say about unconscious, all of
20 those sorts of things. We don't even know if
21 that's actually what was said.
22 THE COURT: It did not fit excited utterance.
23 It just did not -- that scenario, that whole thing.
24 So if Hughes if you can lead through to
25 get through without opening up that hearsay, then

1 it's permitted.
2 MS. POLK: May I have a moment with
3 Mr. Hughes?
4 THE COURT: Yes.
5 (Discussion between counsel held off the
6 record.)
7 THE COURT: You know what, Counsel? We need
8 to take a recess.
9 (End of sidebar conference.)
10 THE COURT: Ladies and gentlemen, we need to
11 take a brief recess just for a few minutes. Please
12 remember the admonition.
13 And we're going to try to come back in
14 about 10 minutes. I'm going to ask the parties to
15 remain for a moment. And remember the admonition,
16 as I said. This will be a very brief break.
17 Ms. Hamilton, you are excused too for a
18 few minutes.
19 (Proceedings continued outside presence
20 of jury.)
21 THE COURT: Please be seated.
22 The attorneys are present.
23 Mr. Hughes, just to finish up on the last
24 point, did you have anything further?
25 MR. HUGHES: Yes, Your Honor. One other

1 point, which is the defense, through their
2 examination of Ms. Foster and now through their
3 examination of Ms. Hamilton, have been suggesting a
4 recent fabrication. And another exception to the
5 hearsay rule is to rebut a claim of recent
6 fabrication.
7 I think it's very relevant that
8 Ms. Foster not only heard the statement and
9 testified about the statement herself, but she
10 relayed that statement to Mrs. Hamilton. That
11 relaying of the statement to Mrs. Hamilton rebuts
12 this -- this allegation that was raised when
13 Ms. Foster was on the stand that this is a recently
14 fabricated statement, perhaps because Mrs. Foster
15 has a motive not to like Mr. Ray, the areas that
16 the defense went into with Ms. Foster.
17 So in addition to the fact that these
18 statements should come in because of its effect on
19 Ms. Hamilton, namely, the fact that Ms. Hamilton
20 put Ms. Foster and YCSO together, it should also
21 come in to rebut this claim that the defense made
22 of a recent fabrication by Ms. Foster.
23 MR. LI: Your Honor, I'm just reading the rule
24 of recent fabrication. And that relates to
25 declarant. So the declarant testifies at trial,

1 and you're trying to show some prior consistent
2 statements through the declarant to rebut the idea
3 of recent fabrication, not through some third party
4 to say that -- that she said it to some third party
5 and have the third party report back what
6 Ms. Foster purportedly heard inside the sweat
7 lodge.
8 This is also -- you know -- I mean, as I
9 said at sidebar, this is very -- treading on very
10 dangerous ground relating to the 403 issue.
11 MR. HUGHES: Your Honor, in this case the
12 declarant has testified and is subject to
13 cross-examination. And her statement, Ms. Foster's
14 statement, is offered to rebut an express or
15 implied charge against the declarant of recent
16 fabrication.
17 MR. LI: But this, I mean -- it typically
18 relates to a declarant who is testifying, and then
19 there is a prior consistent statement that the
20 declarant is going to acknowledge. Yes, I said to
21 the police the same thing the day before. That is
22 the typical scenario. This is calling Ms. Hamilton
23 to report on what Ms. Foster purportedly said.
24 I'd also just note for the record, Your
25 Honor, that when I made my objection that this was

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1 going to call for hearsay, that the state,
2 essentially, said it was not going to be calling
3 for hearsay. And we knew exactly where this was
4 headed. And it's very dangerous. You know, to do
5 this. And that's why I asked for a sidebar.
6 MR. HUGHES: Your Honor, I did not say it was
7 not going to call for hearsay.
8 MR. LI: Okay.
9 THE COURT: Specifically, you cited the
10 excited utterance exception.
11 MR. HUGHES: That was yesterday, Your Honor.
12 THE COURT: I thought you were talking about
13 yesterday. This is --
14 MR. LI: Your Honor, if I may be heard? I
15 think the way to handle this is to have Mr. Hughes,
16 as the Court said at sidebar, ask questions that
17 are directed, narrow. Did Ms. Foster tell you
18 something that made you want to tell her to talk to
19 the police? Yes.
20 And did you then tell the police that
21 Ms. Foster had something to say? I think that's
22 safe. I think when you get in any further, the
23 state is just trying to get the prejudicial hearsay
24 in.
25 THE COURT: The time to bring up the purported

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1 or possible prior consistent statement would be
2 with the declarant, to bring that up just as an
3 inconsistent statement that would be brought up at
4 that time. The other side gets to cross-examine
5 about that. It's the same with the consistent
6 statement as well.
7 The other thing about prior consistent
8 statements, it has to be brought through -- is they
9 have to be made at a time prior to any motivation
10 to fabricate, if you will. And that's a question
11 that could be debated, I suppose.
12 Mr. Hughes, I do think it's appropriate
13 to lead through to show that information was
14 obtained, and that's why -- if that's the way the
15 testimony goes. I don't know. But I guess that's
16 what you're anticipating, and that's why
17 Ms. Hamilton wanted the sheriff's office to talk
18 to -- sheriff's deputies to talk to Ms. Foster.
19 So that area before, it did not fit the
20 excited utterance, which is the grounds it was
21 urged on. And with regard to prior consistent
22 statement, there is no opportunity to cross-examine
23 now regarding that statement with Ms. Foster.
24 MR. HUGHES: Your Honor, the final ground
25 raised today was the effect on this listener, and

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1 that effect being the fact that she put Ms. Foster
2 together with the sheriff's department and told the
3 sheriff's department you need to talk to
4 Ms. Foster. That effect on the listener is now
5 relevant due to the fact of Mr. Li's
6 cross-examination.
7 THE COURT: And I think that's what you were
8 going to be leading her through to make sure it's
9 done in those kinds of terms.
10 MR. HUGHES: But, Your Honor, the statement
11 itself is a hearsay statement, is admissible if
12 it's offered to show the effect on the listener and
13 if the effect on the listener is somehow relevant.
14 It's become relevant. The statement itself, what
15 was actually said to Mrs. Hamilton, is admissible
16 under the hearsay rule.
17 And, Your Honor, I'm just completing the
18 record. I didn't raise that yesterday because
19 Mr. Li had not suggested a relevant reason why the
20 effect on Ms. Hamilton was important as of
21 yesterday.
22 But today, given his cross-examination,
23 he went down that road. He didn't need to, but he
24 did. So the effect on Ms. Hamilton, the jury is
25 entitled to hear that to assess the fact they need

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1 to know what she was told.
2 Again, we're talking about a statement by
3 the defendant. We're not talking about hearsay
4 within hearsay. We're talking about a statement by
5 the defendant, which is a statement against the
6 defendant's own interest.
7 THE COURT: 403 really comes in in this area.
8 And that was a concern yesterday as well.
9 So, Mr. Hughes, as I've indicated, you
10 can lead through and portray that.
11 MR. HUGHES: Thank you, Your Honor.
12 THE COURT: Okay.
13 I do want to take a few minutes, just a
14 few minutes. Thank you.
15 (Recess.)
16 (Proceedings continued in the presence of
17 jury.)
18 THE COURT: The record will show the presence
19 of Mr. Ray, the attorneys, the jury.
20 Ms. Hamilton is back on the witness
21 stand.
22 Mr. Hughes.
23 MR. HUGHES: Thank you.
24 **Q.** Ms. Hamilton, I think where we left off,
25 we had started on the subject of your recommending

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1 that YCSO get in touch with Fawn Foster.
2 A. **Yes.**
3 Q. At some point in time, did you hear --
4 and I'm not asking you what you heard. But did you
5 hear something from Mrs. Foster that led you to
6 believe that you should have her speak to YCSO?
7 A. **Yes, I did.**
8 Q. And can you tell us what point in time
9 that was that you heard this from Mrs. Foster?
10 A. **It was on October 8th in 2009 during the**
11 **last round when I was sitting next to her on that**
12 **back log bench right next to the sweat lodge.**
13 Q. I'm showing you Exhibit 144. Is this the
14 log bench that you're talking about?
15 A. **That is the log bench I'm talking about.**
16 Q. You were asked some questions by Mr. Li
17 about whether the wood -- and I'm going to show you
18 Exhibit 512, which is a slightly different exhibit
19 than Mr. Li asked you about. But it shows the same
20 pile of wood.
21 Do see that pile of wood over there?
22 A. **To the left. Yes.**
23 Q. You were asked whether you were sure or
24 not whether that wood was burned in the fire. Do
25 you remember that?

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1 A. **Yes.**
2 Q. Do you know, first of all, where the main
3 fire pit was?
4 A. **Here on this. Here was the main fire**
5 **pit.**
6 Q. And was there another fire pit for the
7 intentions fire?
8 A. **Yes. That was a little bit to the right**
9 **here.**
10 Q. Let me zoom out a little bit.
11 Can you see where the little fire pit
12 was?
13 A. **I think. Yeah.**
14 Q. Let me zoom in on that area.
15 A. **Here. The leftover, the ashes of that**
16 **small fire.**
17 Q. Do you know what wood was used for that
18 little fire?
19 A. **What I saw was that they used these kind**
20 **of small little pieces. And my understanding was**
21 **that they had made a little bigger pile here, and**
22 **they used some of that wood for that little fire.**
23 Q. And do you know, Ms. Hamilton, where this
24 pile of wood came from?
25 A. **These are pieces of trees, limbs, dead**

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1 **pieces from the property.**
2 Q. Then you were asked questions about the
3 pump house and the poison on the dish in the pump
4 house. Do you know whether the -- in 2009 did you
5 have the opportunity to go into the pump house
6 before the Spiritual Warrior week?
7 A. **I have been in the pump house**
8 **during 2009. Yes.**
9 Q. Do you know where the blankets and the
10 tarps were stored in the pump house?
11 A. **In the pump house behind the two big**
12 **containers, big tanks, there was a table. And on**
13 **the table were all the blankets.**
14 Q. You mentioned that occasionally there
15 would be flooding in the pump house?
16 A. **There has never been flooding. But where**
17 **there are pumps and water, there could be something**
18 **starting to leak. And we did not want to run the**
19 **risk if that ever happened that blankets would get**
20 **wet. So we would keep them off the floor.**
21 Q. You mentioned to Mr. Li in response to a
22 question that you were sure that Rotillo would not
23 have purchased any sort of chemicals on his own.
24 Can you explain how it is you come to that opinion?
25 A. **Number one, he never did that to begin**

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1 **with. But also he would never do that and pay for**
2 **himself to purchase something. And he would -- he**
3 **would have asked us but -- just never happened.**
4 **The landscapers never ever have purchased anything.**
5 Q. Thank you, Ms. Hamilton. You've been
6 very patient.
7 THE COURT: Thank you, Mr. Hughes.
8 Members of the jury, do any of you have
9 questions for this witness?
10 Will counsel please approach to look at
11 the jury questions.
12 (Sidebar conference.)
13 MR. HUGHES: I don't have any objection.
14 THE COURT: No objection.
15 Before we leave, I want to handle this at
16 sidebar.
17 Ms. Polk, apparently -- was that a note
18 you gave to Heidi?
19 MS. POLK: I was. I don't want to draw
20 attention to it or embarrass Mina. But I just was
21 concerned before that last break that she might be
22 getting a little sleepy and maybe we need to take a
23 break.
24 THE COURT: That's why I took the break.
25 Thank you.

1 I just want to make sure, Mr. Kelly,
2 Mr. Li. I don't want to put it any further on
3 record. I just want people to know why we took the
4 break.
5 Mr. Kelly?
6 MR. KELLY: Different issue.
7 THE COURT: Go ahead.
8 MR. KELLY: Right before lunch these exhibits
9 were marked by the state. I believe
10 Detective Diskin is next. And we object to some of
11 them. And I don't know how you want to handle
12 that.
13 THE COURT: Do you know -- Ms. Polk, are you
14 going to do the examination?
15 MS. POLK: Yes.
16 THE COURT: Do you know when you anticipate
17 those would be offered?
18 MS. POLK: We may or may not get to it today.
19 MR. KELLY: I wrote on here. It's Spiritual
20 Warrior outline, the agenda and syntax, the photos
21 of James Ray. And then foundational discussion,
22 the photographs, I don't have any objections to.
23 So does that help? Is that going to be today?
24 THE COURT: If you can -- if we can get to the
25 first recess before it comes up, that would be

1 good, rather than try to get right into it on a
2 bench conference.
3 But I do want to say too, with regard to
4 Mina, on my screen everything looked fine as far as
5 I can tell.
6 So thank you.
7 (End of sidebar conference.)
8 THE COURT: Ms. Hamilton, I will ask the
9 questions. The lawyers may want to follow up with
10 their own questions.
11 First, was James Ray or anyone
12 representing James Ray or JRI ever present at Angel
13 Valley during the construction of any of the kivas
14 used by JRI's sweat lodge ceremonies?
15 THE WITNESS: No, they were not.
16 THE COURT: Any follow up, Mr. Hughes?
17 MR. HUGHES: No, Your Honor.
18 THE COURT: Mr. Li?
19 MR. LI: No, Your Honor.
20 THE COURT: Next question: We have heard
21 testimony that James Ray has stated that he
22 received sweat lodge ceremony instructions from a
23 Native American friend of his who has been a part
24 of James Ray's sweat lodges in the past. To your
25 knowledge, has Artie Looking Glass, Brian Hornbeck

1 or David Singing Bear ever met James Ray while at
2 Angel Valley?
3 THE WITNESS: Not to my knowledge.
4 THE COURT: Follow up, Mr. Hughes?
5 MR. HUGHES: Thank you.
6 FURTHER REDIRECT EXAMINATION
7 BY MR. HUGHES:
8 **Q.** Ma'am, were any of those gentlemen guests
9 or visitors to Angel Valley on any of the years
10 that Mr. Ray had his sweat lodge ceremonies there?
11 **A. The question is whether they were guests?**
12 **Q.** Were they guests or visitors during the
13 time that Mr. Ray was on the property?
14 **A. No, they were not.**
15 **Q.** Thank you.
16 THE COURT: Mr. Li.
17 MR. LI: No questions, Your Honor.
18 THE COURT: Ms. Hamilton, you will be excused
19 temporarily as a witness. You may be recalled as a
20 witness. So it's very important, of course, that
21 you continue to follow the rule of exclusion of
22 witnesses and all aspects that I've explained.
23 Do you have any questions about that?
24 THE WITNESS: No.
25 THE COURT: Okay. Thank you. Then you're

1 excused temporarily at this time, and you may step
2 down.
3 THE WITNESS: Thank you.
4 THE COURT: Ms. Polk, the state may call the
5 next witness.
6 MS. POLK: State calls Detective Diskin,
7 please.
8 THE COURT: Detective, if you'd please step to
9 the front of the courtroom here, and raise your
10 right hand and be sworn by the clerk.
11 ROSS DISKIN,
12 having been first duly sworn upon his oath to tell
13 the truth, the whole truth, and nothing but the
14 truth, testified as follows:
15 THE COURT: Please be seated here at the
16 witness stand.
17 Sir, would you start by stating and
18 spelling your full name.
19 THE WITNESS: Sure. My name is Ross Diskin.
20 R-o-s-s, D-i-s-k-i-n.
21 THE COURT: Thank you.
22 Ms. Polk.
23 MS. POLK: Thank you, Your Honor.
24 DIRECT EXAMINATION
25 BY MS. POLK:

Q. Good afternoon, Detective.
A. **Good afternoon.**
Q. Can you start by telling the jury where you were born and raised.
A. **I was born in Prescott and raised here in Yavapai County.**
Q. And how long has your family been in the Yavapai County or Prescott area?
A. **For at least the last three generations.**
Q. Will you tell the jury where you went to high school.
A. **I went to high school at Mayer High School. Mayer High School. I'm sorry.**
Q. Mayer High School.
While you were in high school, did you work, also work?
A. **I did.**
Q. Tell the jury what sort of work you did.
A. **I -- my first job was at Young's Farm in Dewey. Then I worked at an amusement park in Prescott Valley. And then I was a plumber for a water company.**
Q. How long did you work as a plumber for the water company?
A. **It was off and on for probably about**

three years.
Q. Did you go to college?
A. **I did.**
Q. And what state did you go to college in?
A. **In California.**
Q. What was the name of the college?
A. **It was called College of the Siskiyous.**
Q. And was it a two-year or a four-year college?
A. **It was a two-year college.**
Q. Did you go on some sort of scholarship?
A. **No.**
Q. Did you go to play a sport?
A. **Yeah. I went to play baseball.**
Q. Did you play baseball in college?
A. **I did briefly until I needed shoulder surgery.**
Q. What position did you play?
A. **Well, I was a pitcher in high school. And when I went to college, I moved to the outfield.**
Q. And how soon after starting your college baseball career did you get your shoulder injury?
A. **Well, my shoulder injury was clear back from my junior year of high school. And so I had**

done rehab and things to try and cure it, which didn't work.
Q. In college, then, you were not able -- were you able to play a season?
A. **I played in the -- in the fall league.**
Q. And then what happened?
A. **Then I was told I needed surgery.**
Q. And were you able to get the surgery at that time?
A. **I was.**
Q. Did you then look for a job while in college?
A. **I did.**
Q. Where did you go to look for the job?
A. **Well, I was going to a little church up there in Northern California, and I just asked around. Somehow I needed to pay for college. Does anybody have work for me?**
Q. And did you get a recommendation to somebody or did you hook up with someone to get some work?
A. **There was a local contractor that attended that church.**
Q. Did he hire you?
A. **He did.**

Q. For how long did you work for the local contractor?
A. **It was for about two years.**
Q. And what sort of work did you do for him?
A. **Just general construction. We built houses from the ground up.**
Q. Did you know the construction industry before you began working for him?
A. **Not really. I -- I knew plumbing. That was about it.**
Q. Did you learn quite a bit about construction from the builder?
A. **I did.**
Q. Do you continue to do some construction today?
A. **I do.**
Q. Describe for the jury what sort of construction you do on the side of being a full-time peace officer.
A. **You know, I do some remodeling. My parents and I purchased a house a couple years ago. And I remodeled the entire house and then sold it. And then I make furniture.**
Q. You make furniture also?
A. **I do.**

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Q. When you were in college, about how many hours per week were you working for the contractor?
A. **I was in school full time. And I think I probably worked about 30 hours a week.**
Q. For about two years?
A. **Yes.**
Q. Always with the builder?
A. **Yes.**
Q. Did you get an associates degree from the college?
A. **I did.**
Q. Tell the jury what you got your associates degree in.
A. **Well, I don't know if you can get an associates degree in something specific, but my major was administration of justice.**
Q. Did you seek certification in California as a reserve officer, a peace officer?
A. **I did.**
Q. When did you do that?
A. **That was all through college. Through -- through the two and a half years of junior college. It was a progressive thing.**
Q. And is that an actual certification you got from California?

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A. **Yes.**
Q. What did that enable you to do?
A. **That would enable me to be a reserve officer in California.**
Q. What year did you come back to Arizona?
A. **It was in 1999.**
Q. When did you graduate from college?
A. **In '99.**
Q. Did you immediately come back to Arizona after graduation?
A. **I did.**
Q. And did you seek employment here in Arizona then?
A. **I did.**
Q. As what?
A. **I went back to work for that water company that I'd been working for. And then also I applied -- once I turned 21, I applied to work at our county jail.**
Q. Did you get hired at the county jail?
A. **I did.**
Q. What is that position called?
A. **That's called "detention officer."**
Q. What month and year did you get hired as a detention officer?

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A. **It was in January of 2000.**
Q. How long did you hold that position?
A. **About a year and a half.**
Q. Do you need to be a certified officer to be a detention officer?
A. **No.**
Q. Tell the jury what sorts of things you did as a detention officer at the county jail.
A. **Basically, guarded inmates. I worked the evening crew. So we pretty much locked people every night.**
Q. What area did you -- where was the jail when you worked in the jail?
A. **I worked in the Prescott jail.**
Q. At some point did you seek certification in Arizona as a certified peace officer?
A. **I did.**
Q. Explain to the jury how that works.
A. **There is a testing process in which you apply for that position. And then they have a physical test, a written test, and an oral board. From there you're placed on the list.**
Q. Did you go to any sort of training here in Arizona for that testing process?
A. **No.**

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Q. So first you get placed on a list. And then what happens?
A. **Then if you're hired, then they send you to the police academy.**
Q. When was it that you went through the testing and got placed on the list?
A. **I don't remember when the testing was. I started the academy in August of 2001.**
Q. What agency had hired you and sent you to the academy?
A. **The Yavapai County Sheriff's Office.**
Q. And explain to the jury what the academy is.
A. **It's a 17-week training course where you become certified to become a law enforcement officer.**
Q. What's the name of the academy?
A. **Ours is called "NARTA." It's the Northern Arizona Regional Training Academy.**
Q. And are there candidates throughout the state of Arizona who attend NARTA for the training?
A. **Yes.**
Q. And in order to attend the NARTA academy, do you need to be sponsored by a law enforcement agency?

1 A. **Yes.**
2 Q. And, in fact, you have to be hired by a
3 law enforcement agency, and then you go to the
4 academy?
5 A. **Yes. It didn't used to be that way. It**
6 **had become that way prior to when I got hired.**
7 Q. What months, then, did you attend the
8 academy?
9 A. **From August -- I can't remember what**
10 **part -- until, I think, December 14 is when I**
11 **graduated.**
12 Q. Of 2001?
13 A. **Of 2001.**
14 Q. And you successfully completed and
15 graduated from the academy?
16 A. **I did.**
17 Q. When did you get your certification as an
18 Arizona Certified Peace Officer?
19 A. **That would be upon graduation of the**
20 **academy. I believe it was December 14th.**
21 Q. Is that the end result of the academy is
22 you become a certified peace officer for the State
23 of Arizona?
24 A. **Yes.**
25 Q. After graduating and obtaining your

1 certification as a peace officer for the State of
2 Arizona, you're working now for the sheriff's
3 office; correct?
4 A. **Right.**
5 Q. Tell the jury where you were first
6 assigned.
7 A. **Well, my first assignment, really my only**
8 **patrol assignment was the Yarnell, Bagdad district,**
9 **which covered Wickenburg, Wilhoit, Bagdad, Skull**
10 **Valley, People's Valley, Yarnell, all those areas.**
11 Q. Were you on patrol?
12 A. **I was.**
13 Q. Describe for the jury what those duties
14 entail.
15 A. **Well, you never really know what you're**
16 **going to see on patrol. Essentially, we respond to**
17 **calls. Somebody may call and want to report a**
18 **crime, and then we're dispatched to that crime, or**
19 **we also go out and proactively do things. You**
20 **know, run traffic, look for DUIs or whatever we**
21 **have time to do.**
22 Q. When you worked in that area, did you
23 live that area?
24 A. **I did.**
25 Q. Tell the jury what community you lived in

1 then.
2 A. **I lived in People's Valley.**
3 Q. Was it a requirement that you live in the
4 area that you were assigned to patrol?
5 A. **For a while, yes.**
6 Q. And was that requirement lifted at some
7 point?
8 A. **It was.**
9 Q. Did you then obtain a promotion?
10 A. **I did.**
11 Q. Tell the jury when you were promoted.
12 A. **It was in January of 2006.**
13 Q. So how many years were you on patrol
14 before you were promoted?
15 A. **About four years.**
16 Q. What were you promoted to?
17 A. **Detective.**
18 Q. And as a detective -- first of all, tell
19 the jury how many detectives work for the Yavapai
20 County Sheriff's Office.
21 A. **I think we have 12 detectives and 2**
22 **sergeants and a lieutenant.**
23 Q. Are the detectives assigned to specific
24 geographic areas?
25 A. **Yes.**

1 Q. What is your area?
2 A. **My area is the Prescott area.**
3 Q. Are the detectives assigned to a specific
4 type of case?
5 A. **Yes.**
6 Q. And do you have a specific type of case
7 that you were assigned to?
8 A. **Yes, originally.**
9 Q. And originally what was that?
10 A. **Technically still assigned to the Crimes**
11 **Against Children Division.**
12 Q. Tell the jury what that means, "crimes
13 against children."
14 A. **We investigate child abuse, sexual**
15 **conduct with a minor, child molestation, child**
16 **pornography. Basically, anything involving child**
17 **victims.**
18 Q. Do the detectives -- do you cross-train
19 into other areas?
20 A. **We do.**
21 Q. And how does that work?
22 A. **Well, there is not enough of us to where**
23 **we can really specialize and only work a certain**
24 **type of crime, because a crime might be reported**
25 **and everyone else is busy except you, which is kind**

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1 **the case with this particular case.**
2 **We train with -- we learn DNA evidence.**
3 **We learn how to investigate homicides, thefts,**
4 **pretty much everything.**
5 **Q.** And is more than one -- does more than
6 one detective work on a particular case at the same
7 time?
8 **A. Yes.**
9 **Q.** And tell the jury how that works.
10 **A. Well, initially if we're responding to a**
11 **crime scene and it's a major-scene homicide, we all**
12 **go. We all go. We all go to all of them. And**
13 **because it takes all of us to process the scene and**
14 **do what needs to be done. And then usually after**
15 **it calms down and there is less to do on the case,**
16 **then -- you know -- only the case agent works the**
17 **case.**
18 **Q.** Who determined who the case agent will be
19 for a case?
20 **A. Our supervisor.**
21 **Q.** I'd like to just spend a couple moments
22 going over some of the training you've received
23 since becoming a certified peace officer.
24 And, first of all, have you received some
25 training in the area of the crimes against

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1 children?
2 **A. Yes.**
3 **Q.** Do you recall whether you have attended
4 the statewide child abuse prevention conference
5 that was in January of 2006?
6 **A. Yes.**
7 **Q.** Have you attended additional conferences
8 since becoming detective?
9 **A. Yes.**
10 **Q.** Do you know the conferences that you've
11 attended or would you like me to ask you?
12 **A. Well, I've been to a few of the sexual**
13 **assault investigation classes and a few of the**
14 **child abuse investigation -- I'm sorry. The annual**
15 **conferences.**
16 **Q.** Did you successfully attend and complete
17 in January of 2006 investigation and prosecution of
18 child sexual exploitation course?
19 **A. I did.**
20 **Q.** And did you attend in March of 2006 the
21 statewide sexual abuse conference?
22 **A. I did.**
23 **Q.** And in July of 2006 did you attend and
24 successfully complete a course in child abuse and
25 exploitation on the internet?

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1 **A. I did.**
2 **Q.** And in November of 2006 did you attend
3 and successfully complete the advanced forensic
4 interview training of children who allege abuse?
5 **A. I did.**
6 **Q.** Tell the jury what that one was.
7 **A. That was one was similar to the child**
8 **abuse annual conference. I think it was a**
9 **three-day training. And, basically, it's what the**
10 **title says, investigating children who allege**
11 **abuse.**
12 **Q.** And the term "advanced forensic interview
13 training." Tell the jury what forensic interview
14 is.
15 **A. Yes. That portion of the training, the**
16 **forensic interviewing, is what we're trained to do**
17 **to interview children. You can't just ask children**
18 **questions that you would ask a suspect or someone**
19 **else. You can't ask them any leading questions.**
20 **And it's really an art that you have to learn how**
21 **to do this to where you're not leading a child into**
22 **saying something they wouldn't ordinarily say.**
23 **In other words, if you said did so-and-so**
24 **do this to you, then they may feel compelled to**
25 **answer yes or no, and they may think you want to**

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1 **hear yes, so they answer that. And so we avoid**
2 **those types of disclosures by doing a forensic**
3 **interview.**
4 **Q.** Planting with the child an idea that the
5 child -- that may not really have occurred?
6 **A. Yes.**
7 **Q.** Did the skills that you learned in the
8 forensic interview training of children -- did
9 those skills apply across the board to interviewing
10 people in general?
11 **A. Yes.**
12 **Q.** Did you attend in January of 2008 the
13 19th Statewide Child Abuse Prevention Conference?
14 **A. I did.**
15 **Q.** And in October of 2008 did you attend and
16 successfully complete a course at the Arizona
17 Homicide Investigators Association?
18 **A. I did.**
19 **Q.** Tell the jury what the Arizona Homicide
20 Investigators Association is.
21 **A. It's, essentially, a group of detectives**
22 **in Arizona that investigate homicides. And you can**
23 **become a member of the Arizona Homicide**
24 **Investigators Association. And the class -- or the**
25 **training you're talking about is a week-long event**

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1 **that was the annual conference for the Arizona**
2 **Homicide Investigators Association.**
3 **Q.** And in that week-long conference, did it
4 consist of various courses and classes in homicide
5 investigations?
6 **A. It did.**
7 **Q.** In June of 2009 did you successfully
8 complete the Buried Body Recovery school at the
9 Northern Arizona Regional Training Academy?
10 **A. I did.**
11 **Q.** Tell the jury what that was.
12 **A. That was instructed by Dr. Laura**
13 **Fulginiti, which is a forensic anthropologist.**
14 **She's considered one of the leading anthropologists**
15 **in the state. And she teaches a class.**
16 **Essentially, we get a lot of buried**
17 **bodies that we recover. And her class is how to**
18 **forensically recover the body underground without**
19 **losing any evidence.**
20 **Q.** In July of 2009 did you complete the
21 basic shooting reconstruction school also at the
22 Northern Arizona Regional Training Academy?
23 **A. I did.**
24 **Q.** Tell the jury what that was.
25 **A. That was -- that was at the Northern**

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1 **Arizona Regional Training Academy. The second half**
2 **was at the Prescott PD shooting range. And we,**
3 **basically, shot up a car and saw how different**
4 **angles, different calibers of the bullet, does**
5 **different types of damage to a vehicle. Learned**
6 **trajectory -- you now -- what a bullet does after**
7 **it passes through a windshield. Those kinds of**
8 **things.**
9 **Q.** You just used the abbreviation "Prescott
10 PD." Will you tell the jury what that is?
11 **A. I'm sorry. The Prescott Police**
12 **Department.**
13 **Q.** Are there requirements, continuing
14 education requirements, to maintain your
15 certification as a peace officer?
16 **A. Yes.**
17 **Q.** And what are they?
18 **A. I believe it's eight hours continuing**
19 **training, which is like classroom-type stuff. And**
20 **I believe that's once a year. And then I believe**
21 **it's eight hours proficiency training every three**
22 **years, which is defensive tactics and firearms and**
23 **things like that. We have our own in-house**
24 **training that we go through, which is a 40-hour**
25 **training per year.**

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1 **Q.** And you're "in-house," meaning at the
2 Yavapai County Sheriff's Office?
3 **A. Yes.**
4 **Q.** And you do 40 hours a year of firearm
5 training?
6 **A. No. We do 40 hours a year of total**
7 **training as opposed to just the 8 hours that POST**
8 **requires.**
9 **Q.** So the 40 hours to include courses and
10 classes such as you and I have just discussed?
11 **A. Yes.**
12 **Q.** And then you also do something to
13 maintain your proficiency in the firearm?
14 **A. Yes.**
15 **Q.** And is that also offered through the
16 sheriff's office?
17 **A. Yes. We have to qualify every year with**
18 **all of our firearms.**
19 **Q.** What does that mean to "qualify"?
20 **A. That means there is a minimal score that**
21 **you have to make in a range setting. There is a**
22 **score that you have to maintain or else you can no**
23 **longer carry that firearm.**
24 **Q.** Since becoming detective in 2006, have
25 you worked numerous cases involving the crimes

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1 against children?
2 **A. Yes.**
3 **Q.** And have you also worked other cases
4 outside of the crimes against children?
5 **A. Yes.**
6 **Q.** You are the case agent for the case that
7 we are here on the past couple of months?
8 **A. Yes.**
9 **Q.** And when did you learn that you were
10 assigned to this case?
11 **A. The first detective assigned was**
12 **Detective Poling. I arrived on scene the following**
13 **day after this happened on the 9th, on October 9.**
14 **And I was told that I was going to take over the**
15 **case because Detective Poling was going to be going**
16 **on vacation. And so Detective Poling was the**
17 **original case agent. But then early the following**
18 **day, I was assigned as case agent.**
19 **Q.** And in the beginning were multiple
20 detectives working on this case?
21 **A. Yes. Pretty much everybody.**
22 **Q.** Did this become a case, Detective, that
23 you worked exclusively on for a period of time?
24 **A. Yes.**
25 **Q.** For what period of time do you recall?

1 A. **It was several months. I only remember**
2 **working two other cases while working this case.**
3 Q. Is that unusual?
4 A. **No. Not on a case with -- you know --**
5 **hundreds of people to interview.**
6 Q. Would you explain to the jury the
7 relationship -- you talked about being on patrol
8 and handling cases and then as a detective,
9 detectives handle cases. What is it that decides
10 how a case gets passed from a patrol officer to a
11 detective?
12 A. **Well, in most agencies if the case is a**
13 **felony case, then it automatically gets forwarded**
14 **to a detective. With our agency -- you know -- the**
15 **deputies are allowed to work felony cases as long**
16 **as it's within their training and experience.**
17 **So, essentially, whatever is no longer**
18 **within their training and experience, they submit**
19 **it to criminal investigations.**
20 Q. In other words, are there cases that
21 patrol officers would handle that would never go to
22 a detective?
23 A. **Yes.**
24 Q. Do all homicides go to detectives?
25 A. **Yes.**

1 Q. Do all sex offenses go to detectives?
2 A. **Most of them. I have handled a few as a**
3 **patrol deputy before I came into investigations.**
4 Q. I want to talk now about October 8th
5 of 2009. Do you recall that the Yavapai County
6 Sheriff's Office was dispatched at 5:25 p.m. out to
7 the scene at Angel Valley?
8 A. **Yes.**
9 Q. Would you explain to the jury how a 9-1-1
10 call from Debbie Mercer, how it results in the
11 sheriff's office being dispatched to the scene?
12 A. **Yes. This area of the county, the 9-1-1**
13 **calls go to the Sedona Fire Department. And from**
14 **there Sedona Fire Department will dispatch it to --**
15 **you know -- if it's medical, if it's police.**
16 **Whatever the caller needs, that's how it gets**
17 **dispatched. In this case it was dispatched to**
18 **medical. And also Sedona Fire advised our agency**
19 **of the call.**
20 Q. Do you know who was dispatched first
21 between law enforcement and medical?
22 A. **Medical.**
23 Q. Did your office then respond after being
24 dispatched at 5:25 p.m.?
25 A. **Yes.**

1 Q. Do you know many -- approximately how
2 many members from your office went out to the scene
3 around that time?
4 A. **Initial first responders, I believe it**
5 **was four or five.**
6 Q. And did your lieutenant go out that
7 night?
8 A. **Eventually, yes.**
9 Q. Can you tell the jury whether that night
10 detectives were then dispatched to the three
11 hospitals that we've heard from -- heard about in
12 this case?
13 A. **Yes. It was -- it was later. I want to**
14 **say about a couple hours after the initial call**
15 **came out that criminal investigations was called**
16 **out. And some of the detectives were dispatched to**
17 **Angel Valley. Some of them were dispatched to the**
18 **different hospitals to interview the victims.**
19 MS. POLK: Your Honor, counsel has stipulated
20 to the admission of Exhibit 929.
21 THE COURT: 929 is admitted.
22 (Exhibit 929 admitted.)
23 Q. BY MS. POLK: I'd like to put up on the
24 overhead, Detective, Exhibit 929, which is actually
25 taken the next day on October 9th, 2009.

1 What I want to have you do is explain to
2 the jury, when your office responds to a crime
3 scene, first of all, what is the first priority?
4 A. **The first priority is to get medical**
5 **attention to whoever needs it.**
6 Q. And once that piece is taken care of,
7 what does your training tell you to do?
8 A. **Our training tells us at that point, once**
9 **people are safe, to secure evidence. Either -- you**
10 **know -- create a crime scene, collect evidence**
11 **if -- you know -- if we're going to lose it.**
12 **Things like that.**
13 Q. Do you know whether or not the crime
14 scene was secured after the medical attention was
15 provided to participants that night?
16 A. **Yes, it was.**
17 MR. KELLY: Judge, I'm going to object based
18 on the lack of foundation. He didn't arrive until
19 October 9th. I'd ask for additional foundation.
20 THE COURT: Sustained.
21 Q. BY MS. POLK: Detective, do you know
22 whether at some point the crime scene was secured?
23 A. **Yes.**
24 Q. Is there something visible that is used
25 by your office to secure crime scenes?

A. **Yes.**
Q. What is that?
A. **Well, there is the crime-scene tape.**
Q. Do you see that in this photograph?
A. **I do.**
Q. Can you show it to the jury.
Do you know what this vehicle is right here?
A. **Yes. That's our mobile command post.**
Q. What is that?
A. **It's, essentially, a motor home that is equipped to house people for a few days if we need to keep somebody on -- on scene. This particular case the motor home was used for our volunteers who maintained the crime scene throughout the night until we could respond at daylight the next day.**
Q. You mentioned volunteers. Explain to the jury what this program is that allows volunteers to assist law enforcement at crime scenes.
A. **Yes. We call it our "VIP program," which is Volunteers in Protection. They go through training and an academy and firearms training and things like that so that they can -- they can volunteer with the sheriff's office.**
Q. And, to your knowledge, the Volunteers in

Protection and the mobile command unit arrived out at Angel Valley the same evening, October 8th?
A. **That's correct.**
Q. And secured the crime scene?
A. **Yes.**
MR. KELLY: Your Honor, object to the leading questions. I believe we're in the middle of foundation questions.
THE COURT: Sustained as to foundation.
Q. BY MS. POLK: Detective, when did you arrive out at Angel Valley?
A. **It was on October 9th at about 8:30 in the morning.**
Q. And when you arrived on October 9th at 8:30, did you observe whether or not the mobile command unit was there?
A. **It was there.**
Q. Did you observe whether or not crime scene tape was up?
A. **I did.**
Q. And did it look like what we see in this photograph?
A. **It did.**
Q. Did you determine at some point, Detective, what county Angel Valley is in?

A. **Yes. It's in Yavapai County.**
Q. When you arrived on scene, then, at 8:30 a.m. on October 9th, what was your first priority, knowing that the crime scene was secure?
A. **My first priority was to get briefed on what was going on. I -- I -- you know, I showed up at 8:30 the next morning. And I still didn't know what was going on. I was the first one there.**
So I'm sort of standing around while I'm waiting for the other detectives to arrive who had been there into the late hours of the night.
Q. Did you learn at some point that two people had passed away?
A. **I did.**
Q. Do you recall when you learned that?
A. **That was shortly after the other detectives arrived. I believe it was probably around 9:30 or 10:00.**
Q. Did notification of next of kin -- is that something that falls to law enforcement?
A. **Yes.**
Q. Explain to the jury generally how it is that you notify next of kin when you learn someone in your jurisdiction has deceased.
MR. KELLY: Your Honor, objection. Relevance.

THE COURT: Overruled.
You may answer that.
THE WITNESS: What we do is we'll find out where the next of kin lives or attempt to identify next of kin. And then we have our agency send a teletype to the local agency that has jurisdiction over wherever the next of kin is. And then the local agency will then go to notify.
Q. BY MS. POLK: Is there an attempt to notify next of kin in person?
A. **Yes.**
Q. And is that -- is that reciprocal? If a person in another state has a victim or a person who has passed away, and they contact your agency because next of kin resides in your jurisdiction, does your agency do personal notification?
A. **Yes, we do.**
Q. Did you become involved in the process of notifying next of kin for James Shore?
A. **I did.**
Q. And was it that morning?
A. **It was.**
Q. How did you become involved?
A. **Well, I was advised that James Shore was one of the ones that was deceased. And I was asked**

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1 **to try to locate next of kin or see if I could find**
2 **anything in -- in James Shore's belongings that**
3 **would indicate who his family was or how we could**
4 **reach them.**
5 **Q.** Did you learn that there was no emergency
6 contact information for James Shore --
7 **A. Yes.**
8 **Q.** -- available?
9 And what did you do then in attempting to
10 determine where next of kin for James Shore might
11 reside?
12 **A. Well, I found out that he was sharing a**
13 **room with Lou Caci. And so I went up to the dining**
14 **hall where Lou Caci was, and I asked Lou Caci for**
15 **consent to search their room for James Shore's**
16 **next-of-kin information.**
17 **Q.** Do you recall what sort of room it was?
18 **A. It was a tent.**
19 **Q.** Did Lou Caci give you permission?
20 **A. He did.**
21 **Q.** And did you obtain something that gave
22 you some identification information for James
23 Shore?
24 **A. Yes.**
25 **Q.** What did you find?

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1 **A. I found James Shore's wallet, which had**
2 **miscellaneous cards, and I believe there was some**
3 **phone numbers and things in there.**
4 **Q.** Did you provide that information to
5 somebody?
6 **A. I did.**
7 **Q.** Who did you provide that to?
8 **A. I provided it to one of our investigative**
9 **assistants who was in Prescott working out of the**
10 **office. It was enough information to where she**
11 **could locate the next of kin.**
12 **Q.** Were you involved in finding out
13 information to notify next of kin for Kirby Brown?
14 **A. No.**
15 **Q.** Was somebody else?
16 **A. Yes.**
17 **Q.** Do you recall, Detective, then, generally
18 what happened next?
19 **A. The first interaction I remember with --**
20 **with anybody else was there were some participants**
21 **that came down to the sweat lodge. And they were**
22 **wanting to get their belongings from around the**
23 **sweat lodge. Their -- their water bottles and**
24 **things like that.**
25 **Q.** Were you at the scene when they came?

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1 **A. Yes.**
2 **Q.** And did you have contact with the
3 participants?
4 **A. I did.**
5 **Q.** What did you tell them?
6 **A. I told them — you know -- I don't know**
7 **what we have. But it's a crime scene so we can't**
8 **release anything that's in it to them.**
9 **Q.** At some point were you again approached
10 by participants?
11 **A. Yes.**
12 **Q.** And do you recall at that point what it
13 was about?
14 **A. Some of the participants had come down to**
15 **the sweat lodge. Again, it was the morning of the**
16 **9th. And they had bouquet of flowers and asked if**
17 **they could put it inside the sweat lodge.**
18 **Q.** And did you do that?
19 **A. Not then. I promised them that after**
20 **we -- we were done, I would put the flowers in the**
21 **sweat lodge.**
22 **Q.** Did you take the flowers from the
23 participants?
24 **A. I did.**
25 **Q.** And what did you do with them?

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1 **A. I set them off to the side.**
2 **Q.** And later after you released the crime
3 scene, did you do something with the flowers?
4 **A. I did.**
5 **Q.** What did you do?
6 **A. I put them inside the sweat lodge where I**
7 **said I would.**
8 **Q.** Did you get briefed, then, by your
9 lieutenant and other detectives sometime that
10 morning?
11 **A. Yes.**
12 **Q.** At that point after the briefing, did you
13 know what you were looking at?
14 **A. Yes.**
15 **Q.** What did you know at that point?
16 **A. We knew that two people had died, and**
17 **several others -- several others had been**
18 **transported to the hospital. We did not know why.**
19 **We knew some things had been ruled out.**
20 **Q.** At that point what did you learn had been
21 ruled out?
22 **A. We learned that carbon monoxide had been**
23 **ruled out. We learned that toxicology was negative**
24 **on the victims.**
25 **Q.** What would that mean to you?

1 A. **That would mean common drugs of abuse.**
2 Q. Illegal drugs?
3 A. **Yes.**
4 Q. You learned that had been ruled out?
5 A. **Yes.**
6 Q. Okay. And anything else?
7 A. **I don't recall.**
8 Q. At that point with the information you
9 had, what was your approach to the investigation?
10 A. **My approach was to take everything that**
11 **might have a toxin. I mean, it appeared that there**
12 **was something that obviously caused the death of**
13 **the people inside. And -- you know -- we didn't**
14 **know how hot it had gotten. So we wanted to take**
15 **everything that could have released any kind of**
16 **toxin or collected a toxin that was released so we**
17 **could test for it.**
18 Q. Did you suspect heat at that point?
19 A. **No.**
20 Q. And why not?
21 A. **Well, I knew it was a sweat lodge, and I**
22 **knew it got hot. But I had no idea how hot it got.**
23 **I wasn't that familiar with what a sweat lodge was.**
24 Q. Did it occur to you at that time that
25 people might die in a sweat lodge?

1 A. **No.**
2 Q. The Exhibit 133, which is a copy of the
3 9-1-1 calls with the radio traffic, has been
4 admitted into evidence in this trial. And it does
5 contain on it the 9-1-1 calls as well as the radio
6 traffic. Do you recall, off the top of your head,
7 what period of time the radio traffic covers, how
8 many hours, for example?
9 A. **It would be during while they're**
10 **responding to the scene and then transporting**
11 **patients from the scene. So while people are still**
12 **needing to be treated or transported to the**
13 **hospital, that's what you would hear in the radio**
14 **traffic.**
15 Q. Does the radio traffic reflect the
16 various possibilities the first responders were
17 looking at while they triaged the scene?
18 A. **Yes.**
19 Q. Do you know what some of the other
20 possibilities were that responders were looking at
21 at that point?
22 MR. KELLY: Your Honor, objection.
23 Foundation.
24 THE COURT: If you can answer that yes or no,
25 to start with.

1 THE WITNESS: Yes.
2 Q. BY MS. POLK: For example, do you know
3 whether or not --
4 MR. KELLY: Your Honor, objection. Leading.
5 THE COURT: It appears so. Sustained.
6 Q. BY MS. POLK: What are some of the other
7 possibilities that first responders were looking
8 at?
9 A. **They were looking at we don't know if**
10 **this is toxins, carbon monoxide. There is some**
11 **traffic that -- you know -- they want to get HazMat**
12 **out there to try and figure out -- you know -- what**
13 **it was that was causing this.**
14 Q. You mentioned that carbon monoxide was
15 eliminated. How was that eliminated?
16 A. **I believe it was eliminated at the**
17 **hospital with the patients. I believe there is a**
18 **test they can do to eliminate carbon monoxide. The**
19 **HazMat, I believe, also eliminated it from the**
20 **sweat lodge itself.**
21 Q. What is a HazMat team?
22 A. **They investigate and contain hazardous**
23 **materials.**
24 Q. Do you know whether the Arizona Poison
25 Center was contacted?

1 A. **I do.**
2 Q. And do you know if that's reflected on
3 the radio traffic?
4 A. **It is.**
5 Q. In terms of your investigation, did you
6 conduct any interviews before entering the crime
7 scene?
8 A. **I did.**
9 Q. Who did you interview?
10 A. **The first person I interviewed was Ted**
11 **Mercer.**
12 Q. Where were you when you interviewed Ted
13 Mercer?
14 A. **I was -- we've seen a couple pictures of**
15 **the wood pile that's off to the side where they**
16 **stored the wood.**
17 Q. First of all, I'm going to put up
18 Exhibit 141 and ask you if that shows the jury
19 where you were when you interviewed Ted Mercer?
20 A. **It does.**
21 Q. And can you show the jury where.
22 A. **It was this wood pile right here.**
23 Q. Show the jury where the sweat lodge is.
24 A. **It's right here.**
25 Q. How did you have the encounter with Ted

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1 Mercer?
2 A. **We were -- I was on scene, obviously,**
3 **waiting for a search warrant. We were waiting for**
4 **the search warrant before we could process Angel**
5 **Valley. And Ted Mercer had approached us and said**
6 **you know what? I've been here. I'm the fire**
7 **tender. I think I have information that might help**
8 **you guys.**
9 Q. Are you able to give the jury the
10 approximate area of the crime scene itself, where
11 crime scene tape had been placed?
12 A. **Yes.**
13 Q. Can you do that on the overhead?
14 A. **That's roughly where -- there were**
15 **actually two places that were roped off. An**
16 **initial place and then it was expanded later.**
17 Q. Was it expanded when you were there?
18 A. **No.**
19 Q. Before you arrived?
20 A. **Yes.**
21 Q. Where was the expanded area?
22 A. **That's, basically, the expanded area. It**
23 **included the cooling off station where they had the**
24 **electrolytes and water. And also it included our**
25 **mobile command post.**

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1 Q. And then show the jury again where it was
2 that Ted Mercer approached you.
3 A. **Well, where I interviewed him was right**
4 **here. Where he approached me there is a road that**
5 **comes right down here. And he had walked down this**
6 **road. And I was standing just outside the crime**
7 **scene about right here.**
8 Q. Do you recall how long it was that you
9 talked to Ted?
10 A. **Not really. I would estimate probably**
11 **about 45 minutes.**
12 Q. And did you have a tape recorder?
13 A. **I did.**
14 Q. Did you tape record that interview?
15 A. **I did.**
16 Q. In fact, the jury has heard bits and
17 pieces of it throughout this trial?
18 A. **Yes.**
19 Q. When Ted Mercer approached you, just
20 generally describe for the jury the things that
21 were on your mind, first of all.
22 A. **What was on my mind was -- you know --**
23 **what could have caused this? Is this -- you**
24 **know -- toxins? What's the process for a sweat**
25 **lodge? How does a sweat lodge work? I -- I didn't**

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1 **know the element to a sweat lodge.**
2 **And so I learned, basically, the elements**
3 **of what a sweat lodge is from Ted. And then from**
4 **there I could ask follow-up questions as to what**
5 **this could have been.**
6 Q. In that interview did you ask Ted about
7 the tarps and where they were stored?
8 A. **I did.**
9 Q. And do you recall at what point in the
10 interview that part of the conversation occurred?
11 A. **I would say it was towards the beginning.**
12 Q. Do you know if you started out just
13 trying to find out general information about sweat
14 lodges and what was going on?
15 A. **Yes.**
16 Q. And then did your interview get more
17 focused as it went on?
18 A. **It did.**
19 Q. Did you also ask Ted about the wood
20 during that interview?
21 A. **I did.**
22 Q. Detective, did you ever ask Ted Mercer
23 during that interview if pressure-treated wood had
24 been used somehow?
25 A. **I did.**

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1 Q. First of all, when you asked Ted Mercer
2 about pressure-treated wood, what use were you
3 asking him about?
4 A. **I was asking him what wood was used to**
5 **heat the -- the rocks.**
6 Q. So at that point had you learned -- you
7 had learned some things about a sweat lodge at that
8 point?
9 A. **Yeah. I had learned, basically, that you**
10 **heat the rocks. Or they're called "grandfathers."**
11 **And then those are brought into the sweat lodge,**
12 **and that's what heats up the sweat lodge.**
13 Q. The suggestion that the very first thing
14 Ted talked to you about was the wood -- is that
15 true or not true?
16 MR. KELLY: Your Honor, objection. Form.
17 THE COURT: Overruled.
18 You may answer that.
19 THE WITNESS: Chances are now I don't remember
20 the very first thing we talked about. But I
21 wouldn't have known to ask questions about the wood
22 when we first started talking.
23 Q. BY MS. POLK: And when you asked Ted
24 about wood, had you at that point become aware of
25 this pit that is shown in Exhibit 491? That's the

1 pit with the rocks.
2 A. **Yes.**
3 Q. Did Ted do some pointing for you of the
4 wood that he burned in the fire?
5 A. **He did.**
6 Q. And, again, show the jury where you were
7 when Ted pointed.
8 A. **We were at this woodpile right here.**
9 Q. What did Ted point you?
10 A. **He pointed to the stack of D-logs. My**
11 **mark isn't quite on line. But that was over by the**
12 **sweat lodge.**
13 Q. Did Ted at any time ever point to any of
14 the wood over in this pile?
15 A. **No. In fact, I asked him about wood that**
16 **was in that woodpile. And he corrected me and**
17 **said, no. It's that wood in this woodpile over**
18 **here.**
19 Q. Did you ask Ted about pressure-treated
20 wood?
21 A. **I did.**
22 Q. Do you recall what you asked him?
23 A. **I asked him if any pressure-treated wood**
24 **was -- had been burned.**
25 Q. What was his response?

1 MR. KELLY: Your Honor, objection. Hearsay.
2 THE COURT: Sustained.
3 Q. BY MS. POLK: When you asked -- do you
4 know what pressure-treated wood is?
5 A. **I do.**
6 Q. How do you know?
7 A. **Just from working construction. I've**
8 **used it several times.**
9 Q. Do you recognize pressure-treated wood on
10 sight?
11 A. **I do.**
12 Q. And did you examine the wood over here?
13 A. **I did.**
14 Q. Do you recall if you saw any
15 pressure-treated wood there?
16 A. **I -- I did.**
17 Q. And how much did you see?
18 A. **All I remember right now is seeing one**
19 **stick or one two-by-six of pressure-treated wood.**
20 **And that's why I asked Ted -- you know -- were you**
21 **burning pressure-treated wood like this?**
22 Q. And what did -- how did Ted respond?
23 MR. KELLY: Your Honor, objection. Hearsay.
24 THE COURT: Sustained.
25 Q. BY MS. POLK: When you asked Ted about,

1 if he had burned pressure-treated wood, were you
2 pointing to something?
3 A. **Yes.**
4 Q. And what were you pointing to?
5 A. **I was pointing to a piece of wood that**
6 **was over here in this woodpile.**
7 Q. And after Ted responded, was your
8 attention directed to some place other than where
9 you saw the piece of pressure-treated wood?
10 A. **Yes, it was.**
11 Q. Where was it directed to?
12 A. **It was over to this woodpile here.**
13 Q. Did you later go down with Ted to that
14 woodpile?
15 A. **I don't believe so. No.**
16 Q. Did you look at that woodpile with Ted?
17 A. **I did from a distance. Ted never entered**
18 **the crime scene, and the woodpile was part of the**
19 **crime scene.**
20 Q. When you're asking Ted questions about
21 the wood burned to heat the rocks for the sweat
22 lodge -- I'm going to put up Exhibit 493 -- is this
23 where your attention was directed to?
24 A. **Yes.**
25 Q. Ultimately, Detective, did you seize some

1 of the logs from that pile?
2 A. **I did.**
3 Q. And I'm going to put up on the overhead
4 Exhibit 512. Tell the jury what that shows us.
5 A. **This shows us later in the search. The**
6 **first thing we do is we photograph the entire**
7 **scene. Then we search the scene and identify items**
8 **of evidence or items that we want to seize and**
9 **test.**
10 **After we identify those items, we mark**
11 **them and photograph the scene again so we can see**
12 **where the item is next to the number in the scene.**
13 **And so this is after we had marked items of**
14 **evidence that we planned on taking.**
15 Q. And does that show the jury the lumber or
16 the logs that you seized?
17 A. **It does.**
18 Q. I'll zoom in a little bit.
19 Can you point, then, to the jury the logs
20 that you seized.
21 Those are four spots you just made?
22 A. **Yes.**
23 Q. I'm going to put back up on the overhead
24 Exhibit 141 and zoom in. Did you seize any wood
25 from the piles over here?

A. **No.**
Q. And why not?
A. **There -- it wasn't used.**
MR. KELLY: Your Honor, object.
THE COURT: And the grounds, Mr. Kelly?
THE WITNESS: Lacks foundation.
THE COURT: Sustained.
Q. BY MS. POLK: Detective, what was the reason for your decision not to seize any wood from the area that I've just circled?
A. **There wasn't -- it wasn't part of the case. The wood that is in this pile was always used to heat the rocks in the sweat lodge.**
MR. KELLY: Your Honor, may I voir dire the witness?
THE COURT: Yes.
VOIR DIRE EXAMINATION
BY MR. KELLY:
Q. Detective, you were not present when the fire was built which heated the rocks to go in the sweat lodge; correct?
A. **No, I wasn't.**
Q. When you say this pile of wood, which has been circled by Ms. Polk, that's your opinion -- correct? -- that was not used in fire?

A. **That's my opinion based on what I learned.**
Q. But you were not personally present; correct?
A. **No.**
MR. KELLY: Thank you.
I withdraw my objection.
THE COURT: Go ahead, Ms. Polk.
MS. POLK: Thank you.
DIRECT EXAMINATION (Continued)
BY MS. POLK:
Q. Detective, when you interviewed Mr. Mercer, did you find out specific information about the activities that -- some of the activities that participants had done prior to participating in the defendant's sweat lodge ceremony on October 8, 2009?
A. **I did.**
Q. Did you also gather information about what might have been put on the rocks that were being heated, what might have been put on them, if anything?
A. **Yes.**
Q. And did you also learn information about prior sweat lodge ceremonies performed by Mr. Ray?

A. **I did.**
Q. I'm going to put up on the overhead Exhibit 493 and ask you if you seized any of this wood?
A. **I did not.**
Q. And why not?
A. **Because it wasn't used.**
MR. KELLY: Your Honor, objection to the response. Lacks foundation.
THE COURT: Sustained.
Q. BY MS. POLK: What was your reason for not seizing -- did you reach some conclusions based on the information you were receiving that -- upon which you made the decision not to seize this wood?
A. **Yes.**
Q. And after receiving information at the crime scene, your decision was what?
A. **Was that it was only this wood that was used.**
Q. Did you look at this pile?
A. **I did.**
Q. And, again, based on your work history, working for a builder and continuing to work in the construction industry today, do you recognize pressure-treated wood?

A. **I do.**
Q. Did you see any pressure-treated wood in that pile?
A. **No.**
Q. Is there any pressure-treated wood in that pile?
A. **Not that I can tell.**
MR. KELLY: Withdraw the objection.
THE COURT: Okay.
Q. BY MS. POLK: And tell the jury how it is -- what you would look for in trying to determine whether or not wood you're looking at is pressure treated.
A. **Well, for one thing, it's green. And then I'm not sure how to describe it other than it's pressurized with something. It leaves these distinct mark over the whole piece that remain there. It's obvious that it's pressure treated once you see it.**
Q. In your examination of this pile, did you see any of the wood that had those obvious marks on it?
A. **No.**
Q. Did some of that wood have a greenish tint to it?

1 **A. It did. I didn't -- I don't remember**
2 **noticing that on scene, but obviously in the**
3 **picture, you can see it has a green tint.**
4 **Q.** And that green tint, does that confuse
5 you as to whether or not it's pressure treated?
6 **A. Not really.**
7 **Q.** Why not?
8 **A. You can tell that it isn't pressure**
9 **treated.**
10 MS. POLK: I can keep going. I just didn't
11 want to --
12 THE COURT: No. We can continue.
13 **Q.** BY MS. POLK: Did you interview Debbie
14 Mercer that day?
15 **A. I did.**
16 **Q.** And where were you when you interviewed
17 Debbie Mercer?
18 **A. I was up on the flat level area by the**
19 **teepee.**
20 **Q.** Say that again. The flat --
21 **A. It's a flat, level area. I believe the**
22 **Hamiltons said they hauled in dirt to raise the**
23 **area for the teepee.**
24 **Q.** How much time passed between the time you
25 interviewed Ted Mercer and Debbie Mercer?

1 **A. Probably a couple of hours.**
2 **Q.** How did you find Debbie Mercer to
3 interview?
4 **A. When I interviewed Ted, I believe I asked**
5 **him to see if she would be available to talk to.**
6 **Q.** When you interviewed Ted Mercer, had you
7 yet entered the crime scene?
8 **A. Probably.**
9 **Q.** Had you yet begun processing the crime
10 scene?
11 **A. No.**
12 **Q.** When you interviewed Debbie Mercer, had
13 you yet begun to process the crime scene?
14 **A. No.**
15 **Q.** Does this, what I put up on the overhead,
16 Exhibit 141, show where you interviewed Debbie
17 Mercer?
18 **A. Yes. It was up on this flat area, which**
19 **was a shelf up above where the sweat lodge was.**
20 **And it was, basically, between the teepee and the**
21 **sweat lodge where you could see -- from standing up**
22 **there, you could see the whole area down below**
23 **here.**
24 **Q.** And when you interviewed Debbie Mercer,
25 do you recall generally what you learned from

1 Debbie?
2 **A. Yes.**
3 **Q.** And what did you learn?
4 MR. KELLY: Your Honor, objection.
5 THE COURT: Sustained.
6 **Q.** BY MS. POLK: Based what you learned from
7 Debbie Mercer, did that direct the course of your
8 investigation?
9 **A. It did.**
10 **Q.** What specifically did you learn from
11 Debbie Mercer that directed the course of your
12 investigation?
13 **A. We learned that the only problems with**
14 **sweat lodges at Angel Valley were James Ray.**
15 MR. KELLY: Your Honor, nonresponsive. Ask
16 that it be stricken.
17 THE COURT: Sustained. Granted.
18 MS. POLK: Your Honor, may I approach?
19 THE COURT: I wanted to take the recess at
20 this point. There are a couple matters to address.
21 I can do that not at a bench conference. So we
22 will take a recess.
23 Ladies and gentlemen, please be
24 reassembled at 20 till. So about 20 minutes.
25 Remember the admonition.

1 And, Detective, you may step down too.
2 Thank you.
3 Ask the parties to remain. Thank you.
4 (Proceedings continued outside presence
5 of jury.)
6 THE COURT: The record will show the jury has
7 left the courtroom. Mr. Ray and counsel are
8 present.
9 Two things I wanted to take up. One, I
10 was alerted at bench conference before there might
11 be some issues on exhibits. And I wanted to do
12 that other than at sidebar.
13 And, secondly, the issue that has just
14 come up, which was anticipated. And that needs to
15 be addressed. And that's why I suggested an
16 earlier recess, so we can cover that not at bench
17 conferences.
18 But how about the -- we'll take up the
19 issue that was just presented.
20 One thing that's a little unusual,
21 Detective Diskin is seated here, but he is the case
22 agent. Quite commonly when we discuss these
23 things, the witness is not present. Unless counsel
24 have something to say about that.
25 MR. KELLY: I have no objection, Judge.

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1 THE COURT: Okay. Mr. Kelly.
2 MR. KELLY: Judge, I believe this area of
3 testimony, just as you have just mentioned, is
4 going to attempt to bootstrap in prior sweat lodge
5 activities that then dictate the course of the
6 investigation.
7 Obviously, there have been several
8 rulings from this Court that 404(b) character
9 reference -- or excuse me -- character evidence
10 cannot be referenced in the testimony of a witness.
11 So we'd ask that Detective Diskin be
12 strictly cautioned that he's not to mention
13 anything about prior sweat lodge activities,
14 consistent with the Court order.
15 Detective Diskin has sat through the
16 entire trial. So I believe he's familiar with your
17 orders. And I believe the instruction needs to
18 be -- a cautionary instruction -- you know -- is
19 going to be easily understood by the detective.
20 Judge, anyway, that's our concern. And
21 this last question is an example. What did you
22 learn from Debbie Mercer? How did it dictate the
23 course of your investigation? That can be answered
24 factually. Well, we collected rocks. We collected
25 this portion of the tarp. We interviewed these

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1 witnesses. Here's what we did as a fact
2 investigator, without providing any opinions as to
3 my client's character and conduct in prior years.
4 THE COURT: And this issue was raised, and I
5 gave my initial thoughts on it, and we knew it was
6 going to arise.
7 Ms. Polk.
8 MS. POLK: Your Honor, this detective is not
9 going to be testifying about his opinion about
10 anything. But the course that he -- the direction
11 that his investigation took has been raised already
12 by the defense. In fact, they have to the jury in
13 opening statement and consistent with their
14 cross-examination of witnesses, already presented
15 the defense theory that Detective Diskin focused in
16 on Mr. Ray and on heat to the exclusion of other
17 possibilities. And this testimony, then, explains
18 that Detective Diskin did do that but the reasons
19 why.
20 This investigation consists of hundreds
21 of witnesses or about hundred witness interviews,
22 hundreds of hours of witness interviews, and the
23 physical evidence that was seized at the scene.
24 This is a case where information learned
25 during those hundreds of hours of interviews

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1 ultimately then helps illustrate, through what he
2 learns from those witnesses, that it is the heat
3 which is the causation.
4 But the testimony that I'm seeking from
5 the detective is to explain where his investigation
6 goes, what course his investigation takes and why.
7 And when he interviews the Mercers, as
8 he's already testified, when he first gets to the
9 scene, he doesn't know what happened. And at that
10 point nobody thinks you can actually die in a sweat
11 lodge. Nobody realizes how hot it got.
12 Through the interviews of the Mercers,
13 though, he very early on learns that Mr. Ray's, the
14 defendant's, sweat lodges, are very, very extreme,
15 more extreme than others. And he learns there have
16 been problems in the past and only when Mr. Ray is
17 conducting the sweat lodge ceremony.
18 That information then helps direct the
19 course of his investigation. And that's relevant
20 in the case. The defense has made it relevant.
21 And that's the information I'm seeking to elicit.
22 THE COURT: Mr. Kelly.
23 MR. KELLY: Judge, I remind you that during
24 the testimony of Mr. Mercer, he told the detective
25 on this date, October 9th, that, in his opinion,

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1 the heat was the same.
2 I'd also point out that there has been no
3 physical evidence presented in this case regarding
4 the actual temperatures inside of any of these
5 sweat lodges. So that is an assumption without
6 foundation advanced by the prosecutor.
7 And, again, Judge, this has been briefed,
8 argued, rebriefed. I would simply incorporate all
9 the arguments of cocounsel, the written pleadings,
10 and assert that this is highly improper, that there
11 has been no basis now different this week than last
12 week to admit these types of prior activities.
13 Judge, in addition to 404(b) there is a
14 403 issue. It's highly prejudicial. We discussed
15 that last week.
16 And after you made your comments, I
17 started thinking under what circumstances could
18 improper 404(b) evidence -- how could I open the
19 door during cross-examination which may allow
20 Ms. Polk to present this type of evidence.
21 And I would assert, Judge, that you open
22 the door to bad character by listing good character
23 traits. You don't open the door to 404(b) court
24 orders precluding that type of testimony by asking
25 questions of a detective regarding an inadequate

1 investigation.
2 So that's a myth that somehow asking him
3 why he didn't collect wood or dirt samples,
4 et cetera, that somehow opened the door to all the
5 prior activities that have been heavily litigated
6 in this case.
7 THE COURT: Once again, I get presented with
8 these extreme positions, and I want relevant
9 evidence to go to the jury. I've indicated before
10 that it just seems to me that someone's got to be
11 able to explain why he or she is doing what he or
12 she is doing. Just to leave a gap would not be a
13 fair representation to the jury, arguably. Again,
14 I'm not commenting on the evidence in any way.
15 The problem is I did a 404(b) hearing.
16 How many times have I said it? Not one person, not
17 evidence of any life-threatening condition in any
18 prior sweat lodge. So you have this very dangerous
19 403 situation of suggesting there were these
20 life-threatening situations out there. It was the
21 same. All these things just repeat conduct. All
22 that propensity danger I talked about before.
23 At the same time, the state, in my
24 view -- and it's my ruling -- has to be able to
25 say -- to let the jury know that this is the

1 evidence, Ms. Polk; that the detective did some
2 interviews and there was a distinction. There was
3 some kind of heat-related -- possibly heat-related
4 problems and that's why he took the direction he
5 did. Something to that effect.
6 Just otherwise they would not be an
7 actual or true representation. And Mr. Li made
8 clear that one of the aspects of the defense is to
9 attack the investigation. So there has to be some
10 explanation.
11 The tricky part is -- you know -- the
12 Mercers have testified. That evidence has not been
13 stricken. So the jury knows now what has been
14 stated. And it's one of these situations,
15 Mr. Kelly and Ms. Polk, where it's probably best to
16 lead through and put this issue out, this
17 information out, in a fashion that just does not
18 take it further than what the evidence has been
19 shown in the 404(b) where I've made the ruling.
20 So I don't know how to say that in any
21 other fashion. But it's not the time for a bunch
22 of hearsay to be brought into evidence.
23 Ms. Polk, that would just certainly
24 jeopardize the whole proceeding to have that
25 happen.

1 Limiting instructions can only go so far.
2 That's obviously one approach.
3 So that's the best I can do. And if the
4 questions go too far, there might be a ruling.
5 MR. KELLY: Your Honor, in regards to the
6 second issue?
7 THE COURT: Oh, yes. Let's cover that,
8 Mr. Kelly, the various exhibits.
9 MR. KELLY: Again, I've been provided by
10 Mr. -- a stack of exhibits which were marked this
11 morning. And I believe the state intends to use
12 them during the detective's direct examination.
13 This is my only copy. But what I've done is taken
14 this exhibit and identified the objections I have
15 to specific marked exhibits.
16 And I think it's difficult for us to
17 discuss the problems associated with the exhibits
18 that I object to without you having a copy and the
19 chance to review it, Judge. And it's extensive.
20 It's, essentially, my client's notes that were
21 discovered in his room during the detective's
22 investigation, and some outlines, things of that
23 nature, some poems.
24 So I guess I'm asking you for direction
25 how you'd like to handle that. I don't think we

1 can argue it right now because you haven't seen it.
2 I would say this -- and I could ask a
3 specific question to Ms. Polk in regards to
4 Exhibit 935 and 936. And that is a photograph of
5 the frame of the sweat lodge. And all we need is a
6 foundation as to the date and time of that
7 photograph, and we'd withdraw an objection. So the
8 objection would be to the --
9 THE COURT: What number?
10 MR. KELLY: 935 and 936.
11 THE COURT: Okay.
12 Ms. Polk, what about dates?
13 MR. KELLY: So I think we can take care of
14 that one.
15 Finally, Judge, we'd object to the photos
16 of my client. And they're 932, 933. And one is a
17 photo of his wallet, contains some sensitive
18 information. I think a Costco account number, his
19 driver's license. And then the 933 is a photo of a
20 travel agent card. We will stipulate that that --
21 to the extent it's relevant, that that cabin where
22 that wallet was discovered was Mr. Ray's.
23 So if the issue is identity, we're not
24 disputing that. We really don't want his personal
25 information public. So I've probably not stated

1 this clearly, but we would object to -- the
2 information I have is that marked as 927, a
3 Spiritual Warrior outline; 928, the agenda and
4 syntax; 934, which is a photo of the syntax, which
5 is cumulative; the 932 and 933, which are the
6 photos of my client's personal information.
7 And then, finally, we'd ask for
8 foundation on 935 and 936. The other 30-some
9 exhibits we have no objection to.
10 THE COURT: Ms. Polk, if we can start with 935
11 and 36.
12 MS. POLK: Your Honor, you're looking at 935?
13 THE COURT: The two that Mr. Kelly indicated
14 that really is just foundational issue, I thought
15 we'd start there.
16 MR. KELLY: Oh. I'm sorry.
17 THE COURT: Yeah. I said 935 and 936. I
18 think, Mr. Kelly, you said that was just kind of a
19 technical matter.
20 MR. KELLY: So, Judge, the foundation on
21 exhibit -- the proper foundation is 935 and 936 is
22 on the evening of October 9th. So I withdraw the
23 objection.
24 THE COURT: Okay.
25 MR. KELLY: And the objection would be to the

1 remaining exhibits I've identified.
2 THE COURT: 928 having to do with the syntax,
3 Ms. Polk.
4 MR. KELLY: May I approach, Judge?
5 THE COURT: Yes.
6 MS. POLK: Your Honor, I don't intend to use
7 nine --
8 THE COURT: These -- I'll announce which ones
9 I have up here. This isn't a marked copy. But I
10 take it this, 928, that's the syntax. It's got
11 highlighting on it.
12 MS. POLK: And I do not intend to use that
13 copy. I do not intend to use 950.
14 MR. KELLY: Judge, if I could correct the
15 Court, I believe that photo of the syntax is 934.
16 THE COURT: I thought 928 also related. But I
17 have 934, both somehow relating to the syntax.
18 This is 934?
19 MR. KELLY: Correct.
20 THE COURT: It's a highlighted copy of the
21 log.
22 MS. POLK: And I do not intend to use that.
23 THE COURT: Okay. I'm going to note that.
24 934. But you do want to use 950, did you say?
25 MS. POLK: Yes.

1 MR. KELLY: I don't have a 950.
2 THE COURT: Is this one of these?
3 MR. KELLY: No. I don't have a 950. Mine
4 ends at 944. I have a stack of papers --
5 THE COURT: It says, 950, syntax for day five,
6 on the list I've got.
7 MR. KELLY: Judge, I'll have to look at that.
8 I was provided the materials, but I didn't know the
9 numbers.
10 THE COURT: Okay. Well, let's --
11 MR. KELLY: You want me to look at it?
12 THE COURT: If we can. Let's address what we
13 can.
14 MR. KELLY: Judge, I don't even know if I have
15 it.
16 THE COURT: Let's go to some of the others,
17 then. 932 and 933. There was a photo of Mr. Ray's
18 personal items. And Mr. Kelly proposed just taking
19 care of that by stipulation if the purpose is some
20 kind of identity.
21 MS. POLK: Your Honor, the state would agree
22 to black out any information Mr. Kelly objects to.
23 But we have the right to present to the jury the
24 indicia of occupancy of Mr. Ray in that room at
25 Angel Valley. And this exhibit accomplishes that

1 purpose.
2 THE COURT: Can I see the exhibit?
3 MR. KELLY: Judge, I believe I handed it to
4 you.
5 THE COURT: I do have that. Mr. Kelly did
6 give me. They don't have numbers on it, but just
7 the various items.
8 MR. LI: Your Honor, may I also approach? I
9 haven't seen it.
10 THE COURT: Of course, Mr. Li.
11 What Ms. Polk is saying is they'll just
12 take out any kind of identifying, anything other
13 than name, I take it. Certainly card numbers would
14 not be there.
15 What about that solution, Mr. Kelly.
16 MR. KELLY: Well, Judge, I guess -- I assume
17 that what they were attempting to show was to
18 connect up all these other papers with the identity
19 of the person in a particular -- I think it's cabin
20 No. 7, if I recall correctly. We're willing to
21 stipulate to that.
22 If there is some other purpose, improper
23 purpose, like attempting to show that Mr. Ray is a
24 flight risk, I'd object to any testimony about
25 having his wallet in that room. They have no

1 foundation. There is no evidence as to why his
2 wallet remains in the room.
3 THE COURT: Okay.
4 Taking the indicia of occupancy further,
5 is that the relevance the state's urging, that it's
6 to show control of this other documentation?
7 MS. POLK: Yes, Your Honor. There is a search
8 of the room that Mr. Ray was staying in. This
9 shows that it is his room. And then the subsequent
10 exhibits will show the area where the paper
11 exhibits that we've been discussing were all found.
12 That's appropriate. This is -- the case is against
13 Mr. Ray. This shows that he was indeed staying in
14 that room. And this is the indicia of occupancy.
15 We will remove any information that Mr. Kelly
16 objects to.
17 But the indicia of occupancy is
18 appropriate to show to the jury and establish for
19 the jury.
20 MR. KELLY: Judge, we've already heard
21 testimony from a witness with one exhibit -- I
22 think it's 144 -- that showed the location of
23 Mr. Ray's cabin. There is no dispute that he was
24 the sole resident of that cabin.
25 And, again, those are travel documents.

1 There is luggage. And whether they improperly
2 create some perception in the mind of the jury that
3 Mr. Ray is a flight risk, he is not. He was in the
4 back of a patrol car.
5 It's highly improper to admit those type
6 of evidence that have minimal probative value and
7 the possibility of a great deal of prejudice.
8 I have to ask -- you know -- it's a
9 manslaughter case involving a sweat lodge. And
10 we're talking about after the sweat lodge what a
11 detective finds in his room. And if it's not
12 identity, what could be the possible --
13 THE COURT: What do the other documents relate
14 to, Ms. Polk?
15 MS. POLK: Your Honor, first of all, the
16 search was done the next day. Mr. Ray was not in
17 the back of a patrol car.
18 And this shows that he occupied the room
19 that subsequent documents are taken from. Again,
20 completely appropriate in this case.
21 The defense has no -- is not allowed to
22 stipulate away evidence. The state has the right
23 to present the evidence.
24 The documents that, then, we'll be moving
25 to admit will be the in syntax that shows the

1 events of the week. And the entire syntax has
2 already been admitted. This is day five as is in
3 Mr. Ray's documents.
4 And then we have Exhibit 951, which is a
5 Spiritual Warrior script, which goes through the
6 events of the week. It's the script that Mr. Ray
7 followed.
8 Then there are documents that pertain to
9 the various topics that Mr. Ray spoke to the
10 participants about through the week. There is a
11 document that is the -- set forth the rules of the
12 Samurai Game that was played. And the jury has
13 heard testimony about.
14 And then there is documents that go back
15 to the exercises, the writing exercise, for
16 example. All of these documents found in Mr. Ray's
17 briefcase in his room, all relevant to what Mr. Ray
18 was doing throughout the week, the events that he
19 was leading, and the script that he was following
20 as he lectured to his participants.
21 THE COURT: Ms. Polk is correct. Stipulations
22 are not often forced by the Court. I think I've
23 suggested it in this case in one instance when it
24 could arise.
25 But they can be forced if there is really

1 no relevance to an item other than potential
2 prejudice. If there is -- if there is really that
3 risk, a stipulation can be forced on the parties.
4 And, Ms. Polk, if there is just a total
5 stipulation that these papers came from this room
6 and there is no doubt about it, what is the
7 relevance of all these other cards and things?
8 MS. POLK: Your Honor, I have no objection to
9 crossing out information about the -- whatever on
10 the cards Mr. Kelly wants crossed out. But, again,
11 the defense has suggested that the detective did
12 not do a thorough investigation.
13 And going through the steps of the
14 investigation and the items he collected and the
15 steps that he took, the defense has made
16 relevant -- to force us to stipulate away so the
17 jury never hears --
18 THE COURT: Ms. Polk, I understand. And it
19 will be redacted to take out information that isn't
20 appropriate under the rules anyway -- identifying
21 financial information, that kind of thing. Okay.
22 MR. KELLY: And, Judge, again, I have to
23 emphasize that we were provided this stack of
24 exhibits for the first time --
25 THE COURT: Mr. Kelly, I don't want to

1 interrupt you other than to get more background on
2 exactly what you're talking about. Were these
3 listed exhibits?
4 MR. KELLY: No, Judge. They were listed
5 today. And they weren't even listed on my sheet.
6 THE COURT: They weren't in the final list
7 that I ordered?
8 MR. KELLY: No. They were marked today
9 beginning with 913 through 944. And then
10 apparently once -- Ms. Durrer just came up and
11 marked 949 and 950.
12 And the problem, Judge, is a myriad of
13 problems. First of all, relevance. Secondly,
14 Rule 610. There are things in here of a religious
15 nature. There is financial information in this
16 stack that you specifically precluded in this
17 trial.
18 And there is no foundation. And what I
19 mean by that is they are simply found in my
20 client's room. So how they apply to the sweat
21 lodge, which is allegedly the cause of death of
22 these people, I have no idea. And which particular
23 participant or victim somehow viewed these
24 documents, there are those foundational issues.
25 There's a significant First Amendment

1 issue because they contain poems and stuff. And
2 assuming that my client somehow used those during
3 the seminar, they're simply words.
4 So, Judge, what I would ask right now is
5 I believe the Court needs to look through this
6 stack. I haven't had the chance to do it. I would
7 ask for a stack of exhibits, at least with the
8 numbers on them, so I don't have sort through here
9 like I'm doing now, and to be able to discuss this
10 before an attempt at admission in front of the
11 jury.
12 Finally, Judge, with regards to the
13 photograph of my client's wallet, if it's
14 discovered the next day after Mr. Ray has been put
15 in a sheriff's car and is acting on the advice of
16 an attorney, all it can do is improperly suggest to
17 this jury that somehow he fled the scene.
18 And, again, I had object to the admission
19 of those documents.
20 THE COURT: I understand the potential
21 prejudice, other than just myriad cards that --
22 why -- why would be relevant for and the jury to
23 see that.
24 MS. POLK: And, Your Honor, if I can respond
25 to the representation to the Court that we did not

1 provide these exhibits. We did. The entire stack
2 was marked as one of our original exhibits as
3 Exhibit 413. I have it if the Court would like to
4 see it.
5 THE COURT: No. I'll take your avowal.
6 MS. POLK: And what we've done is we've broken
7 them out into separate exhibits and marked them
8 today as separate exhibits, new exhibits. So the
9 original 413 was everything. And then the stack we
10 gave Mr. Kelly was a -- separating them.
11 MR. KELLY: Judge, 413 was objected in
12 writing. We began this trial with the belief that
13 the pretrial orders were going to apply. And then
14 at literally 11:50 this morning, we take it apart
15 and give it new numbers, and we're arguing it.
16 THE COURT: Mr. Kelly, it's 413?
17 MR. KELLY: First I heard of that. It's in
18 the box. 413 is.
19 THE COURT: Did you say you objected?
20 MR. KELLY: We did in writing, Judge.
21 THE COURT: I certainly want to be dealing
22 with that. I've been asking repeatedly if there
23 are outstanding legal issues, trying to keep up.
24 MR. LI: Your Honor, we'd have to check our
25 filings. But I'm also positive that we filed a

1 written objection to a number of exhibits,
2 including that one --
3 THE COURT: And I know the --
4 MR. LI: -- at the beginning of trial.
5 THE COURT: And the understanding, I thought,
6 had been that I would know enough in advance that
7 we'd take them up. That's been kind of the
8 understanding is when they need to be taken up,
9 they'll be taken up.
10 And I'm wondering if there aren't some
11 other issues out there with regard to the
12 foundation for certain witnesses. It's that type
13 of thing that's going to come up one day I'm going
14 to come in here, and -- and we're going to have a
15 major legal issue presented.
16 But, Ms. Polk, have you responded to an
17 objection in writing on this?
18 MS. POLK: Judge, we -- I'm not recalling that
19 they did object to it. I'll stand corrected if
20 they can produce --
21 THE COURT: I don't know. I'm trying to find
22 out.
23 MS. POLK: But I know that we responded to
24 everything in writing that has been filed.
25 MR. LI: Your Honor, I think -- we'd have to

1 get the pleading to make sure. There was an
2 omnibus pleading that we filed at the very
3 beginning of the trial that involved things ranging
4 from the clips, the aerial clips with the ABC logo
5 on it, to -- you know -- to financial files. It's
6 probably, like, a 15-page filing or more related to
7 a number of exhibits. I believe this one was also
8 objected to.
9 The problem we have as the defense is
10 we're the defense. So we're waiting to find out
11 from the state what they're actually going to do.
12 And so I'll just give one example. There
13 was at time when the state had taken the position
14 that they were going to introduce autopsy photos.
15 We filed a bunch of motions about it. They filed a
16 motion back saying -- you know -- that autopsy
17 photos were relevant for identity purposes.
18 And then, I think, basically, on the day
19 of trial or sometime very shortly thereafter, they
20 said, we're not going to introduce autopsy photos.
21 All we can do is note the objections we
22 can find, and then the state decides whatever
23 they're going to do.
24 So for instance, in this case, they have
25 take an exhibit to which we have objected, chopped

1 it up, not responded to our original objections,
2 and then -- you know -- want to introduce it. And
3 so while we apologize for the disruption in the
4 court proceedings, and we too want to move this
5 thing along, a lot of it is just because we're
6 reacting to what the state is doing.
7 THE COURT: Ms. Polk, were you planning on
8 discussing these exhibits soon in the testimony of
9 the detective?
10 MS. POLK: Yes, Your Honor.
11 Judge, again, I'm raising the issue of
12 the autopsies. The state made it clear from the
13 beginning, after that motion was filed, we didn't
14 intend to use those the autopsy photographs. I'm
15 not sure what the point Mr. Li was trying to make.
16 If something has been filed in writing,
17 we have responded. And at this point it doesn't
18 ring a bell with me any particular objection to
19 413. If we can have a few -- if we can have a few
20 moments, we can find it.
21 MR. LI: If it would be helpful, we filed it
22 on February 24th. It's on page 9 of our pleading.
23 Just for the record, I do believe the state filed
24 an opposition to our motion in limine relating to
25 the autopsy photos.

1 But the relevant issue here is page 9 on
2 a pleading that we filed on February 24th.
3 MS. POLK: Can we ask the name of the
4 pleading?
5 MR. LI: Objections to exhibits, something
6 like that. Defendant's objections to exhibits.
7 MS. POLK: Your Honor, what I can do is, if we
8 want to use the time, is come back to the search of
9 the defendant's room, move on to some other areas
10 and then -- I don't know in terms of timing and
11 needing guidance from the court.
12 But I can move on to some other areas if
13 we could use the jury while they're here. And then
14 maybe we can find our response, find that motion.
15 THE COURT: Again, I just asked repeatedly to
16 know -- and Mr. Li, I understand you.
17 But this is something that needs to be
18 addressed without inconveniencing the jury.
19 What I'd mentioned about the other issue
20 and questions to Detective Diskin about what he
21 learned from the Mercers, I just said there will be
22 a ruling and kind of left it there. I just want to
23 emphasize how serious I am about the limited nature
24 of how that needs to be presented.
25 But if there are other areas we can deal

1 with that don't involve these exhibits, I want to
2 do that. If not, then you need to inform me. And
3 if we have to recess and deal with this issue, we
4 will.
5 Mr. Kelly.
6 MR. KELLY: Judge, on the initial issue I have
7 a big concern. I understand that leading questions
8 may be the best protection to some unwanted
9 testimony. So I will, if I understand your ruling
10 correctly, allow the prosecutor to lead
11 Detective Diskin through some of steps that he did.
12 But if there is a question such as, in
13 2005 did you learn that Daniel P. went to the
14 hospital after a sweat lodge ceremony conducted by
15 JRI, I would suggest, Judge, that's a mistrial.
16 THE COURT: And that's what I'm suggesting,
17 Ms. Polk, when I said there could be a ruling. I
18 didn't say anything further. If that type of
19 blatant hearsay were to be interjected at this
20 point, at any point, it would be bad after all of
21 the discussions, hearings that have been conducted
22 or arguments.
23 Thank you. Probably about 10 minutes.
24 (Recess.)
25 (Proceedings continued in the presence of

1 jury.)
2 THE COURT: The record will show the presence
3 of Mr. Ray, the attorneys, the jury.
4 And Detective Diskin has returned to the
5 witness stand.
6 Ms. Polk.
7 Q. BY MS. POLK: Detective, when we took the
8 break, we were talking about the two interviews
9 that you had done of both Ted and Debbie Mercer.
10 Did you conduct both of those interviews before
11 processing the crime scene?
12 A. **I did.**
13 Q. And without telling the jury what the
14 Mercers told you in those interviews, did what you
15 learned from the Mercers help direct the course of
16 your subsequent investigation?
17 A. **It did.**
18 Q. And how so?
19 A. **Basically, just the extreme nature**
20 **that -- that Mr. Ray did the sweat lodge.**
21 Q. Did you continue to look at other
22 possibilities?
23 A. **Yes.**
24 Q. And specifically, poisons or toxins?
25 A. **Yes.**

1 Q. Did you examine the issue of a -- the
2 cause of deaths being toxins in light of the number
3 of participants and how many were dead?
4 A. **Yes.**
5 Q. How so?
6 A. **Well, we -- we still believed that toxins**
7 **could be present. But it seemed unlikely because**
8 **there is no way to explain how some people died and**
9 **other people had no effects at all. We believed**
10 **that if there was some type of toxin in the sweat**
11 **lodge, it probably would have affected everybody.**
12 Q. The day, then, that you processed the
13 crime scene, October 9th, how many people were
14 involved? And how many detectives, I should say?
15 A. **There was probably four or five of us on**
16 **scene and one evidence technician.**
17 Q. How long, Detective, were you at the
18 scene that day?
19 A. **About 12 hours.**
20 Q. You just mentioned an evidence
21 technician. Tell the jury what that is.
22 A. **Our evidence technicians are trained**
23 **in -- in crime scene investigation. They go to**
24 **crime scenes and process the evidence, package the**
25 **evidence, photograph. They have training in how to**

1 **take photographs of crime scenes.**
2 **In this particular case, Josh Nelson, our**
3 **evidence tech supervisor -- he responded and took**
4 **care of the evidence.**
5 Q. Did he stay with you that day at the
6 crime scene?
7 A. **Yes.**
8 Q. And is he a certified peace officer?
9 A. **No.**
10 Q. Are evidence technicians typically peace
11 officers?
12 A. **Not in Arizona.**
13 Q. Did you obtain some search warrants?
14 A. **Yes.**
15 Q. Ultimately how many search warrants did
16 you get?
17 A. **There were three search warrants.**
18 **Although one of them was in a different state. So,**
19 **technically, it wasn't my search warrant. The**
20 **local agency had to write the search warrant.**
21 Q. This investigation included three search
22 warrants?
23 A. **Yes.**
24 Q. And tell the jury the first search
25 warrant was for what area?

1 A. **The first search warrant was for Angel**
2 **Valley.**
3 Q. And any part of Angel Valley?
4 A. **The room where James Ray was staying, the**
5 **sweat lodge. I can't remember where else it was.**
6 **I think it allowed us anywhere at Angel Valley.**
7 Q. Is it standard procedure to get search
8 warrants when you're investigating a homicide
9 scene?
10 A. **Yes.**
11 Q. Were the Hamiltons cooperative?
12 A. **Yes.**
13 Q. And in spite of their cooperation, is it
14 standard to get a search warrant?
15 A. **It -- yes. Because if they can't give us**
16 **consent to search the entire property because it's**
17 **being rented by other people.**
18 Q. The second search warrant was for what?
19 A. **The second search warrant was for James**
20 **Ray International in Carlsbad, California.**
21 Q. And that's the search warrant that
22 another agency helped you with?
23 A. **Yes.**
24 Q. And that would have been a local law
25 enforcement agency in Carlsbad, California?

1 A. **Yes.**
2 Q. And then the third search warrant was for
3 what?
4 A. **We seized the items of evidence from**
5 **Carlsbad, California, under the second search**
6 **warrant, the local California search warrant, which**
7 **their search warrant allowed us to bring it back to**
8 **Arizona.**
9 **Then in order to go through this stuff, I**
10 **had to write another search warrant to search the**
11 **property that we had already seized. Even though I**
12 **had it, I couldn't search it without a search**
13 **warrant in Arizona allowing me to do so.**
14 Q. Let's talk about the processing the
15 scene. You already described just generally for
16 the jury how you go about processing a crime scene.
17 But I want to go through it step by step.
18 What would be the first step, then, to go
19 about processing a crime scene?
20 A. **The first step would be what we call**
21 **"overall photos," where you make sure nobody is in**
22 **the photograph, and the evidence tech will take**
23 **photos of the entire crime scene from all the**
24 **different angles without moving anything yet.**
25 Q. And did that happen for the scene at

1 Angel Valley?
2 A. **Yes.**
3 Q. Who was taking the photographs?
4 A. **It was Josh Nelson.**
5 Q. And were you with Mr. Nelson when he was
6 taking the photographs?
7 A. **Some of them.**
8 Q. Specifically I want to talk about the
9 area where the sweat lodge was and go through some
10 of the photographs taken.
11 And what I'd like to try to do,
12 Detective, is using Exhibit 414, which is the
13 simple diagram of the sweat lodge, and look at
14 photographs and have you tell the jury what angle
15 from the outside we're looking at.
16 A. **Okay.**
17 Q. I'm going to put up on the overhead
18 Exhibit 91 --
19 MR. KELLY: Judge, I have no objection to 919,
20 920, 921, 922, 317, 923, 924, 496, 925 and -- did I
21 say 925?
22 THE COURT: You did.
23 MR. KELLY: And 926.
24 THE COURT: Okay. The following exhibits are
25 admitted: 919 through 926 inclusive and then 317,

1 also 496.
2 (Exhibits 317, 496 and 919-926 admitted.)
3 Q. BY MS. POLK: Detective, I want to start
4 by putting up on the overhead Exhibit 919. And
5 then we'll refer back to 414.
6 Is this one of the photographs that you
7 took from the outside moving into the crime scene?
8 A. **Yes.**
9 Q. And if you can work from what I'm doing
10 or you need me to approach, let me know. What I
11 want you to tell the jury is what angle of the
12 sweat lodge this photograph is taken from.
13 A. **That's supposed to be an arrow.**
14 Q. And then Exhibit 920. Can you show the
15 jury now on 414 where that was.
16 I'll put up on the overhead Exhibit 488.
17 And then show the jury on 414 where that was.
18 A. **Can you put it up there?**
19 **Okay.**
20 Q. So, Detective, basically, were you moving
21 around the outside?
22 A. **Yes.**
23 Q. I'll put up on the overhead Exhibit 921.
24 And on there will you show the jury where the door
25 to the sweat lodge is.

1 A. **Yes. It's right here.**
2 Q. And then show the jury the crime scene
3 tape that we've been talking about.
4 I want you to show the jury on the
5 diagram what angle this photograph is taken from.
6 A. **This is the same angle as the last**
7 **picture, but the camera is turned more toward the**
8 **left, towards the station where -- the hydration**
9 **station.**
10 Q. Okay. I'm going to put up on the
11 overhead Exhibit 489. Is this part of the series
12 but moving back a little bit?
13 A. **Yes, it is. This in an area of where the**
14 **last photograph was taken. The camera had been**
15 **turned to the right towards where you obviously see**
16 **the wood pile.**
17 Q. Okay. So just show the jury, if you can,
18 using the 414. Point an arrow off in the direction
19 where the cameraman was standing.
20 I'm going to put up on the overhead,
21 Exhibit 922.
22 Are these last three, generally, all from
23 the same area?
24 A. **They appear to be. Yes.**
25 Q. Does this show that crime scene tape down

here, or do you know?
A. **Yes.**
Q. So what they're seeing -- what the jury is seeing would all be within the crime scene tape?
A. **Yes.**
Q. I'm going to put up on the overhead, Exhibit 317. And show the jury on here where the crime scene tape was running.
A. **You can see it here. And that's the only place I see it in this photograph.**
Q. And then you had talked earlier about an expansion of the crime scene?
A. **Yes.**
Q. Does it show it on here?
A. **No.**
Q. And then show the jury on 414 where that last photograph was taken from.
A. **It was taken quite a ways out this way.**
Q. And I'll put up on the overhead Exhibit 923.
And on 923 will you show the jury the crime scene tape.
A. **Yes. You can see the outer perimeter, and then you can see this tape here, which was the -- I believe this was the initial crime scene**

tape that the responding deputies put up.
Q. And was that later changed?
A. **Yes.**
Q. And how so?
A. **It was expanded to way beyond what you can see in this picture.**
Q. Which direction way beyond?
A. **The -- where you see the vehicles, the crime scene tape remained there, as far as I know. And then further towards the direction of the person taking the picture is where the crime scene was extended to from where you can see it right here.**
Q. I'm going to show you Exhibit 324. Do you know what that is?
A. **Yes.**
Q. And tell the jury what that is.
A. **This is towards the back of the sweat lodge.**
Q. Will you mark on 414.
A. **It's going to be about right in here.**
Q. And that picture -- I'll put it back up. Exhibit 924. Ultimately did you come to learn in the course of your investigation that somebody came out through this area?

A. **Yes.**
Q. Are you able, looking at this photograph, to tell the jury who?
A. **Yes.**
Q. And who was it?
A. **This was Kirby Brown and James Shore where they were drug out.**
Q. And I'm going to put up on the overhead Exhibit 496, which appears to be similar to what we just had up. So I'll move on.
Let me approach and ask you to look at these two photographs. Do you know if those are showing the same thing or two different areas?
A. **No. This is the same thing.**
Q. And I'm going to put up on the overhead Exhibit 926.
Where is that photograph taken from?
A. **It's taken from the same general area of a few of the other ones we've seen that are quite a ways out this way.**
Q. Detective, I want to ask you if you will come down from the stand and get out a tape measure. And realizing there is another technician who can talk about the exact measurement of the sweat lodge, I'd like to create the general size of

the sweat lodge, if we can do that.
A. **Sure.**
Q. First of all, what was the diameter of the sweat lodge?
A. **It was about 23 feet.**
Q. And for those of us who were French majors in college, tell us what diameter is.
A. **The diameter is the distance across. In other words, from 6:00 o'clock to 12:00 o'clock across.**
Q. And if I could get you to -- I'm going to stand over here at this wall and have you come out, then, 23 feet.
A. **This is 23 feet right here.**
Q. And can you get a yellow sticky and just put it at the edge of counsel table at 23 feet.
Then we'll be 23 feet.
I'm going to stand back where you were sitting.
A. **It's about right here.**
Q. Is that the edge of the table as well?
A. **Yes.**
Q. Can you move the sticky -- No. I'm sorry. Leave the sticky where it is. Right? That would be 23 one way and 23 the other way. Okay.

The sweat lodge was not square; right?
A. **Right.**
Q. So this corner going from that wall to here wall would not be this much space; correct?
A. **That's correct.**
Q. Can you give the jury -- if you'd just stand with your arms and give the jury an idea what these two measurements mean that we just took?
A. **Well, the corner of the sweat lodge, since it's rounded, where we marked it, that would be the edge of the sweat lodge all the way around. But it would be -- it would be like this.**
Q. So it's fair to put out my arms like this and you'd do the same from another corner?
A. **About.**
Q. And then the sweat lodge would take up a round circle within this box that we've created?
A. **Right.**
Q. Was there a technician on scene who took measurements?
A. **Yes. Detective Steve Page. He's trained in our computer-generated diagram software. So he was able to create a computer-generated diagram based on all of his measurements.**
Q. After taking overview photographs, then

did you move closer to the sweat lodge and take additional photographs?
A. **Yes.**
Q. At that point what were you trying to capture?
A. **The scene as we found it. We have to document — before we manipulate anything or move anything, we generally capture the scene as we find it with photographs. So we take as many photographs as -- as we can.**
Q. And did someone go inside the sweat lodge to take some photographs from the inside?
A. **Yes.**
Q. And who was that?
A. **That was Josh Nelson.**
Q. Were you present when Mr. Nelson did that?
A. **Yes.**
Q. Let's look at some of those photographs, then, Detective.
MS. POLK: Your Honor, counsel has stipulated to the admission of the following exhibits.
THE COURT: Okay. And I'll have the clerk note this, please.
MS. POLK: 497, 526, 332, 916, 915, 913, 532,

914, 917, and 918.
THE COURT: Those exhibits are admitted.
MS. POLK: Thank you.
(Exhibits 332, 497, 526, and 913-918 admitted.)
Q. BY MS. POLK: Detective, I want to start by putting Exhibit 918 up on the overhead and ask you to tell the jury what they're looking at here.
A. **Right here you're looking at the door from, basically, in the area of where James Shore and Kirby Brown were. If the photographer were near Kirby Brown and James Shore, that's where the picture was taken.**
Q. And based on your investigation, did you determine where Mr. Ray was sitting with respect to the door that we see?
A. **Yes.**
Q. Show the jury where.
A. **He was sitting right here.**
Q. On the other side of that pole?
A. **Yes.**
Q. And you said that it's taken from the area that Kirby Brown and James Shore would have been sitting?
A. **Yes.**

Q. Which would be?
A. **They would have been right in -- right in here.**
Q. I'm going to put up on the overhead Exhibit 917.
And tell the jury what they're looking at here.
A. **These — this is a string of tobacco pouches hanging from the ceiling.**
Q. Is the door shown in this photograph?
A. **Yes.**
Q. And show the jury where.
A. **It's right here.**
Q. And, again, where would Mr. Ray have been sitting?
Does this photograph show where Kirby Brown sat?
A. **Well, we've heard testimony that Kirby Brown was near these tobacco pouches. From what I could tell from the scene and the drag marks, it appeared to me that she was more back here a little ways.**
Q. I'm going to put up on the overhead 914 and have you tell the jury what they're seeing here.

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1 A. **This is the same tobacco pouches we just**
2 **saw. This is the opening in the tent where Kirby**
3 **Brown and James Shore were drug out of.**
4 Q. And where would the door to the sweat
5 lodge be in this photograph?
6 A. **It would be this way.**
7 Q. You mentioned drag marks. Are they
8 visible in this photograph?
9 A. **Yes. You can see them here. There is**
10 **two drag marks. I'll have to remove my marks once**
11 **I draw them so you can see them.**
12 Q. We do have some other photographs. I'll
13 zoom in.
14 A. **You can -- I'll draw just above them so**
15 **you can see them here.**
16 Q. I'm going to put up on the overhead
17 Exhibit 532. Is this the same tobacco pouch that
18 we just saw in the previous photograph? Do you
19 know?
20 A. **It looked like it.**
21 Q. How many tobacco pouches were still
22 hanging inside the sweat lodge when you arrived at
23 the scene?
24 A. **There were quite a few in the sweat lodge**
25 **and around the sweat lodge.**

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1 Q. And let me just ask you in terms of
2 position, do you recall where Kirby Brown sat in
3 relationship to what the jury sees here?
4 A. **I can't tell -- I can't really orient the**
5 **direction of the picture.**
6 Q. Okay. I'm going to put up on the
7 overhead Exhibit 913.
8 And tell the jury what they're seeing
9 here?
10 A. **This is the center pit here where the hot**
11 **rocks go. This is where Sean Ronan was drug out.**
12 **And over here is where James Shore and Kirby Brown**
13 **were drug out.**
14 Q. This photograph actually has some exhibit
15 markers in it. And we'll come back to them. But,
16 generally speaking, where the jury sees 47, tell
17 them what that is.
18 A. **47 is marking where the "grandfathers" or**
19 **the stones that was heated up. It's inside the pit**
20 **where the stones go.**
21 Q. And that marker itself is called an "item
22 marker"?
23 A. **Yes.**
24 Q. And how do you use them at the scene?
25 A. **When we search a scene, we go through and**

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1 **look for evidence. And when we find evidence,**
2 **usually you will tell the case agent -- you know --**
3 **this may be evidence. Do you want to take it? If**
4 **the case agent decides it's evidence and wants to**
5 **take it, then you put a marker next to it.**
6 Q. And do you do anything before you
7 actually seize it?
8 A. **We photograph it.**
9 Q. So you photograph every place where you
10 put a marker?
11 A. **Yes.**
12 Q. And what's the purpose of photographing
13 it?
14 A. **So you can see it in a picture where --**
15 **you know -- two years later when you're at trial,**
16 **you know that item 47 -- you know where it came**
17 **from.**
18 Q. Did this picture have any drag marks?
19 A. **I can't tell.**
20 Q. And do you know whether or not the jury
21 is able to see where Liz Neuman sat in this
22 picture?
23 A. **Yes.**
24 MR. KELLY: Your Honor, may we approach,
25 Judge?

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1 THE COURT: Okay.
2 (Sidebar conference.)
3 THE COURT: Mr. Kelly.
4 MR. KELLY: Judge, my concern is the form of
5 the question and the nature of the answer. I don't
6 have a problem with the detective testifying as to
7 what he believes based on his investigation and
8 sitting through this trial.
9 But when you ask a question such as,
10 well, do we know where Liz Neuman sat, where was
11 Kirby Brown was located, and they're just pointing
12 out specific spots, that relate to the burden of
13 proof. And I'd ask that the questions be phrased
14 and the witness be instructed to answer the
15 question based on his belief, which is a result of
16 his investigation. But he has no personal
17 knowledge.
18 THE COURT: Ms. Polk, could you ask the
19 questions in terms of his investigation and where
20 these people are?
21 MS. POLK: Yes.
22 MR. KELLY: Thank you.
23 (End of sidebar conference.)
24 Q. BY MS. POLK: Detective, during the
25 course of your investigation, did you formulate a

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1 belief as to where Liz Neuman was sitting during
2 the defendant's sweat lodge ceremony?
3 A. **Yes.**
4 Q. And will you -- can you see that position
5 in this photograph?
6 A. **Yes.**
7 Q. Will you show the jury where you believe
8 Liz Neuman was sitting.
9 A. **This general area here.**
10 Q. I'm going to put up on the overhead
11 Exhibit 915.
12 Will you tell the jury what they're
13 looking at in this photograph.
14 A. **Yeah. There is the tobacco pouches here.**
15 **You can see some drag marks coming from here, it**
16 **appears.**
17 Q. What is that item marker 36? What is
18 that marking?
19 A. **That is marking the tobacco pouches.**
20 Q. And based on your investigation, did you
21 form a belief as to where Kirby Brown was before
22 she was dragged out?
23 A. **Yes.**
24 Q. Can you show us on this photograph?
25 A. **Yes. I believe Kirby and James were in**

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1 **this area here.**
2 Q. And based on your investigation, did you
3 form a belief that there was a relationship to the
4 drag marks you're describing for the jury and Kirby
5 Brown and James Shore?
6 A. **Yes.**
7 Q. And what does this photograph show us in
8 terms of those conclusions?
9 A. **Well, we knew that only two people were**
10 **drug out this area here. And you can see one set**
11 **of drag marks here. So that would indicate someone**
12 **was in this general area. We're not sure if they**
13 **were drug directly out the back or drug toward the**
14 **door to maintain their clockwise motion, and they**
15 **realized they couldn't get to the door, and they**
16 **went out the back.**
17 **In other words, we don't know if they**
18 **were drug straight from here out the back or**
19 **towards the door and then out the back.**
20 Q. Did you form a conclusion that the drag
21 marks you described in this area came from Kirby
22 Brown or James Shore?
23 A. **We believe that they came from Kirby or**
24 **James. It's hard to tell in these pictures. There**
25 **is some other pictures near the perimeter of the**

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1 **sweat lodge where you can see the drag marks a**
2 **little clearer.**
3 Q. Are there drag marks in this area as
4 well?
5 A. **To me it appears to be drag marks. One**
6 **drag mark here. I don't know if you can see that,**
7 **but it looks a drag mark here and then here. And**
8 **then with one of the pictures further back, it**
9 **looks like these marks continue here and here.**
10 Q. Okay. I'm going to put up on the
11 overhead Exhibit 916. Does this better illustrate
12 the drag marks that you were just talking about?
13 A. **Yes. Right here. I'll clear that so you**
14 **can see it. I don't know if you can see that or**
15 **not from that angle, but it looks like an**
16 **oval-shaped drag mark there.**
17 Q. And where would Kirby Brown have been in
18 relationship to the mark you just drew?
19 A. **She would with have been over here.**
20 Q. And James Shore?
21 A. **Yes.**
22 Q. In the same location?
23 A. **Yes.**
24 Q. The item marker 37. Do you know what
25 that was marking?

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1 A. **Yes. There is some tobacco pouches on a**
2 **string on the ground.**
3 Q. And then item marker 47. What was that
4 marking?
5 A. **That is one of the "grandfathers."**
6 Q. And 48?
7 A. **Same thing.**
8 Q. On this photograph does it show -- does
9 it illustrate the area where the third person was
10 dragged out?
11 A. **It's hard to tell in this picture, but I**
12 **thought where the third person was drug out was**
13 **further over here.**
14 Q. In the course of your investigation,
15 Detective, did you learn that three people were
16 dragged out of this sweat lodge?
17 A. **There were multiple people dragged out of**
18 **the sweat lodge.**
19 Q. That there were three people who were
20 pulled out in an area other than the door?
21 A. **Yes.**
22 Q. And who are those three people?
23 A. **That would be Sean Ronan, Kirby Brown and**
24 **James Shore.**
25 Q. And in the course of your investigation,

1 did you form a conclusion as to where Sean Ronan
2 was sitting inside the sweat lodge during the
3 defendant's ceremony?
4 **A. Yes. He was over on the side over here.**
5 **Didn't apparently put the mark where you put your**
6 **finger. That way.**
7 Q. I'm going to put up on the overhead 332
8 and have you tell the jury what that is.
9 **A. Yes. This -- from what we could see from**
10 **further back was item 37. That's the tobacco**
11 **pouches on a string. And here, obviously, there's**
12 **a drag mark that goes out the back. This is a**
13 **different drag mark than the other one.**
14 Q. And did you form a conclusion as to how
15 that different drag mark was made?
16 **A. Well, we know that right outside the tent**
17 **here is where they worked on James Shore and Kirby**
18 **Brown. And I don't -- I don't recall from the**
19 **testimony which side Kirby was -- you know -- from**
20 **James. So I don't know which drag marks belonged**
21 **to which person.**
22 Q. Did you see more than one set of drag
23 marks going out that area?
24 **A. Yeah. The other one -- the other set**
25 **that we looked at was, I think, a little bit**

1 **further this way.**
2 Q. And was that illustrated in a photograph
3 already for the jury?
4 **A. Yes.**
5 Q. I'm going to put up Exhibit 526 and have
6 you tell the jury what this is.
7 **A. This here is area where Liz Neuman and**
8 **Lou Caci and Sean Ronan were sitting. This is**
9 **where Sean Ronan was drug out to the side.**
10 Q. When you conducted your investigation of
11 the crime scene and the sweat lodge itself, how
12 many areas other than the door did you find opened
13 up?
14 **A. There were two areas that were -- were**
15 **opened up. There was a third area where we believe**
16 **somebody had called out during the sweat lodge.**
17 **And it's difficult to tell which areas were lifted**
18 **up by firefighters to check to see if anybody was**
19 **left in there or which areas where -- you know --**
20 **people were actually drug out of.**
21 Q. And are you able to see the pit with the
22 rocks in this photograph?
23 **A. I can't tell.**
24 Q. I'm going to bring you a copy of it. See
25 if that will help you.

1 **A. I can on here.**
2 Q. I'm going to put 526 back up on the
3 overhead and have you tell the jury if the pit with
4 the rocks is shown in photograph?
5 **A. Yes. It's right about here. You can't**
6 **see it on here, but on the actual photograph you**
7 **can see it.**
8 MS. POLK: And, Your Honor, this would be a
9 good time for me to stop if it works for the Court?
10 THE COURT: Okay. Thank you, Ms. Polk.
11 Ladies and gentlemen, we will take the
12 evening recess at this time. Remember the
13 admonition, and be assembled at the regular time,
14 9:15 tomorrow. I know that people travel, some of
15 you, quite some distance.
16 However, please plan on a bit shorter
17 noon recess tomorrow, an hour or so, and maybe some
18 shorter breaks. We are going to have to recess at
19 4:00 o'clock. So I want to get as much trial time
20 in as we can. We'll start at the regular time. Be
21 prepared to recess at 4:00 with a shorter lunch.
22 And I just want to make a brief comment
23 here. Apparently there were some -- just automatic
24 response and some comments that were made, and
25 again, please refrain from that. You need to

1 refrain from that. I know that it's just a
2 reaction sometimes. And I know you're all being
3 very diligent about following the admonition. But
4 just please keep that in mind.
5 So, again, you will be excused at this
6 time.
7 Detective, you may step down.
8 And I'm going to ask the parties to
9 remain just a couple minutes.
10 Thank you.
11 (Proceedings continued outside presence
12 of jury.)
13 THE COURT: Please be seated. I wanted to
14 take a couple minutes here and discuss what needs
15 to be dealt with tomorrow. And I just -- I'll note
16 for the record right now, I've handed Ms. Polk a
17 note that Ms. Rybar just handed me about apparently
18 some jurors just reacting to something and --
19 MR. KELLY: I think it was a square.
20 THE COURT: Well, in any event, that's what
21 the comment was about. So I'm going to go ahead --
22 Ms. Do, if someone would return that to
23 Mr. Li, I'll go ahead and make that note that I've
24 made part of the record.
25 Mr. Kelly had offered up before the

1 exhibits. I really need to look at those. I did
2 find my file with the motion and the response in it
3 relating to the exhibits that are in question. But
4 I need to see those so we can deal with that
5 tomorrow. And I'm saying we need to deal with that
6 by 8:30 at the latest.
7 Are there copies available or do I need
8 to get the ones from the clerk?
9 MS. POLK: We have them pulled. The ones that
10 are marked, Judge, we'll get those to you --
11 THE COURT: Okay.
12 MS. POLK: -- through the bailiff.
13 THE COURT: Anything else? We'll just go off
14 the record, and I can get those before everyone
15 leaves.
16 Anything else, Mr. Kelly?
17 MR. KELLY: No, Judge.
18 THE COURT: Ms. Polk?
19 MS. POLK: No, Your Honor. Thank you.
20 THE COURT: We're in recess.
21 (The proceedings concluded.)
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23
24
25

1 STATE OF ARIZONA)
2 COUNTY OF YAVAPAI) ss REPORTER'S CERTIFICATE
3
4 I, Mina G Hunt, do hereby certify that I
5 am a Certified Reporter within the State of Arizona
6 and Certified Shorthand Reporter in California
7 I further certify that these proceedings
8 were taken in shorthand by me at the time and place
9 herein set forth, and were thereafter reduced to
10 typewritten form, and that the foregoing
11 constitutes a true and correct transcript.
12 I further certify that I am not related
13 to, employed by, nor of counsel for any of the
14 parties or attorneys herein, nor otherwise
15 interested in the result of the within action
16 In witness whereof, I have affixed my
17 signature this 7th day of May, 2011
18
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20
21
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23 ----------
24 MINA G HUNT, AZ CR No 50619
CA CSR No 8335
25

STATE OF ARIZONA)
) ss: REPORTER'S CERTIFICATE
COUNTY OF YAVAPAI)

I, Mina G. Hunt, do hereby certify that I am a Certified Reporter within the State of Arizona and Certified Shorthand Reporter in California.

I further certify that these proceedings were taken in shorthand by me at the time and place herein set forth, and were thereafter reduced to typewritten form, and that the foregoing constitutes a true and correct transcript.

I further certify that I am not related to, employed by, nor of counsel for any of the parties or attorneys herein, nor otherwise interested in the result of the within action.

In witness whereof, I have affixed my signature this 7th day of May, 2011.

Mina G. Hunt

MINA G. HUNT, AZ CR No. 50619
CA CSR No. 8335