

1                   IN THE UNITED STATES DISTRICT COURT  
2                   FOR THE DISTRICT OF COLORADO

3 Criminal Action No. 14-cr-00448-RBJ

4 UNITED STATES OF AMERICA,

5           Plaintiff,

6 vs.

7 HAROLD HENTHORN,

8           Defendant.

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9                                   REPORTER'S TRANSCRIPT  
10                                  Trial to Jury, Day 2

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12                   Proceedings before the HONORABLE R. BROOKE JACKSON,  
13 Judge, United States District Court for the District of  
14 Colorado, commencing at 9:02 a.m., on the 8th day of September,  
15 2015, in Courtroom A902, Alfred A. Arraj United States  
16 Courthouse, Denver, Colorado.

17                                   APPEARANCES

18                   SUNEETA HAZRA, VALERIA SPENCER, Assistant United  
19 States Attorneys, 1225 17th Street, Suite 700, Denver, CO  
20 80202, for plaintiff.

21                   CRAIG TRUMAN, 1444 Wazee Street, Suite 205, Denver,  
22 CO 80202-1326; JOSHUA MAXIMON, Mann & Maximon, LLC, 900  
23 Arapahoe Avenue, Boulder, CO 80302, for defendant.

24 Proceeding Reported by Mechanical Stenography, Transcription  
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P R O C E E D I N G S

(In open court at 9:02 a.m.)

THE COURT: Good morning.

Have a seat, please, everyone.

Are you ready to go when Mr. Henthorn is brought in?

MR. TRUMAN: We are.

MS. HAZRA: We are, Your Honor. Thank you.

THE COURT: Okay.

Then we should be ready in just a minute.

(Defendant in at 9:03 a.m.)

(Jury in at 9:05 a.m.)

THE COURT: We're all going to stand until you folks sit down.

Okay.

Good morning, ladies and gentlemen.

How are my favorite jurors this morning?

JUROR: Great.

Good.

THE COURT: Nice long weekend?

Ready to go to work?

I told you last week that we'll start with opening statements. That's where the lawyers have a chance to make a speech to you about what they anticipate what the evidence will be. This is not evidence. But you're certainly welcome to take notes if you wish, or just listen.

1 I also mentioned that the defendant never has to  
2 present anything, including an opening statement. And we'll  
3 see when the time comes if the defense wants to make an opening  
4 statement, when the time comes.

5 Opening statement for the Government.

6 MS. HAZRA: Your Honor, I didn't know if you were  
7 going to read some preliminary instructions first or not.

8 THE COURT: Preliminary instructions.

9 MS. HAZRA: Some of the jury instructions?

10 THE COURT: We did talk about that.

11 But I don't have a set of the preliminary  
12 instructions.

13 MR. TRUMAN: I have a set, Your Honor.

14 MS. HAZRA: Your Honor, may we approach?

15 THE COURT: Sure.

16 (At the bench:)

17 MS. HAZRA: You were going to read some. It's okay if  
18 you don't want to, I can just start. I have a slide with the  
19 elements of the charge.

20 THE COURT: I'll be happy to read them if you want me  
21 to.

22 MS. HAZRA: You were only going to read some.

23 THE COURT: I didn't realize we had them in final  
24 form.

25 MS. HAZRA: I apologize. Should we just proceed to

1 opening?

2 THE COURT: I'll be happy to do it.

3 MS. HAZRA: It was only some of them. But I can't  
4 remember now which ones.

5 THE COURT: Do you want just this first one, or do you  
6 want me to read them all?

7 MS. HAZRA: How about just the indictment, Your Honor,  
8 and maybe the elements of first-degree murder instruction.

9 MR. TRUMAN: That's fine with us.

10 THE COURT: I think we were going to do this paragraph  
11 and this paragraph.

12 MS. HAZRA: Correct, Your Honor.

13 THE COURT: Is that what you want?

14 MR. TRUMAN: No objection from the defense.

15 MS. HAZRA: So you're not going to do the elements,  
16 just so I know.

17 THE COURT: I'll do that now.

18 MS. HAZRA: Okay. Thank you.

19 THE COURT: Just those two paragraphs.

20 (In open court:)

21 THE COURT: All right. So, ladies and gentlemen, we  
22 have a fairly substantial set of jury instructions, but those  
23 are going to come later in the case. What I'm going to read to  
24 you now is just two paragraphs. It describes the indictment.  
25 The indictment is what got this case started. And as soon as

1 I've read these two paragraphs, then we'll proceed to the  
2 opening statements.

3 Okay?

4 So, indictment.

5 On or about September 29, 2012, in the state and  
6 district of Colorado, and within the special maritime and  
7 territorial jurisdiction of the United States; namely, Rocky  
8 Mountain National Park, the defendant, Harold Henthorn,  
9 willfully, deliberately, maliciously, and with premeditation  
10 and malice aforethought, did unlawfully kill Toni Henthorn in  
11 violation of 18 United States Code section 1111(a) and 7.

12 The indictment is simply the description of the charge  
13 made by the Government against the defendant. It is not  
14 evidence of guilt or anything else. The defendant pleaded not  
15 guilty and is presumed innocent. He may not be found guilty by  
16 you unless all 12 of you unanimously find that the Government  
17 has proved his guilt beyond a reasonable doubt.

18 So that's the indictment. That's an explanation of  
19 what the indictment is. That's all the instructions we are  
20 going to deal with this morning.

21 Now, Miss Hazra, opening statement for the Government.

22 MS. HAZRA: Thank you, Your Honor.

23 **OPENING STATEMENT**

24 MS. HAZRA: May it please the Court, counsel, ladies  
25 and gentlemen of the jury.

1           Good morning. On the weekend of September 28, 2012,  
2 Harold and Toni Henthorn headed up to Estes Park, Colorado.  
3 Toni Henthorn thought she was going to celebrate her 12th  
4 wedding anniversary with this surprise trip to the Stanley  
5 Hotel. The defendant, Harold Henthorn, knew he was going there  
6 to murder his wife. He intended to kill her so that he could  
7 collect \$4 and a half million of life insurance that she did  
8 not know about.

9           And on the next day, he took her to a remote area in  
10 Rocky Mountain National Park, and he shoved her off a cliff.

11           Toni Henthorn fell 128 feet, landing in the trees and  
12 rocks below. The fall broke her neck and all the ribs on her  
13 right-hand side. The fall also essentially scalped her. She  
14 bled out so much that there was not enough blood left in her  
15 for the coroner later to test.

16           The defendant claimed that this -- that her death was  
17 an accident. But this was not the first time that the  
18 defendant claimed that a wife of his died in an accident. As  
19 you will hear during the course of this trial, the defendant's  
20 first wife, Sandra Lynn Henthorn, also died in a remote  
21 location, far from help, where the defendant was the only  
22 witness and the sole beneficiary of her life insurance.

23           And evidence will show you, ladies and gentlemen, that  
24 these deaths were not accidents.

25           But, first, I want to give you some background on the

1 Henthorns. This is a picture of Toni Henthorn. She married  
2 the defendant in 2000, after a very brief courtship. At the  
3 time of her marriage, she was an ophthalmologist in Mississippi  
4 and lived neared her wealthy family, the Bertolets.

5 The defendant at the time of their marriage claimed to  
6 be a fund-raiser, primarily for charities and churches. The  
7 two moved to Colorado. And in 2005, Toni gave birth to their  
8 daughter, Haley. She continued to work as an eye doctor here  
9 in Denver, with a practice in Cherry Creek. The defendant  
10 continued to claim that he was a successful fund-raiser. He  
11 would describe in detail specific projects he was working on.  
12 He would hand out business cards. He even hired a nanny to  
13 look after Haley on Thursday and Fridays because he had to  
14 travel for work.

15 This was all a facade. The defendant made no income  
16 from any type of regular employment. There were no jobs. The  
17 business cards? The business existed only on paper. And that  
18 Thursday, Friday work travel? Well, in 2012, those were trips  
19 to the local Panera where he would sit in the restaurant for  
20 hours surfing the Internet. The defendant, Harold Henthorn,  
21 pretended to everyone, including Toni, that he was employed.

22 Although he was not employed, he made sure that Toni  
23 was well insured. Over the course of their 12-year marriage,  
24 the Henthorns applied for not one, not two, but four different  
25 life insurance policies for Toni Henthorn.

1           On all four of those policies, the beneficiary was the  
2 defendant or a trust that he had exclusive control over. For  
3 all four of those policies, the Henthorns went through the  
4 defendant's close friend, an insurance agent, Neal Creswell.

5           Mr. Creswell will testify during the course of this  
6 trial. He'll explain to you that he never met with Toni  
7 Henthorn on any of those insurance applications, never even  
8 talked to her. He dealt exclusively with the defendant.

9           On every single life insurance application, the  
10 Henthorns indicated that the policy that they're applying for  
11 was a replacement policy. That means it was supposed to  
12 replace the previous one. But only one of the four policies  
13 was canceled. The defendant kept the other three all in  
14 effect. He paid the premiums, checks that he wrote out of a  
15 bank account that he controlled. Thus by the spring of 2011,  
16 Toni Henthorn was insured for \$4 and a half million in life  
17 insurance. All to the benefit of the defendant.

18           But that's not all. As you can see on the slide,  
19 there is an AXA annuity. There was a fifth policy, taken out  
20 by Toni's mom and dad, in the event of Toni's death, to benefit  
21 their granddaughter, Haley. The Bertolets did that for all the  
22 children and their grandchildren. In the spring of 2011, the  
23 beneficiary on this AXA policy was changed from Haley to the  
24 defendant. Resulting in a total of \$4.7 million that he stood  
25 to gain by Toni's death.



1           One month after this beneficiary change, the Henthorns  
2 were alone in their cabin in Grand Lake, Colorado, late at  
3 night. Toni suffered an accident. She was rushed to the ER  
4 first in Granby and then down to Denver. The defendant was the  
5 only witness. Toni Henthorn survived that accident of May of  
6 2011. But she died September 29, 2012.

7           Now I want to talk to you about the weekend of her  
8 death.

9           September 28 was a Friday. The defendant surprised  
10 Toni at her office and the two drove up to Estes Park. That  
11 afternoon, they checked into the Stanley Hotel. As you will  
12 learn during this trial, the Stanley Hotel is by far the nicest  
13 hotel in Estes Park. Has a big wide porch out front and a nice  
14 view of the mountains. The two checked in that afternoon and  
15 took a number of pictures of themselves on the grounds of the  
16 hotel, like this one here, which is Toni, Friday afternoon.

17           They had dinner that night on the grounds of the  
18 Stanley. And later that night, they retired to their room for  
19 what the defendant later told investigators was anniversary  
20 time.

21           On Saturday, September 29, they woke up and had a  
22 leisurely morning. After breakfast, the defendant called the  
23 nanny, Kate Carvill, who was taking care of Haley, to check on  
24 her. Katie Carvill will tell you that the call was unusual  
25 because usually the defendant just texted. She'll also tell

1 you that even more oddly, the defendant passed the phone so  
2 that Toni could talk to Haley directly. Usually Toni never  
3 spoke with Haley on the phone when the defendant was making the  
4 call.

5 The two picked up a picnic lunch, and around 1:30 p.m.  
6 started hiking up Deer Mountain trail. Deer Mountain trail is  
7 labeled a moderate hike. It's approximately 6 miles round  
8 trip. Gains about 1200 feet in elevation. Starts with a  
9 series of switchbacks, but then levels off on a more gradual  
10 hike to the summit which is more than 10,000 feet.

11 During the course of this trial, you're going to see  
12 many photographs of Deer Mountain and the area right around it  
13 as well as you're going to get a chance to see 360-degree  
14 footage similar to what you'd see when you click online for a  
15 real estate tour.

16 The wore jeans and carried only day packs. Toni had a  
17 fleece in addition to the short-sleeve shirt she was wearing.  
18 They hiked for approximately 1 and a half miles up the many  
19 switchbacks. And then where the trail levels off, they went  
20 off the trail.

21 This is a photograph of the terrain directly off the  
22 Deer Mountain trail, a little bit off. As you can see, it's  
23 heavily forested, you have to navigate over rocks and logs as  
24 you walk. Very quickly you're completely surrounded by  
25 wilderness and cannot see the trail at all.

1           The Henthorns hiked through this sort of terrain for  
2 about a quarter of a mile. Until they reached the ridge at the  
3 edge of Deer Mountain.

4           Here's an aerial view of the side of Deer Mountain.  
5 As you can tell, this area is very remote once you get off the  
6 trail. During the trial, we are going to be focusing on this  
7 particular area that I have in this yellow box.

8           There's a closeup of that area. So you can see  
9 there's the ridge on top that's the edge of Deer Mountain and  
10 then it falls down below to the valley.

11           Footage from their camera establishes that the  
12 Henthorns had lunch at this spot at around 3:30 p.m.

13           Here's a photograph of Toni Henthorn having lunch at  
14 the spot. As you can see, the views behind her are  
15 magnificent, you can see the mountains in the background and  
16 the valley below.

17           So a little bit after 3:30 p.m., the Henthorns had  
18 finished their lunch. They are about a quarter mile off the  
19 trail, they had dropped back, to uneven ground to even reach  
20 the trail, and then they have to walk all the way back to the  
21 trailhead. They have dinner reservations for 7 p.m. that night  
22 at Nicki's, the steakhouse in Estes Park. But they don't turn  
23 around and go back.

24           Instead, they hike down this steep rocky scree to the  
25 area that's labeled the top of the cliff.

1           This is the view from the top of the lunch spot. As  
2 you can see, you can't see very down at all. Very far down at  
3 all.

4           (Video played.)

5           MS. HAZRA: Here's a park ranger hiking down this  
6 rocky scree. The terrain is difficult to navigate. As you can  
7 see from the way she's walking, she kind of has to pick her way  
8 through the rocks. She has to use her hands, and in portions,  
9 she even has to sit down and slide to get down. You can't see  
10 very far down from the lunch spot. You certainly cannot see  
11 the top of that cliff that we saw in the previous picture,  
12 unless you knew it was already there.

13           Here's a photograph of the area leading up to the top  
14 of that cliff. People in that photograph are all associated  
15 with the prosecution team who were out there investigating it  
16 that day. You can see there's still no trail to the top of  
17 this cliff. It's extremely rocky. In fact, even rockier than  
18 it was in the previous video, and you have to navigate through  
19 large trees as well as climb over large rocks.

20           They reach this spot around 4:45 p.m. Here's the top  
21 of the cliff that the Henthorns arrived on at around 4:45. You  
22 see the footing is not very stable, and there's a backpack in  
23 the photograph that you can tell is sort of resting up against  
24 a natural rock ledge. That's the barrier between the cliff and  
25 128-foot drop below.

1           The Henthorns took pictures of each other in this  
2 spot. And this only one of Toni, she's seated, looking out  
3 with her binoculars. There is a series of photographs of the  
4 defendant on the edge of this area. The last one is taken at  
5 about 5 p.m.

6           At 5:55 p.m., the defendant calls 911 to report that  
7 his wife has fallen 30 to 40 feet from the top of that cliff.

8           The arrow "body recovered" is where Toni was dragged  
9 to after her fall. As you will learn during this trial,  
10 investigators measured the distance from where Toni was pushed  
11 to the top of the tree where she landed. It's actually 128  
12 vertical feet, not 30 to 40 feet.

13           In the initial call, the defendant does not mention  
14 that Toni's bleeding out, 'cause she's been essentially  
15 scalped. Nor does he mention the multiple wounds that you can  
16 see on her here in this photograph of her lying after the  
17 defendant pushed her.

18           Instead, the defendant tells 911 that her main injury  
19 is a concussion.

20           During the course of this trial, you're going to hear  
21 a series of 911 calls that the defendant either makes or  
22 receives. On most of them, he's repeating direction  
23 information or asking the rangers when they'll get here.

24           At 6:32 p.m., which is 37 minutes after he first  
25 called 911, he tells them that he's starting CPR on his wife.

1 20 minutes later, a 911 operator calls him back because the  
2 defendant has had questions about how to do the CPR. He  
3 doesn't talk to the 911 operator very long because he says his  
4 cellphone is dying and he needs to hang up to save the battery.

5 Between hanging up with 911, a little before seven,  
6 and reaching the trailhead at around 12:30 p.m., (sic) the  
7 defendant makes or receives 22 phone calls with his dying  
8 cellphone. With this dying cellphone that he could not use to  
9 get instructions on 911, he makes or receives 98 text messages.

10 All of these texts are to family and friends. In some  
11 of the texts, he says Toni is dead. In other ones, at the same  
12 time, he says she's still alive. During the time that he  
13 claims to be doing CPR, he sends a text to two friends asking  
14 them to pick him up in the park and even giving them directions  
15 about the best way to reach the park.

16 After that first 911 call, the rangers quickly launch  
17 a search and rescue mission. Ranger Faherty heads up the  
18 trail. He's carrying a very heavy backpack, laden with medical  
19 supplies, and he has a tough job because it's getting dark and  
20 the Henthorns are in such a remote area.

21 He starts off practically running up the trail to try  
22 to find them. Here is that same aerial side-view photograph of  
23 Deer Mountain. You can see the trail in the back. The  
24 defendant has only given the rangers sort of a vague  
25 description of where he is. And Ranger Faherty has to at this

1 point in the dark run off-trail to find them.

2 But he is good at search and rescue, and he does find  
3 them at around 8 p.m. He examines Toni Henthorn and determines  
4 that she has died. After additional rangers reach them,  
5 Ranger Faherty and the defendant walk back down the trailhead.  
6 The defendant goes home with his friends, leaving his car at  
7 the trailhead.

8 The next day, the rangers search the defendant's car.  
9 In the car, they find this map. The map has the Deer Mountain  
10 trail highlighted in pink. On the upper right-hand side  
11 there's the Nicki's, which is the restaurant where the  
12 Henthorns had dinner reservations the night Toni died, circled,  
13 and there's an X in the approximate location where the  
14 defendant murdered Toni.

15 The next day, October 1, Ranger Faherty goes to  
16 interview the defendant at his home in Highlands Ranch. He  
17 shows him this map. The defendant becomes visibly flustered  
18 and says that he made the map for a family friend's son Daniel  
19 Jarvis.

20 Mr. Jarvis is also going to testify during this trial,  
21 and he will tell you that he had never seen the map and that  
22 the first time he saw the defendant after Toni's death was at  
23 Toni's memorial service. The defendant came up to him and  
24 said, Tell them I made the map for you.

25 Before showing the defendant the map, Ranger Faherty

1 asked him to explain how Toni had died. The defendant told him  
2 they left the main Deer Mountain trail for privacy and went to  
3 that first lunch spot. He then gave several conflicting  
4 reasons or sort of changed his story as to why they left the  
5 lunch spot to go down to the top of the cliff. First he said  
6 that Toni saw some wild turkeys. Then he said, no, it wasn't  
7 turkeys, it was deer. Then he said they went to take pictures.  
8 Finally, he said they went down for is for some romantic time,  
9 and he had brought a blanket for that purpose.

10 Once they got to this knob, that I showed you, the top  
11 of the cliff, the defendant said they took photographs, among  
12 them, some of those that I showed you. The defendant said that  
13 he did not see Toni fall because he had his head down reading a  
14 text. He was reading a text from Katie Carvill, the nanny,  
15 saying that Haley had won the soccer game. He even showed  
16 Ranger Faherty the text.

17 The defendant told Ranger Faherty that he waited 45  
18 minutes to call 911 after Toni fell. Phone records confirm  
19 that he called 911 at 5:55 p.m. Thus, if he waited 45 minutes  
20 to call them, then by his time line, Toni fell around 5:10 p.m.  
21 But the text that he was looking at arrived one minute before  
22 he called 911, the text that he claimed to be looking at when  
23 she fell.

24 The defendant said he waited 45 minutes after she fell  
25 before calling 911. He has subsequently told other people that



1 it took him about 15 or 20 minutes to hike down from the top of  
2 the cliff to where her body lay. He also first gathered up  
3 both their backpacks before doing so. Rangers will tell you  
4 that it routinely takes people five to seven minutes to hike  
5 down from the top of the cliff, down the 128 vertical feet to  
6 where Toni lay.

7 This version that the defendant told Ranger Faherty of  
8 how Toni died was just one of many. In some, she's walking  
9 ahead of him. In others, she's behind him. Sometimes she's  
10 checking her work phone. Other times she's fiddling with a  
11 camera. Likewise, he tells some people that he's looking at  
12 his phone when he claims she falls. Other times he's looking  
13 at a camera. And sometimes he's looking at her work phone,  
14 too.

15 He claims that they left the trail to have privacy,  
16 and to other people he says they left the trail to look at  
17 wildlife.

18 Many of the versions that he tells people over the  
19 weeks, months after her death are inconsistent with the  
20 evidence the Government will be presenting during this trial.

21 For example, neither Toni nor the defendant could have  
22 been looking at her work phone when he claims she fell because  
23 she left her work phone here in her office in Denver.

24 The defendant also told Ranger Faherty what he did  
25 after he reached Toni. He said he had to drag her from where

1 she first landed to a more stable, level spot. He said her  
2 head hit on the rocks as he did so. He subsequently told  
3 people that he dragged her by her legs and pulled her down and  
4 that her head bounced off the rocks.

5 He claimed that he did CPR on her for over an hour and  
6 that he performed mouth-to-mouth resuscitation on her. Even  
7 though he claimed that he performed mouth-to-mouth  
8 resuscitation, as you can see in this next photograph, Toni  
9 Henthorn's lipstick is still intact and on her lips.

10 During the interview, Ranger Faherty asked the  
11 defendant whether he had any life insurance on Toni. The  
12 defendant told him that he had one policy, that Toni had one  
13 life insurance policy on her, and it was for around a million.  
14 He made no mention of the other two policies or the remaining 3  
15 and a half million in life insurance that he had taken out on  
16 Toni Henthorn.

17 Just as Toni was not the first wife of the defendant's  
18 to die in what he claimed was an accident, this was not the  
19 first time that the defendant underrepresented the amount of  
20 life insurance that he had on a wife. As I told you in the  
21 beginning, the defendant was married previously to Sandra Lynn  
22 Henthorn. Sandra Lynn Henthorn died nine months after their  
23 12th wedding anniversary, and the defendant and Toni were  
24 married for 12 years.

25 On May 6, 1995, the defendant and Lynn Henthorn were

1 driving in the evening on a remote road near Sedalia, Colorado.  
2 The area is remote today. It was even more so 20 years ago.

3 Sometime a little before 9 p.m. that night, the  
4 defendant pulled over on the side of the road to change a low  
5 tire, not a flat tire. At that time they were about 8 miles  
6 away from civilization and about a half mile from the closest  
7 convenience store.

8 A passerby stopped to help them, but the defendant  
9 waved him away. This was before the widespread use of  
10 cellphones, and the Henthorns did not have one. At some point  
11 Lynn Henthorn crawled underneath the car. At that point the  
12 defendant claims he threw a tire in the back of the Jeep and  
13 the car fell on top of Lynn, crushing her.

14 While Lynn was still trapped face down under the car,  
15 the Montoya family driving by, stopped to help. They were able  
16 to get Lynn out from under the car and began CPR on her. They  
17 were able to get her heart going again. They also covered her  
18 with a coat. It's in the evening and the two are at around  
19 8,000 feet, covered her with a coat as she lay there on the  
20 ground, because the defendant refused to use his coat to cover  
21 her.

22 The police and fire and rescue eventually came and  
23 they air-lifted Lynn Henthorn to the hospital. But she died  
24 later that night from her injuries.

25 This photograph is a photograph, the photograph on the

1 left is the part of the car that fell on Lynn. And those are  
2 the marks on her back from that car.

3 That night and over the next few days, the defendant,  
4 just as he did with Toni, gave several different versions of  
5 what happened. He varied the details about why they were on  
6 the road, where they were going, how many jacks were in the  
7 car, which jacks were working. And he even changed the story  
8 about who was changing the tire and why Lynn crawled under the  
9 car.

10 The lead detective on this case was Detective McMahan  
11 with the Douglas County Sheriff's Office. He went and  
12 interviewed the defendant and asked him if there was any life  
13 insurance on Lynn. Lynn was a social worker. The defendant  
14 told Detective McMahan that Lynn Henthorn had one life  
15 insurance policy on her for \$300,000. He did not tell  
16 Detective McMahan that there was actually a second life  
17 insurance policy on Lynn, also for \$300,000, and that he was  
18 the beneficiary on that policy as well as the first one. The  
19 actual amount of proceeds in total that the defendant received  
20 from Lynn's death was \$645,000.

21 Back in 1995, the Douglas County Sheriff's Office was  
22 a small police force, and Detective McMahan was a relatively  
23 new detective. They closed the case in a week, and the  
24 defendant quickly collected the \$645,000 of life insurance that  
25 he had on Lynn. And he had Lynn, just as he did Toni 17 years

1 later, quickly cremated, even though both their families  
2 objected.

3 Toni died in a remote, rocky area. An area that her  
4 family will tell you they were surprised she was hiking because  
5 she had had several knee operations. An area that the two were  
6 in late in the afternoon when they had dinner reservations  
7 waiting and a nice hotel room. An area very unusual for a  
8 couple in their 50s to be in. At the time of Toni's death, she  
9 was 50 years old, and the defendant was 56. And they are far  
10 off the beaten path.

11 Lynn was crushed by a car after the defendant pulled  
12 over to change a low tire. Not a flat tire. When they were  
13 not far from home. In both instances, the defendant  
14 underrepresented the amount of life insurance that he stood to  
15 receive by their deaths. Life insurance that he did not tell  
16 the police about.

17 As you just heard from Judge Jackson, the defendant is  
18 charged with the first-degree murder of Toni Henthorn.

19 The elements of first-degree murder are up there on  
20 the screen in front of you. It's first that the defendant  
21 caused the death of Toni as named in the indictment.

22 Second, that the defendant killed Toni Henthorn with  
23 malice aforethought.

24 Third, that the killing was premeditated.

25 And last, that the killing took place within Rocky

1 Mountain National Park.

2 Malice aforethought means to kill a person  
3 deliberately and intentionally.

4 A premeditated killing is one that is the result of  
5 planning and deliberation.

6 In determining whether the Government has proved the  
7 intent, you may consider the evidence of the death of the  
8 defendant's first wife, Sandra Lynn Henthorn.

9 You are also going to hear evidence about the  
10 defendant's premeditation in planning this murder. In the  
11 weeks leading up to Toni's death, the defendant made nine  
12 different trips to Rocky Mountain National Park. Nine trips to  
13 scout the area, nine trips that he did not tell investigators  
14 that he took.

15 You're going to hear evidence about the replacement  
16 life insurance policies and you're going to see numerous  
17 pictures and hear evidence about Deer Mountain trail and the  
18 remote, rocky area that the two were in late in the afternoon.

19 And at the conclusion of all this evidence, ladies and  
20 gentlemen, Miss Spencer and I will return and ask that you find  
21 this defendant, Harold Henthorn, guilty of first-degree murder.

22 Thank you.

23 THE COURT: All right. Thank you, Miss Hazra.

24 Mr. Truman.

25 MR. TRUMAN: Your Honor, I'll proceed with opening.

1 THE COURT: Okay.

2 **OPENING STATEMENT**

3 MR. TRUMAN: It was over in an instant. Harold  
4 Henthorn saw his wife Toni Henthorn sitting on the ledge,  
5 getting ready to stand up, and as he looked down to his texts  
6 coming in from the nanny, she was gone.

7 You'll find that the texts came in at 5:51, 1751  
8 hours, on this dreadful day, late afternoon autumn, beautiful  
9 in Rocky Mountain National Park. And you'll see the 911 call  
10 came in less than a minute after that, when Harold Henthorn  
11 called 911 and asked for help.

12 He then scrambled down the mountain to get to his  
13 wife. And when he found her, she was in a dangerous position.  
14 And so he moved her the best he could. She was bleeding and  
15 she was in extreme physical state. He moved her the best he  
16 could to get her to a place where he thought she was the  
17 safest.

18 All the time he was trying to get cellphone coverage  
19 and text message coverage out through the Rocky Mountain  
20 National Park rangers. Wait till you hear how that works.  
21 Wait till you hear how when you call 911 from Rocky Mountain  
22 National Park, you might go to the Park Service, but you might  
23 go to Estes Park Police Department. Thank goodness there are  
24 the audiotapes of these circumstances. You'll hear how that  
25 goes. Here's Mr. Henthorn in extremis, he's hysterical,

1 worried about the death of his wife. She's dying in front of  
2 his eyes. And you'll hear sometimes, in the 911 calls, hey,  
3 listen, if I lose you, call back. You'll hear sometimes in  
4 that, hey, listen, I'm transferring this call to another  
5 person. I may have other calls these days.

6 You'll hear Mr. Henthorn asking, please, where's  
7 Flight for Life. I don't care what it takes, let's get Flight  
8 for Life here, my wife is dying in front of me.

9 You'll see that he wrapped her head to do the best he  
10 could and that there was some CPR done. You'll also hear that  
11 CPR is the last gasp, literally. That we're told to do CPR,  
12 but CPR is rarely, rarely successful.

13 You'll hear about that, and you'll hear about the  
14 texts and the phone messages when a frantic Mr. Henthorn calls  
15 back and forth, first to the rangers, to try to get latitude  
16 and longitude. He happened to have that actually on his  
17 device. And you'll see how that happened with the dispatch  
18 people at the park rangers.

19 There was no helicopter. You'll hear about that. And  
20 as he sat and tried to help his wife, he saw her life ebbing  
21 away. Where are the rangers, where's the EMT, where are people  
22 coming from. He talks to her family. One of whom is a doctor  
23 and says, what should I do, how can I help.

24 You'll hear and see those texts and hear the audio of  
25 this frantic man in extremis with his wife.



1           Finally, about 2000 hours, eight o'clock,  
2 Ranger Faherty, a very experienced ranger, comes in with the  
3 EMT, and he realizes that she's dead and probably has been dead  
4 for quite a while. Mr. Henthorn knew that because in some of  
5 the texts and messages, he had said, I think she's gone, I  
6 think she's losing it. I know that her respirations are slowly  
7 going away.

8           Now, you'll hear from the forensic pathologist who did  
9 the autopsy on this case about the injuries that she suffered  
10 and scientifically what the most likely cause of those injuries  
11 were. You'll hear him talk with you about what might have  
12 happened. Nobody knows what might have happened because there  
13 is no evidence concerning the fall that the pathologist can  
14 tell us about.

15           Now, I need to tell you, you're going to hear from  
16 Dr. Wilkerson, the pathologist, no ordinary pathologist. Not  
17 only was he the Larimer County coroner with a military  
18 background, but before that, he was the coroner in Merced and  
19 Mariposa County, California. Do you know what's in Merced and  
20 Mariposa County? Yosemite National Park. And you'll hear  
21 about his unbelievable experience concerning falls in national  
22 parks and what the circumstances are.

23           You'll hear him talk with you about what happened to  
24 Toni Henthorn and what could have, if anything, been done to  
25 help her.

1           Now, after a while, two other rangers came. And they  
2 joined Ranger Faherty. At that point Mr. Henthorn, still  
3 hysterical, Ranger Faherty had told him, your wife is dead. He  
4 had said, we're going to wait till the morning to air-lift her  
5 out of here. Apparently they couldn't air-lift somebody in to  
6 help her, but they could air-lift her in the morning.

7           Mr. Henthorn said, I'm staying here with my wife.

8           Ranger Faherty said, no, that's not permitted, not at  
9 all. You and I are going to hike out, we're going to hike out  
10 and the other two rangers are going to stay here and she'd be  
11 air-lifted out tomorrow.

12           Mr. Henthorn made arrangements with two friends to  
13 pick him up. He knew in his condition, he was in no shape to  
14 drive back to Denver, and he certainly didn't want to stay at  
15 the Stanley Hotel, where they started such a lovely anniversary  
16 weekend.

17           Two days later Mr. Henthorn has had the opportunity to  
18 go home and to grieve his wife and to tell their young daughter  
19 that I need to tell you your mom is gone. I can't imagine what  
20 that was like. But he did it.

21           And then the next day, here comes Ranger Faherty to  
22 interview him. You'll hear about that interview from  
23 Ranger Faherty. I wish I could play it for you, but it was not  
24 recorded. And so we'll hear what Ranger Faherty has to say  
25 about what was said. You'll hear about this map and see this

1 map. And as you take a close look at it, you'll know what the  
2 map means and while there's a lot of discussion about X marks  
3 the spot, wait till you see the map. Wait till you see what it  
4 actually means.

5 Now, once Mr. Henthorn and Ranger Faherty get back to  
6 the trailhead, his friends are there, and they say, oh, my God,  
7 not again.

8 And Faherty says, what does that mean.

9 Says, well, you know, he lost another wife in 1995.

10 Really?

11 And that's what causes this case to come here and to  
12 be where you are.

13 Because the Government thinks lightning never strikes  
14 twice, that if you within the lottery twice, one is a  
15 celebration, one is an investigation, you remember that. And  
16 so they start looking into this. And so they start bugging the  
17 pathologist. They say, is there any evidence here, is there  
18 anything to show us that this is other than yet another fall in  
19 Rocky Mountain National Park. You'll hear what Dr. Wilkerson  
20 has to say.

21 And then the investigation begins, and it goes back to  
22 1995. And in 1995, Miss Hazra talked with you a little bit  
23 about that. But let's talk about the rest of the story.

24 In 1995 Harold and Lynn Henthorn were starting very  
25 close to their 13th anniversary. She was a social worker.

1 They liked to take drives. And they took drives on this  
2 particular May day because it was wonderful weather and they  
3 wanted to go out for dinner. Now, in their residence, in their  
4 Centennial cul-de-sac, there had been a lot of construction.  
5 As a result of all that construction, there had been nails left  
6 on the highways and streets and Harold and Lynn had suffered  
7 several flat tires.

8 So they were very concerned about that. And on this  
9 day, they went through Sedalia, down to Cheesman Reservoir and  
10 were on their way back, when Harold thought that his right  
11 front tire was mooshy. They're 8 miles away from everything.  
12 It's almost nine o'clock at night. There's a convenience store  
13 a half hour -- a half a mile away. But who knows if that's  
14 open, and so Harold decides he's going to have to pull over and  
15 get the tire changed. He'd had other flats in that very same  
16 circumstance.

17 So they pull over. A very wide area. You'll see the  
18 pictures. Douglas County did a great job taking pictures and  
19 documenting this. 1995, this is not horse and buggies days in  
20 Castle Rock. The Douglas County Sheriff's Office in 1995 was  
21 the fastest-growing community in Colorado. It was the  
22 fastest-growing community in the United States, and there were  
23 many, many, many sheriffs, although they were growing at the  
24 seams.

25 Now, Mr. Henthorn pulls over to work on his car. A

1 fellow pulls up and says, can I help you.

2 No thanks, we'll take care of it. Happens every day.  
3 Those people left.

4 Mr. Henthorn started using the jack for the Jeep. The  
5 one that comes with it. And it was not working correctly.  
6 Mr. Henthorn says, I don't know what to do about that, but  
7 because he's a boater, they have a cabin up at Grand Lake, he  
8 says, I've got two other jacks here, and if I use both jacks,  
9 one to jack it up and another as a safety jack, I can get that  
10 tire changed, and so that's what he does. Wait till you see  
11 the pictures. It's foolish, but you can see why a person would  
12 do it on a Saturday May night, 1995.

13 So he gets the vehicle jacked up, he takes off the  
14 tire. And he tells Lynn Henthorn, who's helping him, who's got  
15 the lug nuts in her hand, I'll be right back with the other  
16 tire. He goes and gets the other tire.

17 Now, we don't know what happened. But I can tell you  
18 what the evidence shows. The evidence showed that there were  
19 lug nuts underneath the vehicle. The evidence shows that Lynn  
20 Henthorn got down to retrieve one of those lug nuts. The  
21 evidence will show that one of the jacks, in order to get the  
22 requisite height, had been put on a paver. Wait till you see  
23 this picture. It had been put on a paver to get the requisite  
24 height so that the vehicle would be up far enough.

25 You know what happened? The paver broke. And you'll

1 see the pictures of the paver that broke and the jack that came  
2 down and then fell off, leaving the vehicle to fall, not all  
3 the way, but onto Lynn Henthorn enough so that she was  
4 dreadfully injured.

5 No cellphones. The Government would have you believe,  
6 they told you, this also was not an accident. This is a  
7 homicide. Imagine, here's what we're going to do. I'm going  
8 to fake a flat tire. I'm going to fake a jack that doesn't  
9 work. I'm going to get two other jacks. And I'm going to have  
10 Lynn Henthorn find me a paver to help the other jack get to the  
11 height. I'm going to somehow get the lug nuts to fall  
12 underneath the vehicle. And I'm going to get, when she's just  
13 in the right place underneath the vehicle, where -- and you'll  
14 see the part of the vehicle that pins her -- the paver breaks.

15 When all that happens, then she's going to be pinned  
16 under the vehicle, not all the way down, but enough to cause  
17 her death.

18 Now, that's the problem with this case for the  
19 Government. Because if Douglas County is an accident -- and  
20 wait till you hear about that -- then that's not lightning  
21 striking twice. That's an accident in Estes Park. If you take  
22 Douglas County away, if that's an accident -- and I think, I  
23 submit, that that will be proven to you -- then it will cause  
24 you to look at Estes Park, Rocky Mountain National Park, with  
25 new eyes.

1           Wait till you see the Douglas County sheriffs. Now,  
2 there's a guy, McMahan, Miss Hazra says he's a fairly new  
3 detective, and that's true. Now he's Captain McMahan of the  
4 Douglas County Sheriff's Office. And he did such a good job as  
5 a new detective that within a year, he was made sergeant and  
6 within two years, lieutenant, and now he's captain. Know what  
7 he's captain of? Professional responsibility for judging  
8 police officers' conduct.

9           Wait till you see some of the other who was there.  
10 McMahan, who was a fairly new detective, was there on his own.  
11 But his sergeant, an old-time sergeant named Brock McCoy, was  
12 there, called out in the middle of the night, so that he could  
13 assist.

14           Wait till you hear the other officers. There was a  
15 young street cop Bredehoeft. And Bredehoeft is now a sergeant.

16           There was another fairly new detective named Duffy.  
17 Duffy is now a captain.

18           It is the best and the brightest of the Douglas County  
19 Sheriff's Office that came and investigated this. They called  
20 out a crime-scene investigator. They took a bunch of pictures.  
21 You'll see a lot of them. They did measurements, she was  
22 forensically autopsied by a terrific doctor, Dr. Galloway, and  
23 both the Douglas County Sheriff's Office and the Douglas County  
24 coroner came to a decision as to the cause and manner of death.  
25 Accident.

1           And that's how it's left. '95, '96, '98, '99. 2000,  
2 2010. And then in 2012, after Rocky Mountain National Park,  
3 Douglas County sheriff contacted by park rangers and the FBI,  
4 said, you fellows, you need to look into this.

5           Wait till you see their reports. Wait till you hear  
6 what a job they did investigating this rather unusual  
7 circumstance. I anticipate they're going to come in and say,  
8 we were such fools. We missed everything. We didn't do a very  
9 good job. We messed it up.

10           You'll hear that the only reason they started looking  
11 into it was because of Toni Henthorn's death. So when they  
12 started investigating further, they find that there's this  
13 Grand Lake problem. Harold Henthorn and Toni Henthorn had a  
14 cabin at Grand Lake, a little more than a cabin, but a very  
15 nice place, and Harold Henthorn is doing some work on that.  
16 Memorial Day weekend. And as he's doing some work on that,  
17 you'll hear that there were some lighting problems. He's  
18 working late at night. The reason he was working late at night  
19 is because with -- once his daughter goes down to bed, that's  
20 when he does the work. Otherwise, they're having a good time.

21           And so Toni Henthorn comes out, and there's a board  
22 thrown off of a small roof, and it hits her in the back and  
23 knocks her down. There's no loss of consciousness. But Harold  
24 races to her, to see how she's doing, and she says, oh, I  
25 really hurt.



1           Wait till you hear. Grand County, that's the county  
2 up there. It's headquartered at Hot Sulfur Springs. They send  
3 a bunch of EMTs down. Now, Toni Henthorn, no shrinking violet,  
4 you know, she's an M.D., an ophthalmologist. She's been  
5 around. And so when the EMTs come, the first thing they think  
6 about is what's her condition; and you'll hear them, we've  
7 rounded them up, I don't know if they're going to testify for  
8 the Government or for us. They'll say, here's what her  
9 condition is. And one of the things the EMT does is they ask,  
10 what happened.

11           Now, generally what people say outside of court can't  
12 be heard, but there's an exception here, so you're going to  
13 hear exactly what Dr. Toni Henthorn said happened. And you're  
14 going to hear the EMTs, as part of their protocol, one of the  
15 things that they do is that they're concerned about domestic  
16 violence, they've been so trained. And so the first thing,  
17 after finding out if she was okay, they did, was they isolated  
18 her. They said, look, we need to talk with you about how this  
19 happened, 'cause they're trained in domestic violence.

20           And wait till you hear what she said. Are you  
21 kidding? This is an accident. There's nothing to that. I  
22 have nothing to report to you. Not to one paramedic, but two,  
23 and you'll hear from several doctors concerning that as well.

24           And so what happens in this case is that after Estes  
25 Park, after Rocky Mountain National Park, after the

1 investigators hear about 1995 in Douglas and after they hear  
2 about this board incident, they say, my goodness, lightning  
3 doesn't strike twice, this is a plan, this is a black widow,  
4 this is a circumstance.

5           Wait to see the evidence. For talk is cheap. I urge  
6 you to give some thought to what evidence there is that Harold  
7 Henthorn was involved criminally in the death of Lynn Henthorn.  
8 Once you hear how this unlikely and unusual turn of events  
9 caused her death, you'll know that Douglas County was an  
10 accident. Once you hear from Toni Henthorn, from beyond the  
11 grave, you'll know exactly what happened in Grand Lake. And  
12 then when you come to evaluate what the evidence shows, you'll  
13 know what happened in Rocky Mountain National Park.

14           Now, I need to tell you something. Harold is an  
15 unusual -- Harold Henthorn is an unusual man. It is true that  
16 he didn't have a job. It is true that he told people he did  
17 and went to great lengths to have cards made and to talk BS  
18 with people about, oh, yeah, I just came back, back from Salt  
19 Lake City, where I'm helping to build a church. The Henthorns  
20 were big in a mega church. You'll hear about that. And for  
21 whatever reason, Mr. Henthorn, perhaps vanity, perhaps no  
22 self-esteem, had to make up these stories about what his job  
23 was. Those things are all true. He made them up. It's a lie.

24           Other, what Miss Hazra calls inconsistencies, you will  
25 see that it's simply the product of a person in the course of

1 grieving and trauma who doesn't get it all right every time.

2 And in the end, when you find that Douglas County is  
3 an accident and you hear what happened at Grand Lake,  
4 Mr. Maximon and I will ask you, based on the evidence, not  
5 character assassination, to find that Harold Henthorn did not  
6 kill his wife Toni Henthorn, who he loved very much, and we'll  
7 ask you to find this man not guilty.

8 Thank you.

9 THE COURT: All right. Thank you.

10 Government ready for your first witness.

11 MS. HAZRA: Yes, Your Honor. We would call Barry  
12 Bertolet.

13 MR. TRUMAN: Your Honor, may witnesses be sequestered?

14 THE COURT: Yes.

15 So, ladies and gentlemen, "sequestered" simply means  
16 that people who are going to be witnesses may not be present  
17 here in the courtroom until they testify. Also, they may not  
18 be briefed about what testimony went before they come into the  
19 courtroom. They have to come in having no understanding of  
20 what the evidence was before. After they've testified, they're  
21 welcome to stay and watch like anybody else.

22 MS. HAZRA: Your Honor, I think we're going to need to  
23 switch the feed for the computer.

24 THE COURT: Do you need a few minutes?

25 MS. HAZRA: No, I think it just has to go to this back

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1 computer.

2 THE COURT: Do you need for Julie to do something?

3 MS. HAZRA: We just need to switch the feed to the  
4 back computer.

5 Thank you.

6 THE COURT: Ready?

7 THE COURTROOM DEPUTY: Yes.

8 THE COURT: All right, sir.

9 (**BARRY BERTOLET, GOVERNMENT'S WITNESS, SWORN**)

10 THE COURT: Okay.

11 Go ahead.

12 **DIRECT EXAMINATION**

13 BY MS. HAZRA:

14 Q Good morning. Can you please state your name and spell  
15 your last name for the court reporter.

16 A Yes. My name is Barry Dean Bertolet; it's B-E-R-T-O-L-E-T.

17 Q Dr. Bertolet, where do you currently live?

18 A I live in Tupelo, Mississippi.

19 Q What is your employment?

20 A I'm an interventional cardiologist with Cardiology  
21 Associates of North Mississippi.

22 Q How were you related to Toni Henthorn?

23 A She's my sister. Younger sister.

24 Q Are you -- is it just the two of you in the family, or are  
25 there other siblings?

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1 A I do have a brother, and he's younger as well.

2 Q How old would Toni be if she were alive today?

3 A She would be 53.

4 Q Where did you grow up as a family, you and Toni and your  
5 younger brother?

6 A We grew up in a small town called Vidalia, Louisiana. It's  
7 across the river from Natchez, Mississippi, so maybe about a  
8 hundred miles north of Baton Rouge, very small town. Maybe  
9 8,000 people in the town total.

10 We grew up in a, just a -- we had a big backyard where  
11 we just played back there a good bit as children. We -- I  
12 guess it was a very traditional southern town where it was lots  
13 of attention toward religious backgrounds. I guess we were  
14 raised in a religious family. And rural environment for the  
15 most part with all that.

16 Q And what was Toni's educational background?

17 A Toni -- we all went to high school. We started off in  
18 public school and then switched over to a private Christian  
19 school, where we went through junior high and high school. And  
20 she, like me, attended the University of Mississippi for  
21 college; and then we went, both went to University of  
22 Mississippi Medical School, which is in a different town, in  
23 Jackson, Mississippi. And I went one direction, and she went  
24 to study eyeballs. So she's a ophthalmologist.

25 Q Okay.

1 And after Toni graduated from medical school, what  
2 state did she practice in?

3 A She practiced in Mississippi.

4 Q So she was close to home essentially?

5 A Yes. She -- her initial practice was in a town called  
6 Meridian, Mississippi, which is almost directly across the  
7 state from where we had grown up at. My parents, by the time  
8 that Toni had entered practice, had actually moved into  
9 Mississippi, into a smaller -- a town, Natchez, Mississippi;  
10 and my brother was actually moving to Jackson, Mississippi, in  
11 about that time as well, so that he would have been about 45  
12 minutes away, 45 miles away.

13 Q At some point in time, did you learn that your sister was  
14 marrying Harold Henthorn?

15 A Yes, I did.

16 Q When did you first meet Harold Henthorn?

17 A I met him initially in a, I guess a short visit in early  
18 2000, we had a get-together dinner in the area at the time, but  
19 I didn't get to spend a lot of time with him then. Had more  
20 time in the week or so preceding the marriage.

21 Q And the marriage occurred in September 30, 2000; is that  
22 right?

23 A Right. Fairly short romance. I think they met New Year's  
24 Eve in 1999, and then that was September of 2000.

25 Q In this initial meeting that you're describing, leading up

1 to the wedding, did you talk with Harold Henthorn about what he  
2 did for a living?

3 A Yes. I asked him what he did for a living. And he told me  
4 he was an entrepreneur, and when I asked what that essentially  
5 was or define that for me a little bit more, he said that he  
6 was a fund-raiser for nonprofits. Such as churches and  
7 hospitals. And I assumed from that that he made his income by  
8 raising X amount of money and taking a percentage off the top  
9 as his fee for doing that.

10 Q At the time of this second marriage of Toni's, did you and  
11 your -- Toni and your brother have significant family resources  
12 in the oil and gas industry?

13 A We did. We all grew up sort of middle class, and then  
14 about the time that I got ready to go to college, Mom and Dad  
15 both did quite well in the oil and gas business. And so they  
16 were quite generous in sharing a good bit of that income with  
17 us.

18 And so we did have not only investments with the oil  
19 and gas industry, but they would also annually gift us money as  
20 well.

21 Q And additionally during this time, Toni was also working in  
22 private practice, is that right, in addition to this income?

23 A That's correct. She actually, at the time that she met  
24 Harold, she actually owned her own private ophthalmology  
25 practice with two separate offices.

1 Q After Toni married Harold Henthorn, did you talk to them  
2 often?

3 A Yeah. I would say relatively often, considering that we  
4 both had fairly busy lives. So I would say that within, you  
5 know, at least a verbal conversation about every other month.

6 Q Did you visit each other?

7 A We did.

8 Q How often would you say you visited?

9 A I would say that we -- I would say as an average, we  
10 actually spent time about once a year. Sometimes it would be  
11 twice a year, and particularly when they moved to Colorado, it  
12 was difficult to, you know, find that time to travel, you know,  
13 when my call schedule allowed, when her call schedule jibed  
14 with mine, so that we would have that time that we could spend  
15 significant time together. But I would say once or twice a  
16 year that we did that as an average.

17 Q And during the time period that you would talk or visit  
18 while they were married, did Harold Henthorn continue to  
19 describe the projects that he was working on?

20 A Yes. He oftentimes would tell us about the projects he was  
21 working on. About work places that he was traveling to, about  
22 fund-raising events that he was going to. There was some golf  
23 courses that he would go to, that they were doing some  
24 fund-raising that was successful. Different things like that.  
25 He was explaining different towns and different locales he



1 would go to.

2 Q So you got, from his statements, it sounds like he was  
3 traveling as well for work; is that right?

4 A Yes.

5 Q In around 2005, did Toni have a child?

6 A Yes, they had a child, Haley Nicole.

7 Q I want to now direct your attention to September 2012.

8 MS. HAZRA: If I could have a moment, Your Honor; I  
9 just need to find an exhibit book.

10 I apologize.

11 BY MS. HAZRA:

12 Q Okay. Directing your attention to September of 2012 and  
13 specifically the last week, did you receive some communications  
14 from Harold Henthorn?

15 A Yes, we did. On Thursday, September 27, I believe that is,  
16 of 2012, I actually got a text message, and it was a picture of  
17 Toni and Harold; and they -- I guess the caption or the tag  
18 line with the message was that they had attended a, one of his  
19 fund-raisers and it was a nice picture and a nice event, but it  
20 was very unusual for us to have received a picture like that.

21 Q And did you learn more about where they were going in that  
22 text?

23 A In text, there wasn't really -- it just said that they were  
24 at a fund-raiser the week prior. And I assumed it was out of  
25 town. It may have been in town, but I assumed from that that

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1 they had traveled someplace.

2 Q At some point in time, did you learn that they were going  
3 away on a trip to celebrate their anniversary?

4 A Yes. I understood that Harold was planning a surprise  
5 anniversary trip for my sister, that they were going to go to  
6 Estes Park and stay at the Stanley Hotel, and then they were  
7 going to have a anniversary weekend there.

8 Q And did you get this information from the defendant, Harold  
9 Henthorn?

10 A Yes.

11 Q I want to have you look at --

12 MS. HAZRA: Your Honor, I'd move for admission of  
13 Government's Exhibit 121, that's previously been stipulated.

14 THE COURT: It's admitted.

15 (Exhibit 121 admitted.)

16 BY MS. HAZRA:

17 Q I direct your attention to the first page of Government's  
18 Exhibit 121. Who is that in that photograph?

19 A That's my sister. Toni.

20 Q And is that in front of the Stanley Hotel, or do you know?

21 A I wouldn't know. I've not been there personally.

22 Q Can we go to the fourth picture.

23 And is that her again?

24 A Yes, ma'am.

25 Q Okay.

Barry Bertolet - Direct

1 So -- thank you.

2 I want to now turn your attention to the next evening,  
3 September 29. At some point that evening, did you receive  
4 information that your sister, Toni, had been injured?

5 A Yes. My wife and I were actually sitting on our back deck.  
6 We had got some salads from a little place called Newk's and we  
7 were eating salads out on our deck there and then my home  
8 telephone rang. So got up and went inside and got a phone call  
9 at that point from Harold. And he was sort of screaming on the  
10 phone, Check your phone, Check your phone. And then that was  
11 pretty much it and hung up.

12 And then I went to --

13 Q I want to stop you there. Sorry to interrupt you.

14 Your home phone rang with Harold saying, Check your  
15 phone?

16 A Yes.

17 Q What phone did you understand him to mean?

18 A My cellphone.

19 Q Did you go check your cellphone?

20 A I did. I did not have my cellphone with me when we were  
21 sitting outside, so I went to where I kept my cellphone that  
22 particular day and then looked at my phone.

23 Q And what did you see on your phone?

24 A That I had received a series of text messages from Harold  
25 at that point.

Barry Bertolet - Direct

1 Q I want you to look at Government's Exhibit 141.

2 MS. HAZRA: And I'd move that into evidence as well,  
3 Your Honor, as it's been previously stipulated to.

4 THE COURT: It's admitted.

5 (Exhibit 141 admitted.)

6 BY MS. HAZRA:

7 Q Government's Exhibit 141 is a multipage exhibit. It's --  
8 do you recognize it, Dr. Bertolet?

9 A Yes, ma'am. That's a screen shot of my cellphone with the  
10 time and the -- the time is in Central time there, and the date  
11 that I received it. And the text -- the first series of texts  
12 that I received.

13 Q Okay.

14 So I want to stop you right there.

15 So there's a time up here. Let's see if I can do  
16 this.

17 That I've just circled of 7:08 p.m. Is that right?

18 A That may have been the time I did the screen shot. I think  
19 the 7:16 p.m. right below that would have been the time that I  
20 would have received the time stamp.

21 Right there.

22 Q And that's Central time, you said?

23 A Yes, ma'am. So it would be 6:16 Mountain.

24 Q For us in Colorado.

25 Okay.

Barry Bertolet - Direct

1 Let's go through these texts.

2 If we could start with the first one and blow that up,  
3 that first page, please, Mr. Price.

4 Can you zoom in on that? Is that possible?

5 So it says, Very urgent, Toni is injured in Estes  
6 Park. You can see that?

7 A Yes, ma'am.

8 Q So this is the first series of text messages that you have  
9 on your phone after you've been directed to go look at it by  
10 Harold Henthorn?

11 A Yes, ma'am.

12 Q What did you understand these to mean?

13 A You know, in this, it says that Toni's been injured, that  
14 she fell from a rock and critical. Requested Flight for Life,  
15 EMT rangers on the way. Please come to Denver on next flight.  
16 Low cell bat, which I understood to mean battery. Please  
17 return message.

18 And so at that point, when I looked at this,  
19 understood that Toni had been injured from this. And then I  
20 replied there at the bottom, Got message. Do I need to call  
21 for help.

22 Q So just for the record, you're -- so the dark or lowest  
23 text message is you responding to Henthorn; is that right?

24 A Yep.

25 Q Okay.

Barry Bertolet - Direct

1           Could we go to the next page, please.

2           And if you could zoom in on that whole -- yeah, that  
3 would be great.

4           So, again, now, this is the top, Got message, do I  
5 need to call for help.

6           That's the message that we just saw on the previous  
7 screen; is that right?

8   A    Yes, ma'am.

9   Q    So this next series of messages is from Harold, is that  
10 correct, Harold Henthorn?

11   A    That is correct.

12   Q    He says, pulse 50, resp five. Can you explain those?

13   A    Yes. Pulse is going to be the heart rate. So I'm assuming  
14 he checked her either radial or carotid pulse at that point to  
15 try to determine a heart rate.

16           Normal heart rate is 60 to a hundred, that would be  
17 normal. So this would actually be in a normal heart rate  
18 range, which for me when I received this, you know, I was  
19 thinking, well, if you think somebody is injured really bad,  
20 you know, your pulse is fast and your respirations are fast,  
21 usually if you're hurt or injured, broken bone, so this is  
22 normal, and then the breath right below, resp would be  
23 respirations and respirations of five would be a low number. A  
24 normal respiratory rate for us all is maybe 12 to 15.

25           MR. MAXIMON: Your Honor, I'm going to object to the

Barry Bertolet - Direct

1 question to the extent he's asking for expert opinion. He can  
2 talk about the texts he got, but a description of what these  
3 things mean.

4 THE COURT: Overruled.

5 BY MS. HAZRA:

6 Q Dr. Bertolet, just maybe back up a second. What is a  
7 respiration?

8 A A respiration is just your how many breaths you take in a  
9 minute time period. And so -- Harold had told us on several  
10 occasions before that he was part of the Civil Air Patrol and  
11 mountain rescue, and so, and then my son was a Boy Scout and  
12 Eagle Scout and going through the, you know, the first aid,  
13 Harold had always told him, talked with him about first aid, so  
14 I assumed that these were, you know, proper assessments.

15 Q And I think just to, I think you were cut off in the middle  
16 of your response. Respiration, five, is that lower or greater  
17 than a normal respiration rate?

18 A Yes. That would be lower. So a normal would be 12 to 15  
19 is a normal human, if we're really just sitting here. And so  
20 five would be definitely low.

21 Q And have you subsequently had a chance to learn what your  
22 sister's actual injuries were?

23 A I have.

24 Q And is this initial pulse and respiration information  
25 consistent or inconsistent?

Barry Bertolet - Direct

1 A I believe it to be inconsistent with her ultimate injuries.

2 Q Could we go through the next screen shot. Next -- could  
3 you blow up that part, too, please.

4 Again, this is the next sort of set of text messages  
5 that you received; is that right?

6 A Yes, ma'am.

7 Q And on the previous page, I believe, is the time that these  
8 hit your phone. So let me start.

9 I'm going to jump back to the next one, previous one.

10 So this is at 6:39 p.m. Mountain time; is that right?

11 A Yes, ma'am, approximately.

12 Q Okay.

13 Now, if we could go to the next page.

14 This is, again, Harold Henthorn sending you texts  
15 saying, No min P, no min resp?

16 A So that would be no minimal pulse, no minimal respiration,  
17 and then CPR means cardiopulmonary resuscitation, that would  
18 mean they would be doing chest compressions and mouth breathing  
19 at that time.

20 Q And then a short while later, you have another exchange,  
21 CPR crit; is that from Harold Henthorn again?

22 A That would be, and by that, doing cardiopulmonary  
23 resuscitation and explaining that the situation has become  
24 critical.

25 Q And then you certainly, you have some responses. And you



Barry Bertolet - Direct

1 say, Is the ranger there.

2 And he says no.

3 Is that right?

4 A That's correct.

5 Q You then respond, is that where is your location, with your  
6 text-messaging type?

7 A Yes, it is. I'd written that because when I was in some  
8 communication with, I guess the emergency-response team, the  
9 911 people, and they were trying to locate where Harold was.  
10 And Toni were. And then they were, they said that they were  
11 having a hard time sort of pinpointing their location. And so  
12 I was trying to do whatever I could to help that out.

13 Q Could we go to the next page. Please.

14 So this is the next text messages he sends back, after  
15 you ask where is your location, Hang in there, Harold.

16 Is that right?

17 You get this message, Can't find pulse.

18 And you say, May be there, keep on with CPR?

19 A Correct.

20 Q Why does the Y mean?

21 A I took that to mean "yes," he was continuing with CPR and  
22 resuscitation effort.

23 Q The next series of text messages occur, again, at  
24 7:53 Mountain time?

25 A Yes.

Barry Bertolet - Direct

1 Q And that's inquiring about the status?

2 A Correct.

3 Q And this is Harold Henthorn's response, CPR, help ten min  
4 out.

5 A Yes.

6 Q And what was your understanding of what was occurring at  
7 that time?

8 A I guess I knew that the mountain rescue was on the way up  
9 the trail, trying to find the location where they were. I knew  
10 that from the 911 operators. 'Cause I kept calling back.

11 Q And CPR meaning continuing with CPR, or what did you  
12 understand that to mean?

13 A Right. That he was continuing CPR. I was trying to just  
14 find out the status of what was going on.

15 Q Then at 8:32 p.m., you initiate another text message with  
16 him; is that right?

17 A Yes. I said, Can you talk now or give me a status update.  
18 And there was a period of time there that I was hopeful that  
19 the EMS people would have arrived and been able to make an  
20 assessment and find out what was going on.

21 Q And you got the message, She's gone?

22 A Yeah.

23 Q And what did you understand that to mean?

24 A That my sister had died.

25 Q Dr. Bertolet, there's some Kleenexes next to you.

Barry Bertolet - Direct

1           The next communication occurs at 8:53 p.m., Mountain  
2 time; is that right?

3       A    Yes, ma'am.

4       Q    And is this a message from Harold Henthorn again telling  
5 you, No cell signal, is that what that message is, you  
6 understood that message to be?

7       A    Right. This was a little bit of time later. As you can  
8 see there, probably about 20 minutes later. And then he had  
9 sent a text that said, No cell signal, EMTs here, has radio.

10      Q    Approximately a minute after you received the message from  
11 Harold Henthorn saying he didn't have a cell signal, did you  
12 receive a phone call from him?

13      A    Yes, I did. And it was, you know, from his cellphone,  
14 which a little bit surprised me because I thought he would be  
15 calling me from the EMT radio, actually.

16      Q    But it was from the cellphone?

17      A    It was from the cellphone.

18      Q    And I think we can take this down. Thank you, Mr. Price.

19           What did Harold say on the phone? Just so I'm sure of  
20 the timing, this is 8:54 p.m. Mountain time, that same night?

21      A    The same night.

22      Q    What did Harold Henthorn say?

23      A    Well, he basically told me that Toni had died and then he  
24 did tell me, I guess, a brief description of what had been  
25 going on there. He told me that they were walking along the

Barry Bertolet - Direct

1 trail and that Toni had lagged behind and sort of, I guess,  
2 fallen out of visual range. And so he had gone back to find  
3 her at that point. And didn't see her on the trail. So he  
4 started looking over some cliffs, looking for her. And he saw  
5 her lying down at the bottom, called out to her. There was no  
6 response.

7 And then he had called the, for EMT, called 911, and  
8 then the resuscitation efforts began.

9 And that was pretty much it. It was a relatively  
10 short phone call.

11 Q What was his demeanor like on the phone?

12 A Surprisingly calm. Actually.

13 Q Did he stumble at all in telling you what had happened to  
14 your sister or anything?

15 A He did not.

16 Q Did you talk with him any more that evening, this  
17 September 29?

18 A I did not.

19 Q I want to talk to you about the next day, September 30,  
20 which was a Sunday.

21 Did you talk to Harold Henthorn on Sunday?

22 A Yeah. Yes, ma'am.

23 I had sent him a text message that morning, just  
24 saying, Hey, you know, just checking on you, how is everything  
25 going.

1 And he had called me back about an hour after I had  
2 sent that, that text message.

3 Q And is the text message just in this Government's  
4 Exhibit 141, I believe?

5 A I believe it was part of that email chain, yes, ma'am.

6 Q What did you all talk about on Sunday morning,  
7 September 30?

8 A Well, he told me that two of his friends had driven up to  
9 Denver and had driven him back -- had driven up to Estes Park  
10 and had driven him back to Denver. And I asked him if he had  
11 talked to Haley yet. And he said that he hadn't. That he had  
12 plans to meet with her that early part of the afternoon.

13 And then he again sort of recapped the story of what  
14 had gone on that evening and what led up to Toni's fall.

15 Q What did he say happened -- how did he say Toni fell this  
16 morning, Sunday morning?

17 A He said that they were actually walking along the trail  
18 together and that Toni had seen some wild turkeys and had gone  
19 off-trail to see, to take pictures of these wild turkeys. He  
20 kept saying over and over again, That damn camera, that damn  
21 camera. I wish I had taken that damn camera away from her.  
22 And that she was taking pictures of these wild turkeys.

23 And to be honest, he mentioned this a little bit later  
24 about wild turkeys, but wild turkeys for us in Mississippi are  
25 like squirrels here, they're all over, everywhere that we are.

Barry Bertolet - Direct

1 So I thought that was unusual that my sister would want to take  
2 a picture of, you know, something that we grew up with and see  
3 every day.

4 But regardless, she was taking pictures of these  
5 turkeys and then Harold said that he had received a text  
6 message from the people that were taking care of their  
7 daughter, my niece Haley. And said that, looking down at it,  
8 that she had -- was in a soccer game and had won her soccer  
9 game, five to one, and I believe that there may have been a  
10 picture associated with the text. Not a hundred percent sure  
11 about that.

12 But when he was down, when he was looking at his  
13 phone, he saw some quick movement out of the corner of his eye.  
14 Did not hear anything. And then when he looked up, Toni was  
15 gone. And then when he went and looked over the side of the  
16 cliff, she was down at the bottom and then again he said he  
17 called out, there was no response. And then he had activated  
18 the 911 system.

19 Q As a result of learning that your sister was dead, did you  
20 travel to Colorado?

21 A Yes. We had made -- actually, we had already had some  
22 plane and hotel reservations 'cause we were going to come out  
23 here to visit that Thanksgiving. And so I actually spent  
24 pretty much the night and the day trying to change that, all of  
25 those plane reservations and whatnot to do all of that.

Barry Bertolet - Direct

1 So we had reservations to fly out early Monday  
2 morning.

3 Q And just so I make sure I'm calendaring right, that's  
4 October 1; is that right?

5 A Yes, ma'am.

6 Q And did you indeed come out that Monday morning?

7 A Yes, ma'am.

8 Q At some point during that day, did you go to Henthorn's  
9 home?

10 A Yes, ma'am. We got there about four o'clock Denver time.

11 Q Who was with you on that?

12 A It was myself; my wife, Paula; my brother, Todd; my father,  
13 Robert; and then my mother, Yvonne; and it was my daughter,  
14 Sarah; and my son, Sam.

15 Q Did you see Haley when you first got there?

16 A No, she wasn't there.

17 Q Did you end up talking to Henthorn that afternoon at his  
18 house?

19 A Yes. When we got there, Harold had not talked to Mom and  
20 Dad about Toni's accident, you know, prior to this time. So  
21 when we got there, there was some friends of Harold's that were  
22 there, and we were introduced to them; and then Harold -- when  
23 you walk in their house, it's like a, I guess, a main floor and  
24 he has a downstairs office, and so he took Mom and Dad  
25 initially down to that downstairs office and talked to them

Barry Bertolet - Direct

1 while we stayed upstairs for a while.

2 Q I think he had not talked to your parents yet. He hadn't  
3 talked to them on the phone after Toni --

4 A Maybe briefly on the phone as we were walking out the door,  
5 but no, you know, discussion about what had happened or  
6 anything like that.

7 Q At some point, did you go down and talk to them as well, to  
8 your parents?

9 A Yes. The friends of Harold's said he had a tendency to  
10 become hypoglycemic and were cutting up fruit and vegetables  
11 and offered Paula and I to take these food downstairs. So we  
12 took the food downstairs to Harold; and then at that time, he  
13 asked us to join in the conversation.

14 I guess Mom and Dad were -- had completed their  
15 conversation, so they left, and so Harold was in a chair and  
16 then Paula and I sat in a couch next to him. And he then  
17 wanted to go through the, this sort of the story with, with us;  
18 but he did not talk with Paula yet at that time, either, so he  
19 sort of went through the story there a little bit again.

20 Q When you say he went through the story, what story are you  
21 referring to?

22 A He did tell us the story on this occasion, there was a bit  
23 more detail in the story. He said that they had --

24 Q I'm sorry to interrupt you, Dr. Bertolet; I want to make  
25 sure, he was telling you the story of how your sister had died,



Barry Bertolet - Direct

1 another one?

2 A Yes, ma'am. Yes, ma'am.

3 Q Okay.

4 Did you ask him some questions that led to this, or  
5 did he just start speaking?

6 A No, he pretty much volunteered.

7 Q And is it -- describe the conversation. Is it back and  
8 forth, where you were asking questions as he spoke, or was it  
9 not?

10 A For the most part, we were just sitting listening, taking  
11 in information.

12 Q So it was more of a narrative from Harold?

13 A Yes, ma'am.

14 Q Okay.

15 And sorry to interrupt you. Could you please explain  
16 what he said happened to your sister on this day, which is  
17 Monday.

18 A On this particular day, the way he told us that evening is  
19 that they were walking along the trail at this mountain trail  
20 and the trail was relatively crowded. And so it sounded like  
21 they got to a, I guess a fork in the trail where you could go  
22 one direction or go another. And this direction seemed to be a  
23 crowded direction. So they chose a less crowded path to take  
24 to go along to a different side of the mountain.

25 I think he said that they went around to the side of

Barry Bertolet - Direct

1 the mountain, as opposed to I'm assuming going up the mountain.  
2 On this trail. And they wanted to have a little bit more  
3 private time, they chose to be alone.

4 They had gone up the trail. That they had lunch up  
5 that way. And then after they had lunch, they were actually  
6 coming down the trail. And then as they were coming down the  
7 trail, they saw these wild turkeys again.

8 Q You said they were coming down the trail, meaning was it  
9 your understanding from what he said that they were returning  
10 to the trail or they were back on the trail?

11 A At this point I never felt they got off the trail. They  
12 had -- he had gone up a trail, and then there was a, one trail  
13 that was going out this way that was less crowded and the trail  
14 that went off this way that was, I guess, more crowded. They  
15 went off this way, went to a lunch spot, and were coming back  
16 down the trail.

17 Q I see.

18 A And then my sister saw these wild turkeys, and then they  
19 went off the trail to take the pictures of the wild turkeys.

20 Q And did he give you any indication of how far off the trail  
21 they had gone to see these wild turkeys?

22 A He had said that they had gone about 50 to a hundred feet  
23 off the trail to take the pictures of the turkeys. At that  
24 time.

25 Q Did he then give you further elaboration of what happened

Barry Bertolet - Direct

1 when they were off this trail looking at turkeys?

2 A And when they were there, she took some pictures of the  
3 turkeys. But also at this point, were taking pictures of him.  
4 And so apparently it was trying to get him in different  
5 positions, to pose him in different positions to get the best  
6 shot.

7 And at this time that he said that he had looked down  
8 at his phone, had received this text message from the people  
9 that were, again, taking care of my niece Haley. And said that  
10 he had received a text and said that she had won her soccer  
11 game, five to one. And then when he had -- basically when he  
12 looked up, she was gone. And then he went over to the side of  
13 the hill, looked over, and then she was lying at the bottom.

14 He called down to her.

15 She didn't respond. He then called 911.

16 Then he said that he then descended down to where she  
17 was. He did make a comment that it took about 15 minutes to  
18 descend down to where she was. He did say that, I guess, the  
19 cell signal was very poor at that particular location; and he  
20 had to climb back up, either part of the way or all the way, in  
21 order to text or to make any calls back.

22 He had said that apparently where my sister had landed  
23 was a, I guess a bad spot for him to deliver resuscitation, and  
24 he said it was sort of like a narrow ledge. And then he had  
25 grabbed her by the feet and had to pull her down and she hit

1 her -- he said he hit her head -- I'm not sure front or back,  
2 but I'm assuming back -- twice, pulling her down to this area  
3 where he could then more safely or easily do resuscitation,  
4 events with that.

5 Q Dr. Bertolet, you just made a motion of your hands like  
6 you're dragging someone. Did Harold Henthorn do that same  
7 motion --

8 A Yes, ma'am.

9 Q -- when he was describing?

10 A Yes, ma'am.

11 Q So he actually demonstrated how he drug your sister by her  
12 legs?

13 A Yes, ma'am.

14 And he said that he had called and gave some compass  
15 coordinates or triangulation coordinates to the park rangers  
16 and that he had some matches in his backpack and had built a  
17 signal fire and he used pine straw in the area in order -- I  
18 guess it was a smokier fire where they would be able to see  
19 that to locate them with that.

20 Q Did he talk to you about your sister's injuries in that  
21 time?

22 A No.

23 Q Did he say anything about what was going on with her or how  
24 much she was bleeding?

25 A No. Not at all.

Barry Bertolet - Direct

1 Q You've now sort of described three separate times you've  
2 talked with Harold Henthorn about how your sister died.

3 A Yes, ma'am.

4 Q Did you later in October talk with him and get sort of a  
5 fourth version of what happened to her?

6 A Yes, ma'am.

7 THE COURT: Before we get to the next version, let's  
8 take a ten-minute recess for the reporter, please.

9 MS. HAZRA: Thank you.

10 THE COURTROOM DEPUTY: All rise for the jury.

11 (Jury out at 10:38 a.m.)

12 THE COURT: Okay. Ten minutes.

13 (Recess at 10:39 a.m.)

14 (Reconvened at 10:50 a.m.)

15 THE COURT: Actually, you folks can sit down if you'd  
16 like to. I know those benches are less than comfortable.

17 One of the jurors might stand up from time to time  
18 during your examinations.

19 MR. TRUMAN: Thank you.

20 THE COURT: For his back. Or her back. I don't know  
21 which.

22 THE COURTROOM DEPUTY: I think also the cloth seats  
23 get warm or something.

24 THE COURT: Cloth seats get warm, yeah.

25 (Defendant in at 10:55 a.m.)

Barry Bertolet - Direct

1 (Jury in at 10:55 a.m.)

2 THE COURT: All right.

3 Have a seat.

4 MS. HAZRA: Thank you, Your Honor.

5 BY MS. HAZRA:

6 Q So Dr. Bertolet, I just want to pick up where we left off.

7 You had described the three sort of different stories  
8 you had gotten from Harold Henthorn in the immediate days after  
9 your sister had passed away?

10 A Yes, ma'am.

11 Q And of those, he was looking at the soccer text that we've  
12 talked about; is that right?

13 A Yes, ma'am.

14 Q I want to now talk about a meeting that happened in  
15 October.

16 Did you say that you met with him and got a new story  
17 or another story?

18 A Yep.

19 Yes, ma'am.

20 The circumstances around that particular meeting were  
21 we had a memorial service for my sister in Jackson,  
22 Mississippi, so Harold and Haley had come down for that. And  
23 Haley asked -- Harold asked to speak with myself; my wife; and  
24 my brother, Todd; and his wife, Rhonda. At this point in time,  
25 Todd and Rhonda had not had a conversation with Harold

Barry Bertolet - Direct

1 regarding the circumstances surrounding Toni's fall and death.

2 And so we sort of all got together on my brother's  
3 back porch to have this conversation.

4 And during this particular conversation, Harold had  
5 prefaced the story with saying that he had met with a park  
6 ranger, Mark Faherty, flattery, something like that, and he had  
7 spun a map at him, and the map had had a pink highlighted line  
8 on it with a X where my sister had died. And Harold -- and  
9 Paula had asked him, asked him, where had that map come from.

10 He said, I don't know, I make maps all the time. I  
11 think I made it for my nephew Daniel. And he said that  
12 actually he really didn't need a map of that area, that he had  
13 actually gone up to this Estes Park area several, several times  
14 in the weeks preceding all of this and had walked multiple  
15 routes and had picked out not only a route for them to walk,  
16 but also alternative routes in case they were crowded, again  
17 saying that they wanted to have some alone time.

18 He also said that the text message that he had told me  
19 about on the two previous occasions that he was looking at, he  
20 had found out that that text message had not actually arrived  
21 until well after the accident. And so he, he basically denoted  
22 that.

23 He'd also made a comment that there was some  
24 investigation into the missing diamond off my sister's  
25 engagement ring.

Barry Bertolet - Direct

1           Then he said that in this, in this time that they had  
2 gone on this trail, and they had taken these alternative routes  
3 in order to get to a very private spot because they wanted to  
4 have some romantic time; during this time, they had had lunch.  
5 They did see some wildlife, but at this time the turkeys and  
6 taking pictures of the turkeys were a lesser thing. They  
7 really just wanted to be alone to have some private, romantic  
8 time.

9           During this -- at this time period, my sister was  
10 apparently taking some pictures of Harold in different  
11 positions and Harold said that he was checking my sister's  
12 phone. Again, she's an ophthalmologist and what I understood  
13 from Harold was that he had arranged previously for another  
14 physician to take her call. But apparently, according to what  
15 he was telling us, is that she was getting a lot of calls, that  
16 in this -- they are worried that they were going to have to go  
17 back to Denver for her to take care of patients.

18           And so he was actually looking at her phone for a  
19 message or a text saying, hey, you needed to come back into  
20 town now. When he had looked down at the phone, he was looking  
21 at her phone, looking at that, he saw this time quick movement  
22 out of the corner of his eye, and when he looked up, again,  
23 Toni was gone.

24       Q    So, Dr. Bertolet, let me try to get some background  
25 information here.



Barry Bertolet - Direct

1           What -- you said this was at your sister's memorial  
2 here in Mississippi. Do you recall the approximate date of the  
3 memorial service?

4           A    October the 20th, I believe.

5           Q    So this is about --

6           A    Of 2012.

7           Q    So about a month after your sister had passed away?

8           A    Yes, ma'am. Three weeks.

9           Q    And this conversation is, again, in your brother's house;  
10 is that right?

11          A    Yes, ma'am. On his back porch.

12          Q    And describe, was this a back-and-forth conversation, or  
13 was this just the defendant talking?

14          A    There was some back-and-forth with that. Like I said,  
15 Paula had asked about, you know, about the map and, you know,  
16 Harold, why did they find a map in your Jeep. You know, what  
17 is this map about. So there was some back-and-forth  
18 conversation with some of this.

19          Q    What was his reaction when he was asked about the map?

20          A    Well, he said that he wasn't even aware that the map  
21 existed, was dumbfounded. He said that he did have numerous  
22 maps, that he kept maps, that he made maps for other people.  
23 And he believes that he had made that map for his nephew  
24 Daniel.

25          Q    And you were talking about the soccer text again. I just

1 want to make sure that I get this straight. That in this  
2 conversation, he said that he was not looking at that text?

3 A Right. It had started off, I guess he had prefaced a lot  
4 of the story about what had gone on with my sister by telling  
5 us that he had found out from Ranger Faherty that, that that  
6 text had actually arrived well after the accident. So then the  
7 story sort of changed.

8 Q So the story changed from looking at the soccer text to  
9 looking at your sister's work phone; is that right?

10 A Correct.

11 Q And Harold was the one looking at your sister's work phone?

12 A We sort of asked him at that point, why did you have her  
13 phone. Because that was sort of -- I keep my own cellphone.  
14 My wife keeps her own cellphone. So why wouldn't my sister  
15 have her own cellphone. So that was one of the questions we  
16 asked.

17 Q What did he say?

18 A You know, I don't think we ever got an answer on that.

19 Q Did you ask him about any other questions that he gave you  
20 answers for, or how did that work when you did ask him  
21 questions in this October meeting?

22 A We did ask questions. We asked questions about the  
23 diamond. And Harold had said that he had not taken the  
24 diamond. That it fell out during her fall.

25 Q And this is the diamond on Toni's engagement ring?

1 A Engagement ring.

2 And apparently there was some conversation also about  
3 apparently Toni was not wearing her engagement ring, at least  
4 on the Wednesday prior to her, this anniversary trip; and one  
5 of Harold's friends, Jack Barker, had an appointment with Toni  
6 and Harold was telling us how Jack Barker had encouraged Toni  
7 to wear her diamond ring on that coming weekend.

8 And again, the question was, well, I thought it was a  
9 surprise. If this was a surprise and she didn't know anything  
10 about it, how was Jack Barker encouraging her to wear her  
11 diamond ring on her big anniversary trip this weekend. So we  
12 thought there was some inconsistencies there.

13 And then later we got into Harold asked us about  
14 whether he would be a beneficiary of some of the, the family  
15 wealth, you know, my parents' wealth, whether he would be a  
16 recipient from, whether he would receive Toni's oil income, her  
17 royalties, and some of the things that my parents had set up  
18 for them. And we told him at that point that he would be.

19 And he had made a comment that that was going to look  
20 bad for him.

21 And then we asked him if Toni had a will. And he  
22 never answered that question.

23 And then he told us that there was one life insurance  
24 policy on Toni that was worth a million dollars. And that half  
25 would go to Haley and then the other half would then go to

Barry Bertolet - Direct

1 friends and family and nonprofits.

2 And then we asked him if there was any other life  
3 insurance policies, and he never answered that question.

4 Q You now told us sort of four different versions that you've  
5 gotten from Harold Henthorn. I want to direct your attention  
6 to the summer of 2013.

7 A Yes, ma'am.

8 Q Did you have an occasion to speak with him for a fifth time  
9 about how your sister passed away?

10 A Yes, ma'am. We have a condominium at Orange Beach,  
11 Alabama. And Harold and Haley had come to visit Paula and I  
12 there, and so we were sitting on the back deck.

13 And we were having a conversation about a variety of  
14 different subjects, but one of those subjects was, again,  
15 again, what had happened. And then essentially the details  
16 were the same as the last story with the exception of that  
17 Harold was looking at his phone, looking at pictures on his  
18 phone instead of looking at Toni's phone and a call would go  
19 back into the hospital.

20 Q Just so I understand, he was saying that he was looking at  
21 his own phone at the time that he claims Toni fell?

22 A Yes, ma'am.

23 Q Okay.

24 And he was looking at pictures on his phone?

25 A Yes, ma'am.

Barry Bertolet - Direct

1 Q Did he explain why he was giving you this new version of  
2 what he was doing or not?

3 A He did not.

4 Q Did he also talk with you about his employment or  
5 nonemployment?

6 A He did. He basically divulged that actually that he had  
7 not worked prior to meeting my sister or any time during their  
8 marriage.

9 Q Did he tell you sort of when prior to meeting your sister  
10 he had stopped working?

11 A He actually said that he had actually stopped working after  
12 the death of his first wife.

13 And so that would have been, I guess, 1995 on he had  
14 not worked.

15 Q How -- what happened with Toni's body, do you know?

16 A She was cremated.

17 MS. HAZRA: Could I have a moment, Your Honor?

18 THE COURT: Sure.

19 BY MS. HAZRA:

20 Q Was your family consulted about Toni Henthorn's cremation?

21 A We were not.

22 Q And did you express any opinions to Harold Henthorn about  
23 it?

24 A We all expressed as a family that we did not want Toni  
25 cremated.

Barry Bertolet - Direct

1 Q But it went ahead and happened?

2 A Yeah. Mom actually wanted to take Toni back to Mississippi  
3 to bury her there.

4 Q What happened -- do you know what happened to Toni's ashes?

5 A I knew that they were initially placed in a vault that was  
6 at their church area at Cherry Creek. And then Harold told us  
7 later that he had spread some in the Rocky Mountains. And then  
8 at -- and then on August -- I think it was in 2013, we got a  
9 text from Harold that he had gone to Ouray, Colorado, and then  
10 he had spread ashes of Toni there. And then he did send some  
11 to my dad.

12 Q Did he send you a photograph of where he spread the ashes  
13 in Ouray, in addition to the text message?

14 A He did. In a monument that he said that he had built.

15 Q I'm going to show you what's been marked for identification  
16 purposes as Government's Exhibit 23. It should come up on the  
17 screen in front of you.

18 MS. HAZRA: Your Honor, I move for the admission of  
19 Government's Exhibit 23, which is also stipulated.

20 THE COURT: It's admitted.

21 (Exhibit 23 admitted.)

22 BY MS. HAZRA:

23 Q You have Government's Exhibit 23 in front of you on the  
24 screen. Do you recognize that photograph, Dr. Bertolet?

25 A Yes, ma'am, that's the picture that we received.

Barry Bertolet - Cross

1 Q Of where Harold Henthorn spread your sister's ashes in  
2 Ouray?

3 A Yes, ma'am.

4 Q Did he tell you why he picked that spot?

5 A He actually said this was one of my sister's favorite  
6 spots, but this is the first time I'd ever heard of that  
7 particular town. It's popular here, but it's the first I'd  
8 heard of it.

9 Q Dr. Bertolet, do you see Harold Henthorn in the courtroom  
10 today?

11 A Yes.

12 Q Could you tell what he's wearing and point to him?

13 A He has a green shirt and purple tie.

14 MS. HAZRA: Your Honor, could the record reflect that  
15 he's identified the defendant.

16 THE COURT: Yes.

17 MS. HAZRA: Your Honor, I have no further questions.

18 THE COURT: Cross-examination.

19 **CROSS-EXAMINATION**

20 BY MR. MAXIMON:

21 Q Good morning, Dr. Bertolet.

22 A Good morning.

23 Q I'm going to go back to something you talked about earlier.

24 A Yes, sir.

25 Q At 6:21 Mountain Standard Time, when I understand is

Barry Bertolet - Cross

- 1 7:21 Central time, you received a call on your home phone from  
2 Mr. Henthorn?  
3 A Correct.  
4 Q And so you were speaking to him live?  
5 A Yes.  
6 Q And he sounded shaken up?  
7 A Yes, he did.  
8 Q And he was real high pitched?  
9 A Yes, sir.  
10 Q And he was almost screaming.  
11 A Yes, sir.  
12 Q And he told you to look at your cellphone.  
13 A Yes, sir. Check my phone, which I'm assuming it was my  
14 cellphone.  
15 Q So you went in -- you recovered your cellphone.  
16 A Yes, sir.  
17 Q And it turned out that five minutes earlier than that, at  
18 6:16 Mountain Standard Time, which is 7:16 Central time, he had  
19 sent you a text message.  
20 A Correct.  
21 Q And he said that Toni was injured.  
22 A Uh-huh.  
23 Q And that she was in Estes Park.  
24 A Yes, sir.  
25 Q And that she had fallen from rocks.



1 A Yes.

2 Q And that she was in critical condition.

3 A Yes.

4 Q And he requested Flight for Life.

5 A Yes.

6 Q And EMTs.

7 A Yes.

8 Q And the rangers were on their way.

9 A Yes, sir.

10 Q And in response to that set of texts, you asked if you  
11 needed -- if he needed you to start helping him.

12 A Yes.

13 Q And you understood his response to that to be, yes, please  
14 help me.

15 A Yes.

16 Q And so you sprung into action.

17 A Yes, sir.

18 Q And you went and looked up the dispatch number for Estes  
19 Park PD.

20 A Yes, sir.

21 Q And you called them.

22 A Yes, sir.

23 Q And you were transferred from the Estes Park PD up to  
24 the -- the National Park Service dispatch, correct?

25 A That's correct.

1 Q And you spoke with the dispatcher Kelly.

2 A I would not remember her name. It was a female that I  
3 spoke with, yes.

4 Q But you spoke with a dispatcher?

5 A Yes.

6 Q And you spoke with her several times.

7 A Yes.

8 Q And you worried -- and one of the reasons you spoke with  
9 her several times, is you were worried that things were taking  
10 so long.

11 A Yes.

12 Q And you were urging them to get there as soon as possible.

13 A Yes.

14 Q You were advocating for your sister.

15 A Absolutely.

16 Q And you -- did you ask them to send a helicopter?

17 A Cannot recall, but probably did.

18 Q And you wanted dispatch to understand the seriousness of  
19 the situation.

20 A Yes.

21 Q And in fact, you told them, if you're waiting to hear back  
22 from the first person, go ahead and send the whole medical  
23 team.

24 A Correct.

25 Q Is that right?

Barry Bertolet - Cross

1 A Correct.

2 Q And you also asked them whether they carry any kind of  
3 external defibrillator.

4 A I may have. I don't recall.

5 Q Well, if -- if -- do you remember speaking with Special  
6 Agent Shott on October 10, 2012?

7 A Yes, sir.

8 Q And she informed you that she was a member of the National  
9 Park Service?

10 A Yes, sir.

11 Q And she told you that she was taping the call?

12 A Yes, sir.

13 Q And so you talked to her about this situation, these calls  
14 that you made to dispatch?

15 A Yes, sir.

16 Q And then there's also a transcript of the dispatch tape.

17 And if I represented to you that you had told Kelly  
18 from dispatch that you had asked about a defibrillator, you  
19 wouldn't argue with that, right?

20 A I would not argue with that.

21 Q And after you had spoken with dispatch several times and  
22 advocated for your sister, you sent a text back to Harold?

23 A Uh-huh.

24 Q And you said, There's help is on the way.

25 A Uh-huh.

1 Q Is that a yes?

2 A Yes, sir.

3 Q And you said, All they have is coming.

4 A Yes, sir.

5 Q You were doing everything you could do.

6 A Yes, sir.

7 MR. MAXIMON: Your Honor, if I could have a moment.

8 Your Honor, no further questions.

9 THE COURT: All right. Any redirect examination?

10 MS. HAZRA: Thank you, Your Honor.

11 **REDIRECT EXAMINATION**

12 BY MS. HAZRA:

13 Q Dr. Bertolet, at the time that you were texting with the  
14 defendant back and forth, you were in Mississippi; is that  
15 right?

16 A I was.

17 Q In any of the text messages or phone calls that you had  
18 with him that night, did he ask you for medical help?

19 A No, sir -- no, ma'am.

20 MS. HAZRA: I have no further questions, Your Honor.

21 THE COURT: Are there any questions from the jurors.

22 JUROR: Yes.

23 THE COURT: Yes?

24 All right.

25 (At the bench:)

1 THE COURT: So I number them. And then I give them to  
2 you. And you tell me if you have any objection. And why.

3 Okay?

4 MS. SPENCER: Okay.

5 THE COURT: I just number a page. There might be  
6 several questions on the page.

7 Here's no. 1.

8 MS. HAZRA: He doesn't have a foundation to answer any  
9 of these.

10 THE COURT: I don't know. I can't see it upside down.

11 MS. HAZRA: We will answer these questions during the  
12 course of the trial.

13 THE COURT: I don't know. I don't know if he knows  
14 no. 3.

15 You say all of that is going to come into evidence?

16 MS. HAZRA: Let me.

17 Your Honor, yes, no. 3 is going to come into evidence.  
18 No. 2 is going to come in.

19 Well, no. 2 I don't know what's going to come out.

20 THE COURT: All right.

21 MS. HAZRA: But no. 1 is.

22 THE COURT: Are you objecting or just commenting?

23 MS. HAZRA: I think there's no foundation to ask this  
24 witness. So I guess the question, I guess there's no harm in  
25 asking, other than he might speculate and that would lead to

1 who knows what. So I guess we would object on those grounds.

2 MR. MAXIMON: We would agree with that.

3 THE COURT: I agree.

4 But I'll tell them that probably these questions will  
5 be answered by others.

6 Question no. 2.

7 MS. HAZRA: That's fine.

8 MR. MAXIMON: This is kind of along the lines of the  
9 objection I made earlier. He's not been qualified as an expert  
10 witness or endorsed.

11 MS. HAZRA: He's not, either endorsed, Your Honor; but  
12 he is a cardiologist, and he obviously testified about that.

13 THE COURT: Will you have somebody answer these  
14 questions, though, that's a disclosed expert?

15 MS. SPENCER: Dr. Wilkerson, the coroner.

16 THE COURT: Object?

17 MR. MAXIMON: Yes.

18 THE COURT: Same objection?

19 MR. MAXIMON: Yes.

20 THE COURT: I agree.

21 But again, I'll say they'll be answered in due course.

22 (In open court:)

23 THE COURT: All right. Members of the jury, we talked  
24 about jury questions.

25 We talked about jury questions last week. And I said

1 sometimes I won't ask them, but it doesn't mean it wasn't a  
2 good question. These are all good questions, but there will be  
3 other people who will answer them for you, people that actually  
4 know the answers. Some of these, this witness really wouldn't  
5 have personal knowledge of, but others will.

6 The medical question he certainly has the expertise to  
7 answer, I assume; but he's not listed as an expert. He's  
8 listed more for his knowledge of facts. There will be a  
9 medical doctor who is a disclosed expert who will answer  
10 questions like the medical questions.

11 So I'm not going to ask the questions of this witness,  
12 but you'll get the information in due course.

13 Okay?

14 Any other questions, that I won't ask.

15 All right. Then, sir, I think we're finished with  
16 your testimony.

17 THE WITNESS: Thank you.

18 THE COURT: And you're free to go or welcome to stay.

19 Next witness.

20 MS. HAZRA: Your Honor, the United States calls Kelly  
21 Vargas.

22 THE COURT: Good morning.

23 Miss Vargas.

24 THE WITNESS: It's Doherty now, I'm married.

25 THE COURT: They told me you were Kelly Vargas.

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1 THE WITNESS: I'm Kelly Doherty now; I got married.

2 (KELLY DOHERTY, GOVERNMENT'S WITNESS, SWORN)

3 THE COURT: Thank you.

4 Go ahead.

5 MS. HAZRA: Thank you.

6 DIRECT EXAMINATION

7 BY MS. HAZRA:

8 Q I apologize. I was unaware you had changed your name.

9 Miss Doherty, could you please spell your last name.

10 A D-O-H-E-R-T-Y.

11 Q Where do you currently live, Miss Doherty?

12 A I live in Glen Haven, Colorado.

13 Q Where are you employed?

14 A I'm employed with the Estes Park Police Department.

15 Q Prior to working at the Estes Park Police Department, were  
16 you employed with the Rocky Mountain National Park?

17 A Yes, I was.

18 THE REPORTER: Could you scoot closer to the  
19 microphone and speak more directly into the microphone.

20 BY MS. HAZRA:

21 Q Prior to working at the Estes Park Police Department, did  
22 you work for Rocky Mountain National Park?

23 A Yes.

24 Q What was your position there?

25 A I was a dispatcher.



1 Q What years were you dispatcher?

2 A You know, it's hard for me to recall. I'm very bad with  
3 the timing. So about four years ago.

4 Q Were you the dispatcher at Rocky on September 2012?

5 A Yes.

6 Q What does the dispatcher do there?

7 A We answer phone calls, anything from routine to emergency  
8 phone calls within the park. And also dispatch stuff out to  
9 the rangers on the radio.

10 Q So let's talk about the first role. Are you essentially  
11 the operator for the park; is that fair to say?

12 A Yeah, we do, yeah, routine and emergency.

13 Q So you're also 911 capacity?

14 A Uh-huh.

15 Q And then you said you dispatched, you send out information.  
16 Can you please explain what that function is?

17 A Sure. When we get a phone call about any type of  
18 situation, routine or emergency, we then pass that information  
19 on to rangers so that they could respond.

20 Q And in September of 2012, approximately how long will you  
21 be working there?

22 A It was about two years.

23 Q Did the calls come in to you directly or how did the calls  
24 get to you, I guess?

25 A It depends. We have our routine phone number. And we also

1 have an emergency phone number. And they can also, if someone  
2 were to dial 911, this gets routed to Estes Park dispatch, and  
3 then they would then transfer the phone call to us.

4 Q So where are you physically located within the park?

5 A We are at park headquarters, the Beaver Meadows visitors'  
6 center.

7 Q And you talked about a 911 operator in Estes Park.

8 Where is that in relation to you?

9 A A few miles away in the town of Estes. At their municipal  
10 building.

11 Q And the town of Estes sits right at the entrance to Rocky  
12 Mountain National Park; is that right?

13 A Yes.

14 Q I want to talk to you about specifically the evening of  
15 September 29. Were you working in the park headquarters as a  
16 dispatcher that day?

17 A Yes.

18 Q Was anyone else working with you?

19 A Elizabeth Repola, my coworker at the time.

20 Q Are you both in the same room, are you separated? What's  
21 the setup?

22 A We're in the same room.

23 Q How do you divide up the calls?

24 A Usually we have two sides of the park, which is split up by  
25 the continental divide, so we would have the east side of the

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1 park and the west side of the park.

2 Q Where is Deer Mountain Trail in that division?

3 A Deer Mountain is on the east side of the park.

4 Q Closer to Estes; is that right?

5 A Yes, uh-huh.

6 Q I want to direct your attention specifically to 5:55 p.m.  
7 that night. Did you get a 911 call routed to you?

8 A Yes.

9 Q Do you recall, first of all, who routed the call to you?

10 A It was from Estes Park Police Department dispatch.

11 Q And the call then, did you actually pick up and talk to the  
12 person?

13 A Yes.

14 Q Do you know who you talked to?

15 A I believe the name was Harold Henthorn.

16 MS. HAZRA: Your Honor, at this time I'd like to play  
17 what's previously been stipulated to as Government's  
18 Exhibit 151.

19 THE COURT: All right. It's admitted.

20 (Exhibit 151 admitted.)

21 THE COURT: Go ahead.

22 MS. HAZRA: Thank you, Your Honor.

23 And before we start, I apologize.

24 BY MS. HAZRA:

25 Q Before coming into court today, have you had occasion to

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1 review the 911 calls that you received?

2 A I have.

3 Q Okay.

4 Can we please start.

5 There's a moment of technical difficulties, Your  
6 Honor. I apologize.

7 Maybe we forgot to pay the bill?

8 THE COURT: It's all right. I know you practiced and  
9 you were ready for this. These moments happen.

10 MS. HAZRA: I apologize, Your Honor. We're going to  
11 play call 150, and I would ask for that to be admitted into  
12 evidence.

13 THE COURT: Okay. 150 is admitted.

14 (Exhibit 150 admitted.)

15 (Audiotape played but not reported.)

16 BY MS. HAZRA:

17 Q Miss Doherty, there was a couple of voices on that first  
18 911 call. The first one is the Estes Park dispatch, right?

19 A Yes.

20 Q So she's here in the courthouse as well to testify, isn't  
21 she?

22 A Yes.

23 Q So we're not going to ask you questions about that. But I  
24 wanted to ask you about the transfer, the call you got. Are  
25 you the first dispatch operator we hear?

1 A I'm sorry?

2 Q Are you the first operator that -- once the call has been  
3 transferred to Rocky Mountain --

4 A Yes.

5 Q -- National Park, are you the first operator?

6 A I am.

7 Q And there's another person that comes on in the middle of  
8 the call. Is that your colleague Miss Repola?

9 A Yes.

10 Q Why was the call transferred like that?

11 A More than likely, it's because I was transmitting on the  
12 radio to the rangers, giving them the information that I  
13 received. So she was working on the west side, which is less  
14 busy, so she had the opportunity to talk to him on the phone  
15 while I'm giving the information to the rangers.

16 Q I noticed that both of you ask a series of questions in  
17 this call. One of them you both ask is you ask Harold Henthorn  
18 if he's with the patient now. Is that a standard question?

19 A That's correct, uh-huh.

20 Q And he said he was both times; is that correct?

21 A Uh-huh.

22 Q Tell me some more about what you were trying to accomplish  
23 in this call by your questions.

24 A We need to find out where they're located. That's the most  
25 important aspect of a 911 call. And again, we like to know the

1 condition of the patient, to give that to our responders as  
2 well.

3 Q So what information are you airing out, then, as you said,  
4 to the rangers, the information that Harold Henthorn had  
5 provided?

6 A Yes.

7 Q Did you have or did you or Miss Repola have additional  
8 calls that evening, for example, one at approximately  
9 six-thirty?

10 A Yes.

11 MS. HAZRA: Your Honor, at this time could we play  
12 Government's Exhibit 151.

13 THE COURT: Good luck.

14 BY MS. HAZRA:

15 Q While he's trying to pull that up, are there additional  
16 phone calls throughout between you or Miss Repola and Harold  
17 Henthorn?

18 A Yes. I do not remember the exact number, but there was a  
19 lot of phone calls between him and dispatch.

20 Q Were all those calls recorded?

21 A No. Initially when they first connect to headquarters  
22 dispatch, they are recorded. But once we transfer them down to  
23 the ROC, which is the ranger headquarters, they weren't  
24 recorded anymore. And nobody knew about that at the time.

25 Q Okay.

1           Let's talk a little bit about the ROC. What is the  
2 ROC?

3       A    The ranger operations center. That's where the rangers  
4 meet for the day at the beginning of their shifts. They keep  
5 all of their --

6           MS. HAZRA: It is successfully paused for now.

7       BY MS. HAZRA:

8       Q    If you could just finish your answer?

9       A    Sure. They keep all of their equipment there for search  
10 and rescue operations. It's kind of like the home base, if  
11 they have an emergency, they have to respond to.

12       Q    And does one of you initially go there as well?

13       A    Yes, if there is a large situation, one of the dispatchers  
14 will go down there.

15       Q    Who went in this case?

16       A    Elizabeth.

17       Q    So when she makes calls from that area, those are not  
18 recorded?

19       A    No, ma'am.

20       Q    And she's there just to focus on this one incident, or does  
21 she continue to field other calls?

22       A    She focuses on this one incident. She handles the radio  
23 task for the incident, and the person in headquarters will  
24 handle the routine operations of the park.

25       Q    All right. I think now we were directing your attention to

1 Government's Exhibit 151, which is the call at 6:32.

2 (Audiotape played but not reported.)

3 MS. HAZRA: Thank you.

4 BY MS. HAZRA:

5 Q And that call, I believe that is that again we're hearing  
6 two voices on that call?

7 A It was all me the whole time.

8 Q And at this point Henthorn is referring to you as Kelly.  
9 Is there another call or so between you all before this one we  
10 just listened to?

11 A I believe so, yes.

12 MS. HAZRA: Your Honor, we're having a few technical  
13 difficulties trying to pull up that call, so I apologize that  
14 we jump ahead to 6:32.

15 If I could have one moment to see if we can fix that,  
16 Your Honor.

17 THE COURT: Sure.

18 MS. HAZRA: Okay. We're going to jump around a  
19 little, and I apologize.

20 BY MS. HAZRA:

21 Q We just finished that call that was at six-thirty,  
22 approximately 6:32 p.m.; is that right?

23 A Yes.

24 Q Now we're going to go back and listen to a call that occurs  
25 at six o'clock. But we can't get the transcript to sync, so



Kelly Doherty - Cross

1 we're just going to play the call.

2 Your Honor, I apologize. I think the best thing would  
3 be to take a break and do the other 911 person who hopefully  
4 the calls would work out better. If that's okay.

5 THE COURT: So you want her to step down momentarily.

6 MS. HAZRA: Yes, please, Your Honor.

7 THE COURT: Leave the courtroom, because of the  
8 sequestration order. You're going to put the other one on and  
9 bring her back.

10 MS. HAZRA: She doesn't need to come back, Your Honor,  
11 we could work with Miss Repola.

12 THE COURT: The defense may have cross.

13 MS. HAZRA: They may, Your Honor, I agree. I'll just  
14 stop with her now and let them have their cross, and we'll  
15 finish up with Miss Repola in direct examination.

16 THE COURT: Okay. Do you have any cross-examination.

17 **CROSS-EXAMINATION**

18 BY MR. MAXIMON:

19 Q Good morning, Miss Doherty.

20 A Good morning.

21 Q So you were at the, at the NPS dispatch, correct?

22 A Yes.

23 Q And Ms. Repola was at the ranger operation center?

24 A She originally started out in the dispatch with me and once  
25 we received this emergency call, she went down to the ranger

Kelly Doherty - Cross

1 operations center.

2 Q That you also call the ROC?

3 A Yes.

4 Q Do you also call it ICP?

5 A Yes.

6 Q Okay.

7 And the two of you were the ones working dispatch that  
8 night --

9 A Uh-huh.

10 Q -- at the Park Service.

11 And the location of this ROC is across the park from  
12 where you were?

13 A Not too far. Just maybe a five-minute walk, maybe.

14 Q Okay.

15 And despite the fact that you guys are in different  
16 spots on these various phone calls, there are times that you're  
17 switching back and forth between you in terms of talking to  
18 Mr. Henthorn?

19 A Yes.

20 Q And that was a pretty hectic night?

21 A If I remember correctly, we did receive other routine  
22 calls.

23 Q And you guys did not have an EMD that was available in  
24 dispatch that night?

25 A No, sir.

Kelly Doherty - Cross

1 Q So you called Julie from Estes police department to cover  
2 you on the EMD?

3 A Yeah, it's a emergency medical dispatch. And neither of us  
4 were trained in that at that time.

5 Q But there was another person from dispatch, Chris, who was  
6 trained in EMD?

7 A Yes.

8 Q And you had talked to him as well.

9 A He was our supervisor. We let him know about the  
10 situation.

11 Q And he was going to be coming in later.

12 A Uh-huh.

13 Q Now, when you spoke with Mr. Henthorn, you understood that  
14 his wife was in really critical condition.

15 A Yes.

16 Q And she had had a bad fall.

17 A Yes, sir.

18 Q And Harold was distraught.

19 A Yes.

20 Q And he asked you to get a helicopter.

21 A Yes, sir.

22 Q He asked you to get Flight for Life.

23 A Uh-huh.

24 Q He said he'd pay all the expenses.

25 A Yes.

Kelly Doherty - Cross

1 Q He said that a couple times, didn't he?

2 A If I recall, yes, he did.

3 Q And he asked for a helicopter several times.

4 A Yes.

5 Q And he said to you, she needs to be evacuated from here.

6 A Uh-huh.

7 Q And Mr. Henthorn called back later on, he was concerned  
8 that a ranger wasn't getting to him quickly enough.

9 A Yes.

10 Q And he told you it would take at least an hour to get to  
11 his spot from the trailhead.

12 A That's correct.

13 Q And you reassured him by telling him that you had rangers  
14 that were able to go to the top of Longs Peak in two hours.

15 A Yes.

16 Q And that he should just hang tight.

17 A Yes.

18 Q And Mr. Henthorn told you that his wife needed to get to a  
19 hospital.

20 A Correct.

21 Q And you knew this was a serious call.

22 A Yes.

23 Q Do you remember -- you talked to Barry Bertolet, the  
24 brother, about defibrillators?

25 A I don't recall that offhand. I apologize.

Kelly Doherty - Cross

1 Q Do you call those AEDs?

2 A Yes.

3 Q And so do you remember Mr. -- Dr. Bertolet asking you about  
4 whether the rangers had these AEDs?

5 A Yes, I do.

6 Q What efforts did you make to call a helicopter?

7 A That would not be my call, sir. That goes up to the  
8 incident commander. I do believe it's up to them to do that.  
9 And I do not think that at that time of night that that was a  
10 decision that they made.

11 Q So that's up to somebody else?

12 A The incident commander, yes.

13 Q Okay.

14 And during the time that you talked to Mr. Henthorn,  
15 you gave him several instructions.

16 A I believe so.

17 Q You told him to wear bright clothes?

18 A I may have, yes.

19 Q You told him that people were going to try to glass him  
20 from the visitors' center?

21 A Yes.

22 Q You told him to wave a purple bag?

23 A Uh-huh.

24 Q And you asked if he had a flashlight?

25 A Uh-huh.

Kelly Doherty - Cross

1 Q And you talked to him about whether he could see lights  
2 from the road.

3 A Yes.

4 Q And that you should wave -- that he should wave?

5 A Yes.

6 Q And you told him to blow a whistle.

7 A Yes.

8 Q And all of those things that you were talking to him about  
9 were in an effort to get professionals to help Mr. and  
10 Mrs. Henthorn; is that correct?

11 A Yes, sir, to get them to his location.

12 Q Because she was in critical condition.

13 A Yes, sir.

14 Q During the course of that call, Mr. Henthorn provided you  
15 with latitude and longitude coordinates.

16 A Yes, sir.

17 Q From a topographical map that he had been carrying.

18 A Uh-huh.

19 Q And then you relayed those coordinates on to, to the  
20 rangers.

21 A Yes.

22 Q To Mr. Faherty.

23 A Yes.

24 Q And he actually gave you those, those coordinates two  
25 different times.

Kelly Doherty - Cross

1 A Yes.

2 Q And the first time was in the, the, what we just heard, but  
3 a second time, he gave you the coordinates of latitude and  
4 longitude later in the phone call; is that correct?

5 A Yes.

6 Q And he gave you three numbers for latitude?

7 A Yes.

8 Q And he gave you three numbers for longitude.

9 A Yes.

10 Q And later on, you talked to somebody who was trying to  
11 confirm those map coordinates, and that person told you that  
12 the north coordinate was missing a number.

13 A Okay.

14 Q And you said that Mr. Henthorn hadn't told you a third  
15 number.

16 A Okay.

17 Q But now you're remembering that he did give you all three  
18 latitude numbers.

19 A Yes.

20 Q All of you were doing the best you could up in dispatch  
21 that night.

22 A Yes, sir.

23 MR. MAXIMON: No further questions.

24 THE COURT: Redirect.

25 MR. PRICE: Ms. Hazra.

**REDIRECT EXAMINATION**

BY MS. HAZRA:

Q Miss Doherty, this is a little unique; we've been able to figure out how to play the rest of the call, and that was the subject matter of many of Mr. Maximon's questions, so if the Court would like, I could play the call now?

THE COURT: It's your choice.

MS. HAZRA: Thank you.

BY MS. HAZRA:

Q I'm just going to ask. You were asked a series of questions about information you were provided or questions you asked of Harold Henthorn and information he provided.

A Yes.

Q And many of those involved a call that we have not yet had an opportunity to play.

MS. HAZRA: At this time, I would play the call.

Thank you, Your Honor.

This is a call --

(Audiotape played but not reported.)

MS. HAZRA: It's a call that's at 6 p.m.

You know, it might be easier for you.

There's a notebook in front of you that has some exhibit numbers, and if you want to look at what's been marked as Government's Exhibit 150.01.

Do you see that in front of you?



1           That should have the transcripts which you can follow,  
2           which might help.

3           (Audiotape played but not reported.)

4           MS. HAZRA: Now we're going to start. This is a new  
5           call.

6           (Audiotape played but not reported.)

7           BY MS. HAZRA:

8           Q Miss Doherty, just to place that call, that was after the  
9           first, initial 911 call you received; is that right?

10          A Yes.

11          Q And then we got the call back at six-thirty?

12          A Yes.

13          Q That we heard second instead. And that's the one where  
14          Mr. Henthorn says he's about ready to start CPR.

15          MS. HAZRA: Your Honor, I have no further questions.

16          THE COURT: Any additional cross.

17          MR. MAXIMON: No, Your Honor, thank you.

18          THE COURT: Any questions from the jurors.

19                 I don't want you to be intimidated just because I  
20          didn't ask the first two.

21                 No other questions.

22                 Thank you, Miss Doherty, for your testimony.

23                 We'll take our lunch break now.

24                 Folks, how much time would you like for lunch?

25                 An hour, an hour and a quarter, you tell me.

1 JUROR: An hour.

2 THE COURT: An hour.

3 Good for everybody?

4 JUROR: Yes.

5 THE COURT: All right. It's about 12:05. Let's say  
6 it's 12:10.

7 We'll come back, let's shoot for 1:10.

8 Have a nice lunch.

9 THE COURTROOM DEPUTY: All rise for the jury.

10 (Jury out at 12:07 p.m.)

11 THE COURT: All right. 1:10.

12 (Recess at 12:07 p.m.)

13 (Reconvened at 1:05 p.m.)

14 THE COURT: Everybody ready?

15 MR. TRUMAN: Ready.

16 MS. HAZRA: We switched out the computer.

17 MS. SPENCER: She just jinxed it. She shouldn't have  
18 said that.

19 THE COURT: I was just thinking, you guys might not  
20 make it on 60 Minutes.

21 Where is our bailiff?

22 Let Julie do it, if she can.

23 If you can't find Julie, would one of you go or both  
24 of you go get the jury and bring them in?

25 So that you know, Julie is not shirking her job. She

Julie Sullivan - Direct

1 just had a baby, and she is taking care of the feeding during  
2 breaks.

3 Waiting for a couple jurors, still.

4 So folks, just, sit down, relax.

5 THE COURTROOM DEPUTY: Judge, are you ready?

6 THE COURT: Yes, we're ready.

7 (Jury in at 1:11 p.m.)

8 THE COURT: All right.

9 Have a seat.

10 Miss Spencer, you have a witness?

11 MS. SPENCER: The United States calls Julie Sullivan.

12 THE COURT: Good afternoon, Miss Sullivan.

13 THE WITNESS: Good afternoon.

14 **(JULIE SULLIVAN, GOVERNMENT'S WITNESS, SWORN)**

15 THE COURT: Thank you.

16 **DIRECT EXAMINATION**

17 BY MS. SPENCER:

18 Q Good afternoon, ma'am. Can you introduce yourself to the  
19 jury and spell your last name for the court reporter, please.

20 A My name is Julie Sullivan, S-U-L-L-I-V-A-N.

21 Q Miss Sullivan, what do you do for a living?

22 A Currently I'm the 911 community outreach for LETA, Larimer  
23 Emergency Telephone Authority. We're the governing authority  
24 for 911 in Larimer County.

25 Q And in 2012, where were you working?

Julie Sullivan - Direct

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1 A I was working at the Estes Park Police Department, and I  
2 was the emergency services dispatcher.

3 Q And how long had you been at the Estes Park Police  
4 Department there in that job?

5 A 12 years.

6 Q And when did you leave?

7 A End of May of 2015.

8 Q Can you tell the jury what sort of training that you had to  
9 be a dispatcher in Estes Park?

10 A The initial training is a 16-week in-house training  
11 program. You have to pass. You are with somebody the entire  
12 time. You're learning policies and procedures and that type of  
13 thing. You also must become certified as emergency medical  
14 dispatcher. It's a program you go outside to, several days of  
15 intensive class, and then you must pass the test. Also CPR  
16 certification. That's the initial. Then we have ongoing  
17 training as we grow in our career.

18 Q So the ongoing training is provided on an annual basis?

19 A Every -- the ongoing training, we do all the time. For  
20 continuing education, we have to stay up with our emergency  
21 medical dispatch, which is 24 hours every two years, and I was  
22 also a QEMT. Q, which means quality assurance. I would grade  
23 the calls of all the other dispatchers to make sure they met  
24 the standards, and I had to have 30 hours every two years.

25 Q Where is the Estes Park 911 call center located?

Julie Sullivan - Direct

1 A It's located in Estes Park at 170 McGregor, and that is in  
2 the police station itself in Estes Park.

3 Q Is that close to the library in Estes?

4 A It's in the same building.

5 Q Okay.

6 I'm going to take you to September 29, 2012.

7 Miss Sullivan, were you working that day?

8 A Yes, I was.

9 Q Do you recall what shift you would have been working?

10 A It was 10 to 2000 or 10 a.m. to 8 p.m.

11 Q When you're working there, are you alone, or do you have  
12 coworkers also doing dispatch calls?

13 A At this day and time, I was a single dispatcher on duty.  
14 And I took all calls and all radio traffic.

15 Q Do you just handle the calls from Estes Park city itself or  
16 from outlying areas?

17 A Our 911 center setup, we have 289 square miles. We're the  
18 PSAP center, public safety answering point. And we would, the  
19 911 center would send all the calls to us; and then if it's  
20 outside of our jurisdiction, we would send it to the  
21 jurisdiction where the call should go to.

22 Q All right.

23 I'm going to give an example about that. Did an  
24 emergency call come in from someone who turned out to be  
25 located in Rocky Mountain National Park at 5:55 that evening?

Julie Sullivan - Direct

1 A Yes.

2 Q Tell us about that, how a call would come in from the park  
3 to Estes Park and what you do.

4 A All the cars are routed to, we're a 24/7 center. So we had  
5 289 square miles. The calls come in, I determine right away  
6 where the jurisdiction is. And I immediately send the call  
7 over to the jurisdiction, so they can help whoever is calling.

8 Q And do you have some sort of automatic-dial situation so it  
9 can be done quickly, or do you have to --

10 A It's just a transfer on our phone lines. You might hear  
11 some clicking, but it's just a transfer.

12 Q So we have a call that occurred at 17:54:31 that's been  
13 taped. Is it the practice of the Estes Park dispatch center to  
14 tape all its 911 calls?

15 A Yes, it is.

16 Q And then you keep those?

17 A We keep it for three years.

18 Q That is Exhibit 150, but it's already been played, and I'm  
19 going to ask that it be played in the initial portion just to  
20 orient you and ask some questions about that.

21 So if you could play 150, please.

22 (Audiotape played but not reported.)

23 MS. SPENCER: All right.

24 BY MS. SPENCER:

25 Q Is that your voice, Miss Sullivan?

Julie Sullivan - Direct

1 A Yes, it is.

2 Q One of the things that you say is I'm pulling up your lat  
3 and long on my phone here.

4 Can you interpret for us, what does that mean?

5 A We can get calls and the 911 calls either come in as a  
6 phase 1 or phase 2. Phase 2 we receive the longitude and  
7 latitude. If we have that information, it helps us to identify  
8 where the person is. If they do not know their exact location.

9 Q So that if they're in a remote area, you can pinpoint for  
10 whoever is going to be the emergency situation --

11 A For the emergency, the technology, especially back then,  
12 when it comes in, the 911 call comes in as a phase 1, it's just  
13 going to be the cellphone number and the cell tower. It's not  
14 going to be the location where the person is.

15 A phase 2, with the increase in technology, our smart  
16 phones, especially in a city area, you're able to pull up a  
17 phase 2, and that's going to be, once again, the cellphone  
18 number of the caller and also the caller's location. This does  
19 not work as well in high-rise buildings, we can't pinpoint  
20 where you are in that building, nor does that work as well in  
21 remote areas.

22 Q So when you say I'm pulling up your lat and long, what are  
23 you actually doing to do that?

24 A At that point, it did not automatically retransmit. I had  
25 a button on my computer screen. On the phone system, I would

Julie Sullivan - Direct

1 hit that button, and it would keep on going out and searching,  
2 trying to find the location. So when I say I'm retransmitting,  
3 I'm trying to get the signal back out and I'm asking the  
4 computers to, can you see the signal, can you see where this  
5 person is at.

6 Q You say within the call, Let me try one more time before I  
7 transfer you because they don't have this technology. Who are  
8 you speaking of, they don't have this --

9 A Rocky Mountain National Park, they are not the primary  
10 PSAP, so they don't have the technology that we have on our  
11 phone systems to get the phase 1 and phase 2 phone calls.

12 Q Tell me again, what's a PSAP?

13 A Public safety answering point. The 911 routing center  
14 sends all the 911s to us, we do have all the technology  
15 recommended by the FCC for the latest technology. So we are  
16 the public answering safety point for all 911s.

17 Q Were you able to get the lat and long from that call you  
18 received at 1754?

19 A No, I did not.

20 Q Had you had, then what would you have done with that  
21 information?

22 A We would give that information over to the Rocky Mountain  
23 National Park so they could put it on their maps and see where  
24 the caller was located.

25 Q Did you get other calls in reference to this emergency that



Julie Sullivan - Direct

1 evening?

2 A Yes, I did.

3 Q Did you get a call from someone who was not Mr. Henthorn,  
4 the one who had just called you, or someone from the national  
5 park?

6 A Yes, I did.

7 Q Was that unusual to receive third-party calls, if you will,  
8 about an emergency?

9 A It was very unusual.

10 Q And at 1852, did you get a call from the National Park  
11 Service, asking you to help in regards to CPR with  
12 Mr. Henthorn?

13 A Yes, I did.

14 Q And why were they reaching out to you to provide that  
15 assistance?

16 A They called me and they told me they did not have anybody  
17 on that was EMD qualified to do the CPR.

18 Q You mentioned the EMD, emergency medical dispatch; is that  
19 right?

20 A That's correct.

21 Q Can you tell us a little bit about that and what you can do  
22 with it?

23 A The emergency medical dispatch is a certification you go  
24 through at the beginning of your training. We follow the  
25 protocols for the International Association of Emergency

Julie Sullivan - Direct

1 Dispatchers. A group of doctors, emergency services doctors  
2 have come together, put together protocols, and the system that  
3 we use goes through those protocols.

4 So we can -- we have a process and protocols where we  
5 follow, we ask the callers when you call in, we get your basic  
6 information, the status of the patient. Then we can go through  
7 and we look at what is wrong with you, a heart attack, whatever  
8 else you might have. It's called your chief complaint. We'll  
9 go through a series of questions just on those stats or what  
10 you're giving us.

11 At that point in time, we can, if we need to, go to  
12 dispatch life support, and that's where you're going to do a  
13 Heimlich maneuver, you're going to go into CPR, it's the  
14 process that takes it through it, us through it.

15 Q So it's an actual, standardized protocol that you march  
16 through?

17 A Yes, it is.

18 Q And in this situation, they were asking you to help with  
19 CPR?

20 A Yes.

21 Q Miss Sullivan, have you done that in the past, helping  
22 people go through that on the phone?

23 A Yes, I have.

24 Q How often?

25 A Over my years, probably a good average would be over all my

Julie Sullivan - Direct

1 years, up to 2012, would have been about 240.

2 Q And you actually talk people through how to do CPR on the  
3 phone?

4 A Yes, we do. We follow the protocol.

5 Q All right.

6 In Exhibit 153, which has already been stipulated,  
7 Your Honor, is that tape where you're providing that  
8 assistance.

9 I'll ask at this time that we play that?

10 THE COURT: It's admitted.

11 (Exhibit 153 admitted.)

12 (Audiotape played but not reported.)

13 BY MS. SPENCER:

14 Q Miss Sullivan, that was you, again, on Exhibit 153,  
15 speaking with the defendant?

16 A Yes, it was.

17 Q Now, the questions that you were going through and asking  
18 him, where are you getting those specific questions from?

19 A That is our protocol, the medical dispatch priority system,  
20 that we utilize that follows the protocol by the International  
21 Association of Emergency Dispatchers. It's a nationwide  
22 recognized program.

23 Q So as you go through the questions, do you click on them or  
24 is it a decision tree?

25 A It is more or less like a decision tree. We do have it on

Julie Sullivan - Direct

1 our computers at every console so every dispatcher has this and  
2 also we have it on a backup, a card set, so our computers, a  
3 power outage, we could go through the CPR process with anybody.

4 Q The process we heard you go through with the defendant, is  
5 that the process you go through with any other individual that  
6 needs CPR assistance?

7 A Yes, it would be.

8 Q And was Mr. Henthorn's responses to you in any way unusual  
9 based on your experience in doing this on the phone?

10 A In my experience, when I'm doing CPR with somebody, guiding  
11 them through it, even if they are experienced people, nurses  
12 and other people on the scene, they're extremely out of breath.

13 I found it unusual that he wasn't letting me know when  
14 he was completed with an instruction I had given him. A lot  
15 of -- you know, every other call I've been with, the person  
16 wants to know immediately what to do next. Okay, I did my 30,  
17 what do I do next. What do I do next.

18 That was very unusual, and I didn't feel like he was  
19 doing the CPR. Most people because of the exertion of doing  
20 the CPR, the compressions and also giving the breaths, it's  
21 very exhausting.

22 Q Now, at one point, you tell him two breaths, 30 pumps, and  
23 say, Tell me when you've done those.

24 Why do you ask him to tell you when that's been  
25 completed?

Julie Sullivan - Direct

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1 A As I stated, I need to know when you're complete with it,  
2 so we can go ahead and go on to the next instruction, and he  
3 was not letting me know after he completed every instruction  
4 I'd given him. So I was prompting him to let me know.

5 Q In terms of the timing of when you went to the next thing,  
6 had enough time passed for him, in your experience, passed for  
7 him to do the two breaths and the 30 pumps?

8 A No. And also we did have an open line. On all the other  
9 CPR calls that I've done through my career, I can hear them as  
10 they are doing the compressions on the patient 'cause it's a  
11 lot of breathing, it's a heavy breathing, it's very exhausting,  
12 and it's hard to even get out and talk back -- they have a hard  
13 time talking with me because they are so out of breath because  
14 of the exertion.

15 Q One of the things that you tell him is that you will count  
16 for him. That you have a counter on your computer.

17 A We do have several different tools available to us, and we  
18 can count through with them. We want to make sure those  
19 compressions are, as I said, the 2 inches, we want to make sure  
20 they're placed on the breastbone, and we want to do it fast.  
21 This is going to carry the blood through the body and  
22 especially to the brain, so I want to count along with the  
23 person doing it to make sure that we're doing it accurately.

24 Q Now, near the end of the call, he indicates to you that his  
25 battery is running out and that he can't stay on the call with

Julie Sullivan - Cross

1 you. In fact, the call lasts for three minutes, 42 seconds.

2 Based on the times that you've done that, is this a short call,  
3 long call, normal call?

4 A Very short call. I've been on a CPR call up to 45 minutes  
5 before. When they were not able to get a ambulance to a person  
6 who was CPR in progress the entire time because of the  
7 snowfall. So typically the CPR calls last a very long time.  
8 This was a very short call.

9 Q All right.

10 One of the thing he says, and I don't know if we have  
11 the transcript to pull up at the end part, he says, I hardly  
12 have any cell battery left, I'm going to, I've got to turn off.

13 Let's see if we can get that.

14 Then you say, Okay.

15 And he indicates, Because the rangers have to find me.

16 Is that your recollection of what he said to you?

17 A That is.

18 MS. SPENCER: Just a moment, Your Honor.

19 Pass the witness.

20 THE COURT: All right. Cross-examination.

21 **CROSS-EXAMINATION**

22 BY MR. MAXIMON:

23 Q Good afternoon, Miss Sullivan.

24 A Good afternoon.

25 Q Now, between the calls that we just went through --

Julie Sullivan - Cross

1 A Uh-huh.

2 Q -- a few of you with Mr. Henthorn, you had some discussions  
3 with Kelly Vargas, who is now Kelly Doherty; is that correct?

4 A That is correct.

5 Q And you also had some discussions with Elizabeth Repola?

6 A That is correct.

7 Q And the reason for that was Miss Vargas or Miss Doherty  
8 called you to let you know that they didn't have an EMD on duty  
9 that night?

10 A That is correct.

11 Q And so they were asking for backup from you.

12 A That's correct.

13 Q Because you're an EMD.

14 A That's correct.

15 Q And because of that, they asked you to call Mr. Henthorn on  
16 the mountain.

17 A That's correct.

18 Q And so when we heard the dialing on the call, that was you  
19 calling Mr. Henthorn?

20 A Yes.

21 Q When you spoke with Miss Repola, you expressed a  
22 reservation about doing that call with Mr. Henthorn.

23 Is that right?

24 A No, it's not a reservation. I was notifying them that I  
25 was dispatching alone. We can have several 911s call in at the

Julie Sullivan - Cross

1 same time. We can have two emergencies going on at the same  
2 time. I wanted to notify them that I was dispatching alone.  
3 If another 911 call came in, I would have to break from the CPR  
4 to answer it. But I do keep that call on hold and I do get  
5 right back to it. I triage it and see which one has the higher  
6 priority.

7 Q You wanted them to know that you weren't alone.

8 I mean, that you were alone?

9 A Yes.

10 Q As you were taking the call?

11 A Yes.

12 Q And you told her that Mr. Henthorn would have to wait if  
13 you had received one of those other calls.

14 A That's affirmative. Until I could triage to see if there  
15 was a higher priority call.

16 Q And you understood from Miss Repola that it wouldn't be a  
17 problem to wait because Mr. Henthorn was out of breath?

18 A That's what she told me.

19 Q She said, He won't mind, because he is out of breath doing  
20 this.

21 A That's what she reported to me.

22 Q You called Mr. Henthorn.

23 Correct?

24 A Correct.

25 Q And you talked to him about chest compressions.



Julie Sullivan - Redirect

1 A That's correct.

2 Q And you talked to him about breath.

3 A That's correct.

4 Q He told you that is what he had been doing.

5 A That is what he did advise.

6 Q And after that, the two of you hung up.

7 A That's correct.

8 Q After that call, you called Ms. Repola again.

9 A That's correct.

10 Q And you told her, He's been doing CPR correctly.

11 A That's correct.

12 MR. MAXIMON: No further questions.

13 THE COURT: Redirect.

14 **REDIRECT EXAMINATION**

15 BY MS. SPENCER:

16 Q Following up on that cross-examination about your telling  
17 Ms. Repola that he was doing the CPR correctly. Was that  
18 actually what you thought had been going on?

19 A What we have, it's a little different if you're a paramedic  
20 on the scene, you can actually see, feel, and hear what's going  
21 on. As emergency medical dispatcher, we only have what people  
22 tell us, and we have to go by that. We can never assume  
23 anything. We can only go by what they tell us. It's kind of a  
24 difficult situation at times 'cause we're not there with the  
25 patient.

1           He told me he had been doing that. And that's what he  
2 was doing. I had to assume that he knew how to do CPR because  
3 what I gave him to do, he stated he was doing the same thing.

4       Q    And so that's what you reported to Miss Repola?

5       A    That's affirmative.

6       Q    Based on your experience, do you believe that he was  
7 truthfully telling you that he was doing CPR with you when you  
8 were on the phone?

9       A    When I was on the phone with him, I did not believe that he  
10 was doing the CPR. That's why I kept on prompting him to let  
11 me know when he was finished so we could go on to the next set  
12 of instructions.

13      Q    And you didn't think he was doing the steps with you?

14      A    No.

15      Q    We've already heard the telephone call, but in your  
16 estimation, when he picked up the phone, did you believe the  
17 defendant to be out of breath?

18      A    He did not appear to be out of breath. That's why I asked  
19 if someone else was there on the scene with him. I was  
20 wondering if somebody else was doing the chest compressions and  
21 the CPR.

22               MS. SPENCER: Thank you, ma'am.

23               THE COURT: Are there any questions from the jury for  
24 this witness?

25               No.

Elizabeth Repola - Direct

1 All right, then, Miss Sullivan, thank you for your  
2 testimony. You're excused, free to go.

3 Next witness.

4 MS. HAZRA: Your Honor, the United States calls  
5 Elizabeth Repola.

6 **(ELIZABETH REPOLA, GOVERNMENT'S WITNESS, SWORN)**

7 THE COURT: Thank you.

8 Have a seat, please.

9 **DIRECT EXAMINATION**

10 BY MS. HAZRA:

11 Q Good afternoon.

12 Can you please introduce yourself to the jury.

13 A My name is Elizabeth Repola.

14 Q And could you please spell your last name for the court  
15 reporter.

16 A R-E-P-O-L-A.

17 Q Where are you employed, Miss Repola?

18 A Currently my husband and I own some vacation rentals and we  
19 take care of those, and the rest of the time I'm a grandma. So  
20 I'm not employed.

21 Q That sounds lovely.

22 Before you went to that, what did you do?

23 A I worked at my church, and before that, I worked at the  
24 park. Before that, I taught school. And before that, I worked  
25 at the sheriff's department in Larimer County for ten years.

Elizabeth Repola - Direct

1 Q What did you do for the sheriff's department?

2 A I started out as a dispatcher, and then I became the  
3 dispatch supervisor, and then I was promoted and I was  
4 basically the IT director. I had dispatch, records, and IT  
5 below me. So I stayed there for ten years.

6 Q When you said you worked for the park, what park?

7 A Rocky Mountain National Park. In the dispatch center.

8 Q What years did you work for the park?

9 A I left in 2013, so I think I started around 2011. I did  
10 three summer and part-time one of the winters.

11 Q What did you do as dispatch work?

12 A Basically take information in from phone calls or radio  
13 traffic and then disseminate it. I look at it as kind of a  
14 support service that we, you know, take phone calls, whether  
15 they're emergencies, nonemergency, and then we give it to the  
16 appropriate person. We dispatch it to the appropriate person  
17 or make notifications and send resources.

18 Q And already heard a little bit about this from  
19 Miss Doherty, but I now want to talk about what you did  
20 specifically on the night of September 29, 2012.

21 Do you recall working that day?

22 A Yes.

23 Q What were you doing that day?

24 A The dispatch center was set up with two radio consoles and  
25 phones, and Kelly was my partner that night. And she had

Elizabeth Repola - Direct

1 primary radios, meaning the east side of the park. And I was  
2 on the other console, and I had the west side of the park,  
3 which is not as busy, and so I would also take phone calls.

4 And so that night, I think I was working on the west  
5 side with a possible DUI. And so Kelly answered the phone and  
6 took the first phone call for this case.

7 Q And what was that phone call?

8 A Mr. Henthorn calling to talk about his wife who had fallen  
9 and -- and that information.

10 Q And the jury's already heard that call. But were you, did  
11 you also talk to Mr. Henthorn in these beginning initial calls?

12 A Not his first call. But I talked to him while I was still  
13 in dispatch. And then what happens is the person in charge  
14 asks for a dispatcher to come down to the incident command  
15 post. So it was between Kelly and I, and I went down to the  
16 incident command post. You pack up your computer and take  
17 everything down there and get set up and you take over  
18 everything as the dispatch, so the dispatcher can basically run  
19 other things happening in the park.

20 Q Why were you the one that went to the incident command  
21 post?

22 A Kelly wasn't feeling well that night. And the incident  
23 command post, just the way the room is laid out, it would have  
24 been uncomfortable for her to be down there.

25 Q Is that also known as the ROC?

Elizabeth Repola - Direct

1 A Yes. It's known as the ROC.

2 Q And you said that you would then go there and be the  
3 dispatcher handling the incident?

4 A Right.

5 Q This is the same incident involving Toni Henthorn?

6 A Right. Right. And once you go right down there, you tell  
7 the other dispatcher, there's an intercom system between  
8 headquarters where the main dispatch center is, and the ROC,  
9 and we could talk to each other on intercom. And I just, when  
10 I was all set up, I said I have it now, and then she could let  
11 it go.

12 Q What does that mean by "let it go"? Does that mean that  
13 you would be responding primarily to --

14 A Uh-huh.

15 Q -- Harold Henthorn's phone calls?

16 A Not only his phone calls, but the radio traffic. The  
17 people in charge of the incident are kind of standing behind  
18 you and there's a room with a map and they might ask you to get  
19 on the radio and ask so-and-so about this incident.

20 That night Kelly was swamped. She called in the  
21 supervisor, but when Mr. Henthorn would call, she could tell me  
22 and I would pick it up.

23 Q You talked about these other people being in the room with  
24 you. Those aren't other dispatchers?

25 A No, they're law-enforcement rangers, supervisors, figuring

Elizabeth Repola - Direct

1 out the logistics of where the person is, how to get to them,  
2 what resources they need and things like that. So I would  
3 handle the radio traffic with any updates, with any, you know,  
4 basically a dispatcher takes everything in and gives everything  
5 out.

6 Q And we have heard a couple of the phone calls that were  
7 recorded that night between Rocky Mountain National Park  
8 dispatch and Mr. Henthorn. Did you also have conversations  
9 with him that were not recorded?

10 A Yes. Nothing was recorded in the ROC when I talked to him.

11 Q But if the call was transferred from Kelly, that's still  
12 recorded is my understanding?

13 A Not once she would release her phone.

14 Q But the calls that are recorded we're about to play in a  
15 moment, are after 7 p.m. when you were in the ROC.

16 A Okay.

17 Q So those would be ones obviously that were reported?

18 A Right.

19 Q Okay.

20 I want to direct your attention to Government's  
21 Exhibit 154, which is a call to dispatch at 7:06.

22 MS. HAZRA: And, Your Honor, this has previously been  
23 stipulated.

24 THE COURT: It's admitted.

25 (Exhibit 154 admitted.)

Elizabeth Repola - Direct

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1 MS. HAZRA: Thank you.

2 (Audiotape played but not reported.)

3 BY MS. HAZRA:

4 Q That was sort of hard to hear, but were you able to hear  
5 that?

6 A I'm sorry, I didn't.

7 Q Okay.

8 Were you able to read it on the screen in front of  
9 you?

10 A It's blank.

11 Q That call that was just played, I was just saying, were you  
12 able to identify whose voice that was?

13 A It was Kelly, yeah.

14 Q And I believe to the extent I heard it, it was asking about  
15 an ETA on the rangers; is that right?

16 A Uh-huh.

17 Q What does "ETA" stand for?

18 A Estimated time of arrival. How soon will he be there.

19 Q Now I want to direct your attention to Government's  
20 Exhibit 155, which is a call from Harold Henthorn to dispatch  
21 at 7:41:32.

22 And the transcript is going to come up on the screen  
23 in front of you, to your right.

24 A Okay.

25 Q As well as it should be playing.



Elizabeth Repola - Direct

1 THE COURT: All right. It's admitted.

2 (Exhibit 155 admitted.)

3 (Audiotape played but not reported.)

4 BY MS. HAZRA:

5 Q Okay. Were you able to read that transcript?

6 A I was.

7 Q And it says that's Harold Henthorn talking to Chris. Who  
8 is Chris?

9 A Chris is the dispatch supervisor. Kelly called him in to  
10 help us.

11 Q So is he with Kelly now?

12 A He's with Kelly.

13 Q And you're still in the lower location?

14 A Right.

15 Q Is that right?

16 A Correct.

17 Q And Harold is asking about you guys have my location?

18 A Correct.

19 Q It then says he's going to transfer down to ICP, and that's  
20 where you are?

21 A Correct.

22 Q In between these two phone calls, do you recall having, you  
23 know, phone calls with Harold Henthorn in between, while you  
24 were in the ICP?

25 A I don't know if it was in between, but I had numerous phone

Elizabeth Repola - Direct

1 calls from Harold that I talk to him. At least five.

2 Q What do you recall were the substance of what was said in  
3 those conversations?

4 A Almost every single one was where was the ranger. How soon  
5 is he going to get here. And, you know, I couldn't give him an  
6 exact answer. So.

7 Q In any of those phone calls, did Harold Henthorn relay  
8 information about Toni Henthorn's condition?

9 A When he called, he called at one point and said, Should I  
10 start CPR?

11 And then that was transferred to the city so that they  
12 could give him medical instructions.

13 And I think there was one taped phone call when I was  
14 in the dispatch center before I left, that he was giving the  
15 vitals and the statistics. And at that point I asked him if he  
16 was a paramedic.

17 Q And with respect to the unrecorded phone calls, do you have  
18 any memory of him sort of conveying information about her  
19 condition, similar to what you've described on the taped phone  
20 calls?

21 A I remember him saying her breath was getting more shallow  
22 and things like that, but nothing more specific.

23 Q And the main theme was where were the rangers?

24 A Right. Right.

25 Q I now want to direct your attention to what's previously

Elizabeth Repola - Cross

1 stipulated Government's Exhibit 156.

2 This is another 911 call from Harold Henthorn to  
3 Chris.

4 THE COURT: It's admitted.

5 (Exhibit 156 admitted.)

6 (Audiotape played but not reported.)

7 BY MS. HAZRA:

8 Q Miss Repola, this was another conversation with Chris; is  
9 that right?

10 A Yes.

11 Q The supervisor.

12 And again, there's a lot of information there about  
13 where Harold Henthorn is. Was that typical of sort of the  
14 information he was giving you on these unreported calls, or was  
15 it more general than that?

16 A My information was more general.

17 Q Thank you.

18 MS. HAZRA: I have no further questions, Your Honor.

19 THE COURT: Cross.

20 **CROSS-EXAMINATION**

21 BY MR. MAXIMON:

22 Q Good afternoon, Miss Repola.

23 A Good afternoon.

24 Q You spoke with Mr. Henthorn that night?

25 A I did.

Elizabeth Repola - Cross

1 Q And Miss Vargas also spoke with Mr. Henthorn?

2 A Correct.

3 Q You were switching him back and forth?

4 A Depending on who was, who could handle the call, right.

5 Q Some of those calls were recorded.

6 A Yes.

7 Q And some of the calls were not recorded.

8 A Correct.

9 Q The ones that were not recorded were the ones from ICP.

10 A Correct.

11 Q Those were the ones that were primarily with you.

12 A Correct.

13 Q When you first talked to Mr. Henthorn, he told you, she's  
14 going to need to be evacuated from here.

15 A Correct.

16 Q Then he asked if you could bring a helicopter.

17 A Correct.

18 Q He asked for a Flight for Life.

19 A I don't remember that. I remember the Civil Air Patrol.

20 MS. HAZRA: Your Honor, I'm just going to ask -- we  
21 did not cover this in direct, so if he could direct Miss Repola  
22 to a particular call, that would help.

23 THE COURT: Is that an objection?

24 MS. HAZRA: Yes, Your Honor.

25 THE COURT: It's overruled.

Elizabeth Repola - Cross

1 BY MR. MAXIMON:

2 Q He asked you for a helicopter several times.

3 A Correct.

4 Q Since you were in ICP, are you aware of what efforts were  
5 made to get a helicopter?

6 A I just passed the information. The first time I think I  
7 was in dispatch when I called down to the ICP. And beyond  
8 that, I gave the information over.

9 I knew that typical park policy wouldn't be that we  
10 would just launch a helicopter; that we would have to see that  
11 there was a landing pad; that there was people to direct them  
12 in. So I didn't have any expectation that they were going to  
13 start down that path. I think they were starting down the path  
14 to get where he was.

15 Q And send a ranger to get him.

16 A Correct.

17 Q Who typically makes the decision about helicopters?

18 A It's brought to whoever is in charge of that incident. And  
19 they'll make that decision. And then they usually consult. We  
20 have, I forget what it's called, it's like an aviation expert.  
21 And so they would confer.

22 Q At some point, you asked Miss Sullivan from Estes Park  
23 Police Department to call Mr. Henthorn on the mountain?

24 A For CPR? Correct.

25 Q Yes.

Elizabeth Repola - Cross

1 And to talk about CPR?

2 A Correct.

3 Q And he had asked a question, when to start CPR.

4 A Correct.

5 Q You wanted her to be able to answer his questions.

6 A Right. I'm not, at that time I was not EMD -- I didn't  
7 have -- I wasn't certified for emergency medical dispatch. So  
8 I was not able to give out any medical information. But I knew  
9 that the Estes dispatchers were. And so that's why I asked her  
10 to walk him through it.

11 Q When you talked to Miss Repola (sic), she warned you that  
12 she was the only one on duty, right?

13 A Miss Sullivan advised me.

14 Q Sorry?

15 A Yes.

16 Q Sorry, you're Miss Repola, I apologize.

17 A It's okay.

18 Q That Miss Sullivan was the only one on duty.

19 A Correct.

20 Q She, if she got another call, she would have to put  
21 Mr. Henthorn on hold.

22 A Correct.

23 Q And you told Ms. Sullivan, a delay would not be a problem  
24 because Mr. Henthorn was out of breath doing CPR.

25 A Okay. I don't remember that, but.

Elizabeth Repola - Cross

1 Q If I read to you, would that, would that help you from the  
2 transcript?

3 A If it's in there.

4 Q Do you remember saying that?

5 A I don't remember saying that, but. I'm sure if it's in the  
6 transcript, then.

7 MR. MAXIMON: Counsel, so you can follow along, on  
8 page 26.

9 BY MR. MAXIMON:

10 Q Estes Park dispatch, so if I get another call or anything,  
11 I've got to put him on hold.

12 NPS. Which was you?

13 A Uh-huh.

14 Q And he won't mind, because he's out of breath doing this.

15 A Okay.

16 Q You said?

17 A Yes, I guess so.

18 Q And then Miss Sullivan called you back after she had spoken  
19 with Mr. Henthorn.

20 A Correct.

21 Q And you understood from what she said that Mr. Henthorn was  
22 doing CPR correctly?

23 A He knew what he was doing.

24 Q She said to you, Mr. Henthorn is doing CPR correctly.

25 A Okay.

Elizabeth Repola - Cross

1 Q You agree with that?

2 A Yes. Yes.

3 Q Mr. Henthorn called a number of times asking where the  
4 rangers were.

5 A Correct.

6 Q Asking you when the professionals would arrive.

7 A Correct.

8 Q And at some point, you learned that Ranger Faherty was  
9 looking in the wrong place.

10 Do you remember that?

11 A No. I know -- what I remember was it was a really  
12 difficult place where he was. That most people that were down  
13 at the ICP were having a difficult time figuring out where he  
14 was. And I know that, I remember that some of the rangers were  
15 helping Ranger Faherty figure out the location.

16 Q After, after Ranger Faherty spoke with Chris, the  
17 coordinates of GPS coordinates were cleared up. Correct?

18 MS. HAZRA: Objection. Lack of foundation.

19 THE COURT: Sustained.

20 BY MR. MAXIMON:

21 Q You heard the transcript that we just heard.

22 A Yes.

23 Q Where GPS coordinates were given to Ranger Faherty.

24 A Yes.

25 Q And there was also a description of where the Henthorns



Elizabeth Repola - Cross

1 were. On the saddle between the two outcrops?

2 A Yes, I heard that, uh-huh.

3 Q And as soon as Ranger Faherty heard that from Chris, the  
4 location of the Henthorns was cleared up. Do you remember  
5 that?

6 A Not really. Because the GPS coordinates he gave them  
7 initially on the call. And I don't know that they differed  
8 from those coordinates. So I can't really answer that  
9 question.

10 MR. MAXIMON: Your Honor, I'm going to ask that we  
11 play that last recording to the conclusion.

12 THE COURT: Okay.

13 MR. MAXIMON: The last recording.

14 (Audiotape played but not reported.)

15 BY MR. MAXIMON:

16 Q Miss Repola, does that refresh your recollection?

17 A I think you're going to have to ask me the question again.  
18 Was it a different -- are you asking?

19 Q Well, Ranger Faherty was saying that this new information  
20 he was -- this information he was getting from Chris was new  
21 info, correct?

22 A I guess.

23 Q And he said that makes total sense.

24 A Okay.

25 Q So he now knew where to go?

Elizabeth Repola - Redirect

1 MS. HAZRA: Objection, Your Honor. Lack of  
2 foundation.

3 THE COURT: I'm not sure she's really following you.

4 THE WITNESS: I'm sorry.

5 MR. MAXIMON: Okay.

6 THE WITNESS: If you're saying that -- I guess I would  
7 look at it as they were narrowing it down and making it more  
8 accurate. He started up the trail. He knew the general area.  
9 And as a call like that goes on, you can get more specific and  
10 more specific. So maybe it did change a little something, but  
11 he was still headed in the right direction.

12 Am I understanding your question?

13 BY MR. MAXIMON:

14 Q Sure. Let me ask this question. Soon after the call  
15 between Ranger Faherty and Chris, they found Mr. Henthorn.

16 A Okay.

17 Q Is that correct?

18 A I'd have to see the time line, but, yes. I would think so.

19 MR. MAXIMON: No further questions.

20 THE COURT: Okay.

21 Redirect.

22 **REDIRECT EXAMINATION**

23 BY MS. HAZRA:

24 Q Miss Repola, you just heard the 911 call that occurred at  
25 7:55 p.m.; is that right?

Elizabeth Repola - Redirect

1 A Correct.

2 Q And there was the end bit where Chris at dispatch is  
3 talking to someone?

4 A Uh-huh.

5 Q Do you know who he is talking to on the other end?

6 A I don't. I think it was down at the ICP because there's so  
7 many places you can answer a phone. And if I'm on the phone  
8 with somebody, one of the other rangers will pick it up.

9 Q So Mr. Maximon asked you a series of questions about what  
10 Ranger Faherty and Chris were talking about. You weren't even  
11 sure who was on that other end of the call?

12 A Right. And I didn't really hear any of that because I'm  
13 busy doing other things. As well.

14 Q And then you were asked some questions about your  
15 conversation with Julie Sullivan in Estes Park; is that right?

16 A Correct.

17 Q When you said, he's out of breath doing this, I believe was  
18 the quote, do you know what you're referring to now?

19 A I think I was referring to CPR, he was trying it.

20 He asked me if he should start it. And I didn't know.  
21 That's not my call. And that's why I brought him to Julie.  
22 Now, he could have been out of breath, but I don't know what he  
23 was doing. I don't know if he was starting CPR. That wouldn't  
24 really make sense because he asked me if he should start it.  
25 And that's when I turned it to Julie. So, you know, when

Mark Faherty - Direct

1 you're, I think, in that situation, you're going to be, so.

2 Q So you don't know what he was doing?

3 A Correct.

4 MS. HAZRA: I have no further questions, Your Honor.

5 THE COURT: Are there any questions from the jurors?

6 No.

7 All right, Miss Repola, thank you for your testimony.

8 THE WITNESS: Thank you.

9 THE COURT: You're excused, free to go.

10 Next witness.

11 MS. HAZRA: Your Honor, the United States calls Ranger  
12 Mark Faherty.

13 THE COURT: Afternoon.

14 THE WITNESS: Good afternoon, Judge.

15 **(MARK FAHERTY, GOVERNMENT'S WITNESS, SWORN)**

16 THE COURT: All right. Thank you.

17 Would you sit right over there, please.

18 **DIRECT EXAMINATION**

19 BY MS. HAZRA:

20 Q Good afternoon, Ranger Faherty.

21 A Good afternoon, ma'am.

22 Q Where are you currently employed?

23 A I'm currently employed at the New River Gorge National  
24 Park.

25 Q Is that a national park?

Mark Faherty - Direct

1 A Yes, it is.

2 Q And what is your position there?

3 A I'm a protection ranger.

4 Q How long have you been a protection ranger?

5 A Approximately 14 years.

6 Q Just exclusively in this park you're in now or other parks  
7 as well?

8 A I worked in several different parks.

9 Q Have you worked at Rocky Mountain National Park?

10 A Yes. I worked there from 2012 to 2014.

11 Q When did you start at Rocky Mountain?

12 A I started there at -- in 2012.

13 Q When in 2012?

14 A Oh. Around June.

15 Q You said that you're a protection ranger. What does that  
16 mean?

17 A I do -- I wear several hats. I'm a law-enforcement  
18 officer. That's my primary function. I also do EMS.  
19 Emergency medical services. I'm an EMT. I do search and  
20 rescue. In some parks, we also do wildland fire or even  
21 structure fire.

22 Q Do you do fires in Rocky or just the other duties you  
23 mentioned?

24 A We did not have specific wildland fire duties in Rocky.

25 Q Did you have specific training that you received as a

Mark Faherty - Direct

1 protection ranger?

2 A Yes. I attended the Federal Law Enforcement Training  
3 Center. That was in 2002, approximately 20 weeks.

4 Q And you mentioned that you're this particular type of  
5 ranger. Can I assume that there are other types of rangers out  
6 there as well?

7 A Yes, there are. There's interpretive rangers, campground  
8 rangers, to name a couple.

9 Q I want to direct your attention to September 29 of 2012.  
10 Were you working in Rocky Mountain National Park that evening?

11 A Yes, I was.

12 Q And what was your position that day?

13 A I was a protection ranger. That day, I was assigned  
14 front-country duties, which meant pretty much patrolling the  
15 road areas, maybe some short trails off the, off the road. So  
16 primarily a law-enforcement function.

17 Q I want to direct your attention to around 6 p.m. that  
18 evening.

19 Did dispatch air a radio call that you heard?

20 A Yes, they did.

21 Q And what was the nature of the call?

22 A It was a visitor fall in the Deer Mountain area.

23 Q And what -- did you say visitor fall?

24 A Yes. A visitor had taken a fall in the Deer Mountain area.

25 Q And what was your reaction to that, or what did you have to

1 do?

2 A Ranger Ray Biddle asked me to stage at the Deer Ridge  
3 trailhead. That means to respond to that area and then wait  
4 for further instructions.

5 Q Did you at that time that you were going to stage at the  
6 Deer Mountain trailhead have any idea who the injured person  
7 was?

8 A Yeah, I remember in the traffic identifying the victim as a  
9 Toni Henthorn and the caller as a Harold Henthorn. And also  
10 there was some other details as well.

11 Q Did you understand the nature of their relationship, the  
12 Henthorns? Did you know that they were husband and wife?

13 A Yes. The caller had identified him, himself as the husband  
14 of the victim.

15 Q At some point shortly thereafter, did you get further  
16 communication with Ranger Biddle about what you should do next?

17 A Yes. Ranger Biddle instructed me to head up the trail. As  
18 hasty medical, what we call hasty medical, which is just the  
19 first person responds up the trail as fast as they can, tries  
20 to locate the patient, the scene of the incident, and  
21 administer whatever EMS, emergency medical service, they can.

22 Q So you said the term is "hasty medical"; is that right?

23 A That's correct.

24 Q As part of that, are you carrying any kind of equipment to  
25 help you?

Mark Faherty - Direct

1 A Yes, I was. I was carrying a medical pack. And also some  
2 SAR, basic SAR equipment, warm clothing, water, food, light.

3 Q And SAR, can you tell me what that stands for?

4 A Yes. I'm sorry. SAR stands for search and rescue.

5 Q So approximately how heavy was this pack that you were  
6 carrying?

7 A I'd estimate it at 40 pounds.

8 Q Is there anyone else with you at the time?

9 A No, I was alone.

10 Q And what time would you say you started on the Deer  
11 Mountain Trail?

12 A Approximately 6:15 p.m.

13 Q So what was the light like at that time?

14 A Sunset was at around 6:40, and so it was beginning -- it  
15 was dusk.

16 Q At the time you started on the trail, where did you  
17 understand you needed to go?

18 A Based on the radio call I heard, the caller had stated that  
19 this incident occurred between -- well, about 1 mile south of  
20 the Fall River visitors' center on the north side of Deer  
21 Mountain. And he described it as being between two  
22 outcroppings in the saddle.

23 Q So was it your understanding that the fall occurred on the  
24 trail or off the trail?

25 A Off the trail.



Mark Faherty - Direct

1 Q Could we please look at what has been marked for  
2 identification purposes as Government Exhibit 1 and hasn't been  
3 admitted.

4 MS. HAZRA: It's been stipulated.

5 THE COURT: Well, it's admitted now.

6 (Exhibit 1 admitted.)

7 BY MS. HAZRA:

8 Q And it should be on the screen in front of you,  
9 Ranger Faherty.

10 A Okay.

11 Q Do you recognize Government's Exhibit 1?

12 A Yes, I do.

13 Q Is that a map of Rocky Mountain National Park?

14 A Yes, it is.

15 Q And are these the maps that are handed out as you drive  
16 into the park?

17 A That is correct.

18 Q Can you -- there's some pink highlighting on this map. Do  
19 you -- can you show the jury where the Deer Mountain Trail is  
20 on this map?

21 A Yes, I can.

22 Q You should be able to draw on this when you touch --

23 A Okay.

24 Q -- when you touch on the screen in front of you.

25 THE COURTROOM DEPUTY: There's a stylus on top of the

1 screen.

2 THE WITNESS: Okay.

3 THE COURTROOM DEPUTY: That might be easier.

4 BY MS. HAZRA:

5 Q Whoops.

6 Do you want to draw with the stylus; is that easier?

7 So that's the Deer Mountain Trail?

8 A Yes, it is.

9 Q And you mentioned Fall River visitor center.

10 A Yes.

11 Q That you received information that the Henthorns were about  
12 a mile from there; did you say?

13 A That's correct.

14 Q Could you please identify that on this map?

15 A It's, as I'm looking at the screen, it's to the right of  
16 that cross.

17 Q Okay.

18 I think there's actually a little box that identifies  
19 it; is that correct?

20 A That's right. It says Fall River visitor center.

21 Q I don't know if we're able to zoom in on this part.

22 Your markings went away. I apologize.

23 You see the Deer Mountain Trail. You can see it  
24 written. Is it also highlighted in pink?

25 A Yes, it is.

Mark Faherty - Direct

1 Q There's an X there. Where is that X in relation to where  
2 you thought you needed to go?

3 A That's pretty much right where I thought I needed to go.

4 Q And I think we're going to talk about this map more later,  
5 but that's fine for now, Mr. Price. Thank you.

6 At the time you started up, were you able to  
7 communicate with the rangers?

8 A Yes, I was.

9 Q And how were you able to communicate?

10 A I had a radio and a cellphone with me.

11 Q And who was Ranger Biddle in all this?

12 A Ranger Biddle was, he was the initial IC or incident  
13 commander. He's a supervisor ranger at Rocky Mountain National  
14 Park.

15 Q So when you started this, was he sort of directing the  
16 operation?

17 A Yes, he was.

18 Q At the time you started the hike, I think you said it was  
19 around 6:15, 6:20; is that right?

20 A That's correct.

21 Q Did you notice many other hikers as you started up?

22 A No. I don't recall seeing any other hikers on the trail.

23 Q Can you describe how the trail starts? Like where did you  
24 go as you headed up the trail?

25 A Well, it starts about 9,000 feet in elevation. And the

Mark Faherty - Direct

1 Deer Ridge Trail, it starts -- it's in open area, you get good  
2 views of the continental divide initially, and then after a  
3 little while, you begin to switchback up the mountain. And you  
4 still get good views here and there, but there's more tree  
5 coverage at that point.

6 Q And approximately how fast were you going up the trail?

7 A I was going as fast as I could. Short of running. I  
8 didn't think I'd be able to sustain a pace where I was running  
9 the whole way. But I was certainly moving out as fast as I  
10 can.

11 Q And at some point, did you end up leaving this established  
12 trail?

13 A Yes. After about 2.2 miles, the trail kind of levels off  
14 and that's right around the area where I left the trail.

15 Q And why did you leave the trail?

16 A My instructions were that that was the way to get to the  
17 scene of the incident was shortly after the trail levels off,  
18 leave the trail.

19 Q At approximately what time do you think you left the trail  
20 that day?

21 A I'd say between seven and seven-thirty.

22 Q At this point the sun has set; is that right?

23 A Yes.

24 Q So what's the lighting like now?

25 A It was dark.

Mark Faherty - Direct

1 Q How is the terrain as you headed off the trail?

2 A I was bushwhacking or going through some brush initially,  
3 till I gained a ridge. The ridge was rocky. It had loose rock  
4 on it. You know, there were downed trees. I actually  
5 backtracked on the ridge for a little ways because I saw a rock  
6 knob -- or I'm sorry, a rocky knob. I thought, well, maybe  
7 this is it. I really didn't have my bearings very well.

8 Q I should ask you, had you been in this area of the park  
9 before?

10 A No, I had not.

11 Q Were you having -- around this time, were you having any  
12 trouble finding where you needed to go?

13 A Yes, I was.

14 Q Did you have any information about where you needed, other  
15 than what you've previously told us?

16 A I had GPS coordinates that my understanding were provided  
17 by Mr. Henthorn. I tried to use them on my GPS, and I'm not  
18 sure why, but it just didn't seem to be very helpful.

19 Q So you have some device that enables you to put in GPS  
20 coordinates?

21 A Yes.

22 Q At some point in time, did you end up reaching out to  
23 rangers, other rangers, to help you find the spot?

24 A Yes. I called a ranger Jess Asmussen.

25 Q And what was the reason you called him for?

Mark Faherty - Direct

1 A He was operations that evening, and I felt like he might be  
2 able to get me better directions or instructions on how to find  
3 these folks that needed my help.

4 Q And how did you reach out to Ranger Asmussen?

5 A Via phone.

6 Q Was he able to give you any additional information?

7 A Yes. He -- I can't recall exactly what he said, but he  
8 gave me some directions that were helpful. And then the other  
9 thing that was helpful was -- I mean, I started following his  
10 directions, traveling in the manner or the direction of which  
11 he had said. And then the moon actually came out, and I was  
12 able to see Deer Ridge Buttress which at that point I had my  
13 bearings and had a pretty good idea of where I needed to go.

14 Q So it was really the moon more than anything, it sounds  
15 like?

16 A It was both.

17 Q Could we look at Government's Exhibit 20.

18 MS. HAZRA: And I believe this is -- it's been  
19 stipulated to, if it's not already admitted.

20 THE COURT: Yes. Admitted.

21 (Exhibit 20 admitted.)

22 MS. HAZRA: Thank you.

23 BY MS. HAZRA:

24 Q So you were just describing, I think, Deer Ridge Buttress.  
25 Can you please, first, describe what we're looking at here?

Mark Faherty - Direct

1 A Yes. The big steep cliff on the left would be Deer Ridge  
2 Buttress.

3 Q Is that this one right here that the line is on?

4 A Yes, that's correct.

5 Q Okay.

6 And can you point out where the trail is approximately  
7 or where you left the trail to get here?

8 A The trail is up here, approximately. I left the trail  
9 somewhere over here. And actually headed in this direction,  
10 across this slope.

11 Q Okay.

12 So how would you describe this area? Was it, was it  
13 well traveled, was it remote, how would you describe it?

14 A It is remote. It's cross-country. There's, there's a lot  
15 of trees that you have to, you know, kind of scramble through,  
16 loose rocks. It's steep in places. It's definitely  
17 cross-country travel.

18 Q Okay.

19 And could we look at Government's Exhibit 21, please?

20 MS. HAZRA: And I would move its admission.

21 It's also stipulated.

22 THE COURT: It's admitted.

23 (Exhibit 21 admitted.)

24 BY MS. HAZRA:

25 Q I believe this is simply a closeup of the previous

Mark Faherty - Direct

1 photograph; is that correct?

2 A Yes, it is.

3 Q And can you point out for the jury just sort of where you  
4 came down. I think you described you went below some rocks or  
5 hit a ridge?

6 A Yes. I came through this, generally in this direction.

7 Q And is this the ridge you're talking about?

8 A Nope. The ridge I'm talking about is off the map. It  
9 would be off the map to the right.

10 Q Get rid of my markings.

11 A It was before I ever was able to see Deer Ridge Buttress.

12 Q I see.

13 Then you came down in the way you just indicated,  
14 somewhere down in here?

15 A Uh-huh. That's correct.

16 Q In addition to trying to find them by sight, were you  
17 making any noise?

18 A Yes, I was using a whistle.

19 Q And how do you use the whistle?

20 A You blow on it and it saves your voice. That way you, you  
21 know, hopefully if whoever you're looking for, maybe they have  
22 a whistle and you can communicate and kind of zoom in on them  
23 that way.

24 Q Okay.

25 At some point did you find Harold Henthorn and his



Mark Faherty - Direct

1 wife, Toni?

2 A I did.

3 Q Do you recall when you first made some sort of contact,  
4 either by voice or sight?

5 A It was approximately eight o'clock where I established  
6 whistle contact with Mr. Henthorn.

7 Q And then what happened? Can you -- after you first  
8 established this whistle contact?

9 A Well, you know, I continued to whistle, just to make  
10 sure -- and he was whistling back and forth, so he had a  
11 whistle, apparently. And then eventually, maybe ten minutes  
12 later, I was -- arrived on the scene.

13 Q Okay.

14 I don't know if this is the best picture, but can you  
15 maybe show us approximately where you were when you would have  
16 been in whistle contact or what you did as you approached the  
17 scene?

18 A Yeah. First whistle contact, probably would have been  
19 around here.

20 I came down along this cliff and about right --  
21 whoops.

22 Up a little and to the right of that cross is where I  
23 first saw Mr. Henthorn.

24 Q Okay.

25 So I think I undid your last mark, but somewhere in

Mark Faherty - Direct

1 there?

2 A Yeah. Almost where the line I drew stops, at the bottom of  
3 that little cliff there.

4 Q And in this route, this sort of cross-country route that  
5 you described, did you see anyone else other than Mr. Henthorn?

6 A No.

7 Q Okay.

8 So you didn't encounter any people around this area?

9 A No, I didn't.

10 Q Describe what you first saw when you saw Harold Henthorn.

11 A Mr. Henthorn was about 10 feet from the patient,  
12 Miss Henthorn. Kind of waving me in. And while I put on my  
13 protective equipment, which would be rubber gloves and called  
14 in my control -- the command post, Mr. Henthorn went back to  
15 the patient and did the chest compressions.

16 Q After seeing you, Mr. Henthorn went back and did chest  
17 compressions?

18 A Yes.

19 Q And what did you do after you donned your gloves and called  
20 back in to headquarters?

21 A I went over to the patient's location and asked  
22 Mr. Henthorn to move.

23 Q Why did you ask him to move?

24 A 'Cause this, this location is rocky. Uneven terrain.  
25 There wasn't a lot of working room. And I needed to access the

Mark Faherty - Direct

1 patient in order to be able to assess her.

2 Q Where -- where was Toni Henthorn sort of -- how was she  
3 positioned?

4 A Her head was downhill. Her feet were uphill. And she was  
5 on her back. Her eyes were open. Her pupils were fixed and  
6 dilated. And she was covered with a blanket and a fleece  
7 sweater.

8 Q Up to now, had Henthorn said anything to you between the  
9 time you saw him and then when you went over to where he was  
10 with Toni Henthorn?

11 A Yes. When I initially identified myself. I identified  
12 myself as Park Service search and rescue and asked how she was  
13 doing. And I don't really recall his response. But I was kind  
14 of focused on what I needed to be doing.

15 Q Did you then assess Toni Henthorn?

16 A I did.

17 Q And what was your conclusion?

18 A Based on what I observed, I felt she was dead. She was  
19 dead.

20 Q You've described this area. Maybe some photographs might  
21 help.

22 MS. HAZRA: Can we please look at Government  
23 Exhibit 85, which has been stipulated, and I'd ask that it be  
24 admitted.

25 THE COURT: It's admitted.

1 (Exhibit 85 admitted.)

2 BY MS. HAZRA:

3 Q This photograph was obviously not taken that same night,  
4 was it?

5 A No.

6 Q Was this taken the next day?

7 A Yes.

8 Q And there's two people in yellow here. Who are they or  
9 what are they associated with?

10 A They were part of the recovery team. They're National Park  
11 Service, search and rescue.

12 Q But there is a photograph here of Toni Henthorn covered.  
13 Is that the position she was in or something close to that  
14 position when you arrived?

15 A Yes.

16 Q And you described some clothes or things that she had on  
17 here. Is this consistent with what you saw?

18 A Yes. Although her head was not covered.

19 Q Right, 'cause you could see her pupils. So the pink  
20 blanket was still on her?

21 A Yes.

22 Q And this blue fleece, but you could see her head?

23 A That's correct.

24 Q You said she was sort of lying in this position.

25 When you were there that night, did you also see a

Mark Faherty - Direct

1 fire?

2 A Yes, I did.

3 Q Okay.

4 Do you -- can you in this photograph sort of show us  
5 where the fire is, or is that -- is this not the best angle?

6 A It's up here. Where I drew a mark.

7 At the, I'd say about middle left of the photo.

8 Q You mentioned, I think you testified that this was a sort  
9 of difficult area to navigate around.

10 MS. HAZRA: Could we please look at Government's  
11 Exhibit 71, and I'd ask that it be admitted.

12 THE COURT: It's admitted.

13 (Exhibit 71 admitted.)

14 BY MS. HAZRA:

15 Q Is this a photograph of that same area from a different  
16 angle, Ranger Faherty?

17 A Yes, it is.

18 Q Who is the individual in the photograph?

19 A That's me.

20 Q And was this taken in 2012 or sometime later?

21 A This was taken fairly recently. So sometime definitely  
22 later than 2012.

23 Q Can you please describe, you know, sort of what this area  
24 we're looking at is.

25 A Yeah. This is the, the ledge where she was lying.

Mark Faherty - Direct

1 Q And there seems to be a drop-off behind you. Is that  
2 right?

3 A That's correct. It's actually, terrain is at an angle.  
4 Sloping downward. It's rocky.

5 MS. HAZRA: And could we please look at Government's  
6 Exhibit 67.

7 THE COURT: It's admitted.

8 (Exhibit 67 admitted.)

9 MS. HAZRA: Thank you, Your Honor.

10 BY MS. HAZRA:

11 Q What is Government's Exhibit 67?

12 A This is looking up from the location where her body was  
13 recovered. Toni's body.

14 Q Looking up where?

15 A Looking up the cliff.

16 Q And if I'm correct, there's two little dots of people; is  
17 that right?

18 A Yes.

19 Q And again, was this photograph taken in 2012 or more  
20 recently?

21 A More recently.

22 MS. HAZRA: Thank you, Mr. Price.

23 BY MS. HAZRA:

24 Q After you pronounced her -- after you determined that Toni  
25 had passed away, did you talk with Mr. Henthorn that evening at

Mark Faherty - Direct

1 the site of where she was?

2 A Yes, I did.

3 Q What did you all talk about?

4 A I wanted to get a brief statement from Mr. Henthorn about  
5 what had occurred.

6 Q And what did Mr. Henthorn tell you had happened?

7 A Well, he said it was his and Toni's 12th wedding  
8 anniversary. This was a surprise trip for Toni. They had left  
9 their daughter, Haley, with their, Haley's godparents down in  
10 Denver, in the Denver area. And they'd stayed Friday night at  
11 the Stanley Hotel. And he said they had left the trail because  
12 of the crowded conditions; and a cliff up above where this  
13 incident occurred, Toni had observed turkeys downslope and had  
14 gone to investigate.

15 Q Did he say how it is that she -- how did he say what  
16 happened when she fell?

17 A He said that they scrambled up to the top of that cliff  
18 where the incident occurred and Toni was focused on getting,  
19 getting a perfect picture with her camera; and Mr. Henthorn was  
20 preoccupied with his phone, and he just saw a blur.

21 Q How was his demeanor as he was describing that?

22 A He was, he appeared distraught.

23 Q Prior to telling you what had happened, did you tell him  
24 that it was your opinion his wife had passed away?

25 A Yes, I did.

Mark Faherty - Direct

1 Q And what was his reaction to that?

2 A Well, I had said that, you know, I'm sorry, she's gone.

3 And he said, his voice kind of cracked, and he said, I think

4 so, too.

5 Q And do you recall -- I mean, if I told you that you sort of

6 reported your findings to your incident command post about

7 8:12 p.m., does that sound accurate?

8 A Yes.

9 Q Where did this conversation take place where he told you

10 that he had been looking down at his phone and she had been

11 preoccupied getting the picture? Where was this conversation?

12 A We were still on scene with Toni's body. Waiting for the

13 next rescuers to arrive on scene.

14 Q At that point in time -- why were you waiting for the

15 rescuers to arrive on the scene?

16 A Well, we couldn't leave until someone else arrived on scene

17 to kind of take custody of Toni's body.

18 Q Were you able to observe whether or not Mr. Henthorn had

19 blood on him?

20 A I didn't observe any blood.

21 Q At some point in time, did additional rangers come to your

22 location?

23 A Yes, they did.

24 Q And did you and Harold Henthorn start hiking out?

25 A Yes, we did.



Mark Faherty - Direct

1 Q And do you know what time that was?

2 A I think they arrived on scene around ten o'clock, and we  
3 left maybe 15, 20 minutes after that.

4 Q Did Mr. Henthorn protest about leaving at all?

5 A He did. He put up some, some resistance. When I kind of  
6 prepped him about what was going to happen to Toni's body.  
7 And, you know, I told him that she would be flown out the next  
8 day. You know, people would stay with her that night and that  
9 he should hike out with me. And he protested. He said he  
10 wanted to stay with Toni.

11 Q And why weren't you able to let him?

12 A It was going to be a helicopter operation the next day.  
13 Just safety purposes, it did not seem like a very good idea.  
14 Mental-health purposes as well. I told, I had told him that he  
15 should take care of himself and his daughter.

16 Q Before -- did Mr. Henthorn carry anything out with him; did  
17 he have a backpack as you guys were hiking back out?

18 A He took his backpack, yes.

19 Q Did he have any lighting or any way to light his way?

20 A He borrowed a light from one of the rescuers. I think he  
21 did have a light with him out there, but it either had stopped  
22 working or wasn't really sufficient to light the way.

23 Q And did you go out the same way you came in?

24 A We did not. We went out an alternative way.

25 Q Why an alternative way?

Mark Faherty - Direct

1 A The way I had come in was pretty difficult. And I don't  
2 even know if I would have been able to find that, that same  
3 way. So we kind of compared notes with the way Ranger Flornoy  
4 and Dan Frattura, they were the next rangers on scene, kind of  
5 compared notes with how they had come in and tried to figure  
6 out the best way to get out.

7 Q Was the way that you chose to get out an easier way at the  
8 end of the day?

9 A Yes.

10 Q Along on the hike out, did you have any conversations with  
11 Harold Henthorn?

12 A I tried to leave him alone. I didn't really have anything  
13 to say. I felt like this, you know, losing someone you love,  
14 would be very traumatic and I should just give him his space.

15 Q Were you ahead or behind him?

16 A I was ahead.

17 Q Were you aware of whether or not he was sending text  
18 messages on the hike down?

19 A I really don't know. I wasn't paying attention to that. I  
20 was just kind of trying to leave him alone.

21 Q About what time did you get back to the trailhead?

22 A We got back about twelve-thirty.

23 Q Was anyone there at the bottom waiting?

24 A Yes. Ranger Tim Phillips, who was acting as family  
25 liaison, and a couple of Mr. Henthorn's friends.

Mark Faherty - Direct

1 Q What happened when you got down to the bottom, then?

2 A Well, we met with them. Ranger Tim Phillips and I spoke  
3 with Henthorn about traveling back to Denver with his friends,  
4 who I had understood he had called up there.

5 Q He had called these friends to come pick him up?

6 A That was my understanding, yes.

7 Q And did he end up going home with them?

8 A Yes, he did. He left his keys with us, in our safekeeping,  
9 and he went with his friends.

10 Q Prior to that, was he allowed to get anything he wanted out  
11 of the car?

12 A Yes.

13 Q And what happened to his car that night?

14 A The car that night was just left secured at the parking lot  
15 for Deer Ridge Trail.

16 Q And do you recall how many people came to pick him up?

17 A Two, to my knowledge.

18 Q And did you have any further conversations with Harold  
19 Henthorn at the trailhead that evening?

20 A Yes, we arranged to meet him, he was going to come back to  
21 the park Monday around noon for a more comprehensive interview.

22 Q I want to now turn your attention to Sunday, which  
23 twelve-thirty, I guess you're already the early hours of that.

24 Is that about what time you reached the bottom of the  
25 trailhead?

Mark Faherty - Direct

1 A Yes, twelve-thirty, Sunday morning, yes.

2 Q Did you still continue to work on this case that Sunday?

3 A Yes. I came in about nine o'clock that morning.

4 Q And what was your role on Sunday? You were no longer  
5 search and rescue; is that right?

6 A Correct. I was assigned to be the investigator for the  
7 fatality.

8 Q And why were you investigating it at this time?

9 A I'm sorry?

10 Q At this time why were you investigating it?

11 A We investigate all deaths that occur in the park.

12 Q Did you assist in the collection of any evidence that day?

13 A Yes, I did.

14 Q And I want to now direct your attention back to  
15 Government's Exhibit 1.

16 Pull that up.

17 This is the map we had talked about earlier where you  
18 had showed us where you went that night.

19 Did you take custody of this map?

20 A Yes, I did.

21 Q And where was this map found?

22 A This was in Mr. Henthorn's vehicle, in the passenger's side  
23 door compartment.

24 Q Actually, Ranger Faherty, if you would look in the box  
25 behind you, I believe there's the actual map labeled

Mark Faherty - Direct

1 Government's Exhibit 1.

2 It should be right at the top of that box.

3 And if you just want to hold that up so the jury can  
4 see it.

5 Is that the actual map?

6 A Yes, it is.

7 Q And if you want to just flip it over so they can see both  
8 sides.

9 There's some highlighting on that side as well; is  
10 that right?

11 A Yes.

12 Q But is that the opposite side of the park, from where --

13 A Yes, yes, this is the west side, the Grand Lake side.

14 Q And if you would turn it around to the front.

15 Is what's depicted on the screen as Government's  
16 Exhibit 1, is that a blowup of what the highlighted part is  
17 there, the side you're holding up to the jury?

18 A Yes. Government Exhibit 1 is part of this map, yes.

19 Q Thank you.

20 You can put that down.

21 Thank you.

22 As part of your evidence collection, did you also get  
23 an SD card from a camera?

24 A Yes.

25 Q What is an SD card?

Mark Faherty - Direct

1 A It's the memory card from a camera.

2 Q And whose camera? Who owned the camera, as far as you  
3 knew?

4 A I obtained this from Ranger Larson, who had found it on the  
5 scene. It was Toni Henthorn's camera.

6 Q Could you please look in that same box at what's been  
7 marked as Government's Exhibit 8.

8 MS. HAZRA: Your Honor, I would -- this has been  
9 stipulated to as well, and I would move it into admission at  
10 this time.

11 THE COURT: Okay. Exhibit 8, admitted.

12 (Exhibit 8 admitted.)

13 BY MS. HAZRA:

14 Q And can you just hold it up so the jury can see it.

15 What is Government's Exhibit 8?

16 A This is the memory card I recovered.

17 Q Did it have photographs on it?

18 A Yes, it did.

19 Q And were you able to view those that day?

20 A Yes, I did.

21 Q And I'm going to have you look. It might be easier to do  
22 it -- there's a notebook in front of you, Government's  
23 Exhibit 122 through 125.

24 MS. HAZRA: And, Your Honor, these have previously  
25 been stipulated to, and I would move them into admission at

Mark Faherty - Direct

1 this time.

2 THE COURT: All right. They're admitted.

3 (Exhibit 122-125 admitted.)

4 MS. HAZRA: Pull them up, Mr. Price.

5 BY MS. HAZRA:

6 Q Are those generally the photographs that you recovered from  
7 the SD card?

8 Are those all photographs that you recovered from that  
9 card or saw on that card?

10 A Yes.

11 Q Is there -- there's also another page behind each  
12 photograph that contains what we refer to as metadata. You did  
13 not recover that page, did you?

14 A No, I did not.

15 Q You just had the photographs?

16 A Yes.

17 Q Did you end up speaking with Harold Henthorn that day?

18 This is Sunday, September 30?

19 A Yes, I did.

20 Q And what was the substance of your conversation?

21 A Mr. Henthorn wanted to change the meeting place for our  
22 interview the following day, Monday, to his house.

23 Q Did you agree to that?

24 A I did.

25 Q So now let's talk about October 1. That's the Monday; is

Mark Faherty - Direct

1 that right?

2 A Yes.

3 Q Did you go to Harold Henthorn's house to speak with him  
4 that day?

5 A Yes, I did.

6 Q And where was his house located?

7 A This is in the Denver area.

8 Q Do you have a neighborhood?

9 A Highlands Ranch, I believe.

10 Q Highlands Ranch, yes.

11 Around what time did you get to his house?

12 A Two-thirty.

13 Q And how were you dressed?

14 A I was dressed in uniform. With the duty gear.

15 Q Similar to how you dressed today?

16 A Yes.

17 Q Who -- was anyone at his house when you got there?

18 A His daughter and there was another woman. He introduced me  
19 to both.

20 Q And by "he," you mean Mr. Henthorn?

21 A Yes.

22 Q Did you start talking with him right away, right there in  
23 the entryway, or did you guys go someplace?

24 A Mr. Henthorn led me in his basement, which appeared to  
25 serve as his office.



Mark Faherty - Direct

1 Q Did you introduce yourself again?

2 A I did. Yes.

3 Q And did you explain to him that your role had changed from  
4 rescue to a law-enforcement officer?

5 A Yes, I did. I told him that when he'd first met me, you  
6 know, I was still a law-enforcement officer, but primarily  
7 serving in a EMT, search-and-rescue capacity. I just wanted to  
8 make sure that he understood in that now I was a  
9 law-enforcement officer investigating the death of his wife.

10 Q Did you start right away speaking with him, or did he leave  
11 briefly?

12 A He did, he did leave briefly. Yes.

13 Q Can you please explain?

14 A He, after he led me into his office, he kind of had me sit  
15 at his desk, and he turned on his computer and a slide show on  
16 the computer with pictures of Haley, him, and Toni set to  
17 music. And then he excused himself. For, I guess, about five  
18 minutes.

19 Q And then he came back and started to talk with you?

20 A Yes, he did.

21 Q So I want to talk about that interview, and if at some  
22 point, you have trouble remembering, let me, let me know.

23 THE COURT: Let's take a break here.

24 Folks, ten minutes?

25 Anybody need more?

Mark Faherty - Direct

1 All right.

2 THE COURTROOM DEPUTY: All rise for the jury.

3 (Jury out at 2:45 p.m.)

4 THE COURT: Okay.

5 (Recess at 2:45 p.m.)

6 (Reconvened at 2:59 p.m.)

7 (Defendant in at 3:02 p.m.)

8 (Jury in at 3:03 p.m.)

9 THE COURT: Okay.

10 BY MS. HAZRA:

11 Q Ranger Faherty, we were discussing your interview of  
12 Mr. Henthorn on October 1.

13 Did he say why they went to Rocky Mountain National  
14 Park?

15 A Yes. He stated it was to celebrate, it was a surprise  
16 trip, to celebrate their 12th wedding anniversary.

17 Q Did he say when they left for Estes Park, did he say when?

18 A He had surprised Toni at her office, and they left directly  
19 from her office, about 3:15.

20 Q And what time did they get to Estes, approximately?

21 A About 5 p.m. is when they arrived at the Stanley and  
22 checked in.

23 Q What is the -- is the Stanley a particular hotel?

24 A Yes. It's a upper-scale hotel in Estes Park.

25 Q Did he say whether they had dinner that night?

Mark Faherty - Direct

1 A Yes. He said they had reservations at the Cascades  
2 restaurant in the Stanley for seven-thirty.

3 Q And what did he say they did after dinner?

4 A He said they ate until about nine-thirty, and at that point  
5 they returned to their room for some anniversary time, as he  
6 called it.

7 Q Let's talk about what he said they did in the morning of  
8 the 29th, Saturday. Did he say where they went for breakfast?

9 A Yes, he said that they ate at the Egg and I.

10 Q And what did they do after eating at the Egg and I?

11 A They picked up some sandwiches from Subway to take on the  
12 hike that they had planned, for lunch.

13 Q What time did they enter the park, approximately?

14 A They decided to go in the Fall River entrance, 'cause it  
15 was crowded, Beaver Meadows was crowded. They entered about  
16 twelve-thirty to one o'clock.

17 Q You said Beaver Meadows was crowded. What is Beaver  
18 Meadows?

19 A Beaver Meadows is the entrance station that Highway 36  
20 leads to. It would be kind of over closer to the Bear Lake  
21 area, which was their -- the place they had intended to hike.

22 Q So the defendant told you they'd originally planned to hike  
23 at Bear Lake?

24 A In that area, yes.

25 Q And then they went and switched and went through the Fall

1 River visitor center?

2 A He said he noticed it was crowded in town and they went in  
3 through the Fall River area, thinking it might be less crowded  
4 that way.

5 Q Where did they decide to hike once they got in the park?

6 A They got in and saw it was crowded still and decided to  
7 hike the Deer Ridge Trail.

8 Q In this conversation, did Mr. Henthorn tell you whether he  
9 had been on the Deer Ridge Trail before?

10 A Yes. He said he'd been on it numerous times. Four times  
11 in the last ten years, and most recently -- excuse me -- two or  
12 three months prior, as a scouting trip in anticipation of this  
13 trip he had taken with Toni.

14 Q So he said he'd been on it four times over the last ten  
15 years?

16 A Yes.

17 Q Okay.

18 But the most recent time was on one scouting trip  
19 prior to this anniversary weekend?

20 A That's correct.

21 Q Did he say where he went on this one recent trip, recent  
22 previous trip?

23 A Yes. He said he had hiked on the Deer Ridge Trail, not to  
24 the top, just to a spot on the south side where he could see  
25 the Longs Peak.

Mark Faherty - Direct

1 Q And just so I -- we can sort of figure out where we are,  
2 the south side is the opposite side, is it not, from where you  
3 actually found Toni Henthorn that night?

4 A Yes, that's correct.

5 Q So just so I'm clear, he said he went to that side, the  
6 other side?

7 A Yes. He said he didn't hike all the way up the trail. He  
8 also added that he had hiked some other trails while he had  
9 been there. I think he said the Lumpy Ridge, maybe the trail  
10 to Gem Lake, and then in the, a trail in Moraine Park.

11 Q What time did he say they started on the Deer Ridge  
12 trailhead?

13 A Around 1:45 at the latest, I believe.

14 Q And what was their plan when they started the hike?

15 A They hadn't planned on going all the way to the top. It's  
16 just they were going to hike up the trail to a spot where they  
17 could get some good views.

18 Q Did he say how far they went on the trail?

19 A He said that they'd noticed the trail was crowded. And  
20 decided to leave the trail right around where the trail levels  
21 off.

22 Q So that's after the switchbacks; is that right?

23 A After the switchbacks, yes.

24 Q Did he tell you -- you said they said the trail was  
25 crowded; did they give you any other reasons -- did he

Mark Faherty - Direct

1 elaborate on why they left the trail?

2 A He said they wanted to find a spot with views and also a  
3 romantic spot.

4 Q And where did they go when they left the trail, which  
5 direction?

6 A North. Generally north. He said that, you know, whatever  
7 trail there was, they lost it and began to leave sticks so they  
8 could find their way back. Ultimately they came to a, a knob  
9 or a cliff kind of at the top of a ridge where they could get  
10 good views.

11 Q What did he say they did at this top of this cliff?

12 A He said they stopped there and had lunch.

13 Q Did he tell you around what time they had lunch?

14 A They were there about 3:30 to 4:45.

15 Q What did the defendant tell you they did after lunch?

16 A He said that Toni had, as they were about to leave, Toni  
17 had looked through binoculars that Mr. Henthorn had bought her  
18 for their anniversary, and she looked down the hill and saw  
19 turkeys.

20 Q And so what did he say they did as a result of seeing the  
21 turkeys?

22 Or what did you do, what did you respond?

23 A Well, that seemed kind of a strange statement to me. Just  
24 I couldn't imagine turkeys being up there. I don't know if  
25 they are or not. It just seemed odd. So I asked him about it.

Mark Faherty - Direct

1 And then he responded, Well, I don't know about  
2 turkeys, but there were definitely deer.

3 Q Did you ask him to elaborate further on the deer?

4 A I did. I asked him if they had gone down to that lower  
5 cliff where the incident had occurred to view wildlife, and he  
6 said, no, we went down there to take pictures. And then I  
7 continued to kind of question him, to clarify, and ultimately  
8 he said they went down there to find a romantic spot.

9 Q Did you ask him whether -- why the first place off the  
10 trail was not suitable?

11 A I had. He said that it was on top of a ridge and didn't  
12 give enough privacy. You know, he mentioned that he brought a  
13 blanket for this purpose.

14 Q I want to just have you look at Government's Exhibit 25.

15 MS. HAZRA: And I would ask that it be admitted into  
16 evidence, Your Honor.

17 THE COURT: It's admitted.

18 (Exhibit 25 admitted.)

19 THE COURT: Excuse me. 25, admitted.

20 BY MS. HAZRA:

21 Q Can you describe what we're looking at in Government's  
22 Exhibit 25?

23 A Yes. The Deer Ridge Trail is there.

24 Q Is that the defined trail you see?

25 A Yes.

Mark Faherty - Direct

1 Q And can you indicate on this sort of aerial photograph  
2 where they headed off-trail, where they stopped to eat lunch.

3 A Yes. This . . . see if I can -- right to the right of that  
4 circle is a small, what I would call a small rock knob, rocky  
5 knob. It's separate, actually, from that main cliff, the  
6 larger one.

7 Q And it's sort of at the edge of Deer Mountain; is that an  
8 accurate characterization?

9 A Yes. It's right on the, you know, on the left or west of  
10 Deer Ridge. Buttress.

11 Q And could you please bring up Government's Exhibit's 124,  
12 which has been admitted.

13 Can you tell the jury what we're looking at in that  
14 photograph?

15 A This is the view down from where Mr. Henthorn told me they  
16 ate lunch.

17 Q So he was saying, when he told you about the turkeys and  
18 the deer and the romantic time, this was in response to your  
19 question about why they went down here?

20 A Yes.

21 Q Where did he say they went as they descended down this  
22 slope?

23 A He said they just made their way down this talus, this  
24 boulder field, to that lower cliff.

25 Q Did they consider other cliffs?



Mark Faherty - Direct

1 A Yes, they did. He stated there was another cliff in the  
2 area with a, some sort of white sheet or white fabric on it.  
3 But they did not go on it because it appeared dangerous.

4 Q Around what time did they reach the lower, the lower cliff?  
5 Did he say?

6 A Yes, he did say. He said they left the top about 4:45,  
7 they got down to the bottom of the cliff about 5:15.

8 Q What did he say they did on the top of that?

9 A He said they were passing the camera back and forth taking  
10 pictures. At one point, Toni took a picture of him. Wearing  
11 just a T-shirt and loose pants, and she called them droopy  
12 drawers.

13 Q Did he tell you then what happened after they took this  
14 series of pictures of themselves?

15 A Yes. He said Toni was kind of focused on getting the  
16 perfect picture. She liked to use all the functions on the  
17 camera; and right when the fall happened, he was actually  
18 getting a text that said his daughter, Haley, had won a soccer  
19 game, five to one. And Toni was actually, her focus was on her  
20 camera. And directing him where to stand for the perfect  
21 picture. And at that point she was walking rapidly toward the  
22 cliff edge, and he just saw a blur, and she fell.

23 Q Okay, let's talk about -- when he talked about the text, I  
24 want to make sure I understand what he's describing.

25 Could you please look at Government's Exhibit 55.

Mark Faherty - Direct

1 MS. HAZRA: Your Honor, I'd ask that this be admitted  
2 into evidence.

3 THE COURT: It's admitted.

4 (Exhibit 55 admitted.)

5 BY MS. HAZRA:

6 Q Is this the top of the cliff that we are, where the  
7 defendant claims Toni fell?

8 A Yes.

9 Q So can you please help me orient where she was walking  
10 towards, while trying to get the perfect picture.

11 A Toward this point.

12 Q Toward where the backpack is, essentially?

13 A Yes.

14 Q And she was trying to get him into the picture, is what she  
15 said?

16 A She said -- well, he said that she was giving him  
17 directions on where to stand to get the perfect picture.

18 Q So from that, was it your understanding that he was somehow  
19 between her and the edge?

20 A He didn't really specify on that. He just said he was  
21 5 feet away from her.

22 Q And you had not been up to this area before you spoke with  
23 him, had you?

24 A No.

25 Q Thank you.

Mark Faherty - Direct

1 Did he say whether or not at the time of her fall, she  
2 was wearing her backpack?

3 A She did not have her backpack on, according to  
4 Mr. Henthorn.

5 Q And what did he do after he saw this blur and she was gone?

6 A He tried to, I don't know if you'd say hail her, with his  
7 voice, tried to communicate with her, and there was no  
8 response. He went down to her location at that point.

9 Q And what was her condition, did he say?

10 A Well, he couldn't remember how exactly she had landed. But  
11 he moved her away from the cliff. To a place where he could  
12 kind of assess her, and he said she was in critical condition.

13 Q Did he say what, if anything, happened to her body as he  
14 moved her, whether or not it hit anything?

15 A He said he thought that she hit her head and shoulder when  
16 he was moving her.

17 Q Did he say what he did after he moved her?

18 A Yes. He checked her respirations, which he said were eight  
19 to ten a minute, and then her pulse was 110, 112. He  
20 positioned her airway and covered her with warm clothing, like  
21 a . . . at that point -- oh, go ahead.

22 Q And then what did he say he did?

23 A Yeah, at that point, he said he had to move from her  
24 location to call 911.

25 Q So he only at that point called 911?

Mark Faherty - Direct

1 A Yes.

2 Q Did he tell you how long after he thought she had fallen  
3 that he called 911?

4 A He estimated 45 minutes.

5 Q Did he say what he did after calling 911?

6 A Well, he went back to her location and at some point he  
7 said he restarted his phone so that he actually did have a  
8 signal, an iffy signal, at that scene.

9 Q Did he give you an estimate of how long it was before his  
10 wife's condition worsened?

11 A He said about an hour. In about an hour, her respirations  
12 had decreased to about five a minute.

13 Q What did he tell you he did at that point in time?

14 A He said once she had completely stopped breathing, and he  
15 started CPR, both chest compressions and rescue breaths.

16 Q Rescue breaths is mouth-to-mouth resuscitation?

17 A That's correct.

18 Q Did he tell you whether or not he had any training in that?

19 A He said he had trained about ten years prior when his  
20 daughter had been born, just an infant CPR, and he also said  
21 that he had been in the Civil Air Patrol, or something along  
22 those lines.

23 Q Did he tell you how long he had performed CPR?

24 A He didn't know.

25 Q But it was about an hour after?

Mark Faherty - Direct

1 A He just estimated about an hour after the incident occurred  
2 that he began CPR.

3 Or actually, he said that an hour after her  
4 respirations worsened at five, and then I'm unclear when  
5 exactly -- how much more time transpired before he began CPR.

6 Q He told you he had been looking at a text when he claimed  
7 she fell; is that right?

8 A That's correct.

9 Q Did he give you further information about the text?

10 A I actually asked to see the text.

11 Q And did he show it to you?

12 A Yes, he did, on his phone.

13 Q And what was the text?

14 A It was essentially --

15 Q Sorry, the substance of the text?

16 A His daughter had won her soccer game, five to one.

17 Q Were you able to observe the time that the text reached his  
18 cellphone?

19 A Yes.

20 Q And what time was that?

21 A 5:54 p.m.

22 Q Did the defendant tell you whether or not he had had cell  
23 reception during the hike?

24 A He said he had. He said he had been texting someone back  
25 and forth, doing kind of logistics because his daughter,

Mark Faherty - Direct

1 Haley's, soccer game had moved.

2 Q At the time that he told you that he was looking at this  
3 5:54 text, did you know when the first call to 911 was?

4 A No, I didn't.

5 Q During this interview, did you show him the photos you  
6 recovered from his SD card?

7 A Yes, I did.

8 Q And let's go back to Government's Exhibit 124, please.

9 If we could go to the last picture in this group.

10 Did you show him this photograph among those?

11 A Yes.

12 Q Do you know where this photograph was taken?

13 A He told me this was where they ate lunch.

14 Q If we could go to Exhibit 125. I would ask that -- it's  
15 already in evidence.

16 Did you show him this photograph?

17 A Yes, I did.

18 Q Where was this photograph taken from?

19 A This was the spot Toni fell from.

20 Q In what context did he say that?

21 A He said she was walking rapidly toward the edge and she  
22 fell off.

23 Q And he indicated it was in this particular spot on the  
24 cliff?

25 A Yes.

Mark Faherty - Direct

1 Q Could we please go to the next page of Government's  
2 Exhibit 125.

3 Sorry, the next photograph.

4 Did you show him this photograph?

5 A Yes.

6 Q And how about the next one.

7 A Yes, I showed him all these photos.

8 Q Could we just go to the next one, please.

9 And in this one, he's wearing a shirt, is that right,  
10 that he was not wearing in the previous one?

11 A That's correct.

12 Q Are these all still on that same cliff?

13 A It's the same cliff, same location.

14 Q Could we go to the next one, please.

15 And then the next one.

16 Thank you.

17 Did you then show him the map that you had found in  
18 his car?

19 A Yes, I did.

20 Q Can you please describe his reaction to seeing the map?

21 A Mr. Henthorn, during this interview, had been very well  
22 spoken. When I showed him this map, he seemed at a loss for  
23 words. He would -- he kind of, when what I would say, hemmed  
24 and hawed, before he finally gave me an explanation.

25 Q What was his explanation?

Mark Faherty - Direct

1 A He said that this map was not from this trip. He said he  
2 was unsure which trip it had been from. And he was not sure  
3 why there was an X in the rough location this incident had  
4 occurred.

5 Q And let's just pull up Government's Exhibit 1, please.

6 Just so we're clear, this is the map we're talking  
7 about?

8 A Yes.

9 Q And there's a Nicki's. If we could zoom in on this area,  
10 please.

11 So first of all, he said this map was not for this  
12 trip; is that right?

13 A Yes.

14 Q Did he say anything about Nicki's, which is circled up  
15 there?

16 A He did. He said his wife and he had frequently eaten at  
17 Nicki's and that in fact, they did have a reservation there for  
18 that evening for eight o'clock.

19 Q Reservation --

20 A The evening the incident had occurred.

21 Q So reservation for that night, the 29th?

22 A Yes.

23 Q Could we zoom out and just zoom in on the total area,  
24 please.

25 Did he agree -- did he identify the handwriting on



Mark Faherty - Direct

1 this map?

2 A He said the writing and the highlighting were done by  
3 himself.

4 Q And did you ask him why there was an X right near where  
5 Toni died?

6 A I did. He couldn't explain it.

7 Q Thank you.

8 You said he told you 8 p.m. dinner reservations at  
9 Nicki's restaurant. Did you do any follow-up to see if that  
10 was correct?

11 A Yes, I did.

12 Q What did you learn?

13 A I observed the reservation book at Nicki's and there was a  
14 reservation for seven o'clock p.m. on the 29th for a two-person  
15 party, anniversary party. The name was under it, the name  
16 Henschorn.

17 Q And could we please pull up Government's Exhibit 162.

18 THE COURT: It's admitted.

19 (Exhibit 162 admitted.)

20 MS. HAZRA: Thank you, Your Honor.

21 BY MS. HAZRA:

22 Q And could you zoom in on the top portion of that.

23 What is this, Ranger Faherty?

24 A Yes, that's what I observed when I went to Nicki's. It  
25 said two-person reservation at seven for Henschorn, anniversary,

Mark Faherty - Direct

1 window.

2 Q Thank you.

3 Did you talk with the defendant about Toni Henthorn's  
4 physical fitness?

5 A Yes, I did.

6 Q And what did he say?

7 A He said she was very physically fit. She did team sports  
8 when she was younger and since moving to Colorado, in the last  
9 ten years or so, she'd gotten a lot more into the outdoors.  
10 She liked to snowshoe, but she couldn't ski anymore. He said  
11 they would hike about once a month and frequently go off-trail.  
12 And he also mentioned an issue she had with her knees.

13 Q What did he say, did he say whether or not she had any  
14 surgeries to her knees?

15 A He said she'd had three knee surgeries which prevented her  
16 from skiing.

17 Q Did you talk to the defendant about his employment?

18 A Yes, I did.

19 Q What did he say?

20 A He said that he was a fund-raiser and developer for  
21 churches.

22 Q What did he say his wife did?

23 A He said she was a eye surgeon at Cherry Creek eye surgeons.

24 Q Did you ask him whether or not Toni had life insurance on  
25 her?

Mark Faherty - Direct

1 A Yes, I did.

2 Q What did the defendant say?

3 A He said that she had a \$50,000 -- well, he said that there  
4 might have been a \$50,000 life insurance policy associated with  
5 a auto loan that he had recently taken out. And he said there  
6 was a additional insurance policy for \$1 million that was set  
7 up as a trust fund for their daughter, Haley, where if  
8 Mr. Henthorn or Mrs. Henthorn died, \$1 million would go into a  
9 trust fund for Haley.

10 Q So is this \$1 million policy he was sure existed; is that  
11 right?

12 A That's correct.

13 Q And he told you the specific amount of 1 million?

14 A Yes.

15 Q Did you ask him what had happened to his first wife?

16 A Yes, I did.

17 Q And what was her name?

18 A Her name was Lynn, Lynn Henthorn.

19 Q What did the defendant say happened to her?

20 A When I asked, he seemed reluctant to talk about it. He  
21 said he'd prefer I read the police report. But I was able to  
22 get a brief summary according to him of what happened.

23 He said that they were in a remote part of Douglas  
24 County when he had gotten a flat and he stopped to change the  
25 flat. And Lynn had crawled under the vehicle to retrieve a lug

Mark Faherty - Direct

1 nut and at that moment the jack slipped and collapsed on Lynn,  
2 killing her. Or at least crushing her badly enough that she  
3 died later.

4 Q Was anyone else there besides the defendant and Lynn  
5 Henthorn?

6 A He said he was the only one there.

7 Q In preparing for this interview, Ranger Faherty, had you  
8 determined how old Harold Henthorn was?

9 A Yes.

10 Q And how old was he at this time?

11 A In 2012?

12 Q Yes.

13 A Can I refer to my notes on that?

14 Q Yes.

15 A I'm not sure.

16 Q Certainly, if that will refresh your recollection.

17 A Thank you.

18 If my math is correct, he was 57.

19 Q He was born in 1955?

20 A Yes.

21 Q And I think his birthday had not quite happened yet. So  
22 could he be 56?

23 A 56. That's correct. My math is wrong.

24 Q During the course of this interview, what was the  
25 defendant's demeanor like?

Mark Faherty - Cross

1 A His demeanor?

2 He seemed, he still seemed distraught. He wasn't, he  
3 didn't seem as broken up as the first time we had met. On the  
4 side of the mountain.

5 Q Did he have any trouble remembering anything?

6 A He didn't. With the exception of what position  
7 Miss Henthorn had landed in.

8 Q Other than that, he was clear about what he had been doing,  
9 what she had been doing?

10 A Yes.

11 MS. HAZRA: I have no further questions, Your Honor.

12 THE COURT: Okay. Cross-examination.

13 **CROSS-EXAMINATION**

14 BY MR. MAXIMON:

15 Q Good afternoon, Ranger Faherty.

16 A Good afternoon, sir.

17 Q Let's talk turkey.

18 Would it surprise you to know that the National Park  
19 Service keeps track of the species of birds that are in Rocky  
20 Mountain National Park?

21 A No.

22 Q The 260 species?

23 A No, it wouldn't surprise me.

24 Q That's done by Dr. Howard Rollin. Are you aware of him?

25 A No.

Mark Faherty - Cross

1 Q In conjunction with a doctor from Colorado College.

2 Are you aware of any of that?

3 A No.

4 Q Would it surprise you to find out that wild turkeys are  
5 actually year-round birds within Rocky Mountain National Park?

6 A No, it wouldn't surprise me. I'm not a turkey expert.

7 Q And that they're occasional visitors. Would it surprise  
8 you to hear that?

9 A I don't know. I'd totally believe you, sir.

10 Q Okay.

11 Now, I'm going to talk to you a little bit about the  
12 interview you did on October 1 of 2012.

13 And would you agree with me that your role had changed  
14 somewhat from the previous time that you had missed -- that you  
15 had met Mr. Henthorn?

16 A Yes, I would agree.

17 Q And you went from rescuer to investigator.

18 A That's correct.

19 Q And you had some questions that you wanted answered?

20 A Yes, sir.

21 Q You wanted to interrogate Mr. Henthorn?

22 A I wouldn't use that word.

23 Q You wanted to question him.

24 A Yes.

25 Q Aren't you trained to video- and audio-tape important

Mark Faherty - Cross

1 interviews?

2 A That's at the discretion of the officer.

3 Q But in your background as a law-enforcement officer, isn't  
4 that something that's important, that important interviews get  
5 video-taped or audio-taped?

6 A I have very rarely used any audio in any of my interviews.

7 Q But you would agree that it's an important thing to do?

8 A It could be, yes.

9 Q That way, we would know exactly what was said.

10 A Sure, you would have a recording.

11 Q And we would know exactly how it was said?

12 A Yes.

13 Q You would agree with me that an audiotape or a video of  
14 that interview you did on October the 1st would be better  
15 evidence than your recollection of it three years later.

16 A I think my recollection of it is accurate.

17 Q But an audiotape would be better. Wouldn't you agree?

18 A I can't agree with that.

19 Q But you didn't make a video of that interview on October  
20 the 1st?

21 MS. HAZRA: Your Honor, asked and answered.

22 THE COURT: All right.

23 Let's move on.

24 BY MR. MAXIMON:

25 Q I'm going to go back to a question that you were asked

Mark Faherty - Cross

1 earlier about the time between the fall and when the 911 call  
2 was made. You understand that that's a different question from  
3 how long did it take you to hike down the cliff, correct?

4 A Yes.

5 Q That hiking down the cliff could be a shorter period.

6 A Yes, I do.

7 Q And you had spoken with Mr. Gunderson from the coroner's  
8 office. You understood that Mr. Henthorn told him that the  
9 walk down --

10 MS. HAZRA: Objection, hearsay, Your Honor.

11 MR. MAXIMON: -- was about 15 minutes.

12 THE COURT: Overruled.

13 BY MR. MAXIMON:

14 Q You understood that the hike down was about 15 minutes?

15 A Yes, that seems reasonable.

16 Q And that when you were asking a different question about a  
17 longer period of time --

18 A Correct.

19 Q -- you were -- I'm sorry to interrupt you.

20 A That's fine.

21 Q Did you understand my question?

22 A I mean, the 45 minutes included all the time he spent to  
23 retrieve Miss Henthorn from the location she had landed and  
24 assess her and all of that. So, yeah, it was my understanding  
25 that 45 minutes, not to hike down, but do all those things.



Mark Faherty - Cross

1 Q And to move her the 15 feet.

2 A Right. Yes.

3 Q And also to get cellphone coverage?

4 A Yes, I think that's reflected in my report.

5 Q Okay.

6 And when you talked about the 45 minutes that you  
7 testified to earlier, he -- what he told you was that he was  
8 unsure about that?

9 A When I said he estimated, yes.

10 Q But in your notes, it says, 45 minutes, maybe, unsure.

11 A Right.

12 Q Is that --

13 A Yes, I think he said he was unsure. And I asked him to  
14 give an estimate, and he said 45 minutes.

15 Q Maybe?

16 A Approximately 45 minutes. It was an estimate.

17 Q But he used those words.

18 Of maybe and unsure?

19 A Yes, he -- I'm not sure if that's a verbatim quote.

20 Q But you wrote them down in your report?

21 A Right. But at times I paraphrased.

22 But, yes, I mean he relayed to me that he was not  
23 exactly sure how long it took.

24 Q You talked to Mr. Henthorn about his Verizon cellphone  
25 coverage?

Mark Faherty - Cross

1 A Yes.

2 Q And that it was difficult at first?

3 A That's correct.

4 Q At times he had an iffy signal?

5 A That's what he said, yes.

6 Q It improved later on, after he had turned the phone off and  
7 on.

8 A Yes.

9 MR. MAXIMON: Your Honor, if I could have a moment.

10 THE COURT: Sure.

11 BY MR. MAXIMON:

12 Q Could we publish that People's Exhibit 1, please?

13 MS. HAZRA: Government's.

14 MR. MAXIMON: Government's Exhibit 1.

15 BY MR. MAXIMON:

16 Q Ranger Faherty, is that a topographical map?

17 A No.

18 Q And you would agree with me that it would be better to hike  
19 with a topographical map than this map?

20 A Yes.

21 Q It would be more precise?

22 A Yes. It would give more of the features, yes.

23 Q Okay.

24 If I could approach to . . . .

25 Ranger Faherty, if I could look at this?

Mark Faherty - Cross

1 A Sure.

2 Q Which is the actual map.

3 This map that you were asked questions about earlier  
4 has highlighting of a number of different trails?

5 A Correct.

6 Yes, it does.

7 Q And it has several places where there's writing on it of  
8 restaurants?

9 A Yes, it mentions the Dunraven as well as Nicki's, yes.

10 Q And it has highlighted marks at Bear Lake. Correct?

11 A Yes, sir.

12 Q And Deer Mountain?

13 A Yes.

14 Q And then as you turned it around earlier, it also has  
15 highlighted parts near Grand Lake.

16 A Yes. That's correct.

17 Q Those appear, all appear to be different hikes that you  
18 could take if you were going to Rocky Mountain National Park?

19 A I'm not sure about the one at Grand Lake. That looks like  
20 a road. But some of the other ones highlighted, yes, they're  
21 alternative hikes.

22 Q Thank you.

23 MR. MAXIMON: Thank you, Ranger Faherty. No further  
24 questions.

25 THE COURT: Redirect.

**REDIRECT EXAMINATION**

1  
2 BY MS. HAZRA:

3 Q Ranger Faherty, you were asked about whether your  
4 discussion was an interview or an interrogation. You said it  
5 was an interview. Can you please explain the difference?

6 A Interrogation is, it's more of something that you would do  
7 with somebody -- well, typically, we're trained not to use that  
8 word at all. But custodial interrogation, one would be  
9 required to Mirandize the person, and Mr. Henthorn was not a  
10 suspect during this interview.

11 Q When you say "custodial interrogation," do you mean when  
12 they're in police custody?

13 A Yes.

14 Q And the interview took place at the defendant's home at  
15 whose request?

16 A At his request.

17 Q Does the Park Service have any sort of audio or video  
18 recording at its headquarters where you wanted to have the  
19 interview?

20 A Yes, the regional office, about 30 minutes from  
21 Mr. Henthorn's house, would have that type of thing.

22 Q And last, you talked to me about Deer Mountain Trail. Does  
23 one need a topographical map if you're staying on the trail?

24 A No. No. It's a very distinct trail.

25 Q Is it well marked?

1 A Yes.

2 MS. HAZRA: I have no further questions, Your Honor.

3 THE COURT: Any questions from the jury?

4 Yes. All right.

5 (At the bench:)

6 THE COURT: Question 3.

7 Can you see it?

8 MR. MAXIMON: Yeah, we're okay.

9 MS. HAZRA: No objection.

10 MR. MAXIMON: I'm okay with it.

11 THE COURT: Question 4.

12 MS. HAZRA: I have no objection.

13 MR. MAXIMON: No objection.

14 THE COURT: Question 5.

15 MS. HAZRA: I don't object, Your Honor.

16 MR. MAXIMON: Fine.

17 THE COURT: Question 6.

18 MS. HAZRA: I don't think he's the right person to ask

19 that to.

20 MR. MAXIMON: Fine.

21 MS. HAZRA: Your Honor, I think we have another  
22 witness that may better be able to answer, to answer that.

23 THE COURT: Is that an objection?

24 MS. HAZRA: Yes, Your Honor.

25 THE COURT: Overruled.

1 MS. HAZRA: Okay.

2 THE COURT: It will be permitted.

3 Thank you.

4 (In open court:)

5 THE COURT: All right. We have a number of questions  
6 for you from the jury.

7 Question: From the topo sheet, how precise can  
8 location data be?

9 THE WITNESS: On that park map, I presume they're  
10 referring to.

11 THE COURT: Well, they're referring to a topographical  
12 map.

13 THE WITNESS: Oh.

14 THE COURT: Not necessarily that map.

15 THE WITNESS: You don't think it's the park map. It's  
16 the topographical map, sir?

17 On a topographical map, I think it's -- they come in  
18 different scales. I think some are like one to 15,000. Some  
19 are one to 24,000. So I don't really know what kind of  
20 topographical map Mr. Henthorn used on this trip. He did tell  
21 me at one point he had one with him. But I just don't know  
22 what scale it was. I don't know even exactly what the one to  
23 15 means or the one to 24 means. I don't have a great  
24 explanation for that.

25 THE COURT: The related question that the juror asks

1 is, after the juror said how precise can the location data be,  
2 to the second, question mark.

3 THE WITNESS: Can you repeat that, sir.

4 THE COURT: To the second?

5 The question is can the precise -- can the location  
6 data be precise to the second.

7 THE WITNESS: To the second.

8 On a good enough . . . it depends largely to what  
9 extent -- to what kind of topographical map Mr. Henthorn had.  
10 Because the scale, you know, the larger the scale, if it's one  
11 to 24, it's not going to be as good as one to 15. So it all  
12 depends what kind of topographical map he was using.

13 Even the, you know, it's really common for hikers to  
14 have like the, you know, the Whole Trails illustrated map of  
15 Rocky, and they have the lat long on those. And those are even  
16 a bigger scale. So it's just going to depend on what scale map  
17 he was using. 'Cause the smaller you get, of course, the more  
18 accurate it's going to be.

19 And I hope that answers that.

20 THE COURT: Next question. Is it simpler to ascertain  
21 that information while looking at a topo sheet.

22 THE WITNESS: Oh, like the lat long.

23 Not really, because if, if I have the right lat long  
24 and the right format -- I don't know what format he used, for  
25 the lat long, there's like minutes, seconds, there's minutes,

1 decimals. So if I put it in wrong in my GPS, it's going to not  
2 take me to the right place. So the format is more important.  
3 If I had the right format and I input into my GPS, it should  
4 take me to a -- reasonably close to where they are.

5 THE COURT: Question: Did you see a topo sheet or  
6 topographical map near the body?

7 THE WITNESS: No, I didn't. Mr. Henthorn had a  
8 backpack with him. That backpack, he took that home with him.  
9 It was never searched. There was never any reason to search  
10 it. Nor did I have any authority to search it.

11 THE COURT: Okay.

12 Question: On a late September afternoon on Deer  
13 Mountain at the site of the incident, what direction was the  
14 light coming from.

15 THE WITNESS: Well, we were on the north slope. At  
16 the site of the incident. So we would have been in the shadow  
17 of Deer Mountain. Sun, of course, would have been to the south  
18 of us. So the north side of Deer Mountain would have gotten  
19 less light earlier in the evening than other aspects, say, the  
20 west aspect of Deer Mountain.

21 THE COURT: Question: Is it unusual for someone to  
22 know their location to the degree Mr. Henthorn did.

23 THE WITNESS: I thought . . . I listened to the 911  
24 call later, and it seemed very strange to me some of the things  
25 he was asking for or the way he was asking for it. Like an



1 alpine rescue team and saying he would pay for it and to be  
2 that prepared when something you're not really expecting  
3 something so traumatic to happen and then be prepared with GPS  
4 coordinates and -- it did seem strange to me.

5 THE COURT: How long would it take you to find your  
6 own location with Mr. Henthorn's method, and what would you  
7 need.

8 THE WITNESS: If you have a good topographical map,  
9 you should be able to get the coordinates off of it. With  
10 the -- even without a compass, if you knew you were between  
11 Deer Ridge, right next to Deer Ridge, you shouldn't even need a  
12 compass 'cause, you know, your senses would tell you kind of  
13 what direction you are in Deer Ridge. And you should be able  
14 to look at that topographical map and basically pinpoint your  
15 location.

16 THE COURT: I think the next question has to do with  
17 the map that you've got there next to you.

18 THE WITNESS: Yes. Yes, Your Honor.

19 THE COURT: The question is: Are there any markings  
20 on that map that would determine the last time the map was  
21 updated.

22 THE WITNESS: That would require me to look at it for  
23 a minute, if that's okay.

24 THE COURT: Sure.

25 THE WITNESS: Thank you, Your Honor.

1           Your Honor, that would be hard for me to ascertain  
2 because the map is folded in half.

3           THE COURT: You can take it out.

4           THE WITNESS: May I take it out?

5           THE COURT: Sure.

6           THE WITNESS: The only thing that might bear any  
7 relevance to that question, I guess, would be on the very  
8 bottom, there's maybe a lot number, and it has the word  
9 "reprint, 2000" after it. And that's, that's the only thing  
10 that I find that would even closely answer that question.

11          THE COURT: All right.

12          Are there any other questions from the jurors?

13          All right, then.

14          Back to counsel. Miss Hazra, do you have any further  
15 questions for him in response to the jurors' questions?

16          MS. HAZRA: No, Your Honor. Thank you.

17          MR. MAXIMON: No questions, Your Honor.

18          THE COURT: No questions.

19          All right, then, thank you, sir.

20          THE WITNESS: Thank you, Your Honor.

21          THE COURT: You're excused and free to go.

22          Next.

23          MS. HAZRA: Your Honor, the United States calls Jess  
24 Asmussen.

25          THE COURT: Mr. Asmussen, spelled A-S-M-U-S-S-E-N.

Jess Asmussen - Direct

1 THE WITNESS: Correct.

2 (JESS ASMUSSEN, GOVERNMENT'S WITNESS, SWORN)

3 THE COURT: Thank you.

4 **DIRECT EXAMINATION**

5 BY MS. HAZRA:

6 Q Could you -- you've already stated your name. So,

7 Mr. Asmussen, where are you currently employed?

8 A I work for the U.S. Forest Service, the Payette National

9 Forest, which is outside of McCall, Idaho.

10 Q What do you for the Forest Service?

11 A I work as a safety manager.

12 Q What does that entail?

13 A I kind of manage the occupational health and safety issues  
14 that arise in the forest.

15 Q Does that involve forest fires and the like?

16 A Yeah, forest fires, kind of anything, kind of trail crew,  
17 anything that forest employees engage in.

18 Q Prior to working for the Forest Service, did you work for  
19 the National Park Service?

20 A Yes.

21 Q What was your position with the National Park Service?

22 A I was an east district climbing ranger.

23 Q Were you located within a particular park?

24 A Yes. In Rocky Mountain National Park.

25 Q What does a climbing ranger do?

Jess Asmussen - Direct

1 A You're kind of the face of the Park Service. Your job is  
2 kind of devoted to kind of the more remote, kind of off-trail  
3 areas. So I would spend most of my time in the back country in  
4 those spots.

5 Q And by "climbing," fair to say it's rock-climbing?

6 A Yes.

7 Q I want to direct your attention to September 29, 2012.  
8 Were you working in the park that day?

9 A Yes.

10 Q At some point, did you go home and have to come back to the  
11 park?

12 A Yeah. I think I had a Longs Peak patrol that day, and it  
13 was a long day. I remember riding my bike home past lines of  
14 cars and I got home.

15 Q And when did you have to return to the park?

16 A It wasn't very long, because I remember I still had pieces  
17 of my uniform on, so it was probably less than 30 minutes.

18 Q So sometime in the evening?

19 A Yes. Sometime in the evening. Probably sixish.

20 Q And why did you come back to the park?

21 A I came back because we had a search-and-rescue call for  
22 someone who was injured on Deer Mountain.

23 Q What was your role in that?

24 A I came back to the incident command post, and I worked as  
25 the operations section chief.

Jess Asmussen - Direct

1 Q What does an operations section chief do?

2 A In a few words, you execute the plan.

3 Q You may direct people to the various locations?

4 A Correct.

5 Q In the course of doing that that evening, did you have a  
6 conversation with Ranger Faherty?

7 A I did.

8 Q And what was the purpose of that conversation?

9 A The purpose was to kind of direct him into the location  
10 where this incident had occurred. It was kind of in a, a  
11 little bit of a tricky place to get to. Not many people go  
12 there. I don't think that he had ever been there before. And  
13 so we chatted on the cellphone about the best route in.

14 Q Were you familiar with the Deer Mountain Trail?

15 A Yes. Spent a lot of time up there.

16 Q And were you familiar with the general area of where  
17 this -- of where Ranger Faherty was trying to go?

18 A Yeah.

19 Q And how would you describe the terrain?

20 A It's kind of mixed technical terrain. There's kind of a  
21 mix of cliff faces and talus fields with kind of some tree  
22 slopes in there. Yeah.

23 Q And why do you say it's sort of an unusual place for people  
24 to be?

25 A There's a couple trails that kind of go up and over the

Jess Asmussen - Direct

1 top. Those have -- they were placed in the park and their  
2 popularity and there's a little bit of climbing in the north  
3 side that's infrequently visited, probably less than 20 people  
4 a year go there.

5 Q So it's sort of an odd place to be, okay.

6 Had you been in the area about the week prior to  
7 September 29?

8 A Yes.

9 Q And do you recall what day you went there?

10 A I don't recall the exact date. I went there on a  
11 back-country patrol, to remove an item that someone had glassed  
12 from the campground down below.

13 Q Okay.

14 Would September 20 sound correct to you?

15 A That does sound correct.

16 Q You said someone glassed from the campground below. What  
17 does that mean?

18 A From the Aspen campground, which was kind of in the valley  
19 below, someone had looked up at one of the cliff faces and had  
20 seen a white object that was on one of the cliff faces.

21 Q So your job was to go remove the white object?

22 A Yeah, or just see where it was. I didn't get a very good  
23 description of where it was. So I was kind of wandering around  
24 up there. There's several cliff faces, so I just went and took  
25 a trip to see if I could locate the object, and if possible,

Jess Asmussen - Direct

1 remove it. But there's a lot of technical climbing to get up  
2 there, too.

3 Q Do you know how long the white object had been up at the  
4 time you went up on September 20?

5 A I would guess three days, roughly.

6 Q And were you able to find it?

7 A Yes.

8 Q What did you do once you found it?

9 A I removed it.

10 Q And what did you do with it?

11 A I brought it back. I shoved it in my backpack, and I  
12 brought it down to the ICP. I remember kind of throwing it out  
13 on the pavement and looking at it. I couldn't quite discern  
14 what it said. It had some red letters on it. And then I threw  
15 it away.

16 Q Did you receive any reports the sheet was back up between  
17 September 20 and September 29?

18 A No.

19 Q When you went that day on September 20 to remove the sheet,  
20 did you see anyone else in the area?

21 A No.

22 Q I'm going to show you Government's Exhibit 21.

23 If we could zoom in on the top portion of this.

24 Do you recognize -- first of all, do you recognize  
25 Government's Exhibit 21?

Jess Asmussen - Direct

1 A Yes.

2 Q What is that?

3 A It's kind of the, the Deer Ridge Buttress is what we call  
4 it. It's kind of on the north side of Deer Mountain.

5 Q Maybe could we zoom out for a second, Mr. Price.

6 Can you show us where Deer Ridge Buttress is on this?

7 A Should I touch --

8 Q If you touch, it should show up, the mark.

9 A Deer Ridge Buttress is this large buttress on there.

10 Q Can you see the blue sort of?

11 A Yes, it's that large buttress.

12 Q And is that the buttress that you said is infrequently  
13 climbed?

14 A Correct.

15 Q Can you, on this current, without being zoomed in, can you  
16 show us where you went to remove the white sheet?

17 A Roughly right there, about, just -- can you erase that,  
18 actually.

19 Q I should be able to.

20 A See if I can get it right on.

21 Yeah, that's right there.

22 Q So why don't we try to zoom in to that maybe a little bit.

23 The mark went away.

24 Can you make it now.

25 From where this sheet is, can you see down to the



Jess Asmussen - Direct

1 cliff where the defendant claims that Toni fell?

2 A I do not recall.

3 Q I'm going to now have you look at -- there is behind you,  
4 with white sort of tape over it, a big poster.

5 Are you able to get that, sir?

6 A This thing?

7 Q Yes. If you can.

8 Do you mind taking off the binder clips.

9 If you could --

10 MS. HAZRA: Your Honor, may the witness walk around in  
11 front of the witness stand?

12 THE COURT: Sure. Sure.

13 BY MS. HAZRA:

14 Q Is this a big blowup of what we were seeing?

15 If you could hold it up, perhaps, sir.

16 Is that a big blowup that we were looking at?

17 A Yes.

18 Q I don't know if you were able to do it while you're holding  
19 it.

20 Are you able to show us where this white sheet was?

21 A Yes. It's on this side.

22 THE COURT: You can put it on the easel, if you want.

23 MS. HAZRA: Maybe you could, Special Agent Grusing.

24 MR. TRUMAN: Special Agent Maximon will help with  
25 that, Your Honor.

1 MR. MAXIMON: Over here?

2 MS. HAZRA: That would be fine, thank you.

3 THE COURT: And you can move around, of course, if you  
4 want to, to see what he's doing, Mr. Maximon.

5 You can go anyplace that you can see. You can stand  
6 over there at the end of the jury box, if you want.

7 MR. MAXIMON: Thank you.

8 BY MS. HAZRA:

9 Q Can you show the jury where you recovered this white sheet?

10 A Right here.

11 MS. HAZRA: I have no further questions, Your Honor.  
12 Thank you.

13 THE COURT: All right.

14 All right. Special Agent Maximon, cross-examination.

15 MR. MAXIMON: No questions, Your Honor.

16 THE COURT: Questions from the jury.

17 No.

18 All right, then, thank you, sir.

19 Next.

20 MS. SPENCER: The Government calls Steve DeFrance.

21 Your Honor, for your purposes on the witness list,  
22 Mr. Cabelli is no longer going to testify. Mr. DeFrance is  
23 taking his place because of a family emergency. We notified  
24 counsel of that.

25 MR. TRUMAN: Of course we have no objection.

Charles DeFrance - Direct

1 THE COURT: Okay.  
2 So your name is Steve.  
3 THE WITNESS: My name is Charles S. DeFrance, sir.  
4 THE COURT: Charles.  
5 MS. SPENCER: Well, now he's made me look bad.  
6 THE COURT: Spell your last name.  
7 THE WITNESS: D-E capital F-R-A-N-C-E.  
8 THE COURT: And you are filling in for somebody.  
9 THE WITNESS: Yes, sir.  
10 THE COURT: Thank you for doing that.  
11 THE WITNESS: No problem, sir.

12 **(CHARLES DEFRANCE, GOVERNMENT'S WITNESS, SWORN)**

13 THE COURT: All right.  
14 Right there, please.

15 **DIRECT EXAMINATION**

16 BY MS. SPENCER:  
17 Q Good afternoon, sir.  
18 A Good afternoon.  
19 Q I announced you as Steve DeFrance, and then you come in and  
20 tell us you're Charles. So please make an honest woman out of  
21 me.  
22 A My name is Charles Steven DeFrance. I normally go by my  
23 middle name.  
24 Q All-righty.  
25 What do you do for a living?

Charles DeFrance - Direct

1 A I'm a special agent for the FBI, the Federal Bureau of  
2 Investigation, assigned here in the Denver division.

3 Q Do you have any specialties which you apply to the FBI as a  
4 special agent?

5 A One of the specialties that I have is I'm on the evidence  
6 response team which is the crime-scene response component of  
7 the FBI. And also within that team, I'm an operator of  
8 something called the total station, which is a survey  
9 instrument that we use to document large and complicated crime  
10 scenes.

11 Q We're going to get into that in some detail. But let me  
12 back up in a more macro sense, and tell us about your years of  
13 service with the FBI and what you've done.

14 A I began as a full-time employee with the FBI in 1996. In  
15 the firearms, tool marks division. In the laboratory, I was  
16 qualified as a firearms, tool marks examiner. I did that until  
17 2001, when I went to the FBI academy; and after graduating from  
18 the FBI academy as a special agent, I've been assigned to three  
19 different field offices as a special agent. The Washington,  
20 D.C. field office; San Juan, Puerto Rico; and now Denver,  
21 Colorado.

22 Q And how long have you been in the Denver office?

23 A Since 2007.

24 Q I am going to be asking you questions about the total  
25 station that you mentioned that you're a certified operator of.

Charles DeFrance - Direct

1 If that's the right term. Can you tell us what that is?

2 A The total station is a piece of survey equipment. It's  
3 off-the-shelf survey technology that you would see used at  
4 construction sites. You've probably seen road crews that use  
5 these instruments, survey crews that you see alongside the  
6 road. It's off-the-shelf technology that takes very accurate  
7 three-dimensional measurements, and instead of using it at a  
8 construction site, what we use, we apply that same technology  
9 to documenting a crime scene and looking at structures and  
10 evidence within that scene, very accurately, with that  
11 instrument.

12 Q And what sort of training have you had to be able to be an  
13 operator of that equipment?

14 A We have a specialized training that is put on by the  
15 operational projects unit out of the laboratory division.

16 Q And where is that at?

17 A The laboratory division is in Quantico, Virginia.

18 Q Okay.

19 I interrupted you. I apologize.

20 A That's okay.

21 Q Continue.

22 A The operational projects unit is where we have our  
23 engineers that work on surveys. They have all the survey  
24 equipment there. And they also process the data that's  
25 collected in surveys.

Charles DeFrance - Direct

1 We also have 30 teams in the 56 field offices that are  
2 trained on using the total station in the field. And so those  
3 of us who are selected as total station operators go back to  
4 Quantico or to more recently to Fredericksburg, Virginia, where  
5 there's a training facility. And we're specially trained on  
6 the use of the total station as a survey instrument that we can  
7 use on crime scenes.

8 Q Special Agent DeFrance, I've also heard of use -- and we'll  
9 be talking about in this particular instance -- of a 3D laser  
10 scanner. How does that compare with and contrast with the  
11 total station that you use?

12 A The basic technology behind a total station and a 3D  
13 scanner is the same. Essentially the instruments are set up on  
14 a location that's selected by the operator. That becomes a  
15 control point. And then measurements are taken from that  
16 control point to different points in the scene that are of  
17 interest.

18 It does this by taking three independent measurements.  
19 For every point.

20 So it rotates toward the point. And that horizontal  
21 angle is a measurement.

22 It measures from straight vertical down to where the  
23 point is. And that's a second measurement.

24 And then it has a laser, and it fires that laser to  
25 that point, and it measures the time it takes for that laser to

Charles DeFrance - Direct

1 reflect back to the instrument. And it uses that to determine  
2 the distance to that point.

3 Those three measurements are used to uniquely identify  
4 a point in three-dimensional space.

5 The total station works that way. And so does the  
6 laser scanner. The difference between the two instruments is  
7 that a total station is more manually controlled in the sense  
8 that the operator selects individual points and can label those  
9 points, whether it's a part of the structure, maybe a corner of  
10 the room or something like that. Or if it's a item of evidence  
11 on the floor, and can shoot a specific point and then label  
12 that.

13 The laser scanner is more automated. And it works by  
14 setting it up in the same way, but then it scans, running the  
15 laser up and down over whatever area it's instructed to do so.  
16 And it will take millions of points in that scan. And it's  
17 collecting data on everything that's in the room or everything  
18 that's in front of its point of view.

19 And it's unlabeled data, but it takes a lot more of  
20 it.

21 Q So as you're gathering all the data, whether it's with the  
22 total station or the 3D laser scanner, then what's being used  
23 to sort through it and give you some intelligible information  
24 that's usable as you talked about in crime-scene investigation?

25 A Could you rephrase that question.

Charles DeFrance - Direct

1 Q Oh, I'm sure I could.

2 What happened to the days of tape measures? What is  
3 it that you have to do with all this data that you're  
4 describing to be able to come out and say something about the  
5 crime scene?

6 A So in both cases, the data that's stored is all  
7 three-dimensional measurements, and it's stored in the same  
8 way. That data, we then take and we send it back to the  
9 operational projects unit in the laboratory, and they're able  
10 to take that data and put it into specialized computer software  
11 where they can work with it in 3D and they can make, from that  
12 they can make three-dimensional diagrams, they can make  
13 physical models, they can make two-dimensional diagrams, and  
14 all these are based on those measurements.

15 Q Have you had occasion where you're using the total  
16 stations, the 3D laser scanner is also in operation, and  
17 they're overlapping to be used together?

18 A Yes, we have done that. We did that in the Aurora theater  
19 shooting, we spent about eight days using the total station in  
20 the theater, shooting in very specific points and items of  
21 evidence. We also, in addition to that, we used the laser  
22 scanner that was brought out by the laboratory division, and  
23 those two pieces of data can be overlapped and used together.

24 So they can complement each other.

25 Q And what's the accuracy of these machines?



Charles DeFrance - Direct

1 A The lowest accuracy is about 2/100 of a foot times the  
2 distance.

3 So 2/100 of a foot. If you took a foot and you  
4 divided it up in a hundred equal pieces, you just take two of  
5 those, and that's the plus or minus accuracy at 1 foot, and  
6 then you multiply that by whatever distance you're shooting at.  
7 So the further away you're shooting, the less accurate it is.

8 Q Were you asked to perform any work such as you've described  
9 in relation to this case?

10 A Yes, I was.

11 Q And what were you asked to do initially?

12 A Initially, in the summer of 2013, I met with the case  
13 agents from the Park Service and from the FBI. To discuss how  
14 we could document the crime scene on the side of Deer Mountain  
15 in order to make it accessible essentially, at least in a  
16 virtual sense, to a jury and to others.

17 And one of the first things that we thought about  
18 using on a scene like that would have been the total station,  
19 because of the size and complexity of the scene, even without  
20 seeing it at that point.

21 Q Did you actually go up to Deer Mountain, directed by Park  
22 Service where to go and what to look at?

23 A I've been up there on three occasions.

24 Q So that first time, you said summer of 2013 you went up.  
25 And what did you determine, after actually being there, would

Charles DeFrance - Direct

1 be helpful to try to put something together for the jury?

2 A Well, after we went up there and saw it physically, we  
3 absolutely thought that the total station would be valuable;  
4 but because of the size and complexity of the scene and the  
5 complexity of the cliff face, we also thought that bringing out  
6 a laser scanner to complement the total station would be a good  
7 idea. And in the FBI our laser scanners were all in the  
8 laboratory. So it was a request that had to go to the  
9 laboratory for additional resources to bring out a laser  
10 scanner.

11 Q I know you're here in the Denver office, but are you  
12 affiliated with that operations projects unit?

13 A I'm not directly affiliated with them, but through the  
14 total station operators' program, they are the individuals that  
15 train us and that we deal with them on a regular basis. I also  
16 do a lot of shooting reconstructions. And so I'm using them on  
17 a regular basis, and I've worked with the people in that unit  
18 since I was in the lab in the 1996 and forward.

19 Q So you go out and you scout. You determine that there are  
20 some things that can be done. So do you coordinate them with  
21 Quantico, bring out a team?

22 A Yes, we coordinated with Quantico; and there was a whole  
23 team of people that came out to support the documentation of  
24 that scene, to do photography, spherical photography,  
25 videography, and the crime-scene survey.

Charles DeFrance - Direct

1 Q And if I gave you the date of September 4 is when you went  
2 up on the mountain, would that sound accurate, 2013?

3 A It sounds about right.

4 Q Before the flooding?

5 A Yes.

6 Q All right.

7 So you went up there with a team. I understand that  
8 some llamas accompanied you for your equipment?

9 A Yes, they did.

10 MS. SPENCER: We're going to pull up Exhibit 24, which  
11 has been stipulated, and I'm going to ask for its admission at  
12 this point.

13 THE COURT: It's admitted.

14 (Exhibit 24 admitted.)

15 BY MS. SPENCER:

16 Q Special Agent, it will be on your screen in just a moment.

17 There it is. All-righty.

18 This is just the basic first screen. But if you can  
19 explain what this is; we'll start off with some basics, how it  
20 was put together, what equipment was used, what purpose.

21 A So what we're seeing on the screen is a product that was  
22 put together by the laboratory division. And it combines  
23 information from a number of different sources. It includes  
24 information from the survey, information from photographs, from  
25 spherical photography, from videography, and puts it together

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1 into a package to kind of present with the scene in as accurate  
2 a manner as possible.

3 Q All right.

4 So we're looking at the title page.

5 We've got some different tabs.

6 Click on that home tab.

7 I'm not sure if that changes it or if that is the home  
8 tab.

9 Let's go to spherical page 1.

10 It says "spherical." Please describe for us, before  
11 we get into this detail, what is "spherical"?

12 A So to describe what a spherical image is, I'm going to  
13 start by kind of backing off and talking about panoramic  
14 images.

15 So you may be familiar with how panoramic image can be  
16 formed by taking multiple photographs that overlap each other,  
17 and then stitching those images together to form a panorama.

18 You can do that physically with a, with a printed-out  
19 photograph. You can also do it digitally, which is referred to  
20 commonly as a panoramic stitch.

21 If you were to take enough photos and continue to turn  
22 around, it can go all the way around in a 360-degree, you could  
23 create a 360-degree panorama, where you could see completely  
24 all the way around the position where that camera was when it  
25 rotated.

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1           A spherical image is basically a 360-degree image in  
2 all directions. So it's a series of pictures that are stitched  
3 together, but they use not a normal lens, but they use a  
4 fish-eye lens that has a very wide angle view. So when they're  
5 stitched together, it's kind of like you're on the inside of a  
6 globe, and you can rotate and you can look down and you can see  
7 all the way around in 360 degrees, so it gives you the, the  
8 perception of basically you standing where that camera was and  
9 you can choose to look in any direction you want to, within the  
10 image.

11 Q All right.

12           So this first tab we have up is actually a map.

13           If you could take a look at that and walk us through  
14 what that is.

15 A So on the map, this is a general overview of an aerial  
16 image of Deer Mountain. And there's a orange trail on that.  
17 That's the Deer Mountain Trail. With the trailhead where  
18 there's a blue rectangle.

19           There's also an off-trail path that's shown in yellow.  
20 And then you can also see some of the, the Park Service roads  
21 that are around Deer Mountain.

22 Q So when we look back to that blue square that you  
23 mentioned, what is that?

24 A The blue square indicates an embedded image within the,  
25 within the presentation.

Charles DeFrance - Direct

1 Q So that's something that the laboratory put together?

2 A Yes. So the laboratory embedded an image there. And it  
3 works essentially like a hyperlink, like you might see on a  
4 website, where you want to look at something and you click on  
5 it, and it will bring up another part of the Web page. That's  
6 essentially what they've done in this part of the product.

7 Q So the map says, "trailhead and parking."

8 Let's click on the blue square.

9 And is that showing us the trailhead, then?

10 A Yes. So by clicking on that first square, that was at the  
11 trailhead, this is now showing you an image of the trailhead.

12 Q And I can't tell if that's another blue square that's in  
13 there. It looks like it is.

14 So we click on that, and where are we going?

15 A This is moving you along the trail as you ascend the trail  
16 up your mountain.

17 Q Now, I know you talked about the various pieces of the  
18 project. Did it include this still photography and embedding  
19 them in there?

20 A Yes, ma'am.

21 Q All right.

22 Let's go back to our original map, if we could.

23 Mr. Price has just pulled up sort of an overlay of,  
24 what is that, what is that we're seeing with the blue circles?

25 A This blowout image that has a series of circles on it.

Charles DeFrance - Direct

1 Those circles are located along a off-trail path that in each  
2 of those icons indicates that there was a spherical image that  
3 was taken there.

4 Q All right.

5 So let's go to the first, let's go to the first tab.  
6 I'm sorry, the second tab of spherical page 2.

7 Actually, I'm sorry; I want to back up, back to  
8 spherical page 1, where we were.

9 Let's click on that first blue circle.

10 Special Agent, you have indicated that that shows us a  
11 spherical.

12 So we're going to go ahead and press "play" on that.  
13 If you would put the map down and go ahead and press "play."

14 (Videotape played.)

15 BY MS. SPENCER:

16 Q Is this the general kind of experience you're talking  
17 about, you're standing in the center?

18 A Exactly. This is basically from the point of view of the  
19 camera, you can rotate around this entire scene and see in  
20 every direction.

21 Q Now -- pull that back up. That's fine.

22 That larger map that we spoke of. Now we see a blue  
23 shading area. What is that showing us?

24 A So that kind of blue cone or wedge that you can see on that  
25 smaller map, that indicates the field of view. So as you're

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1 looking at the spherical image, that's the direction that the,  
2 that the camera is facing, what view you're seeing.

3 Q Okay, so it gives sort of a macro view of the bigger  
4 picture, if you will?

5 A Yes, ma'am.

6 Q How did the team know where to set up the camera and what  
7 was important to be filmed to help this jury understand the  
8 scene?

9 A All the photographs were taken based on direction from the  
10 investigators of where to take photographs.

11 Q Let's take down the map part.

12 Now, when we're sitting here and looking on this view,  
13 I see another blue dot on the horizon. What does that tell us?

14 A That next circle indicates that there's an embedded image  
15 there, and that's the next spherical image in the sequence.

16 Q Okay.

17 So the square gives us a picture and the circle gives  
18 us video, spherical video?

19 A Yes, ma'am.

20 Q Let's click on that next one, just to move along, just to  
21 get an idea.

22 (Videotape played.)

23 BY MS. SPENCER:

24 Q Who was actually manning the camera and taking this data  
25 in?



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1 A All these photographs were taken by a photographer who came  
2 out from the operational projects unit in the laboratory, the  
3 same unit that put together this product. It also worked with  
4 the survey data.

5 Q All right.

6 I'm going to click to the end of this tab.

7 And we can take that down.

8 Now I see a red circle with a white camera inside it.

9 What does that mean?

10 A The icon, the red icon with the camera, indicates that's  
11 another embedded image; but instead of a law-enforcement image,  
12 one of the images we took, that was an image that was taken by  
13 one of the Henthorns.

14 Q And we'll go ahead and click on that.

15 All right. And then how do we back back out of that,  
16 back to the scene?

17 A I believe you click on the sphere again.

18 Q Okay.

19 Now, on this screen that we're looking at, this is the  
20 end of the spherical page 1 tab. We're at the lunch spot.

21 What do the rest of the tabs show us?

22 A So spherical page 1 goes from the trail to the location  
23 referred to as the lunch spot.

24 Spherical page 2 is the next segment that goes from  
25 the lunch spot all the way down to the base of the cliff where

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1 the victim, where the victim's body was recovered.

2 Q And what's the next spherical page 3?

3 A Spherical page 3 is the same as spherical page 1, but  
4 without any embedded images. And spherical page 4 is the same  
5 as spherical page 2, but again without any embedded images.

6 Q All right.

7 We're going to go on to spherical page 5. If we can  
8 click on that.

9 Actually, I want to move on to the next one, I'm  
10 sorry.

11 The trail video segments.

12 Special Agent DeFrance, what is this compilation?

13 A This is a series of video segments that are numbered in  
14 sequence from starting at the trailhead and ending at the, I  
15 believe it's at the base of the cliff.

16 Q Are these -- and you may have just said -- in order,  
17 starting at the trailhead and moving on.

18 A Yes, ma'am.

19 Q I apologize, I was trying to think of another word as  
20 sequence.

21 So those are the GoPros, and those were done by the  
22 laboratory as well?

23 A I believe some of these were done by Special Agent Shott.  
24 And some of them were done by one of our ART members from  
25 Denver.

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1 Q All right.

2 Let's go into the next tab, the 2D graphics. And this  
3 is also actually Exhibit No. 36, which is its own diagram.

4 MS. SPENCER: I'd ask permission to view Exhibit 36 at  
5 this time.

6 THE COURT: It's admitted.

7 (Exhibit 36 admitted.)

8 BY MS. SPENCER:

9 Q This is where we get back to your specialty, Special  
10 Agent DeFrance, if you can describe what we're looking at here;  
11 we've now taken out the photo and done the diagram. What is  
12 this and how is this prepared?

13 A This is a two-dimensional diagram showing an elevation of  
14 the scene from the lunch area and encompassing the cliff and  
15 all the way to the location where the victim's body was  
16 recovered.

17 This is developed by the laboratory using data from  
18 three different places, from topographical maps, from the laser  
19 scan survey data, and from the total station survey data.

20 Q And were you involved in pulling down the data at the total  
21 station in this project?

22 A Yes, in this particular part, myself and another total  
23 station operator took in the data. We did basically a grid  
24 across the surface of the cliff face from a couple of positions  
25 at the base of the cliff.

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1 Q And what was the purpose of taking all that data?

2 A All the data was used to create a three-dimensional diagram  
3 and which, from which -- or let me back up.

4 A three-dimensional model of the scene, and from that  
5 is how this particular 2D diagram was formed, by essentially  
6 taking a slice through that 3D data.

7 Q And what is this, then, what is this diagram telling us,  
8 what information is useful here?

9 A So this shows a slice through the mountain, through that  
10 three-dimensional scan that was taken. It shows the, the lunch  
11 area. Which is here.

12 And it basically is a profile of the, of the boulder  
13 field, I would call it, that leads to the top of the cliff.

14 And the top of the cliff is located here.

15 And then the base of the cliff is down here.

16 And then this just shows a profile view of the ascent  
17 to get to the top of the cliff, and then also of the cliff face  
18 itself.

19 Q All right.

20 So I see several different measurements from the, the  
21 outer tree area, down to the fire location. It says 128.0.

22 What is that telling us?

23 A That's a measurement that was taken from the survey data.  
24 To indicate the vertical distance from the top of the cliff to  
25 the base of the cliff. That's -- the cliff itself is not

Charles DeFrance - Direct

1 perfectly vertical. So the face of the cliff is actually  
2 longer than that. So that's just the vertical distance. From  
3 the top to the base.

4 Q So it's 128 feet straight down?

5 A Yes.

6 Q But you have a number of 142.1 feet distance?

7 A So the 142.1 indicates the distance between those two  
8 points if you drew a straight line from the top of the cliff to  
9 the base of the cliff. That's the actual distance diagonal  
10 there.

11 Q I see an indication of 65 degrees?

12 A 65 degrees is the approximate angle of the cliff itself.  
13 So it's not a perfectly vertical, 90 degrees. It's a little  
14 bit less than that.

15 Q All right.

16 146.6 feet elevation change. This is in reference to  
17 our lunch area. What information is that telling us?

18 A That indicates the elevation drop that you go, from  
19 starting at the lunch area in order to get to the top of the  
20 cliff.

21 Q Okay.

22 And if we back out of this, then we've got a  
23 diagram -- get rid of the circles. All right.

24 Photograph next to the diagram. Are we laying some  
25 information from one side over to the other?

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1 A So the same basic information is shown on both the diagram  
2 and the photograph. The basic path is shown. We have the  
3 lunch spot up here. And the path would have to be -- one path  
4 that would lead you here to the top of the cliff.

5 Q And it's got little arrow, outer tree there?

6 A Yes. Indicating that the outer tree that's also labeled on  
7 the diagram.

8 Q All right.

9 So you're just laying over that 2D diagram information  
10 over the photograph to show how they match up?

11 A Yes, ma'am.

12 Q All right.

13 Then going back to our -- now we're back in our  
14 Exhibit 24, in our OPU. We've just finished the 2D graphics.

15 The last thing is maps. Let's click on that and  
16 finish this piece out.

17 What's contained there?

18 A These are two maps showing the general area of Deer  
19 Mountain and Estes Park and the different areas around that.

20 Q All right.

21 Let's go ahead and take that down.

22 Special Agent DeFrance, were you asked to take some of  
23 the information from that cliff side and use your total station  
24 experience and measure against the courthouse here?

25 A Yes, I was.

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1 Q And can you tell us about that, please?

2 A I was asked to come out and take some measurements on this  
3 courthouse to determine the heights of some of the floors to  
4 see what floor would be approximately equal to the distance  
5 that was fallen by the victim at the cliff.

6 Q The 128 feet.

7 A Yes, ma'am.

8 Q Thank you.

9 Okay. And how did you go about that?

10 A So what we did was we set up the total station in the  
11 courtyard outside the entrance to the courthouse. And we set  
12 it up like normal, and we shot in a point that's right at the  
13 cornerstone. So as you're walking into the courthouse, you'll  
14 see that there's a cornerstone that's labeled 2002 and that the  
15 building was constructed under the administration of President  
16 George W. Bush. We took all the measurements beginning there.  
17 And there's a, there's a patch of grass that runs along the  
18 side of the building there.

19 We surveyed in that grassy area. And that became our  
20 zero. So all of our additional measurements, we subtracted  
21 that number from in order to determine the height of the  
22 different parts of the building.

23 And then we surveyed in each of the floors of the  
24 building. I believe beginning at the third floor and going all  
25 the way up to nine or ten.

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1 Q Don't keep us in suspense, Special Agent DeFrance. Where  
2 is 128 feet against this courthouse?

3 A I don't remember exactly. If I could refer to my report.

4 MR. TRUMAN: I have no objection.

5 MS. SPENCER: I don't know if we have it marked up  
6 there. I have got it.

7 I actually don't have it with me.

8 THE WITNESS: I have a copy of --

9 BY MS. SPENCER:

10 Q Do you have it with you?

11 A I do.

12 Q I didn't bring it with me. I apologize.

13 A So based on the measurements that we took, using the total  
14 station, the seventh floor is at 118.17 feet from that grassy  
15 area at the base of the building.

16 Which would be a little bit less than the 128 feet  
17 vertical distance of that cliff.

18 So if you were standing there, it would be essentially  
19 10 feet above, above the floor is the total distance, vertical  
20 distance fallen.

21 Q So let me clarify. I think I followed you. But the  
22 121 feet is the floor of the seventh floor?

23 A It's 118 feet.

24 Q I'm sorry. I'm making up numbers. 118 feet is the floor  
25 of the seventh floor. So 10 feet above that?



Charles DeFrance - Cross

1 A Right.

2 Q And we have tall floors here. We're still on the seventh  
3 floor, but 10 feet above would give us the 128 feet reference  
4 point?

5 A That's correct.

6 Q Right.

7 And in terms of using the total station to do that,  
8 you're just measuring floor by floor, you're not overlaying the  
9 cliff on it or anything, you're just doing an actual feet  
10 measurement?

11 A No, we just measured directly straight up from the first  
12 point that we took that was the grassy area, and we just went  
13 straight up, floor by floor.

14 MS. SPENCER: Pass the witness.

15 THE COURT: Mr. Truman, cross-examination.

16 MR. TRUMAN: Just a couple questions.

17 **CROSS-EXAMINATION**

18 BY MR. TRUMAN:

19 Q Agent DeFrance, how many guys did you guys use up in Deer  
20 Mountain to figure this out?

21 A We had about 14 people that came out as part of the  
22 combination of the evidence response team from Denver, as well  
23 as individuals from the operational projects unit in the  
24 laboratory.

25 The technical hazardous response unit which was there

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1 to handle a lot of the logistics and any, any securing with  
2 ropes that might be necessary.

3 And then we also had a couple of people from the  
4 resident agency in Fort Collins, RA, so in total, I think it  
5 was about 14.

6 Q How many from Washington?

7 A From Washington, I believe we had six.

8 Q That would be the same number from Quantico, or are they  
9 different people?

10 A Oh, I'm sorry. I kind of think of Washington and Quantico  
11 as synonymously. They were all coming out of the laboratory  
12 division, I should say.

13 Q Now, what did you do to account for the difference in the  
14 times that you conducted this replication?

15 A I'm not sure I understand the question.

16 Q Well, you did this test on September the 4th, 2013.

17 A Yes, sir.

18 Q And you were trying to replicate the conditions of  
19 September 29, 2012.

20 A The assumption was that the cliff had not changed in that  
21 time frame.

22 Q So you assumed that nothing had changed there in Rocky  
23 Mountain National Park for an entire year with all those  
24 seasons.

25 A That's correct.

1 Q Thank you.

2 MR. TRUMAN: I have no additional questions.

3 THE COURT: Redirect.

4 MS. SPENCER: Just briefly. Thank you.

5 **REDIRECT EXAMINATION**

6 BY MS. SPENCER:

7 Q Regarding Mr. Truman's last question, you're assuming that  
8 the cliff face didn't grow or shrink in a year's time?

9 A That's correct.

10 MS. SPENCER: Thank you.

11 THE COURT: Questions from the jury.

12 Yes. Okay.

13 (At the bench:)

14 THE COURT: I'm going to call this question 7 and 8,  
15 but they're really part of the same question, I think.

16 MS. SPENCER: No objection. I don't know that he can  
17 answer this. But no objection from us.

18 MR. TRUMAN: He can't answer it, but I have no  
19 objection to it being asked.

20 THE COURT: Okay.

21 MS. SPENCER: Judge, just a second. Having barreled  
22 through seven witnesses today, we don't have any more  
23 witnesses. So I apologize.

24 THE COURT: You know what, I have another hat. I'm on  
25 the disciplinary committee of my golf club. They're meeting at

1 six o'clock. To talk about some bad behavior of some of the  
2 members. If we recess just a few minutes early, that helps me  
3 get there.

4 MS. SPENCER: Okay.

5 MS. HAZRA: Thank you.

6 MS. SPENCER: Thank you, Your Honor.

7 (In open court:)

8 THE COURT: All right, sir, we have some questions for  
9 you.

10 Did you plot the impact point of the body?

11 THE WITNESS: I know that one of the points that was  
12 surveyed in was the location of a broken branch on a tree at  
13 the base of the cliff. Beyond that, I'm not really sure; I'm  
14 not the person to answer exactly where the impact was.

15 THE COURT: If someone falls off a cliff, would their  
16 impact point be measurably different from someone that was  
17 pushed? If so, was this difference apparent at the scene of  
18 the incident?

19 THE WITNESS: In theory, there could be a difference  
20 because there would be a horizontal velocity. If someone was  
21 pushed with a good bit of force.

22 However, in this particular case, because the cliff  
23 was angled, regardless -- I believe regardless of how hard  
24 they're pushed, they're going to hit the cliff face at various  
25 points on the descent.

1 THE COURT: Any other questions, folks?

2 All right. Ms. Spencer, do you have any follow-up  
3 questions?

4 MS. SPENCER: Yes, Your Honor.

5 I just wanted to pull up Exhibit 36, if we could.  
6 That you've already testified about.

7 **REDIRECT EXAMINATION**

8 BY MS. SPENCER:

9 Q Where it says "tree branch." Is that what you had been  
10 notified as the impact area?

11 A That had been described to me that that was noticed at the  
12 time of the body recovery, that there was a broken branch  
13 there, so that's something that we noted in our survey.

14 Q Okay.

15 MS. SPENCER: Thank you.

16 THE COURT: Mr. Truman.

17 MR. TRUMAN: I have no further questions. Thank you.

18 THE COURT: Thank you, sir. You're excused.

19 THE WITNESS: Thank you.

20 THE COURT: You're excused and free to go.

21 Ladies and gentlemen, it's about a quarter to five.

22 Do you think you've earned your money today?

23 What money that might be. Just an expression.

24 Let's call it a day.

25 Nine o'clock in the morning.

1 I warned you about publicity. We spent probably more  
2 time talking about that than I needed to.

3 During one of the breaks, I checked *The Denver Post*  
4 online, and sure enough, there already is an article about the  
5 opening statements this morning. And I'm sure it will be on  
6 the broadcast media as well.

7 You've seen that there are a number of people kind of  
8 coming and going today in the courtroom, but there's a whole  
9 second courtroom down, somewhere downstairs that generally is  
10 where the media are, so you don't necessarily see all the  
11 media, but they're there.

12 So try to -- try to -- please do stay clear of any of  
13 the media coverage. Of course, as we talked about last week,  
14 no research of any kind. Best thing I can advise you, if  
15 you're able to, is just forget about it. Not that that's easy,  
16 but forget about the case to the extent you can. Have a nice  
17 evening.

18 Any questions?

19 Okay.

20 We'll shoot for nine in the morning. I do have a  
21 sentencing in a completely different and unrelated case at  
22 eight-thirty. Probably will take the half hour. If it takes  
23 longer than, it might be just a few minutes more, but we'll  
24 shoot for nine o'clock in the morning.

25 Have a nice evening, folks.

1 THE COURTROOM DEPUTY: All rise for the jury. And  
2 excuse my voice.

3 (Jury out at 4:45 p.m.)

4 THE COURT: All right. The jury has been excused.

5 Are there any things that either side needs to put on  
6 the record tonight?

7 MS. HAZRA: Not from the Government, Your Honor.

8 MR. TRUMAN: No, Your Honor.

9 THE COURT: Okay.

10 So just as a reminder for you and for others who are  
11 watching the trial, we will be in session all day tomorrow,  
12 that's Wednesday; all day Thursday; we will not be in session  
13 Friday. Friday will be an off day. We'll pick it up again  
14 Monday.

15 Have a nice evening, everybody.

16 (Recess at 4:47 p.m.)

17 REPORTER'S CERTIFICATE

18 I certify that the foregoing is a correct transcript  
19 from the record of proceedings in the above-entitled matter.

20 Dated at Denver, Colorado, this 22d day of October, 2015.

21

22 s/Kara Spitler  
23 Kara Spitler

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3 GOVERNMENT'S EXHIBITS

4	Exhibit	Offered	Received	Refused	Reserved	Withdrawn
5	1	359	359			
6	8	380	380			
7	20	364	364			
8	21	365	365			
9	23	292	292			
10	24	433	433			
11	25	389	389			
12	36	441	441			
13	55	392	392			
14	67	372	372			
15	71	371	371			
16	85	369	370			
17	121	264	264			
18	122-125	381	381			
19	141	266	266			
20	150	306	306			
21	151	305	305			
22	153	329	329			
23	154	341	341			
24	155	342	343			
25	156	345	345			

1	162	399	399
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