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IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION

UNITED STATES OF AMERICA,)
)
Plaintiff,) No. 12-04043-01-CR-C-BP
) April 23, 2013
V.) Jefferson City, Missouri
) CRIMINAL
CHRISTOPHER CURTIS KELLEY,)
) Volume II
Defendant.) (Pages 105-281)
)

TRANSCRIPT OF JURY TRIAL

BEFORE THE HONORABLE BETH PHILLIPS
UNITED STATES DISTRICT JUDGE

Proceedings recorded by electronic stenography
Transcript produced by computer

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(Pages 105-281)

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1 APRIL 23, 2013

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3 (The following proceedings were had in the courtroom
4 out of the presence of the jury:)

5 THE COURT: I just wanted to check. Are there any
6 issues that the parties would like to bring up at this point?

7 MR. LYNN: Your Honor, one issue the government
8 would like to raise. Yesterday during the cross-examination of
9 one of the government witnesses, it came to light that Stephens
10 College, the site where one of the computers was taken, had
11 been opened -- or a door had been unlocked or there was
12 reported an unlocked door the day or week before. That
13 obviously opens up the question whether the computer was taken
14 prior to that.

15 Now, there is a evidence that this computer was
16 hooked up to a network with Stephens, and that network
17 reflected that it was taken offline at 3:45 on the 18th of May
18 at the time of this fire. We have a witness, Mark (sic)
19 Herbold is his name. He's prepared to come in and testify to
20 those issues. He's not an endorsed witness. I didn't
21 appreciate the significance of the issue; but when that came to
22 light, we started pursuing the matter.

23 He's available -- I told Mr. Stabenow about him
24 yesterday afternoon. He's available for interview by the
25 defense if they so desire, and we're requesting leave to call

1 him, despite the fact that he's not endorsed.

2 MR. STABENOW: We're going to object. I was able to
3 talk very briefly to Troy Schnack, our IT expert up in Kansas
4 City, last night. In the case file, there were -- the report
5 of Mr. Coleman, the witness we had yesterday on the stand,
6 there is a mention of two things, the idea that the door was
7 open the previous night at 7 p.m., and that an IT person had
8 told him that it appeared the computer had been taken off the
9 network at 3:45.

10 I've talked briefly to Mr. Schnack about this in the
11 past, and he said, I'm very skeptical about that, we can't even
12 tell that on our own network, and I would really need to see
13 how he had everything configured that he would be able to make
14 that claim, but I never pursued it because we never got notice
15 that they were going to bring in an IT specialist to say that
16 they had all the computer software that could do this function.

17 When I talked to Mr. Schnack last time about it, he
18 again said, look, I'm very skeptical about that. I would have
19 to see the reports of how he had this whole system configured
20 to see if that would even be possible, and Mr. Schnack is not
21 available today, he's at a prison preparing for a trial.

22 So the fact that I could interview this witness does
23 nothing for me because I don't have that sort of IT
24 specialization. And so obviously, this isn't like a lay
25 rebuttal witness, this is an expert witness who has specialized

1 testimony. And it was in the reports and the government, for
2 whatever reason, opted not to call him ahead of time, so we're
3 going to object to it because here in the middle of trial, I
4 have no way to test that reporting structure of his. I have no
5 way to test his network configuration. Even if I did, that
6 affects my whole trial strategy and what I've been arguing.

7 THE COURT: Well, however, you've acknowledged the
8 fact that you knew in the report that this evidence at least
9 existed, correct?

10 MR. STABENOW: I knew that there was a mention in a
11 report that somebody had told him that it appeared that the
12 computer had been taken off the network.

13 THE COURT: Okay. Mr. Lynn, do you have any other
14 rebuttal of sorts?

15 MR. LYNN: No. No.

16 THE COURT: Let me think about this for a few
17 minutes. I'm not prepared to rule at this point. I want to
18 think about it.

19 MR. LYNN: Very well.

20 THE COURT: Any other issues?

21 MR. LYNN: None by the government.

22 THE COURT: Where are we in terms of the evidence
23 and when you think that you'll rest, not -- I don't need an
24 answer that I'm going to hold you to, but just your ballpark
25 estimation.

1 MR. LYNN: Well, I've got three really substantive
2 witnesses that are going to take probably the bulk of the
3 morning, but the rest of the witnesses are fairly short and
4 succinct, so I would expect -- I would certainly expect to
5 finish up by afternoon.

6 THE COURT: Okay. And then do you have witnesses
7 that you're going to put on?

8 MR. STABENOW: Well, I have three witnesses right
9 now, Your Honor. I would say my witnesses would take less than
10 an hour. I mean, I can easily see it being half an hour.
11 Although once the government's case is over, I'll probably
12 request a 10 or 15-minute recess just to speak to my witnesses
13 quickly before we begin.

14 THE COURT: So do you think it's possible that we
15 could close today, is that what we're thinking?

16 MR. STABENOW: Based on how fast it went yesterday,
17 I think it's conceivable.

18 THE COURT: We are working on -- we will shortly
19 have the instructions, and so I will try to get those to you as
20 quickly as possible. It seems as though I had another
21 question, but I can't remember exactly what it was.

22 So let's take a break, and I will be back out in
23 about 10 or 15 minutes with a ruling on that other issue.

24 MR. LYNN: Thank you.

25 (A recess was taken from 8:46 a.m. to 9:09 a.m.)

1 THE COURT: I have done some research on this issue.
2 And as you may have been able to tell from my question, the
3 troubling aspect is that there may be evidence out there that
4 the defendant was provided in discovery and, through this
5 question, the inference is made to the jury, or a suggestion
6 was made to the jury that may not actually be true. And so
7 that's one reason that I have weighed this issue heavily.

8 And to clarify, the fact is that there's evidence
9 that the computer was taken offline at 3:45. That evidence may
10 be able to be cross-examined, but that would directly
11 contradict the inference that you're trying to bring up to the
12 jury through the suggestion that the window or the door was
13 opened the night before and thereby permitted someone to enter.

14 I also then did some research into the requirement
15 that the government -- or that either party disclose witnesses
16 and have found a 2012 Eighth Circuit case that specifically
17 says that criminal defendants have no right in noncapital cases
18 to require disclosure of the list of government witnesses.

19 And so for those two reasons, I am going to permit
20 the government to call this witness to the stand. However, I
21 also want to give you the opportunity to give this information
22 to your IT guy and permit him to testify, although he hasn't
23 been disclosed. I recognize that he is busy today, but if
24 we're going to close -- if we are close to closing today, we
25 can take a recess and have him available tomorrow. If he's not

1 available tomorrow, we can even extend it to Thursday. I know
2 we told the jury that this case would close on Wednesday; but
3 if we could get him in here first thing Thursday morning, have
4 him testify, do closings, I wouldn't feel too bad by asking the
5 jury to stay an extra day, given the directive that we gave
6 them at the beginning of the trial.

7 MR. STABENOW: Obviously, Your Honor, I object; but
8 beyond that, I would ask that I at least be able to speak to
9 him or get some disclosure of what the substance of his
10 testimony is since he's coming in as an expert witness, not a
11 lay witness, and that I be able to consult with my IT guy
12 before their witness takes the stand, because otherwise I can't
13 effectively cross him.

14 THE COURT: No, I wholeheartedly agree with that
15 request. So I'll ask the attorneys to coordinate when your
16 witness is available, when Mr. Stabenow can talk to him, and
17 ask that all of that occur prior to the witness taking the
18 stand.

19 MR. LYNN: Very well.

20 THE COURT: Do you know if the jury is here?

21 COURTROOM DEPUTY: We were missing one when I went
22 in and checked a few minutes ago.

23 THE COURT: If you could go check again. And then
24 as soon as everyone is here, we will begin this morning.

25 (A recess was taken from 9:12 a.m. to 9:14 a.m.)

1 THE COURT: Kelly, do you want to go ahead and get
2 the jury?

3 (The following proceedings were had in the courtroom
4 in the presence of the jury:)

5 THE COURT: Well, good morning. I'm sorry we
6 couldn't do something about the poor timing of the rain this
7 morning and getting in, but I trust that everyone made it in
8 fine.

9 I think that we're ready to proceed with a new
10 witness. Mr. Lynn, are you ready to proceed?

11 MR. LYNN: Ready to proceed, Your Honor, government
12 calls Brian Wasson.

13 - - -

14 BRIAN WASSON,
15 being first duly sworn by the courtroom deputy, testified as
16 follows:

17 - - -

18 DIRECT EXAMINATION

19 By Mr. Lynn:

20 Q. Sir, would you state your name and spell your name,
21 please?

22 A. My name is Brian Wasson; B-R-I-A-N, W-A-S-S-O-N.

23 Q. And how are you employed?

24 A. I'm a lieutenant at the Columbia Fire Department.

25 Q. How long have you been with the Columbia Fire

1 Department?

2 A. Twenty-three and a half years.

3 Q. And Lieutenant Wasson, generally speaking, what are
4 your duties there at the fire department?

5 A. I'm a lieutenant on a front-line apparatus, which is in
6 charge of fighting fires, emergency, and medical emergencies.

7 Q. I want to take you back to September 10th of 2011, the
8 early morning hours. Were you dispatched to a fire in
9 Columbia, Missouri?

10 A. We were dispatched to a general fire alarm.

11 Q. Okay. A general fire alarm?

12 A. Correct.

13 Q. Tell the jury what that is.

14 A. A general fire alarm was that there was -- an alarm
15 agency detected a fire alarm, and they dispatched one company,
16 and that was us.

17 Q. And what time were you dispatched?

18 A. Approximately 3:27 in the morning.

19 Q. 3:27 a.m. So how did you receive that dispatch?

20 A. Through the joint communications.

21 Q. And did you then respond?

22 A. Yes, we responded.

23 Q. When you say we, who are you talking about?

24 A. My crew, I have -- I'm a lieutenant, I have an
25 engineer, and then I have a firefighter.

1 Q. So there were -- a three-man crew initially responded?

2 A. Three-man, correct.

3 Q. What time did you arrive at the scene?

4 A. Approximately 3:30.

5 Q. Okay. And where did you go?

6 A. We went to South Ninth Street, 502 South Ninth Street.

7 Q. What was the apparent site of the fire?

8 A. It was the Ellis Library.

9 Q. Okay. So I assume you parked your vehicle?

10 A. We parked our vehicle on South Ninth Street, and we
11 gained access to the library on the west side of the library.

12 Q. Now, how did you gain access to the library? Were you
13 assisted by MUPD?

14 A. We used our Knox-Box, which allows us to get keys to
15 the building. Once we were into the building, we met with
16 Officer Brayer.

17 Q. All right. And where did you go into the building?

18 A. We went up to the first floor and headed north to Room
19 101.

20 Q. All right. And as you approached, what did you see?

21 A. We saw light smoke.

22 Q. Okay. And as you proceeded further, what did you see?

23 A. We had light smoke in Room 101 behind some desks. We
24 noticed that there were a couple of fires, small fires there.

25 And we also noticed that there was a security camera behind the

1 desk, and then in front of the desk was some brackets.

2 Q. So did there appear to be some property damage there?

3 A. Yes.

4 Q. So when you saw apparent property damage, what did you
5 then do?

6 A. We used fire extinguishers to extinguish the small
7 fires. And then as we went back, there was -- the smoke got
8 intense. So at this time I radioed to joint communications and
9 had them fill the box out, which is respond more companies.

10 Q. Send the whole company?

11 A. We have a commercial structure fire at this time.

12 Q. Okay.

13 A. Okay. And then my engineer and firefighter were
14 setting up to get hooked to the standpipe, and at this time we
15 realized that the sprinkler heads in the rooms behind 101 had
16 activated.

17 Q. Okay. So what did you then do?

18 A. I went out to the north doors, and I was making my
19 final -- my first alarm assignments, and that is the other
20 companies coming in, I was letting them know what we had and
21 where I wanted them to stage and what kind of equipment I was
22 going to need to fight this fire.

23 Q. So what happened next?

24 A. Officer Brayer pointed out to me that he could see
25 flames in the windows to the west of the stairwell.

1 Q. Okay.

2 A. So I went up the stairs to Room 115 and found two small
3 fires, paper type fires on desks, and I used a fire
4 extinguisher to extinguish those fires.

5 Q. How many fires did you encounter that you were able to
6 extinguish?

7 A. In Room 115 there was two. In 101 there were three
8 separate fires that we extinguished.

9 Q. And were you able to knock those down fairly quickly?

10 A. Correct.

11 Q. And you say the sprinkler system was also deploying?

12 A. Yes.

13 Q. Now, while you were there, you alluded to you saw
14 possible property damage in the library?

15 A. Yes.

16 Q. Now, what measures did you take to preserve this scene
17 there?

18 A. We let everybody know, Officer Brayer and I let
19 everybody know that this was, we considered a crime scene,
20 nobody touch the cameras. And then when the crews came in,
21 when the next crews came in, we let everybody know that's up.
22 When we have a situation like this, we try to protect the
23 property by extinguishing fires, but we also try to protect the
24 evidence also.

25 Q. Very well. I'm sorry. I'm kind of losing my voice.

1 You referenced a Knox-Box?

2 A. Correct.

3 Q. Can you tell us what that is?

4 A. A Knox-Box is placed on the buildings, and those have
5 the keys to all of the buildings. Sometimes they could be
6 keys, they could be swipe cards, there could be codes in there.
7 The Knox-Box is only accessed by the fire department; and when
8 we get on the scene and we're going to access the Knox-Box, I
9 have to let joint communications know that we're accessing the
10 Knox-Box. They document it, and we have a Knox-Box in each
11 truck, and we have to put in our personal ID code to retrieve
12 the key from the Knox-Box in the truck to open up the Knox-Box
13 on the building.

14 Q. Okay.

15 A. And then we secure the key to our wrist until we secure
16 the Knox-Box.

17 Q. And obviously the Knox-Box isn't accessible to the
18 general public.

19 A. No one, no.

20 MR. LYNN: No further.

21 THE COURT: Cross-examination?

22 - - -

23 CROSS-EXAMINATION

24 By Mr. Stabenow:

25 Q. Lieutenant Wasson, you said that when you went in,

1 first you went through the west side access; is that correct?

2 A. Correct.

3 Q. All right. And then you -- I guess that would take you
4 up some stairs, you turn left, and then go towards the north
5 entrance?

6 A. North, correct.

7 Q. When you got up there, you said there was light smoke.
8 I don't think most of us have had much fire fighting
9 experience, so what does light smoke mean to you?

10 A. Light smoke was -- excuse me, we got near Room 101, and
11 there was just a light smoke, it was -- it wasn't banking down.
12 It was just a little light smoke, you could see it; and as we
13 came in across where 101 is, behind the desk, the smoke got
14 more intense and started being a little heavier and lower.

15 Q. You said you used fire extinguishers to put out the
16 fires in 101?

17 A. Correct.

18 Q. And then you said you noticed the sprinklers were
19 running. Was that the sprinklers were running in 101 or the
20 sprinklers turned on in 101 while you were there or --

21 A. The sprinklers were activated behind the room in 101.
22 You went behind a desk, and as we came around kind of like a
23 little corridor area, the smoke intensified, and we could hear
24 a sprinkler activation back in that room.

25 Q. When you say you heard a sprinkler activation, does

1 that mean it was just turning on or you could tell it was on?

2 A. I could tell it was on. I do not know how long it had
3 been activated.

4 Q. Okay. I'm showing you here Defense Exhibit No. 1. So
5 just to point out where it says circulation 101, those were the
6 fires that were easy to put out?

7 A. Correct.

8 Q. And the sprinklers were running back more towards this
9 101B, 102 area?

10 A. I think -- 102 is where the sprinklers, where I noticed
11 the sprinklers were activated first.

12 Q. Okay. You said there were two small fires in the copy
13 area when you went back inside, that's the Room 115?

14 A. Room 115, thank you.

15 Q. Did I hear you say that they were paper fires?

16 A. It looked like paper, maybe books, and they were up on
17 the desk areas.

18 Q. Did you see any, I don't know, fuses, accelerant,
19 anything like that, or was it just some stuff burning?

20 A. Just some stuff burning.

21 Q. All right. In your experience, if papers of that type
22 are lit, how fast do they start to burn?

23 A. If they're dense books, they burn a little slower than
24 if you just crumble up some paper. This was more -- I'm not
25 sure if it was books or crumbled-up paper. It didn't appear

1 that it had been burning for a long time.

2 Q. Okay. So maybe it had been burning a minute or two,
3 not like 20 minutes or something like that.

4 A. I would say probably not.

5 Q. All right. I know you said that you saw some cameras
6 damaged, some evidence of vandalism. Did you see a broken
7 umbrella and a broken umbrella handle laying there, did you
8 happen to notice that when you went through?

9 A. I did not write it in my report, so I do not recall.

10 MR. STABENOW: Thank you.

11 THE COURT: Any redirect?

12 MR. LYNN: No redirect, Your Honor.

13 THE COURT: Sir, you may step down.

14 MR. LYNN: Debbie -- call Debbie Sorrell.

15 THE COURT: If you could come to the center of the
16 room, and then come up to the front here by the witness stand.
17 Thank you.

18 - - -

19 DEBBIE SORRELL,

20 being first duly sworn by the courtroom deputy, testified as
21 follows:

22 - - -

23 DIRECT EXAMINATION

24 By Mr. Lynn:

25 Q. Would you state your name and spell your name, please?

1 A. My name is Debbie Sorrell; D-E-B-B-I-E, S-O-R-R-E-L-L.

2 Q. And how are you employed?

3 A. I'm an assistant fire marshal for the City of Columbia.

4 Q. And how long have you been an assistant fire marshal
5 with the City of Columbia?

6 A. I've been employed there for 16 years, and I've been
7 assistant fire marshal for nine.

8 Q. And what are your duties as assistant fire marshal?

9 A. I'm the senior fire investigator, but I also conduct
10 inspections of buildings.

11 Q. With regard to your experience as a fire investigator,
12 how long have you worked as a fire investigator?

13 A. Nine years.

14 Q. And what training do you have to do that job?

15 A. Various trainings, but most importantly you have to be
16 certified by the state of Missouri, and that's through Missouri
17 Department of Public Safety.

18 Q. Now, are you, in fact, certified through the Department
19 of Public Safety?

20 A. I am.

21 Q. Now, did you have occasion to do certain fire
22 investigations related to this case?

23 A. Yes.

24 Q. Specifically, I want to take you to May 18th of 2011,
25 the early morning hours. Were you called to the scene of a

1 fire?

2 A. Yes.

3 Q. And what time did you receive the call, if you
4 remember?

5 A. May I refer to my report?

6 Q. If it refreshes your recollection.

7 A. I was dispatched at 4:22 in the a.m.

8 Q. And to what location were you dispatched?

9 A. The address was 1400 Windsor Street in Columbia,
10 Missouri, and that's the address of Audrey Webb Childcare
11 Center on the Stephens campus.

12 Q. Okay. Now, you were dispatched at 4:22. How long did
13 it take you to get there?

14 A. Usually about ten minutes.

15 Q. All right. And upon arriving there, did you meet with
16 anyone?

17 A. Yes. I met with Lisa Todd. She was the officer on
18 Snuzzle 1, and they had discovered and extinguished the fire.

19 Q. Did she brief you as to what she had done?

20 A. That a lot of smoke was inside and that they did have
21 to remove a small portion of the wall where the fire was to
22 check for extension of the fire.

23 Q. Did you then proceed to conduct your fire
24 investigation?

25 A. I did.

1 Q. And what is the first thing you did?

2 A. I conducted a 360 walk around the exterior of the
3 building; and as my method, I start from the smallest amount of
4 damage and work to the largest. I started in the basement and
5 worked my way upstairs until I arrived in Classroom 108 on the
6 first floor.

7 Q. Okay. Now, as you arrived in Classroom 108, what did
8 you notice? What did you notice?

9 A. Immediately, a stronger smoke odor, smoke staining on
10 the walls and ceiling. There was fire damage in the east,
11 southeast corner of that classroom.

12 Q. And let me show you what's been received as
13 Government's Exhibit 8. Do you recognize that?

14 A. Yes. That's the southeast corner of that classroom.

15 Q. Now, let me back up a minute. When you were down in
16 the basement, what was your purpose in going down there?

17 A. There's mechanical areas in that basement. There is a
18 sprinkler riser in that basement -- the building was
19 sprinkled -- and HVAC units.

20 Q. And what did you observe with respect to those items?

21 A. The sprinkler system wasn't monitored, it wasn't
22 installed correctly. And all of the air conditioning, heating
23 ducts and stuff, there was no smoke staining or buildup inside
24 those ducts, and the fire did not originate in the basement.

25 Q. Okay. Were you in the basement? Did you also look at

1 the electrical service panels?

2 A. I did. Nothing was tripped or in an altered position.

3 Q. Okay. So then you proceeded to Classroom 108; is that
4 correct?

5 A. That's correct.

6 Q. Now, I'll show you what's been received as Government's
7 Exhibit No. 9. What does that photograph show?

8 A. That is again the southeast corner. On the lower -- at
9 floor level, there is an old electric type heater, baseboard
10 heater. That's been removed, and that's actually the heating
11 duct now. There's an area of the carpet in front of that that
12 is burned, maybe three-by-three. There was a table sitting
13 there that firefighters had moved.

14 Q. Now, I see -- I see an electrical panel there on the
15 wall. Did you examine that?

16 A. I did. And that's actually a duplex -- it's a junction
17 box, duplex junction box. Again, all of the electrical
18 components that were in this radiant type of heater have been
19 removed. The duplex outlet, that is exposed with the plywood
20 wall behind it. There was a splitter in there, so we have two
21 duplex outlets, six-slot splitter in there, and it was melted.
22 But as you take that off, the inside of the box was in good
23 condition. The wiring was not melted or frayed or damaged in
24 any way. It was radiant heat that damaged this.

25 Q. Okay. Indicating that the electricity wasn't the cause

1 of the fire?

2 A. Nothing to do with it. And those are my only two
3 ignition sources in that area.

4 Q. Did you determine where the fire began?

5 A. Yes, away from that wall approximately three feet there
6 was a table.

7 Q. Okay.

8 A. And on top of and below the table there were items
9 stored on it and, again, firefighters pulled that table away
10 from the wall.

11 Q. Let me show you --

12 A. And that is the table that was moved.

13 Q. And for identification, that's Government's Exhibit 10?

14 A. On the edges of the table, you can see some smoke and
15 soot. You can also see a little bit of charring and deposits
16 on it. Underneath the table was some kind of artwork or
17 prints, prints that were under glass, appeared to be stacks of
18 pictures that were in frame and the frame was just burned.

19 Q. Let me show you what's been received as Government's
20 Exhibit 11.

21 A. That is the underside of the same table. At the top of
22 the picture, you can see that there's more charring than there
23 is at the bottom of the picture. This was closer to the corner
24 of that southeast class -- the southeast corner of the
25 classroom.

1 Q. Did you also notice the table containing computers
2 there?

3 A. Yeah, against the west wall, there was maybe two or
4 three long, narrow tables that were positioned against the wall
5 that had several different work stations on them.

6 Q. Let me show you Government's Exhibit No. 7.

7 A. That's it.

8 Q. And what do you notice with respect to that space in
9 between the computers?

10 A. Something is missing from there, and if the, if it was
11 a better photo, you could see a clean space on there with
12 something -- where soot had already settled on that table and
13 something was removed. Soot here, and no soot where the item
14 was removed.

15 Q. Indicating the item was removed after the fire?

16 A. Correct.

17 Q. Now, based upon your examination, did you determine the
18 nature of the fire there at Stephens?

19 A. The nature of the fire was intentional.

20 Q. And the origin of the fire was where?

21 A. In the southeast corner of the classroom.

22 Q. And you couldn't identify any accidental ignition
23 sources; is that correct?

24 A. There were no -- of the two possible accidental origins
25 of the fire, huh-uh. So it was intentionally set, and the

1 cause of the fire was arson.

2 Q. Next directing you to September 10th of 2011, the early
3 morning hours, did you respond to another fire to conduct an
4 investigation?

5 A. I did.

6 Q. And when were you notified of that fire?

7 A. 4:04 a.m.

8 Q. And did you immediately respond?

9 A. I did, to provide the origin and cause analysis.

10 Q. And did you go to the Ellis Library on the MU campus?

11 A. I did.

12 Q. And upon arriving there, did you make contact with
13 other firefighters?

14 A. I did. I met with Marc Wright outside the north side
15 of the building on the Lowry Mall, and he explained that there
16 were several ignition source, several ignition places
17 throughout one of the upper floors, and that I couldn't go in
18 the building yet.

19 Q. Now, so you had to wait outside for some time?

20 A. I did.

21 Q. Do you recall about how long you had to wait before you
22 were allowed into the building?

23 A. Twenty minutes, thirty minutes.

24 Q. Okay. And upon entering the building, what did you see
25 generally?

1 A. I entered the building with MUPD, University of
2 Missouri Police Department detectives, and there was smoke.
3 There was smoke throughout. Again, through methods we worked
4 from the smallest damage to the worst damage in the fire, and
5 we went to the west.

6 Q. Okay. Let me show you what's been marked collectively
7 as Government's Exhibits 25 through 48. Could you look through
8 those photos just to see whether you recognize them?

9 A. This is the path that I took as I entered through the
10 north door in the security gates.

11 Q. Just right now, do you recognize the photos?

12 A. I do.

13 Q. You took those photos?

14 A. Yes.

15 Q. Do they fairly and accurately depict the scene as you
16 encountered it?

17 A. Yes.

18 MR. LYNN: Your Honor, I would offer Government's 25
19 through 48.

20 MR. STABENOW: No objection.

21 THE COURT: Government's Exhibits 25 through 48 will
22 be admitted.

23 (Government's Exhibits 25-48 were admitted into
24 evidence.)

25 BY MR. LYNN:

1 Q. Let me show you first Exhibit 25. Do you recognize
2 that?

3 A. I do. That's the north entrance into the Ellis Library
4 on the MU campus.

5 Q. Government's Exhibit No. 26, do you recognize that?

6 A. Yes, sir. That's right inside the doors, those north
7 doors.

8 Q. So you're facing south?

9 A. That's correct. So I could go straight ahead down the
10 hallway, to the west or to the east.

11 Q. Government's Exhibit 27, do you recognize that?

12 A. That's just on the other side of those security gates.
13 If your book isn't checked out, they beep if you're bringing
14 anything in or out. It is facing south, I believe.

15 Q. Government's Exhibit 28?

16 A. This is facing west, again, right inside those north
17 doors looking down the west hallway.

18 Q. Did you look in office No. 115?

19 A. Yes.

20 Q. And were you able to locate any fire sources there?

21 A. Yes.

22 Q. Let me show you Government's Exhibit 29. What does
23 that show?

24 A. Copy service and book sale room, and that is office
25 labeled 115.

1 Q. Showing you next Government's Exhibit No. 30. Do you
2 recognize what that shows?

3 A. That's right inside the room, the countertop showing
4 the reception desk, and I continued further to the north,
5 around that reception desk.

6 Q. Government's Exhibit 31, what does that show?

7 A. That's as I continued around that reception desk, and
8 there's two small fires in this area. And you could see smoke
9 on the wall underneath a white tiger, but the next photo will
10 show the first one that I approached.

11 Q. Showing you Exhibit 32, what does that show?

12 A. This is a bookcase with hardly any items on it at all;
13 but on the top left of the photo, there is a corkboard. The
14 corkboard has cloth on it, and the cloth has been burned.
15 There's some fall-down paper on the top shelf of the bookcase
16 of things that fell from the corkboard.

17 Q. Can you touch that screen, if you would, where you're
18 talking about? Just touch it and see --

19 A. There's a red dot on it.

20 Q. Okay. And what did you notice there?

21 A. This is a corkboard. The second red dot is items that
22 fell down off the corkboard as they burned and decomposed.
23 There's no electricity in this area. There are no candles in
24 this area, no cooking. There's no ignition source in that
25 area.

1 Q. Leading you to conclude what?

2 A. That this was an intentionally set fire.

3 Q. Now, could you tell what the fuel source was?

4 A. The ignition, the fuel source was probably just paper.
5 Just very common paper that was hanging on the corkboard.

6 Q. No evidence of accelerants or anything like that?

7 A. None.

8 Q. And No. 33, what does that show?

9 A. That is the same, the same corkboard where you can see
10 items, paper items that burned on the cloth-covered corkboard
11 and fell down onto the bookcase. But, again, there's no
12 electricity in the area.

13 Q. Can you touch clear? There you go. Anything further
14 in that photo?

15 A. No.

16 Q. And Government's Exhibit 34, what does this show? Is
17 this that same area?

18 A. It is the same area.

19 Q. Different perspective?

20 A. Red dot on the fire we just spoke about. There's
21 another fire right here. And the green item resting on the
22 bookcase is a time clock, and it is plugged into the
23 electricity. Behind it there was a poster, there's another
24 corkboard here, in this area is my burn area.

25 Q. And, again, what did you find with respect to that fire

1 in terms of accidental ignition sources?

2 A. Besides the time clock, there were no other ignition
3 sources in that area. The time clock was virtually undamaged.
4 The cord was in good shape, it was still working.

5 Q. Leading you to conclude what in terms of the cause of
6 the fire?

7 A. Again, that this fire was intentionally set by an
8 outside source.

9 Q. Showing you Government's Exhibit 35, do you recognize
10 what that depicts?

11 A. I do.

12 Q. What does that -- and clear your screen, if you would,
13 from -- there you go.

14 A. This is a wooden rolling cart that is in the library
15 behind the -- let me look at the name, please, circulation
16 desk, and the reserve desk. So on the east side of the north
17 entrance where I came into the library, this is another area
18 where you reserve your books, pretty much employees only back
19 here. But this is a sign-out book for reserving and obtaining
20 materials.

21 Q. And what do you see there?

22 A. I see where somebody took a heat source and put it on
23 the corner of the pages.

24 Q. Same question. Any indication of accidental ignition
25 sources there?

1 A. There's nothing in that area that would cause an
2 accidental fire.

3 Q. Clear your screen, if you would. Showing you next
4 Government's Exhibit 36. Is that that same book you were
5 talking about?

6 A. It's the same book, so you could see a light over here
7 on the left side, lights over here on the right side. Nothing
8 would make that paper ignite by itself.

9 Q. Clear your screen, if you would. Showing Government's
10 Exhibit 37. Do you recognize what that shows?

11 A. This is the room, the office just behind the
12 circulation/reserve desk. I don't believe it has a room
13 number. It's a work station. From the ceiling, you could see
14 a large yellow hose. Actually, firefighters placed that there.
15 The sprinkler system was still in service. We had not turned
16 the water off. And to limit the water damage in the building,
17 we had hoses running out the window because we couldn't turn
18 off the sprinkler because fires were still occurring and we
19 wanted to limit the water damage, so that's why that's there
20 and the two ceiling tiles are gone. That's actually right
21 underneath of a sprinkler head.

22 Q. All right. Clear your screen, if you would.
23 Government's Exhibit 38.

24 A. Mr. Lynn, could we go back to that picture we just
25 looked at?

1 Q. 37?

2 A. Thank you. I wanted to make note, this area in through
3 here, there was fire there, and the next picture will show some
4 fall-down. I wanted to make sure you knew that this is where
5 the fire was in that room that initiated that sprinkler
6 activation.

7 Q. Very well.

8 A. Thank you.

9 Q. And the next photo shows the envelopes you were talking
10 about, 38?

11 A. That's correct. So these items are on the floor. And
12 you can see there's water on the floor from that sprinkler
13 activation, and all of these combustibles have fallen down from
14 the shelves. The edges, the edges of these envelopes are
15 burned. They were on the shelf stored in an upright position.

16 Q. Showing you next Government's Exhibit 39. What does
17 that show?

18 A. That is the top shelf. This could have been one
19 ignition, it could have been one light, one lighter, or it
20 could have been more than one.

21 Q. Okay.

22 A. As far as proving that would be very difficult,
23 depending on which direction the HVAC was blowing, things of
24 that nature. But certainly there's nothing in this area that
25 would cause an accidental fire of the top two shelves of

1 envelopes.

2 Q. Leading you to conclude that it was intentional?

3 A. Again, an arson.

4 Q. Showing you next Government's Exhibit No. 40. Do you
5 recognize what that shows?

6 A. Yes, this office is just east of the reserve desk.
7 Office 102, circulation offices, this is looking in from the
8 hallway to the reception area of the office. These two rooms
9 are also connected.

10 Q. Okay. Did you find fires in there?

11 A. I did.

12 Q. Showing you Government's 41. Do you recognize that
13 photograph?

14 A. This is just inside Office 102, the work area 102
15 looking north.

16 Q. Now, was there water on the floor there?

17 A. There is, we had a sprinkler activation in this room
18 also.

19 Q. Next showing you Government's Exhibit 42.

20 A. I'll point to the bottom right corner, and we have
21 cardboard boxes full of stored items on the other side of this
22 cubicle. The reception desk is over here. So this is on the
23 south wall, but there's old computer disks, paper, lesson
24 plans, many pieces of paper that were very wet and some
25 charred.

1 Q. And does Exhibit 43 show that same scene?

2 A. It does.

3 Q. But a little closer?

4 A. It does. So you can see the drawers that held the old
5 disks, ceiling tiles that fell from the ceiling when the
6 sprinkler activated, and the floor is wet with the sprinkler
7 activation.

8 Q. And, again, showing you Government's 44, is that that
9 same area?

10 A. The same area.

11 Q. What did you observe with respect to the metal on the
12 drawers there?

13 A. Some of the paint from the metal was burned. It had
14 kind of a rusted appearance, an oxide appearance usually caused
15 from direct flame contact.

16 Q. And again, any accidental ignition source detected
17 there?

18 A. There's no candles in the area, there's no outlets
19 behind the storage, there was just nothing.

20 Q. Showing you Government's Exhibit 45. What does that
21 show?

22 A. This is a cubicle, approximately 18 feet from the boxes
23 with the computer disk that had burned. In this cubicle, you
24 can see the vertical file folders had been set on fire. There
25 is a computer -- everything was at a distance, but there was no

1 ignition source in this area.

2 Q. Leaving you to conclude what?

3 A. That this was an intentionally set fire.

4 Q. Turning next to Government's Exhibit 46. What does
5 that photograph show?

6 A. I believe that's the same cubicle.

7 Q. Showing debris on the floor there?

8 A. That's correct. The fall-down and stuff on the floor,
9 I can't tell if the fire is right there or if it's over here.

10 Q. Okay.

11 A. Perhaps another view.

12 Q. Showing you Government's Exhibit 47. Do you recognize
13 what that shows?

14 A. I do. This is room -- Room 102 was connected to Room
15 103 where this is. There is also -- 103 can be accessed from
16 the hallway, as well. Cardboard boxes that are on top of a
17 wooden rolling cart. The sprinkler above did activate. What
18 we found in here were cardboard boxes and just combustible
19 Class A items.

20 Q. No evidence of accidental ignition sources?

21 A. There was nothing in this area.

22 Q. Next showing you Government's Exhibit 48.

23 A. This is the corner of that same room, the boxes are
24 right down here? And it just, the fire -- obviously heat
25 rises, we do have an outlet right here that could produce a

1 spark or an arc. The wall plate is still in good shape. I was
2 able to take the small bolts out of the wall plate, the
3 junction box cover, and examine the insides. Everything was in
4 good shape. There were no blisters on the insulation of the
5 wire or tapering or beading.

6 Q. So no electrical cause of the fire?

7 A. That's correct.

8 Q. And your conclusion as to the cause of the fire?

9 A. That it was intentionally set.

10 Q. Let me show you a diagram marked Government's Exhibit
11 92. Do you recognize this? Does that appear to be an overview
12 of the library?

13 A. Yes.

14 Q. Does that fairly and accurately depict the library, at
15 least the rooms as they related to each other?

16 A. It appears to be, yeah, a floor plan.

17 MR. LYNN: Offer Government's 92, Your Honor.

18 THE COURT: Any objection?

19 MR. STABENOW: No objection.

20 THE COURT: Government's 92 will be admitted.

21 (Government's Exhibit 92 was admitted into evidence.)

22 BY MR. LYNN:

23 Q. I'm going to show you Government's 92. And if you
24 would just go in -- as you've figured out the technology pretty
25 well.

1 A. Uh-huh.

2 Q. Just indicate on the diagram the sites where you
3 located fires.

4 A. Okay. Again, I came in through the north entrance. I
5 had a fire in copy services, 115; I had one right -- let me
6 move it over a little bit. Right there. Can you see my arrow?

7 Q. Uh-huh.

8 A. And another one right here.

9 Q. Okay.

10 A. So two in Room 115.

11 Q. Okay.

12 A. To the right of the screen in Room 101, there's a
13 countertop out here. That was the rolling cart. That was fire
14 No. 3, the sign-out paperwork on the log on the binder.

15 Q. Okay.

16 A. Further to the north in reserve, 101B, we had storage
17 of envelopes on the shelf, and a lot of those had fallen down,
18 as well. In access services next-door in 102 in the, near the
19 corner, we had cardboard boxes that were stored next to a
20 cubicle with the old-time computer disks and stuff, and then we
21 also had a vertical file folder in another cubicle that was on
22 fire.

23 Q. Okay.

24 A. Continuing further to the east in Room 103 in the
25 corner by the door was the cardboard on the roly cart.

1 Q. So seven fire sites in total?

2 A. That's correct.

3 Q. And as to all, you were able to eliminate any
4 accidental causes; is that correct?

5 A. I was able to eliminate them.

6 Q. And do they all appear to be available-material kind of
7 fires?

8 A. Yes.

9 MR. STABENOW: Before you clear that one, can you
10 have the courtroom deputy print it?

11 MR. LYNN: Defense is requesting a printout. And we
12 have no further questions, Your Honor.

13 THE COURT: Mr. Stabenow, if you could hold off just
14 for a second so we could get it printed.

15 MR. STABENOW: It's too late now.

16 THE COURT: You can go through and ask her to redo
17 that testimony if you want it preserved. I think you need a
18 couple of advanced degrees in order to be able to operate this.

19 MR. LYNN: I'm still figuring this part out.

20 COURTROOM DEPUTY: Now I find it. Sorry.

21 MR. STABENOW: It's all right.

22 THE COURT: I'm sorry. You may proceed. I'm still
23 trying to figure this out.

24 MR. STABENOW: I need the AV system back up in order
25 to ask my questions.

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CROSS-EXAMINATION

1
2
3 By Mr. Stabenow:

4 Q. Okay. Going back to the fire at the Audrey Webb
5 building.

6 A. Okay.

7 Q. I'm going to put on prosecution Exhibit No. 8 here,
8 zoom out of it. And you said that was -- I guess here in the
9 picture, the brown table is the table that you said the fire
10 was underneath. It had been pulled back from the wall prior to
11 your arrival by the firefighters, and that that damaged area
12 back there in the corner is where the table had been sitting;
13 is that correct?

14 A. Close to it, yes.

15 Q. Okay. Now, the actual -- the walls are ripped out, and
16 that was done by your firefighters trying to make sure there
17 wasn't an electrical fire going on behind the walls.

18 A. That's correct.

19 Q. Why didn't we see similar stuff in the Ellis Library
20 fires? Why weren't those walls pulled out or ripped out like
21 this was?

22 A. They weren't damaged like this one was.

23 Q. So just there was not as much damage?

24 A. That's correct.

25 Q. Okay. I'm going to put now prosecution Exhibit No. 7

1 on. This is that picture of the computer equipment. Now,
2 Mr. Coleman is the person who actually took this picture,
3 correct?

4 A. He is.

5 Q. All right. And you said that this was, that the
6 computer would have been taken after the fire because of the
7 clean imprint on the tables?

8 A. Correct.

9 Q. How do you know that isn't like a layer of dust? I
10 mean, I think many of us might have offices where if we moved
11 our computer equipment there would be a similar pattern of dust
12 and clean.

13 A. And my office gets dusty, as well, but soot is black.

14 Q. Okay.

15 A. And this was a paper that had burned, so it puts off a
16 lot of soot.

17 Q. So how long would the fire have had to be -- how long
18 would there have had to be smoke in the air and everything else
19 in order to put down this amount of soot before somebody takes
20 it away and leaves an imprint?

21 A. Not very much at all because it was paper that was
22 burning. A lot of the items were paper and cardboard that put
23 off a lot more ash.

24 Q. Now, you didn't mention any of this in your report, did
25 you?

1 A. In --

2 Q. In the fire report that you issued, you didn't mention
3 anything about a computer or soot being on the table or that
4 being an indicator that the computer was taken after the fire
5 or anything like that?

6 A. No. The only thing that I put in my report was when I
7 met with security the next morning, they said that a computer
8 was missing and that their IT department was able to find out
9 what time the computer was unplugged from the wall.

10 Q. I'm not asking about that. Just did you mention in
11 your report that this computer, that the soot here shows that
12 the computer was taken after a fire?

13 A. I did not. Just what I just told you about the
14 computer being unplugged at a certain time.

15 Q. Returning to Prosecution 32, it shows the two fires in
16 the copy room.

17 A. Uh-huh.

18 Q. And up here in the upper right-hand corner, there's a
19 green square object. That's the clock that I'm pointing at.

20 A. The time clock.

21 Q. You said it was still working fine?

22 A. That's correct.

23 Q. Are you able to tell how long that fire had been
24 burning?

25 A. No. I know that the items that did burn burned

1 quickly, you know, pieces of paper with lots of oxygen around
2 them.

3 Q. Is this something that would take 20 minutes to burn or
4 just --

5 A. Usually quicker than that.

6 Q. You light it, and you want to back up pretty quickly.

7 A. It's not going to poof, it's a piece of paper, but it
8 doesn't take very long.

9 Q. Okay. Here is Defense Exhibit No. 1. This is kind of
10 a zoomed-in section of that map that you talked about with Mr.
11 Lynn.

12 A. Yes.

13 Q. Do you recognize it as the layout?

14 A. Yes.

15 Q. All right. Now, we talked about some fires in work
16 area 102 and this -- it's hard to read, but ILL Office 103.
17 ILL Off, I think it stands for interlibrary loan office 103.
18 Do you see that section?

19 A. I do.

20 Q. And going now to -- going to go back and forth here
21 real quick. Government's Exhibit 40, do you see that?

22 A. Okay.

23 Q. And then we go back to Defense Exhibit No. 1. That
24 picture was taken right here at the bottom of work area 102
25 where this little green door is indicated; is that correct?

1 A. Yes.

2 Q. And Government's Exhibit 48, this fire with the light
3 switch, and we see a door through a window, that was taken, on
4 Defense Exhibit No. 1, at this doorway at the bottom of the
5 interlibrary loan office that leads out into the hallway; is
6 that correct? Not -- standing inside the door looking back --

7 A. Almost. The direction is kind of like this. You can
8 kind of see the door from 103. I'm sorry, 102.

9 Q. So put them next to each other. There on the left,
10 you're seeing the door that I'm pointing at here that's at the
11 bottom of --

12 A. I believe that's a real good depiction, yes.

13 MR. STABENOW: Okay. Just a moment.

14 Q. Are you able to -- were you able to tell which fire was
15 in this 101, 102, 103 area, what order the fires were set in?

16 A. No, they were all extinguished by the time I arrived.
17 I know what the firefighters told me, but they were all
18 extinguished by the time I arrived.

19 MR. STABENOW: Thank you. Nothing further at this
20 time.

21 THE COURT: Any redirect, Mr. Lynn?

22 MR. LYNN: No redirect.

23 THE COURT: Ma'am, you may step down.

24 THE WITNESS: Thank you.

25 MR. LYNN: Julie Rogers.

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JULIE ROGERS,

being first duly sworn by the courtroom deputy, testified as follows:

- - -

DIRECT EXAMINATION

By Mr. Lynn:

Q. Ma'am, would you state your name and spell your name, please?

A. Julie Rogers; J-U-L-I-E, R-O-G-E-R-S.

Q. Miss Rogers, what is your employment?

A. I am assistant head of security at Ellis Library, University of Missouri.

Q. And as assistant head of security, what are your responsibilities there?

A. I run the daily operations of the security department, direct report of all of the security officers, full and part-time.

Q. Now, is Ellis Library equipped with surveillance cameras?

A. Yes, it is.

Q. Do you have responsibilities related to that?

A. I do, I'm accountable for training all officers.

Q. Okay. And are you familiar with equipment?

A. Yes, I am.

1 Q. Surveillance equipment? And back on September 10th of
2 2011, the morning hours, were you called into the library?

3 A. Yes, I was.

4 Q. And do you recall what time you arrived at the library?

5 A. 4 -- about 4:05 a.m.

6 Q. Upon your arrival, what were you requested to do?

7 A. I was requested to look on our surveillance system at
8 all of our cameras and see if we could see anybody that was in
9 the building.

10 Q. And did you have a particular time frame that you were
11 reviewing, that you were looking at?

12 A. Initially, yes. It was between 3 a.m. and 3:45 a.m.

13 Q. Okay. So your initial focus was a little more limited;
14 is that correct?

15 A. Yes, it was.

16 Q. Then ultimately, did you review the time frame from the
17 previous evening to the early morning hours?

18 A. Yes, I did. From 8:15 p.m. on 9/9/11, throughout that
19 entire evening until 9/10/11 at 4:15 a.m.

20 Q. Okay. So I suspect that took a little bit of time.

21 A. Yes, it does.

22 Q. And how many cameras did you have to review?

23 A. I reviewed -- give me a second here. I reviewed ten
24 cameras.

25 Q. Now, let me show you what's been received as

1 Government's Exhibit 92. Do you recognize that diagram?

2 A. Yes, I do.

3 Q. What does that diagram show?

4 A. It's the first floor of Ellis Library.

5 Q. I want you to indicate for us with a stylus where those
6 cameras were positioned on that day.

7 A. The cameras on this floor, there's a camera right
8 there, there is a camera right here, there's a camera right
9 here.

10 Q. Backing you up --

11 A. I'm sorry.

12 Q. On the first camera you indicated, is that camera
13 designated a certain number or name?

14 A. Yes, this is camera No. 7. It's also called the
15 birdcage.

16 Q. Okay. And what perspective does that camera give you?

17 A. It shoots from the hanging point north, so it would
18 show this area.

19 Q. All right. The second camera that you designated --
20 the second camera you've designated, did it have a particular
21 name and number?

22 A. This is camera No. 9, the north door.

23 Q. Okay. And what perspective does that --

24 A. It --

25 Q. -- survey?

1 A. It's pointed here, and it points out the north door, so
2 it shows our north door entrance out into the foyer.

3 Q. The next camera you've designated?

4 A. This is camera No. 16, and it shows, from this vantage
5 point it covers this whole area here.

6 Q. Okay.

7 A. And it comes back through here.

8 Q. And what is the next camera?

9 A. This is -- we have two cameras in our circulation area.
10 We have camera No. 5, and it's actually indicated as north desk
11 camera because it points from the circulation wall and it
12 shoots out this way.

13 Q. Okay.

14 A. And this is the next camera, it's camera No. 6, and
15 it's called east circ for east circulation, and its vantage
16 point goes through here.

17 Q. Now, is that all of the cameras or -- are those all the
18 cameras that were operational, operating back on September 10th
19 of 2011?

20 A. Yes, these are all of the cameras on the first floor.

21 Q. On that floor. Other floors were also equipped with
22 cameras?

23 A. Yes, they were.

24 Q. Where were other cameras located?

25 A. On -- there were other cameras on the first floor and

1 it's not, it's not on this map, but there are four cameras on
2 the first floor on the south side, and there is a camera on the
3 second floor outside of Room 213, that's the name of that
4 camera. And there are several cameras on our ground level.

5 Q. Okay. Now, are there cameras situated near or by exits
6 or entrances?

7 A. Yes, there are. Our -- I can't show you on this map.

8 Q. Just describe.

9 A. Yes. At our west entrance of the library, there are
10 two cameras. Also when you enter our west entrance, it goes
11 onto the ground level. There are three cameras on that floor
12 outside of our security office. There's a camera at our
13 loading dock entrance and the hallway leading from that loading
14 dock entrance. There is a camera out the east entrance. And
15 that would be about the 16 cameras.

16 Q. Sixteen cameras total throughout --

17 A. Yes.

18 Q. Did you have occasion to review all of the
19 surveillance?

20 A. Yes, I did.

21 Q. To the best of your knowledge, were those cameras
22 operating properly that evening?

23 A. They were.

24 Q. Were the surveillance cameras operating properly?

25 A. Yes, they were operating properly.

1 Q. Okay. Now, did you have occasion to make or preserve
2 copies of certain surveillance?

3 A. Yes, I did.

4 Q. Let me show you what's been marked as Government's
5 Exhibit No. 99. Do you recognize that disk?

6 A. Yes, I do.

7 Q. You've had occasion to review that disk?

8 A. Yes, I did.

9 Q. Does that disk contain certain surveillance video that
10 you preserved?

11 A. Yes, it contains all the surveillance video that I just
12 explained.

13 Q. Okay. Now, was there a particular time frame that is
14 preserved on this disk?

15 A. Yes, from 8:15 p.m. on 9/9, 2011, to 9/10, 2011, at
16 3:25 a.m.

17 Q. Now, why did you terminate your preservation at 3:25?

18 A. It was actually 3:24 and 28 seconds when the suspect
19 left, was leaving the building, and we got him on camera
20 leaving the building.

21 Q. But did you have occasion personally to review all of
22 the surveillance?

23 A. Yes, I reviewed all of the surveillance until 4:15 a.m.

24 Q. Did you see yourself arrive on video?

25 A. Yes, I did.

1 Q. Did you see other library personnel arrive?

2 A. I saw -- I saw members of the fire department, I saw
3 members of MUPD, university police; I saw myself and several
4 other library employees enter the building.

5 Q. Did you see Officer Brayer arrive?

6 A. Yes, I did.

7 Q. Do you recall about what time he arrived?

8 A. He arrived through the west entrance, and that was at
9 3:29, and he was on camera again at the north entrance at 3:30
10 a.m. -- excuse me. 3:30 a.m.

11 MR. LYNN: Your Honor, I'm going to offer
12 Government's Exhibit 99.

13 THE COURT: Any objection?

14 MR. STABENOW: No, Your Honor.

15 THE COURT: Government's Exhibit 99 will be
16 admitted.

17 (Government's Exhibit 99 was admitted into evidence.)

18 MR. LYNN: Do you want a copy of that?

19 MR. STABENOW: No.

20 THE COURT: Could you clear that?

21 THE WITNESS: Undo?

22 (So done.)

23 MR. LYNN: That doesn't sound good.

24 BY MR. LYNN:

25 Q. All right. Now, do you see on the display in front of

1 you, does that appear to be my desktop?

2 A. Yes, it is.

3 Q. And does that appear to -- have I opened the disk
4 there?

5 A. Yes, Drive E, fire video.

6 Q. Okay. Now, the first folder designated fire
7 surveillance, what is that file?

8 A. That file contains five different sets of video on
9 different cameras that I spoke about earlier, camera 7.

10 Q. Spanning what time frame?

11 A. Spanning from 8:15 p.m. on 9/9/11 to 3:25 a.m. on
12 9/10/11.

13 Q. How about the second file called fire suspect video
14 footage?

15 A. That's different segments of time when the suspect's
16 caught on camera.

17 Q. Okay. I'm going to open that folder, and what do I see
18 there?

19 A. The GE Navigator is the system that we play our
20 surveillance from, and the other videos, the other files are
21 segments of video from different cameras.

22 MR. LYNN: Your Honor, I'm going to request leave to
23 play portions of the video at this time.

24 THE COURT: Any objection?

25 MR. STABENOW: No objection, Your Honor.

1 THE COURT: You may proceed.

2 BY MR. LYNN:

3 Q. All right. I've activated the player, hopefully it
4 will work.

5 A. Yes.

6 Q. Enlarge that window so we have presented to us a play
7 list; is that correct?

8 A. Yes, it's a play list of two videos at camera 16,
9 camera 9, camera 6, and camera 5.

10 Q. I'm going to select the first item on the play list.
11 It's designated 20110910-030653 from camera 16. And, again,
12 refresh our memory, what is camera 16?

13 A. Camera 16 is on our north entrance from -- viewing
14 inside the north entrance, so you'll see the book detectors
15 leaving the north entrance of Ellis Library.

16 Q. All right.

17 (Playing video.)

18 Q. That video commences approximately what time?

19 A. When does it finish or when does it start?

20 Q. 3:06, when it commenced, when it began.

21 A. 3:06:53.

22 (Playing video.)

23 Q. What do we see there?

24 A. That's the suspect walking in front of camera 16 with a
25 pipe.

1 Q. Did you catch anything of significance from there on?

2 A. It will catch the suspect exiting in front of the book
3 detectors and trying to exit the north doors at 3:24.

4 Q. I mean this particular -- okay. That will be the next
5 segment, though?

6 A. Yes.

7 Q. Okay. All right. I'm going to stop the video just
8 one -- I'm going to show you Government's Exhibits 49, 50, and
9 51. Do you recognize these?

10 A. Yes. They are still shots from the video that we just
11 saw.

12 MR. LYNN: Okay. Your Honor, I'm going to offer
13 those three exhibits, again, 49, 50, and 51.

14 MR. STABENOW: No objection, Your Honor.

15 THE COURT: Exhibits 49, 50, and 51 will be
16 admitted.

17 (Government's Exhibits 49, 50, and 51 were admitted
18 into evidence.)

19 BY MR. LYNN:

20 Q. Showing you Government's Exhibit 49. Again, what does
21 that show?

22 A. The suspect with a pipe walking in front of camera 16.

23 Q. And what does the time stamp reflect?

24 A. 9/10/11 at 3:07 and 11 seconds, a.m.

25 Q. And Government's 50, what does that show?

1 A. It shows him continuing through camera 16 viewing at, I
2 can't quite see the time. Camera is -- on 9/10/11 at 3:07 a.m.
3 and 12 seconds. And, again, it's camera 16, the north exit.

4 Q. Does he appear to have an item in his hand?

5 A. Yes, he has a pipe.

6 Q. Do you recognize that pipe?

7 A. Yes, I do. It's part of a quiet sign that was up in
8 Room 202 on the second level that was ripped apart.

9 Q. Okay. And showing you Government's Exhibit 51.

10 A. That picture shows the suspect Kelley leaving, about to
11 leave the viewing of camera 16 at, on 9/10/11 at 3:07 and 13
12 seconds, a.m.

13 Q. Can you tell which direction he's headed?

14 A. Yeah, he's actually heading east towards the
15 circulation area, which would be the two other cameras I spoke
16 of, camera 5 and camera 6.

17 Q. Okay. I'm going to deselect that, and I'm going to
18 select the next one, and that shows 20110910-030719 from camera
19 5; is that correct?

20 A. Yes.

21 Q. And what does that, what is that clip?

22 A. It's a, the first camera in our circulation area, it's
23 actually the north desk camera that points out from
24 circulation, viewing south.

25 Q. Okay. I'm going to play that.

1 (Playing video.)

2 A. That was the suspect.

3 (Playing video.)

4 Q. All right. We've reached the end of that segment; is
5 that correct?

6 A. Yes, that's correct.

7 Q. That was pretty quick. So let me show you Government's
8 Exhibits 52, 53, and 54. Do you recognize those?

9 A. Yes, I do. They are still shots from camera 5 that we
10 just watched video on.

11 MR. LYNN: Offer Exhibits 52, 53, and 54, Your
12 Honor.

13 MR. STABENOW: No objection.

14 THE COURT: Exhibit 52, 53, and 54 will be admitted.

15 (Government's Exhibits 52, 53, and 54 were admitted
16 into evidence.)

17 BY MR. LYNN:

18 Q. Showing you Government's Exhibit 52.

19 A. That is camera 5, the north desk camera. It's from
20 9/10/11 at 3:07:14 a.m., and it shows suspect Kelley with a
21 pipe in his hand heading towards the circulation desk.

22 Q. Okay. Exhibit 53?

23 A. That is camera 6, which is an east circulation camera.
24 And it's on 9/10/11 at 3:07 and 14 seconds a.m. and it shows,
25 can I use -- it shows the suspect --

1 Q. Feel free to point.

2 A. It shows the suspect going around the bin here. Our
3 camera 5 is the previous picture that was seen, this is from
4 camera 6.

5 Q. And finally Government's Exhibit 54.

6 A. That shows suspect Kelley at 3:07:15 a.m. entering the
7 circulation area on 9/10/11, and that's from camera 5.

8 THE COURT: Mr. Lynn, we've been going for about an
9 hour and 15 minutes. Is this a good stopping point to take a
10 break?

11 MR. LYNN: It would be a good time.

12 THE COURT: Okay. Why don't we go ahead and take a
13 15-minute recess.

14 (The following proceedings were had in the courtroom
15 out of the presence of the jury:)

16 THE COURT: My thought is to take a 15-minute
17 recess, reconvene at about ten till 11:00, and go for another
18 hour and 15 minutes, and then break for lunch around noon,
19 whenever it's a good breaking point with the witnesses.
20 Anything else to take up at this point?

21 MR. STABENOW: No.

22 MR. LYNN: No.

23 THE COURT: Okay. I'll see you in 15 minutes.

24 (A recess was taken from 10:36 a.m. to 10:51 a.m.)

25 THE COURT: Ready to call the jury in?

1 MR. STABENOW: Yes.

2 THE COURT: Mr. Lynn?

3 MR. LYNN: Yes. Judge, should she resume the
4 witness stand?

5 THE COURT: Yes, please.

6 (The following proceedings were had in the courtroom
7 in the presence of the jury:)

8 THE COURT: Mr. Lynn, you may resume.

9 MR. LYNN: Thank you, Your Honor.

10 - - -

11 JULIE ROGERS,

12 having been previously duly sworn by the courtroom deputy,
13 testified further as follows:

14 - - -

15 RESUMED DIRECT EXAMINATION

16 By Mr. Lynn:

17 Q. Miss Rogers, I'm selecting the third item on the play
18 list. Attempting to select it. And it is, for the record,
19 20110910-030727 from camera 6. Are you familiar with that
20 video excerpt?

21 A. Yes, I am.

22 Q. And to what camera does that relate?

23 A. Camera 6 is also the east circulation camera, east circ
24 camera.

25 Q. Hit play.

1 (Playing video.)

2 Q. Is that the end of that excerpt?

3 A. Yes, it is.

4 Q. That went pretty fast, so let me show you some stills.
5 Show you Government's 56 -- or 55, 56, and 57. Do you
6 recognize those items?

7 A. Yes, I do. They're still shots from the east
8 circulation camera No. 6.

9 Q. Based upon the excerpts that we just observed, correct?

10 A. Yes, based on the video.

11 MR. LYNN: Offer 55, 56, and 57, Your Honor.

12 MR. STABENOW: No objection.

13 THE COURT: Exhibit 55, 56, and 57 will be admitted.

14 (Government's Exhibits 55, 56 and 57 were admitted
15 into evidence.)

16 BY MR. LYNN:

17 Q. Show you Government's Exhibit 55. What does that
18 photograph show?

19 A. It shows suspect Kelley on 9/10/11 at 3:07 and 15
20 seconds a.m., camera 6, east circulation.

21 Q. Can you ascertain where he's headed?

22 A. He's headed behind the circulation desk.

23 Q. Does he appear to have an object in his hand?

24 A. He still has the pipe in his hand.

25 Q. Exhibit 56?

1 A. It is, again, east circ camera No. 6 on 9/10/11 at
2 3:07:16 seconds a.m., shows suspect Kelley entering the
3 circulation desk.

4 Q. Government's Exhibit 57?

5 A. Again, east circ camera, camera No. 6, on 9/10/11 at
6 3:07:29 seconds a.m. It shows suspect Kelley in the bottom
7 corner.

8 Q. Now, did the video depict anything at 3:09:37?

9 A. 3:09?

10 Q. You don't have any?

11 A. I don't have any time at 3:09. I'm sorry.

12 Q. Okay. Go back to video. Now, I'm deselecting camera
13 6, going down to the next one on the play list, which is
14 20110910-032359 from camera 9. What does that excerpt depict?

15 A. That is camera No. 9, points from inside the library
16 out the north door. It's the north door camera, as well. And
17 it shows suspect Kelley trying to exit the building.

18 (Playing video.)

19 Q. Is that the end of that video excerpt?

20 A. Yes, it is.

21 Q. Approaching, show you Government's Exhibit 66 and 67.
22 Do you recognize those?

23 A. Yes, they're still shots from camera No. 9, also known
24 as the north door camera, on 9/10/11 showing suspect exiting --
25 or trying to exit, excuse me.

1 MR. LYNN: Offer Government's Exhibit 66 and 67,
2 Your Honor.

3 MR. STABENOW: No objection.

4 THE COURT: Exhibits 66 and 67 will be admitted.

5 (Government's Exhibits 66 and 67 were admitted into
6 evidence.)

7 BY MR. LYNN:

8 Q. Showing you Government's Exhibit 66. Do you recognize
9 that?

10 A. Yeah, it's the still shot of camera No. 9, the north
11 door camera on 9/10/11 at 3:24 and 16 seconds a.m. It shows
12 suspect Kelley trying to leave the north door.

13 Q. Show you Government's Exhibit 67.

14 A. Snapshot from camera No. 9, north door, on 9/10/11 at
15 3:24:18 seconds a.m. Trying to exit the door, and it is
16 locked, so he turns away.

17 Q. The door was locked?

18 A. Yeah, the door is locked.

19 Q. Okay. I've selected the camera 16, which is
20 20110910-032413 from camera 16. Is that a video excerpt you
21 prepared?

22 A. Yes, it is.

23 Q. And what does it depict?

24 A. It is -- it shows suspect Kelley leaving the
25 circulation desk area heading to the north doors. You have to

1 switch the monitor.

2 Q. Oh, okay.

3 (Video playing.)

4 Q. Okay. That concludes that excerpt; is that correct?

5 A. Yes, it does.

6 Q. Show you Government's 64, 65, and 66. What do those
7 photos show?

8 A. They're snapshots of the north exit door, camera 16,
9 and it shows him trying to exit the building.

10 Q. Was he able to exit the building?

11 A. No. It's a locked door. You have to have key card
12 access.

13 Q. Show you 64.

14 A. Camera 16, north exit at 9/10/11 at 3:24:12.

15 THE COURT: Excuse me, Mr. Lynn, my records show
16 that that's not been admitted, 64 and 65 have not been
17 admitted.

18 MR. LYNN: I'm sorry.

19 MR. STABENOW: I have no objection if he offers
20 them.

21 MR. LYNN: 64, 65, and 66, sorry.

22 THE COURT: Okay. Those are admitted.

23 (Government's Exhibits 64 and 65 were admitted into
24 evidence.)

25 BY MR. LYNN:

1 Q. Now that those are admitted, let me show you 64.

2 A. Camera 16, north exit, 9/10/11 at 3:24:12 a.m., and it
3 shows suspect Kelley running towards the north door.

4 Q. Government's Exhibit 65?

5 A. That's another still shot on camera 16, north exit, on
6 9/10/11 at 3:24:14 a.m. It shows him running to the north
7 doors.

8 Q. Government's Exhibit 68?

9 A. Camera 16, north exit, 9/10/11 at 3:24:21 a.m., shows
10 suspect Kelley heading towards the front service area, copy
11 services, as well.

12 Q. Okay. Now, I'm going to the last -- let me get back to
13 my place here. I'm going to the last file on the disk labeled
14 video of damage to camera 5. What does that contain?

15 A. It's actually video of damage to cameras 5 and 6.

16 Q. Five and six.

17 A. It contains footage from when suspect Kelley comes on
18 the camera until when they're broken.

19 Q. I've activated the recorder. I'm going to select the
20 first item on the play list, which is 20110910-030714 from
21 camera 6.

22 (Video playing.)

23 Q. I'm going to fast forward.

24 A. Do you need the time?

25 Q. I'm going to stop it. Anything visible thereafter?

1 A. It comes back into focus at 3:14 for about four
2 seconds.

3 Q. Is that the totality of that?

4 A. That is, yes.

5 Q. And show you Government's Exhibit 60. What does that
6 depict?

7 A. That is camera No. 6, east circulation at 3:12 when it
8 starts to go out, when it's been hit.

9 MR. LYNN: Your Honor, offer Government's Exhibit
10 60.

11 MR. STABENOW: No objection.

12 THE COURT: Exhibit 60 will be admitted.

13 (Government's Exhibit 60 was admitted into evidence.)

14 BY MR. LYNN:

15 Q. Going to switch back. And show you Government's 60.
16 Is that the photo you described?

17 A. Yes, camera 6, east circ, 9/10/11, 3:12:29 a.m.

18 Q. Was that one knocked off the wall, or did it still
19 hang?

20 A. That one still hung. That was camera 6.

21 Q. Okay. Deselect that and select the next item on the
22 play list.

23 A. You need to switch the monitor.

24 Q. I'll switch the monitor. And I've selected item
25 20110910-030743 from camera 5. What does that depict?

1 A. That's camera 5, which is the north desk camera. It
2 shows the damage of the camera when it starts to go out and is
3 hit.

4 (Video playing.)

5 Q. Okay. Is that the totality of the video from camera 5?

6 A. Yes, it is.

7 Q. Show you Government's Exhibits 61, 62, and 63. Do you
8 recognize those?

9 A. Yes, I do. They're snapshots of camera No. 5, north
10 desk.

11 Q. Depicting what?

12 A. The camera being hit and taken out of service.

13 MR. LYNN: Offer 61, 62, and 63, Your Honor.

14 MR. STABENOW: No objection.

15 THE COURT: Exhibit 61, 62, and 63 will be admitted.

16 (Government's Exhibits 61, 62, and 63 were admitted
17 into evidence.)

18 BY MR. LYNN:

19 Q. Showing you Government's 61. What does that photo
20 show?

21 A. It shows north desk camera 5, and it is showing the
22 ceiling. It's being knocked out of service on 9/10/11 at
23 3:12:43 a.m.

24 Q. Next showing you Government's Exhibit 62. What does
25 that show?

1 A. That is from camera 5, north desk camera, 9/10/11 at
2 3:12:45 a.m., and this right here is a mirror that the camera
3 is hitting, reflecting off of, and this right here is the
4 suspect.

5 Q. Okay. And do we have -- let me show you Government's
6 Exhibit 63. Is that a still photo of --

7 A. That's a snapshot of the north desk camera 5 on 9/10/11
8 at 3:12:46 a.m., and this is the mirror I was speaking of.

9 Q. Now, the video you originally viewed in its raw form,
10 was it any clearer than this photo that we see?

11 A. Oh, yeah, it's a lot clearer. I have a smaller picture
12 that I'm looking at. So it's a lot clearer than it shows now,
13 but if you look, you can see the suspect right here, and the
14 camera would be right up there being hit.

15 Q. When did the defendant first appear on camera, on the
16 video surveillance?

17 A. On 9/10/11 at 2:12 a.m.

18 Q. Okay. Did he appear on multiple cameras at that time?

19 A. Yes, he did. He appeared on camera 7, 16, 5, 6, and 9.

20 Q. And what was he doing?

21 A. He was walking across the entranceway, the north
22 entranceway from our copy service area. So he was going from
23 west to east.

24 Q. Let me show you what's been marked Government's Exhibit
25 70, 71, and 72. What do these photos show?

1 A. These are photos from the camera outside of Room 213 on
2 the second floor.

3 MR. LYNN: Your Honor, I would offer 70, 71, and 72.

4 MR. STABENOW: No objections.

5 THE COURT: Exhibits 70, 71, and 72 will be
6 admitted.

7 (Government's Exhibits 71 and 72 were admitted into
8 evidence.)

9 BY MR. LYNN:

10 Q. Showing you Government's 70. What does that photograph
11 depict?

12 A. This is a camera up on the second floor, which is
13 outside of Room 213, and it goes -- there's a stairwell right
14 here, and it goes from the first floor up to the third floor,
15 and this is suspect Kelley.

16 MR. STABENOW: Objection, Your Honor. The witness
17 keeps testifying that some of these photos are, quote, suspect
18 Kelley, like in the mirror. I think it's up to the jury to
19 determine if it's Mr. Kelley. She can say this is the image we
20 captured on the video.

21 THE COURT: I do think it's a conclusion. I think
22 she can point out that it's an individual.

23 MR. LYNN: Very well.

24 BY MR. LYNN:

25 Q. Government's Exhibit 71. What does that show?

1 A. That is the camera outside of Room 213, and that is the
2 suspect we were, had been videotaping all day.

3 Q. Okay. Government's 72?

4 A. That's the same camera, outside of 213. It's the
5 suspect that we had had on video all day heading up to the
6 third floor.

7 Q. Show you Government's 69. What does that show?

8 A. That is camera 7, the birdcage camera. It shows the
9 suspect trying to exit the building.

10 MR. LYNN: Offer 69.

11 MR. STABENOW: No objections.

12 THE COURT: Exhibit 69 will be admitted.

13 (Government's Exhibit 69 was admitted into evidence.)

14 BY MR. LYNN:

15 Q. Showing you government's 69. What does that show?

16 A. That's camera 7, the birdcage camera that shows the
17 suspect after he tries to exit the north doors on 9/10/11 at
18 3:24:22 a.m.

19 MR. LYNN: Your Honor, could I have just a moment?

20 THE COURT: Sure.

21 (So done.)

22 MR. LYNN: Your Honor, the next excerpt that we
23 intend to play is going to take a little time to queue up.
24 This system is proprietary, it's not very user friendly. So if
25 we could have five minutes just to queue it up, it would save

1 everybody just from waiting.

2 THE COURT: Sure. Why don't we go ahead and take a
3 five-minute recess, kind of get up and move around a little
4 bit. But we will be back from recess pretty quickly at --
5 let's see. At about 11:36.

6 (A recess was taken from 11:32 a.m. to 11:37 a.m.
7 when the following proceedings were had in the courtroom out of
8 the presence of the jury:)

9 MR. LYNN: Your Honor, Ms. Rogers has a doctor's
10 appointment at 2 o'clock, if there's any way we could get
11 through her.

12 THE COURT: Sure. We've taken enough breaks this
13 morning that I won't feel bad if we go to 12:30 or so for
14 lunch. So we can definitely stay here until your direct and
15 cross is completed and then take a lunch break at that point.

16 MR. LYNN: Very well.

17 THE COURT: Are there any thoughts yet on the IT
18 expert and your IT expert?

19 MR. STABENOW: I sent a text message to Troy Schnack
20 asking that as soon as he's out of the prison that he contact
21 me. That's what I was doing on my phone there. I asked him
22 that he contact me as soon as he's out of the prison by text
23 message so that we can coordinate that.

24 THE COURT: We're just trying to get the
25 instructions done. I'm sorry?

1 THE WITNESS: I was asking if I had time to go to
2 the restroom.

3 THE COURT: Sure. So much for my
4 got-to-be-back-in-at-11:36. We're just trying to coordinate
5 the instructions and get the instructions done. If we have
6 tomorrow, we've got more time to finish the instructions; but
7 obviously if we could finish today, I would prefer to finish
8 today, instructions notwithstanding.

9 (The following proceedings were had in the courtroom
10 in the presence of the jury:)

11 THE COURT: Well, the break was a little longer than
12 I said. We ran into an IT problem and had to have someone with
13 IT come up to address the issue, but I think the issue has been
14 addressed and we're ready to proceed.

15 Given the fact that we've taken a number of breaks
16 and we have a witness on the stand, we're probably going to go
17 a little bit later for lunch today. Nothing like yesterday,
18 but maybe a little closer to 12:30 or so, 12:45 until we take a
19 break for lunch. Mr. Lynn?

20 MR. LYNN: Thank you, Your Honor.

21 - - -

22 JULIE ROGERS,

23 having been previously duly sworn by the courtroom deputy,
24 testified further as follows:

25 - - -

RESUMED DIRECT EXAMINATION

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By Mr. Lynn:

Q. Miss Rogers, I have queued up a video. It's on the play list. It's the first item selected, 20110909-201001 from camera 7. Can you tell us what we're about to observe here?

A. Yeah, it's going to show suspect Kelley entering the --

Q. Ma'am, just --

A. I'm sorry, suspect.

Q. Just individual.

A. Individual. It's going to show the male individual entering here, crossing across here to, this is the north door, to the circulation area, and it's going to show an individual knocking down two cameras.

Q. Now, can you clear that?

A. Yes.

Q. Can you give us the times we should look for? When does the individual first appear?

A. The individual appears right here at about 3:07. Tampering with camera 5 right here about 3:12, and tampering with camera 6 right there at 3:13.

Q. Very well. If you could clear it, I'll play the video.

(Video playing.)

Q. Okay. I'm going to stop it there. Stopping at 3:15:31. Miss Rogers, just a few more questions.

A. Okay.

1 Q. Now, are you familiar with fires that occurred back in
2 Ellis Library back on September 10th of 2011?

3 A. Yes, I am.

4 Q. Are you familiar with their locations?

5 A. Yes.

6 Q. Okay. Now, given your experience with the surveillance
7 system, given the position of the surveillance cameras, was
8 there any way an individual could have entered those areas
9 where the fire took place without being captured on video
10 surveillance or activating an alarm there at the library?

11 A. There's no way possible.

12 MR. LYNN: No further.

13 - - -

14 CROSS-EXAMINATION

15 By Mr. Stabenow:

16 Q. Officer Rogers, I'm going to show you Defense Exhibit
17 1. Do you recognize that as being a partial map of the main
18 floor of the Ellis Library?

19 A. That is a partial map of the first floor of the
20 library.

21 Q. Okay. And you'll see some numbers there. There's a 7
22 with a blue arrow pointing up, a 9, a 16, a 5 and a 6.

23 A. Yes.

24 Q. Do those show the approximate position of those cameras
25 with the blue arrows showing their general angle of view?

1 A. Yes.

2 Q. Now, this is prosecution Exhibit No. 69. That's that
3 view from the birdcage, correct?

4 A. Yes.

5 Q. And if we look -- if you look in the upper right-hand
6 corner right here, I'm going to circle it in blue.

7 A. Uh-huh.

8 Q. We have a desk. That's the desk that the student guard
9 sits at during the day to monitor the front door, correct?

10 A. That's where the student desk sits, yes.

11 Q. And right behind it, I'll draw with a blue arrow,
12 that's the location of the circulation desk area where cameras
13 5 and 6 were.

14 A. Correct.

15 Q. And right up here in the upper right-hand corner,
16 again, you know this doesn't show quite as well on this blowup,
17 but right here up at the very right-hand corner that I'm going
18 to fill in with a half circle, that's where the clock is on the
19 wall, right? Or where the clock was on the wall, on the
20 circulation desk wall.

21 A. I can't say.

22 Q. Okay. You agree that right where I'm going to put a 1,
23 this is where camera 5 was, and right off frame where I'm going
24 to put a 2 is where camera 6 is.

25 A. Yes.

1 MR. STABENOW: Okay. Can you print that?

2 Q. All right. So going back to Defense Exhibit No. 1,
3 that means that since the security desk is right where I'm
4 going to draw some blue junk, 7 is actually mounted just a
5 little bit back down here by the 7 where I put a blue dot. So
6 its field of view as it comes up terminates right where I have
7 the blue line connecting to 101, correct?

8 A. Actually, no. It comes halfway down past like right
9 through here is where it goes to, so you can see cameras 5 and
10 camera 6.

11 Q. So like that?

12 A. Uh-huh.

13 Q. Okay. But it doesn't come all the way over to this
14 access way that I'm drawing as a blue arrow with arrows up and
15 down.

16 A. Camera 7 does not.

17 Q. It does not --

18 A. Huh-uh.

19 Q. -- capture that in its field of view, does it?

20 A. No, it does not.

21 Q. That's why when we look at Prosecution Exhibit 69,
22 that's why we can't see all the way over to the end of the
23 circulation desk up there in the upper right-hand corner,
24 correct?

25 A. Correct.

1 Q. And cameras 9, 16, 5, and 6, likewise, do not give us
2 any insight into this spot right here that I'm indicating with
3 the blue line.

4 A. No, it does not.

5 Q. All right. As a matter of fact, they do a very good
6 job of capturing the area where Mr. Kelley came like this and
7 going back, but they don't capture the stairwell over on the
8 left, they don't capture the stairwell here on the right, and
9 they don't capture the elevators here on the right, correct?

10 A. Correct.

11 Q. Nor do they capture any part of the length of this hall
12 off to the right.

13 A. No, they do not.

14 Q. Now, you said that -- a couple of times you said the
15 person we were watching all day. I assume what you mean is
16 that you saw -- you had somebody on film between about 2 a.m.
17 and about 3:24 a.m. in different spots, and that's what you
18 mean by all day; is that correct?

19 A. No, it's not. I was watching video from 8:15 on 9/9
20 throughout that whole span of time until 4:15 a.m.

21 Q. So was he on video any other time other than between
22 2:00 and 3:24?

23 A. The suspect was not on video between that time.

24 Q. So when you say the person you were watching all day,
25 you just mean what you had between 2 a.m. and --

1 A. Correct.

2 Q. And you had a couple of pictures up on the second floor
3 of somebody rounding the stairwell.

4 A. Yes.

5 Q. Okay. Only one time?

6 A. Yes.

7 Q. All right. So for some reason the camera didn't
8 capture them -- assuming they were going up, it didn't capture
9 them coming down; or assuming they were coming down, it had
10 never captured them going up?

11 A. That picture shows a person going up, and there's
12 several ways to come down besides that stairs.

13 Q. But those ways to come down were not under
14 surveillance.

15 A. The other ways are not under surveillance, but they are
16 under alarm at a certain spot.

17 Q. Explain that. So if I was, say, on the third floor and
18 I took the elevator down to the main floor where the
19 circulation desk is, the first floor, that would trigger an
20 alarm?

21 A. No, it would not. I said stairs.

22 Q. So alarms would be like if I broke into some rooms,
23 that would set off an alarm.

24 A. No, trying to exit the building would set off an alarm.

25 Q. Okay. So as long as I wasn't exiting the building, if

1 I was just going up and down elevators or stairs, that would
2 not trigger an alarm?

3 A. Correct.

4 Q. I'm going to show you Defense Exhibit 3, and that's a
5 view standing in the hallway looking back towards that main
6 area with the circulation desk on our right, correct?

7 A. Correct.

8 Q. All right. And you see up here in the field of view,
9 at the time there was a camera here where I've placed with an
10 X, and a camera here where I've placed with an X, correct?

11 Those would have been cameras 5 and 6?

12 A. Correct.

13 Q. So it would have been possible for somebody to walk
14 from the elevators back into that room or from the stairs back
15 into that room without it being on any of the video
16 surveillance.

17 A. On any of the surveillance on camera 7, 9, 16, 5, and
18 6.

19 Q. Okay. Well, did you have any other video cameras
20 surveilling this spot right here between those elevators and
21 those stairs and that circulation area?

22 A. No.

23 Q. Okay. And this is the view looking back from that main
24 area back towards that hallway where I had shown the other
25 photo from, correct?

1 A. Correct.

2 Q. And over here on the right-hand side, that's that
3 little student desk that we had talked about?

4 A. Correct.

5 Q. And right off frame, that's where those little like
6 book detectors are that are shown in the field of view of
7 cameras 9 and 16.

8 A. Camera 16.

9 Q. Where you're -- if you're coming in and out of the
10 entrance, that would be where the entrance is?

11 A. Correct.

12 Q. All right. Defense Exhibit 4. This is over by the
13 circulation -- or sorry, by the copy services area?

14 A. Correct.

15 Q. And again, up here in the upper left-hand corner,
16 that's the birdcage camera, correct --

17 A. Correct.

18 Q. -- that I'm circling? But that camera's field of view
19 ends about where I'm drawing the line. It doesn't -- it did
20 not have a field of view of the staircase, the actual copy
21 services room, or this hallway back in here; is that correct?

22 A. Camera 7 does not.

23 Q. And you didn't have any other cameras that had a field
24 of view of that exact spot either, did you?

25 A. Yes, I did.

1 Q. Then where is the camera footage going back to --

2 A. It only shows this right here.

3 Q. Okay. So you had a camera that was viewing those, that
4 staircase?

5 A. This is in the shot of one of our views.

6 Q. I'm going to hand you Government's Exhibit 49. Is that
7 the shot you're referring to?

8 A. Yeah, right here.

9 Q. Okay. So putting Government's Exhibit 49 back on here,
10 what you're referring to is the upper right-hand side, you can
11 see kind of right off the side?

12 A. Yeah, into the door. It doesn't show inside the
13 stairs.

14 Q. Okay. What it shows, going back to Defense Exhibit 4,
15 is you can see the pillar and kind of part of --

16 A. Yes.

17 Q. -- the upper part of the side pillar?

18 A. Correct.

19 Q. Okay. I think you and I had talked last fall about the
20 fact that it was kind of a long night for you that night, that
21 you were woken up at a very early hour and you had not had a
22 lot of sleep the night before; is that correct?

23 A. I was woken up by a call shortly before 4 a.m.

24 Q. All right. And how much sleep had you gotten the night
25 before?

1 A. To my recollection, I probably went to bed like normal,
2 between 8 and 9 p.m.

3 Q. Let me ask you, you said there were ten cameras that
4 you looked at, but that may seem a little confusing to some
5 people because we have a camera 16. Why do we have a camera 16
6 if there were only ten cameras at the time?

7 A. There were different numbers on cameras that pretty
8 much varies by when the camera comes about. So camera 1 might
9 have been bought at a certain year, and then by the time we got
10 the last camera, camera 16, it was put in that area down the
11 road, years down the road, so the numbers aren't going to be in
12 sequence.

13 Q. How long, how many days did it take you to watch all of
14 these different ten cameras for the -- let's see, 8 p.m. to 4
15 a.m., say, the eight hours -- ten cameras, eight hours each,
16 how long did it take you to watch all of that footage?

17 A. I watched starting at 4:15 a.m., 4:30 a.m. on the 10th
18 throughout almost two and a half to three weeks.

19 Q. But you didn't -- you didn't find any -- you didn't
20 find anybody, not even Mr. Kelley, on any of the video cameras,
21 right? What we have heard about today is all the times that
22 you found somebody who didn't belong to the library on the
23 video cameras.

24 A. Yes, sir.

25 Q. All right. The only other people you saw was about

1 8:15 the previous night, somebody locking up and --

2 A. Yeah, a security officer locking the doors up and
3 making sure it was secured.

4 Q. And when did you provide this footage to law
5 enforcement?

6 A. When you say this footage --

7 Q. The video footage. I mean, correct me if I'm wrong, I
8 assume your system doesn't automatically go to law enforcement,
9 that if they want something, you have to kind of dub it over or
10 sync it over.

11 A. Yes.

12 Q. And we already heard, and we've already seen it's kind
13 of a -- this viewing system is kind of proprietary and,
14 although it does a nice job for you in security, it's not
15 necessarily the most user friendly for jumping back and forth
16 to different spots.

17 A. Yeah, it is user friendly when it's in a certain time
18 period, yes.

19 Q. Okay. So you basically had to copy stuff over to a
20 thumb drive or a disk or something and give it to --

21 A. I copied footage over to a thumb drive and gave it to
22 officers.

23 Q. And you gave them the part that you thought was
24 relevant?

25 A. I gave them the part that I was asked to --

1 Q. To provide?

2 A. To provide, yes.

3 Q. Prior to you dubbing it over, did you show any of it to
4 law enforcement in its native format? Like did a detective
5 like Laughlin or somebody come in and say, hey, here on the
6 screen I've got somebody who shouldn't be in the library here
7 at this time on these videos?

8 A. There was -- when I was watching video, there was
9 different officers in the room at different times. Most of the
10 footage, after I got the suspect on camera and then it was sent
11 to them for a further report, that's basically when it was
12 pretty much myself, when they were gone and taking care of that
13 situation.

14 Q. What I'm asking is, did you choose what footage to give
15 them, or did you consult with them as to what footage to give
16 them?

17 A. I chose the footage that the suspect was on, and I also
18 chose the footage from making sure my, that the library was
19 secure until when I walked in the building.

20 Q. What happened to the rest of the footage after -- when
21 the footage you said ended at like 3:25, almost 3:26, the
22 footage ends.

23 A. Uh-huh.

24 Q. And at that point, you would agree there's no smoke, no
25 haze, none of those things are yet observable on any of the

1 video camera footage.

2 A. Correct, at 3:24.

3 Q. What happened to the footage after that?

4 A. It saves on the DVR for a period of time, which is
5 anywhere between 30 and 42 days.

6 Q. And then it was gone.

7 A. And then it's gone.

8 Q. Okay. And law enforcement never requested any of that
9 other -- Columbia Police never requested any of that remaining
10 footage.

11 A. Not at that point.

12 MR. STABENOW: Just a moment.

13 Q. Two questions. Going back to Defense Exhibit No. 1,
14 first is, we saw footage that clearly is Mr. Kelley attempting
15 to exit the door right here in the middle of the picture.

16 A. Yes.

17 Q. All right. But we haven't heard any testimony that
18 that set off an alarm when he tried to push that door.

19 A. That's because it would not set off an alarm.

20 Q. It would only if -- you said earlier if somebody tried
21 to like exit the main doors, that would set off an alarm, so --

22 A. No, I said if somebody tried to exit some of our
23 emergency doors, it would set off an alarm.

24 Q. Okay. The second thing, the final thing is you do
25 agree, then, that it was possible for somebody to walk from the

1 elevator lobby into the back circulation area or from the
2 stairs here into the back circulation area, and they would not
3 have been caught on any of your surveillance equipment at that
4 time.

5 A. It would not be caught on any surveillance at that
6 time, the person coming up that, no. But getting to that area,
7 yes.

8 Q. So you're drawing a conclusion that you think somebody,
9 that you would have gotten footage if somebody was moving, else
10 was moving around the library, that's a conclusion you're
11 drawing.

12 A. Correct.

13 Q. But the fact is that it is possible to walk from those
14 stairs, from that elevator lobby back to the circulation area
15 without being on any of your surveillance equipment.

16 A. Correct.

17 MR. STABENOW: Thank you.

18 THE COURT: Mr. Lynn, do you have any redirect?

19 MR. LYNN: Yes.

20 - - -

21 REDIRECT EXAMINATION

22 By Mr. Lynn:

23 Q. But if that individual had moved anywhere else, would
24 that have been caught on surveillance?

25 A. To get to that area, yes, they would be caught on

1 surveillance.

2 Q. Okay. Now, Mr. Stabenow asked you about the video that
3 you preserved. Did you say that you were requested to preserve
4 certain video and that's what you did?

5 A. Correct.

6 Q. But did you have an opportunity to personally review
7 all of the video?

8 A. Yes, sir.

9 Q. And in all of the video that you reviewed, did you ever
10 see anybody, other than the one individual whom you've
11 identified?

12 A. I saw no one on that video, but the individual that
13 I --

14 MR. LYNN: Thank you.

15 MR. STABENOW: Your Honor, might I have a brief
16 recross?

17 THE COURT: Sure.

18 - - -

19 RE CROSS-EXAMINATION

20 By Mr. Stabenow:

21 Q. Officer, you're aware that there was a window that was
22 broken into on the fourth floor, correct?

23 A. Correct.

24 Q. All right. And so it is theoretically possible
25 somebody could have broken in on the fourth floor and gone to

1 the elevators and taken the elevators down to the first floor,
2 and they would not have been on the surveillance cameras.

3 A. I would have to say no.

4 Q. Why do you have to say no?

5 A. I couldn't fit through that window. So -- it's like --
6 the window that was broken is about eight inches wide.

7 Q. Could it have been used to open the window?

8 A. Not to my understanding, no.

9 MR. STABENOW: Nothing further, thank you.

10 MR. LYNN: Nothing further.

11 THE COURT: You may step down. Why don't we go
12 ahead and take a break for lunch now. I'm going to again
13 remind you for the first time today that it's very important
14 that you not discuss this case with anyone, that you not do any
15 type of research whatsoever, internet, going to Ellis Library,
16 Stephens College, anything of that sort, and not draw any
17 conclusions or come to any conclusions regarding the evidence
18 in this case until I've directed you to do so.

19 We will be in recess until -- we'll do another
20 hour-and-15-minute lunch, unless anyone thinks they need more
21 time. If you think you need more time, raise your hand. Okay.
22 I see no hands, so we'll be in recess until 1:30.

23 (The following proceedings were had in the courtroom
24 out of the presence of the jury:)

25 THE COURT: Any issues any of the attorneys wish to

1 raise?

2 MR. LYNN: No, Your Honor.

3 MR. STABENOW: I would just let the judge know
4 Mr. Schnack is available, so I'll take my cell phone out and
5 have the two experts talk to each other.

6 THE COURT: Let me know after lunch if we have any
7 better indication as to when we're going to close.

8 (A recess was taken from 12:14 p.m. to 1:34 p.m.)

9 THE COURT: So are there any issues that need to be
10 taken up before the jury comes?

11 MR. LYNN: Your Honor, we would next intend to call
12 the witness from Stephens, Christopher Herbold, that we
13 disclosed earlier this morning. I think --

14 MR. STABENOW: My IT expert had a chance to talk to
15 their IT expert, and apparently Stephens College has their own
16 proprietary software that most people don't use that is
17 specifically designed to test when things are on or off the
18 network.

19 THE COURT: Okay. So you won't have any additional
20 witnesses on that issue.

21 MR. STABENOW: I don't think so.

22 THE COURT: Okay. Does that give us any ideas as to
23 when we're going to close?

24 MR. STABENOW: Your Honor, I would guess -- it's
25 1:30. I would guess this is -- correct me if I'm wrong. I

1 would guess the government's case might be done by 3:30 or
2 4:00, and then I would personally recommend that we discuss
3 jury instruction and stuff. I think my case would probably
4 take an hour or so. But if we just started with -- if we
5 finished with the government's case this afternoon and talked
6 jury instructions, and then tomorrow morning I could briefly do
7 my case and then we could go right to closing arguments.

8 THE COURT: Let's see what time it is. I would
9 probably prefer to finish all of the evidence today if we can
10 and do closings tomorrow. Why don't we go ahead, though, while
11 we're thinking of it. I have a copy of the instructions.
12 Darin, will you give each of them a copy of the instructions?

13 You'll notice there's one area that's highlighted,
14 two paragraphs in instruction 3.04, that will be determined by
15 whether or not the defendant takes the stand, which obviously I
16 don't know if that's going to occur or not. So these are the
17 first copy of the instructions. Some changes I know will be
18 made, and we'll weigh any objections or suggestions that you
19 all have at the time.

20 So let's go ahead and move forward, and we can make
21 a decision regarding the defendant's case as the evidence comes
22 in. So if you could get the jury, that would be great.

23 You know, one thing that we may, I would like for
24 you to think about, as we were watching those videos, it
25 occurred to me, I would not be surprised if the jury is

1 interested in watching those videos again during deliberations.
2 What I would propose and what I've done in the past when I was
3 in your roles, not in this one, obviously, is to bring the jury
4 in with the attorneys present, not say anything, but then play
5 the videos for them then. It's my understanding based -- or my
6 assumption, I guess, based on the software that you can't send
7 the software back to the jury to have them watch it without
8 sending a computer or something along those lines.

9 MR. LYNN: I can send a disk back, and the software
10 is encrypted in the disk. They could play it if they had a
11 computer.

12 THE COURT: But we would have to give them a
13 computer. I'll determine whether or not there are any
14 computers in the courthouse that we are confident are clean. I
15 doubt that exists.

16 MR. LYNN: I think we've used them before. I think
17 we've had them before, but whatever.

18 MR. STABENOW: I'm comfortable either way, Your
19 Honor. Certainly I think a practical solution might be to
20 indicate if they want to watch a particular couple seconds or
21 whatever that we can quickly pull it up here in the courtroom
22 for them without anybody commenting; but if they're wanting to
23 watch the whole seven hours or something, we'll make special
24 arrangements for them to have that capability because the
25 actual disk does have the seven hours of videos if they want to

1 watch them.

2 THE COURT: The problem is sending the computer back
3 that has the program and no access to any internet.

4 (The following proceedings were had in the courtroom
5 in the presence of the jury:)

6 THE COURT: I think we're ready to begin the
7 afternoon session. Mr. Lynn, are you ready to proceed?

8 MR. LYNN: Ready to proceed, Your Honor, call
9 Christopher Herbold.

10

- - -

11

CHRISTOPHER HERBOLD,

12 being first duly sworn by the courtroom deputy, testified as
13 follows:

14

- - -

15

DIRECT EXAMINATION

16 By Mr. Lynn:

17 Q. Would you state your name, please?

18 A. Chris Herbold.

19 Q. And Mr. Herbold, how are you employed?

20 A. I'm employed with Stephens College as a network
21 manager.

22 Q. Okay. And as network manager, what are your
23 responsibilities?

24 A. I oversee the build-out of networks across our campus.
25 One of my side responsibilities are also making sure all of the

1 labs are connected and updated.

2 Q. Okay. When you say connected, what do you mean?

3 A. Make sure there's fiber optics either to the building
4 or to the labs and that they're all hard-wired in.

5 Q. Now, are you aware of certain computers that were kept
6 at the Audrey Webb Children's School Center?

7 A. I am.

8 Q. And directing you back to May 18th of 2011, did it come
9 to your attention that one of the computers may have been found
10 missing?

11 A. Yes.

12 Q. And was that a computer within your purview, within
13 your responsibilities?

14 A. It is.

15 Q. What sort of computer was that?

16 A. It was a Mac Mini.

17 Q. And was that computer connected to any sort of system
18 network?

19 A. It was connected to our main campus network, yes.

20 Q. Okay. And is there any way that the main campus
21 network kept track of that computer in terms of interfacing
22 with it?

23 A. We have software that interfaces with all of our Apple
24 computers, allows us to install software and do updates at
25 random; so, yes, we are able to see it.

1 Q. So you're able to see if the computer is there and
2 still on the network?

3 A. Yes.

4 Q. Now, with respect to the computer that was determined
5 to be missing, did you determine when it last had contact with
6 the network?

7 A. Yes, we did.

8 Q. What did you determine?

9 A. We determined that the morning -- can I look at my
10 notes?

11 Q. Sure.

12 A. On May 18, 2011, we saw that it last contacted the
13 machine that did all of the management at 3:46 a.m.

14 Q. Indicating to you what?

15 A. Indicated that that was the last time that it was
16 talking to the network.

17 Q. Any further contact thereafter with that computer?

18 A. No, sir.

19 MR. LYNN: No further.

20 THE COURT: Any cross, Mr. Stabenow?

21 MR. STABENOW: Nothing, no questions, Your Honor.

22 THE COURT: Sir, you may step down.

23 THE WITNESS: Thank you.

24 MR. LYNN: Call Michael Laughlin.

25

- - -

1 A. I did respond.

2 Q. What time did you arrive at Ellis Library?

3 A. I arrived at Ellis Library at about 4:30 a.m.

4 Q. Okay. Did you then participate in an investigation?

5 A. I did. When I arrived on scene, there was MUPD patrol
6 officers, police officers, and MUPD security officers
7 positioned around the library so that they could see every
8 entrance and exit. There was also fire personnel on scene when
9 I arrived at that time, and I was advised by fire personnel
10 that I had to wait until they made the scene secure.

11 Q. And ultimately was the scene secured and were you
12 allowed entry into the library?

13 A. Yes, I was advised by Assistant Fire Marshal Debbie
14 Sorrell that the scene was secure, and at that time Assistant
15 Fire Marshal Sorrell and I entered the library.

16 Q. Did you work in conjunction with Officer -- Fire
17 Marshal Sorrell?

18 A. I did. We worked at different paces because I was
19 photographing both the fire damage and the property damage, and
20 she was focusing primarily on the fire damage, but we would
21 make contact with each other and note different fire sites and
22 property damage as we worked throughout the scene.

23 Q. Officer Laughlin, I'm showing you what's a group of
24 exhibits collectively marked 73 through 91. And I want you to
25 take a look at those exhibits and tell us just if you recognize

1 them as photographs that you took of the scene.

2 A. Yes, these are all photographs that I took.

3 MR. LYNN: Your Honor, I would offer --

4 MR. STABENOW: 73 to 91.

5 MR. LYNN: 73 to 91, thank you.

6 MR. STABENOW: No objection.

7 THE COURT: Exhibits 73 to 91 will be admitted.

8 (Government's Exhibits 73 - 91 were admitted into
9 evidence.)

10 BY MR. LYNN:

11 Q. So the focus of your investigation was on identifying
12 and documenting property damage; is that correct?

13 A. That's correct.

14 Q. And was your, did you go throughout the Ellis Library?

15 A. I --

16 Q. Did you go on all floors?

17 A. No, I did not.

18 Q. Let's just go through the photographs. Let me show you
19 what's been admitted as Exhibit 73 and ask you, do you
20 recognize what's depicted in that photograph?

21 A. This is inside access services. On the left side is a
22 monitor that was damaged from blunt force impact. In other
23 words, a hard object was used to strike the monitor to damage
24 it. On the right side of the screen on the cubicle you can see
25 fire damage at the same site. Additionally, there's a printer

1 in between these that the -- that there was a note located on.

2 Q. You might be able to just circle the things you're
3 indicating. So what you circled there is the --

4 A. That's where the object impacted the monitor.

5 Q. Okay.

6 A. That is the fire site, and there is the printer.

7 Q. Very well. Do you want to clear that? Show you next
8 Exhibit 74. Do you recognize what's depicted there?

9 A. This is a damaged monitor. I think it's pretty clear,
10 but --

11 Q. Okay. Showing you next 75.

12 A. Another damaged monitor. The impact point on this one
13 is right there.

14 Q. Government's 76, I'm showing you that.

15 A. Damaged monitor, impact point is right inside that
16 circle.

17 Q. Those last monitors we've seen, where were those
18 located?

19 A. All five of those were located inside access services.

20 Q. Okay. I've got one more to show you. What does that
21 show?

22 A. That's another damaged monitor. The impact point is
23 right there.

24 Q. You indicated all of those monitors were in access
25 services?

1 A. Yes.

2 Q. Showing you next Exhibit 78. Do you recognize that
3 photograph?

4 A. Yes. This office is, this door for the office is
5 located behind the circulation desk; and if you were to walk
6 behind the circulation desk and head north towards the reserve
7 area, you would walk past this, and this is, again, an impact
8 point right there from --

9 Q. Showing you Government's Exhibit 79. What does that
10 photograph depict?

11 A. There was two cameras behind the circulation desk that
12 were damaged and were both removed from where they had been
13 fixed previously. This one was removed and was laying on the
14 ground, and I collected it.

15 Q. Show you Government's 106. Do you recognize that?

16 A. I do. This is the camera that I collected.

17 MR. LYNN: Your Honor, offer 106.

18 MR. STABENOW: I would like to see it just a second.
19 I haven't had a chance to see that one.

20 THE COURT: Any objection?

21 MR. STABENOW: No objection, Your Honor, sorry.

22 THE COURT: Exhibit 106 will be admitted.

23 (Government's Exhibit 106 was admitted into evidence.)

24 BY MR. LYNN:

25 Q. All right. Exhibit No. 80, Government's Exhibit No.

1 80, what does that photograph show?

2 A. This is the camera that you just showed to me, and it's
3 lying on the ground, and that's where I collected it from.

4 Q. And Government's 81, is that just a close-up shot of
5 that same camera?

6 A. It is a close-up shot of that camera and, again, it's
7 behind the circulation desk before you reach the reserve area.

8 Q. Show you Government's Exhibit 82. Do you recognize
9 that?

10 A. That's a picture of the circulation desk. The things
11 to note in this picture is you can see both spots next to the
12 doors where the two cameras were previously located. One
13 camera is still hanging attached to the wires, the other camera
14 is no longer attached. You can also see there's no monitors
15 sitting upright on the circulation desk. They had all been,
16 previously they'd been knocked over.

17 Q. And Government's 83. What does that show?

18 A. That's a close-up of the second camera behind the
19 circulation desk that was still attached to one wire.

20 Q. Government's Exhibit 84, what does that show?

21 A. That is a monitor on the circulation desk, and that's a
22 picture of another -- the impact point on that one is right in
23 the middle of that circle.

24 Q. Government's Exhibit 85. What does that show?

25 A. That's two additional monitors on the circulation desk.

1 You can see the impact point on this one. On the other one, I
2 don't think the impact point is visible.

3 Q. Government's 86. What does this depict?

4 A. That's a monitor on the circulation desk, and the
5 impact point is right there.

6 Q. Showing you Government's 87. Do you recognize this
7 room?

8 A. That is the microforms office. It's located on the
9 fourth floor. It is just to the west of the west stairwell,
10 which starts on the first floor by copy services. Room 403.

11 Q. Show you Exhibit No. 94. Is that a diagram that you
12 prepared?

13 A. Yes, it is.

14 Q. Does it depict the general layout of the fourth floor
15 there?

16 A. Yes, it does.

17 MR. LYNN: Your Honor, I would offer Exhibit 94 as a
18 demonstrative exhibit.

19 MR. STABENOW: No objections, Your Honor.

20 THE COURT: Exhibit 94 will be admitted.

21 (Government's Exhibit 94 was admitted into evidence.)

22 BY MR. LYNN:

23 Q. And let me next show you Exhibit 88.

24 A. That is a window that was broken inside Room 403 of
25 that microforms office that we just showed the outside picture

1 of. You can see the shattered glass down here below the
2 window.

3 Q. Now, showing you Exhibit 94, the diagram of the fourth
4 floor, can you indicate to us where that window was found, was
5 located?

6 A. Inside that office. That's --

7 Q. Show you Government's Exhibit 89. Do you recognize
8 what that is?

9 A. I do. It's a quiet area sign that is located inside a
10 study room on the second floor. That, again, is just off --
11 it's just to the west of the west stairwell.

12 Q. On second floor, you say?

13 A. That's correct. This particular quiet sign was
14 damaged. There was a pipe missing from this quiet sign.

15 Q. Was that pipe recovered?

16 A. That pipe was recovered.

17 Q. Did you recover that?

18 A. I did recover it.

19 Q. Let me show you Government's Exhibit No. 90. Do you
20 recognize what's depicted in that photograph?

21 A. I do. This is the pipe from the quiet area sign laying
22 right there. To give you sort of a, an idea of where we are,
23 I'm standing in the doorway from the reserve area to the access
24 services area. On the right side here is a desk that had a
25 damaged monitor on it and a fire origin, and on the left side

1 is an additional desk that had a damaged monitor on it and a
2 fire site.

3 Q. Now, how long approximately did you remain there at the
4 Ellis site conducting your investigation?

5 A. I don't know the exact time frame, but I was there --

6 Q. Just give me a rough, rough time.

7 A. It was more than a couple of hours.

8 Q. Okay. Well, my question is, later that same day, did
9 you make contact with anyone regarding this investigation, any
10 subject?

11 A. I did. At approximately 12:40 hours, or 12:30 hours, I
12 was advised that a subject had reported, had shown up in the
13 MUPD lobby and stated that he was the person that was in the
14 Clery release.

15 Q. Tell us about the Clery release. What was that?

16 A. A Clery release, it's based upon the Jeanne Clery Act,
17 and it's in an effort to make the campuses safer. Whenever
18 there's a major crime that could affect public safety on the
19 campus, we're required to release Clery releases that notify
20 people of what the incident was so that students on the campus,
21 everyone in the area of that campus, will know that there is
22 something dangerous that has happened that could affect their
23 safety, and they could make decisions as needed based upon that
24 previous incident.

25 Q. Was a Clery release released in connection with this

1 incident?

2 A. That's correct. We made a Clery release advising the
3 campus community that there had been a fire in the Ellis
4 Library and that arson was suspected, and we released two
5 pictures of a subject that was later identified by Kelley as
6 himself, stating that we were attempting to locate the subject
7 and identify him.

8 Q. Okay. So you released this press release, essentially.
9 To whom does it go?

10 A. It goes to the entire campus community, so that's
11 staff, all the students, all the faculty. Additionally, I
12 think if there are retirees and former students who want to pay
13 a fee to continue using their university e-mail, they would
14 also get that.

15 THE COURT: Detective Laughlin, you talk really
16 fast, and so I would ask that you slow down just a little bit
17 so the court reporter can get everything that you're saying.

18 THE WITNESS: I apologize.

19 BY MR. LYNN:

20 Q. Okay. So you were indicating that about 12:30 you were
21 advised of Mr. Kelley's presence?

22 A. I was advised at 12:30, and I actually got to the
23 department more around 12:40, I believe.

24 Q. Did you make contact with anyone?

25 A. At 12:40 I made contact with suspect Kelley in our

1 prisoner processing area.

2 Q. Is the individual you've identified as suspect Kelley,
3 do you see him present in court today?

4 A. He's sitting over there in the green sweater.

5 MR. LYNN: Your Honor, may the record reflect that
6 the witness has identified the defendant?

7 THE COURT: The record will so reflect.

8 BY MR. LYNN:

9 Q. Upon making contact with Mr. Kelley, did you advise him
10 of any rights?

11 A. I did. I read him his Miranda rights. I also provided
12 him with a MUPD Miranda rights waiver form, which I read
13 through for him and I gave to him, advising him that if he
14 signed on the first line, that would indicate that he
15 understood the Miranda rights waiver; if he signed on the
16 second line, that would indicate he was willing to answer
17 questions at that time.

18 Q. Did you ask him any questions?

19 A. I did. I began by asking him what brought him in
20 today. He advised me that he had seen the Clery release, and
21 there was a picture of him in the Clery release, and that was
22 why he came in.

23 I then asked him if he could tell me about what he
24 had done the last, the day of the September 9th, the day before
25 the fire and the early morning hours of September 10th. He

1 told me that on September 9th at about 10:30 in the morning he
2 went to a doctor's appointment. He also --

3 MR. STABENOW: Objection, Your Honor, may I
4 approach?

5 THE COURT: Sure.

6 (Counsel approached the bench and the following
7 proceedings were had:)

8 MR. STABENOW: He's starting a narrative that begins
9 the previous day, and this narrative included a description of
10 a fire that's not coming into this case. So I want to object
11 just as to hearsay now, but I'm going to make an objection of
12 relevance when I go back to my table, and my concern is this
13 narrative would necessarily involve the material that we had a
14 ruling on.

15 MR. LYNN: But he's not admitting he started any
16 fire, all he said was I was at a party and I saw a fire at a
17 duplex.

18 MR. STABENOW: But that's still getting into that
19 fire. I don't think there's any doubt that he's on the video
20 camera at Ellis Library, so why are we --

21 THE COURT: I don't see the relevance of him
22 discussing the other fire.

23 MR. LYNN: Very well, understood.

24 (The following proceedings were had in open court:)

25 BY MR. LYNN:

1 Q. Detective, let me push you forward in your narrative to
2 a point. Did Mr. Kelley tell you that at some point he began
3 to walk around campus in the early morning hours?

4 A. Yes, he told me that he was first walking around the
5 student center, and then he decided to walk around Lowry Mall,
6 which, for those of you who aren't familiar, Lowry Mall is
7 located directly to the north of Ellis Library.

8 I then asked him if -- I asked him what he did
9 around Lowry Mall, and he advised me that he did not set the
10 fires, and then the interview was concluded shortly after that.

11 Q. Okay. Now, what was done with respect to Mr. Kelley's
12 clothing?

13 A. When he was transported to the Boone County Jail, I
14 requested that Officer Kingsbury collect his clothing because I
15 felt that the clothing was the same as the clothing that he was
16 wearing the night -- or during the fire.

17 Q. Had you had an opportunity to review any video
18 surveillance of Ellis Library?

19 A. I have.

20 Q. Okay. Had you at that time?

21 A. I had at that time.

22 Q. Okay. Let me show you what's been marked as
23 Government's Exhibit 107. Do you recognize this?

24 A. I do.

25 Q. What is that?

1 A. When I was in the prisoner processing area, suspect
2 Kelley requested a, something to write with and a piece of
3 paper. I gave him a Sharpie marker and a piece of paper
4 because at that time I had already seen a note that was
5 collected from the library in a Sharpie marker.

6 Q. So you wanted a handwriting sample?

7 A. That's right.

8 MR. LYNN: Offer 107.

9 MR. STABENOW: No objection.

10 THE COURT: 107 is admitted.

11 (Government's Exhibit 107 was admitted into evidence.)

12 BY MR. LYNN:

13 Q. And I neglected to ask you about this earlier. Let me
14 show you what's been marked as Government's Exhibit 100. Do
15 you recognize that?

16 A. That is the pole I collected in the access services
17 area that was from the quiet sign on level 2.

18 MR. LYNN: Offer Exhibit 100, Your Honor.

19 MR. STABENOW: No objection.

20 THE COURT: Exhibit 100 will be admitted.

21 (Government's Exhibit 100 was admitted into evidence.)

22 BY MR. LYNN:

23 Q. Now, during your investigation, Detective, were you
24 able to identify any apparent point of entry there into Ellis?

25 A. There was a window that was pointed out to me.

1 Q. Okay. What did you see around the window?

2 A. There was numerous objects next to the window that were
3 laying in a manner that would suggest that someone -- that they
4 had been knocked in from the outside.

5 Q. And where was that window located?

6 A. It was located in copy services about ten feet from one
7 of the fire sites.

8 MR. LYNN: No further.

9 THE COURT: Cross-examination?

10 - - -

11 CROSS-EXAMINATION

12 By Mr. Stabenow:

13 Q. So it was your opinion that the clothes Mr. Kelley came
14 in -- when he came into the station, the clothes he was wearing
15 were the clothes you had observed in the videos from five or
16 six hours earlier?

17 A. They looked the same.

18 Q. Okay. And when you went to the scene, were you the one
19 who found the pole and collected it?

20 A. I'm the one that collected the pole, yeah.

21 Q. Did you also see underneath the camera that was
22 dangling from the wall a broken umbrella, like a broken
23 umbrella handle and shards of an umbrella?

24 A. I saw a curved wooden object that could have been part
25 of an umbrella or cane or something like that.

1 Q. And wooden fragments?

2 A. Yes.

3 Q. Did you identify who it belonged to?

4 A. No, I did not.

5 Q. Did you check with the librarian and say, is this
6 yours, or do you know where it came from?

7 A. I did, and no one claimed it.

8 MR. STABENOW: Nothing further at this time, Your
9 Honor.

10 THE COURT: Mr. Lynn, any redirect?

11 MR. LYNN: No redirect, Your Honor.

12 THE COURT: Detective, you can step down.

13 - - -

14 APRIL COLVIN,

15 being first duly sworn by the courtroom deputy, testified as
16 follows:

17 - - -

18 DIRECT EXAMINATION

19 By Mr. Lynn:

20 Q. Would you state your name and spell your name, please?

21 A. April Colvin, spelled A-P-R-I-L, C-O-L-V-I-N.

22 Q. And how are you employed?

23 A. I'm employed as a lieutenant with the University Police
24 Department.

25 Q. And how long have you been so employed?

1 A. A little over 14 years.

2 Q. And did you say, what's your position there?

3 A. I'm a lieutenant.

4 Q. Lieutenant. You used to be a sergeant back --

5 A. I did, until about two days ago.

6 Q. Lieutenant Colvin, back on September 10 of 2011, did
7 you work that day?

8 A. I did.

9 Q. What time did your shift start, approximately?

10 A. It started at 7 a.m.

11 Q. Okay. Now, did you become aware after you came in that
12 there was an incident at the Ellis Library?

13 A. Yes.

14 Q. And at some point, were you called to go and retrieve
15 certain items from Ellis Library?

16 A. I was.

17 Q. All right. What is the first item you were requested
18 to retrieve?

19 A. The first item was feces left on a desk on the fourth
20 floor.

21 Q. Okay. And did you package the feces?

22 A. I actually did not package it. Officer Brayer packaged
23 it. I photographed it.

24 Q. Okay. And was that item collected, was it preserved?

25 A. It was collected. However, it was not preserved.

1 Q. And why not?

2 A. I contacted Sergeant Spalding to determine if he needed
3 us to keep it and how to go about preserving it, if he did.
4 And he stated that it was not necessary.

5 Q. Okay. Were you then called back to the library to
6 retrieve additional items?

7 A. I was.

8 Q. An additional item?

9 A. I was.

10 Q. Let me show you -- show counsel first -- Government's
11 Exhibits 95 and 96. Do you recognize those photos?

12 A. Yes, I do.

13 Q. And did you take those photos or are you aware --

14 A. I took the photos, yes.

15 Q. Okay.

16 MR. LYNN: Offer, Your Honor, 95 and 96.

17 MR. STABENOW: No objection.

18 THE COURT: Exhibits 95 and 96 will be admitted.

19 (Government's Exhibits 95 and 96 were admitted into
20 evidence.)

21 BY MR. LYNN:

22 Q. Showing you photo Exhibit No. 95, do you recognize
23 what's depicted there?

24 A. Yes, I do.

25 Q. And what does that show?

1 A. That shows a cubicle -- I'd almost have to show you on
2 the map, but it shows a cubicle that I responded to. On the
3 printer in that corner is a note.

4 Q. Point to that and touch the screen.

5 A. Right here.

6 Q. Okay. And did you, in fact, retrieve that note?

7 A. I did.

8 Q. Let me show you Government's Exhibit 96. Can you clear
9 that, hit that corner where it says clear, and that should take
10 it off of that. Right, the screen, it's a little tricky.

11 A. High tech.

12 Q. Yeah. Okay. 96, is that the note that you encountered
13 there?

14 A. It is.

15 Q. And show you 97. Is that the note?

16 A. It is.

17 MR. LYNN: Offer Exhibit 97, Your Honor.

18 MR. STABENOW: Just a second. No objection, Your
19 Honor.

20 THE COURT: Exhibit 97 will be admitted into
21 evidence.

22 (Government's Exhibit 97 was admitted into evidence.)

23 BY MR. LYNN:

24 Q. And did you take that, and you turned it over to
25 Detective Laughlin; is that correct?

1 A. I did.

2 MR. LYNN: No further questions.

3 THE COURT: Any cross-examination, Mr. Stabenow?

4 - - -

5 CROSS-EXAMINATION

6 By Mr. Stabenow:

7 Q. Lieutenant Colvin, congratulations on your recent
8 promotion.

9 A. Thank you.

10 Q. To your knowledge, that note was fingerprinted, and Mr.
11 Kelley's fingerprints were not found on it, were they?

12 A. I did not get that report. That is what I heard.

13 MR. STABENOW: Okay. Thank you. Nothing further.

14 THE COURT: Any redirect?

15 MR. LYNN: No.

16 THE COURT: Lieutenant, you may step down.

17 THE WITNESS: Thank you.

18 MR. LYNN: Joe Kingsbury.

19 - - -

20 JOSEPH KINGSBURY,

21 being first duly sworn by the courtroom deputy, testified as
22 follows:

23 - - -

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DIRECT EXAMINATION

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By Mr. Lynn:

Q. Sir, would you state your name and spell your name, if you would?

A. Joseph, J-O-S-E-P-H, Scott, S-C-O-T-T, Kingsbury, K-I-N-G-S-B-U-R-Y.

Q. And are you a detective with MUPD?

A. I am.

Q. And I want to take you back to September 10th of 2011. Were you working that day?

A. I was.

Q. And did you assist Detective Laughlin in processing an individual?

A. Yes.

Q. Who did you process?

A. Christopher Curtis Kelley.

Q. Okay. Do you see Mr. Kelley present in court today?

A. I do.

Q. Can you point him out and just indicate what he's wearing?

A. Yes, he's the gentleman with the dark beard and the green shirt.

MR. LYNN: May the record reflect that he's identified the defendant, Your Honor?

THE COURT: The record will so reflect.

1 BY MR. LYNN:

2 Q. Did you have occasion to transport Mr. Kelley to any
3 locations?

4 A. Yes, I did.

5 Q. And where did you transport him to?

6 A. To the Boone County Jail facility.

7 Q. Now, upon transporting him, did you maintain any items
8 of his possessions?

9 A. Yes. I did.

10 Q. What did you retrieve from him?

11 A. From him, I retrieved his clothing upon delivery to the
12 jail, and I packaged them in a brown paper bag and brought them
13 back to the station.

14 Q. Let me show you what's been marked as Government's
15 Exhibit No. 104. Do you recognize that as the brown paper bag
16 containing Mr. Kelley's clothing? And you may look at your --

17 A. Sure. Yes, I do.

18 Q. How are you able to recognize it?

19 A. It was filled out in my handwriting on the front here.
20 And then also it was sealed and labeled by myself, as well, and
21 dated.

22 Q. And when you packaged it, did you seal it with evidence
23 tape?

24 A. I did.

25 Q. Okay.

1 MR. LYNN: Offer Exhibit No. 104, Your Honor.

2 MR. STABENOW: No objection.

3 THE COURT: Exhibit 104 will be admitted.

4 (Government's Exhibit 104 was admitted into evidence.)

5 BY MR. LYNN:

6 Q. What specific items -- and you can take those out and
7 show them to the jury, if you would. What specific items did
8 you retrieve?

9 A. I retrieved Mr. Kelley's shirt that he was wearing at
10 the time he arrived at the MUPD, a gray V-neck T-shirt; I also
11 retrieved a pair of khaki shorts Mr. Kelley was wearing at the
12 time he arrived at MUPD; and I also retrieved a pair of shoes,
13 brown in color, Mr. Kelley was wearing at the time he arrived
14 at MUPD, as well.

15 Q. Okay. You can place those back in the bag, if you
16 would.

17 A. Certainly.

18 MR. LYNN: No further.

19 THE COURT: Cross-examination?

20 MR. STABENOW: Yes.

21 - - -

22 CROSS-EXAMINATION

23 By Mr. Stabenow:

24 Q. So when you collected that clothing, were you
25 anticipating that there might be evidentiary testing of that

1 clothing?

2 A. I was simply instructed by Detective Laughlin to
3 collect his clothing and place it into evidence.

4 Q. Did you do anything that would have prevented -- I
5 mean, did you handle it in a way that it could be tested if
6 somebody wanted to do testing of it?

7 A. I did. I handled it with protective gloves and
8 packaged it according to our policy.

9 MR. STABENOW: Thank you. Nothing further.

10 MR. LYNN: Nothing.

11 THE COURT: All right. You may step down.

12 THE WITNESS: Thank you, Your Honor.

13

- - -

14

KEVIN RODGERS,

15 being first duly sworn by the courtroom deputy, testified as
16 follows:

17

- - -

18

DIRECT EXAMINATION

19 By Mr. Lynn:

20 Q. Would you state your name and spell your name, please?

21 A. Kevin Rodgers; K-E-V-I-N, R-O-D-G-E-R-S.

22 Q. How are you employed, sir?

23 A. University of Missouri Police Department.

24 Q. What is your position there?

25 A. I'm a lieutenant there.

1 Q. Lieutenant Rodgers, I want to take you back to
2 September 10th of 2011. Shortly before noon, were you on duty
3 at that time?

4 A. I was.

5 Q. And did you make contact with an individual around that
6 time?

7 A. Yes.

8 Q. How did you become aware of an individual?

9 A. I was advised by the communications officer that there
10 was an individual in the lobby who said he was in the Clery
11 release that we had earlier released that day.

12 Q. Okay. So what did you do?

13 A. I responded to the lobby, where I made contact with
14 Christopher Kelley.

15 Q. And Christopher Kelley, do you see him in court today?

16 A. Yes, yes, that's him.

17 MR. LYNN: May the record reflect, Your Honor, that
18 he's identified the defendant.

19 THE COURT: The record will so reflect.

20 BY MR. LYNN:

21 Q. And did you know who he was at that point when you
22 initially contacted him?

23 A. Only through the picture of the Clery release.

24 Q. Okay. So did you approach Mr. Kelley?

25 A. Yes.

1 Q. Did you have an exchange with him?

2 A. Yes, I asked him if I could help him, to which he
3 responded that he was in the Clery release.

4 Q. So what did you ask him?

5 A. I said, "So you were in the library?" And he
6 responded, "I was in the library."

7 MR. LYNN: No further.

8 THE COURT: Cross-examination?

9 MR. STABENOW: No, Your Honor.

10 THE COURT: Lieutenant, you may step down.

11 - - -

12 BRITTANY CARNEY,

13 being first duly sworn by the courtroom deputy, testified as
14 follows:

15 - - -

16 DIRECT EXAMINATION

17 By Mr. Lynn:

18 Q. Ma'am, would you state your name and spell your name,
19 if you would?

20 A. Brittany Carney; B-R-I-T-T-A-N-Y, C-A-R-N-E-Y.

21 Q. Miss Carney, where do you live?

22 A. Portland, Oregon.

23 Q. Did you previously live in Columbia, Missouri?

24 A. Uh-huh.

25 Q. And did you become familiar with Christopher Kelley?

1 A. Yes.

2 Q. Just for the record, is Mr. Kelley the gentleman back
3 here to my left --

4 A. Yeah.

5 Q. -- in the green? Did you have a relationship with Mr.
6 Kelley at one time?

7 A. Yes.

8 Q. And by that I mean you were dating; is that fair to
9 say?

10 A. Yes. Yes.

11 Q. Okay. What was the time frame in which you were
12 dating?

13 A. Maybe February 2009 until about February or January
14 2011.

15 Q. Okay. So you stopped dating him in January or February
16 of 2011; is that what you indicated?

17 A. I believe so.

18 Q. Now, directing you to May of 2011, were you still
19 having -- where were you living at that time?

20 A. I was still in Portland.

21 Q. Still in Portland?

22 A. Uh-huh.

23 Q. And where was Mr. Kelley located?

24 A. He was in Columbia.

25 Q. All right. Were you still having contact with him?

1 A. Yes.

2 Q. What was your relationship at that time?

3 A. Just pretty frequent communication.

4 Q. You were still on friendly terms with him?

5 A. I don't talk to him now.

6 Q. At that time you were on friendly terms?

7 A. At that time, yes, yeah.

8 Q. And did you talk with him frequently during that time
9 period?

10 A. Yes.

11 Q. Now, directing you to around May of 2011, that time
12 frame, give or take, did you have a conversation with him about
13 an incident at Stephens College?

14 A. Yes.

15 Q. What did Mr. Kelley tell you?

16 A. He just told me that he went in through a window in the
17 classroom and then took a computer, and then he went back to
18 his house, and then -- he lived like close-by or something like
19 that. And so he thought -- he thought he might have started a
20 fire because he pulled the wires out of the wall.

21 Q. Why did he think he started a fire?

22 A. Because the fire trucks -- he saw a fire truck or cops
23 or something pull up.

24 Q. Did he tell you what kind of computer he took from
25 Stephens?

1 A. I believe he said it was a Mac.

2 Q. A Mac?

3 A. A Mac, like a monitor, something.

4 MR. LYNN: No further.

5 THE COURT: Mr. Stabenow, any cross-examination?

6 - - -

7 CROSS-EXAMINATION

8 By Mr. Stabenow:

9 Q. So, ma'am, just to make sure I understand this right,
10 what he told you was that he went in through a window, took a
11 computer, left, and then later on he got nervous wondering if
12 maybe him pulling the cords out started a fire because later on
13 he saw emergency vehicles or heard emergency vehicles over in
14 the direction of that building; is that correct?

15 A. Yes.

16 MR. STABENOW: Just a moment.

17 Q. Miss Carney, in your experience with Mr. Kelley, it
18 would not have been unusual for him to, when he had some
19 alcohol, go around and go in through windows and wander around
20 buildings and then leave, would it?

21 A. No.

22 Q. And is it fair to say it might not have been that
23 unusual for him to maybe take something?

24 A. Yeah, it would be like a sign or something.

25 Q. But it would have been very much out of character in

1 your experience for him to go around and set fires?

2 A. He likes fireworks, but I never seen him like start
3 fires or that much, no.

4 MR. STABENOW: Thank you. Nothing further.

5 - - -

6 REDIRECT EXAMINATION

7 By Mr. Lynn:

8 Q. So to your knowledge, he did like to go into places at
9 night that were open?

10 A. I mean, yeah, if he had a couple of drinks or
11 something, you know, just wander around.

12 Q. Was that a frequent kind of occurrence?

13 A. Yeah. Yeah. I think so.

14 Q. Okay. And you indicated he liked to take things
15 sometimes?

16 A. Sometimes.

17 MR. LYNN: No further.

18 THE COURT: Any recross?

19 MR. STABENOW: No, Your Honor.

20 THE COURT: Ma'am, you may step down.

21 MR. LYNN: Matt Cavanah, Matthew Cavanah.

22 - - -

23 MATTHEW CAVANAH,

24 being first duly sworn by the courtroom deputy, testified as
25 follows:

1

- - -

2

DIRECT EXAMINATION

3

By Mr. Lynn:

4

Q. Sir, would you state your name and spell your name, if you would?

6

A. Matthew Cavanah, C-A-V-A-N-A-H.

7

Q. And Mr. Cavanah, how are you employed?

8

A. I'm the Web Editor at the Columbia Daily Tribune.

9

Q. Are you familiar with the defendant in this matter, Christopher Kelley?

10

11

A. Yes.

12

Q. How did you come to know Mr. Kelley?

13

A. I lived with him for a few months.

14

Q. Okay. And during what time frame did you reside with him?

15

16

A. It would have been from August 2011 until about March 2012.

17

18

Q. So during September 10 of 2011, you were residing with him?

19

20

A. Yes.

21

Q. Were there others that lived there at the residence with you, as well?

22

23

A. Yes.

24

Q. Who else?

25

A. Casey Gray, Brooke Butler, and Tara Ballenger.

1 Q. Okay. I want to direct you to the morning of September
2 10th of 2011. Did anything unusual come to your attention?

3 A. Early in the morning, Casey came upstairs and showed me
4 that there was an e-mail on his laptop that was the Clery
5 release from MU Police, and there were photos that we saw of
6 Chris relating to a fire.

7 Q. Can you speak up a little bit?

8 A. Sure. Sorry. Casey came up and showed me an e-mail on
9 his laptop that was the Clery release.

10 Q. What sort of information did the Clery release have in
11 it?

12 A. It mentioned that there had been a fire at the Ellis
13 Library on the MU campus.

14 Q. Did it have any photographs depicting any persons?

15 A. Yes.

16 Q. When you saw that Clery release, did you recognize
17 anybody in those photographs?

18 A. Yes.

19 Q. Who was depicted in those photographs?

20 A. Chris Kelley.

21 Q. So what did you do?

22 A. We decided that we needed to tell Chris and urge him to
23 turn himself in.

24 Q. Okay. And where was Chris at that time?

25 A. Upstairs in his room.

1 Q. And so did you proceed upstairs?

2 A. Yes.

3 Q. And what did you do?

4 A. We asked him to come downstairs. Tara was in the room,
5 as well, and we just kind of pulled him aside and showed him
6 the e-mail and encouraged him that he should go down to the
7 police station.

8 Q. Did he, in fact, go to the police station, to your
9 knowledge?

10 A. Yes.

11 Q. Now, at some point later, did you ever have an
12 opportunity to speak with Mr. Kelley about his activities at
13 Ellis Library?

14 A. Yes. It was sometime the next day, I believe.

15 Q. And what did he tell you?

16 A. He said that he had gone in to the library through an
17 open window on the ground floor, but he told us all he did was
18 walk around, look around, and he heard somebody else in the
19 building and left.

20 Q. Did you ask him about any metal bars that he possessed?

21 A. Yes. One of the photos that was in the e-mail showed
22 him holding a sign post, and we asked him what he was doing
23 with that, and he mentioned that he grabbed it in self-defense
24 if he needed to --

25 Q. All right. Now, on February 1 of 2012, were you still

1 living there?

2 A. Yes.

3 Q. Do you recall officers showing up at the residence?

4 A. Yes.

5 Q. Do you recall them coming in and retrieving certain
6 property?

7 A. Yes.

8 Q. Are you familiar with Apple computer equipment?

9 A. Very much so.

10 Q. Are you familiar with an Apple Mac Mini computer?

11 A. Yes.

12 Q. Do you know whether Mr. Kelley possessed such a system
13 back at that time?

14 A. There was one in the upstairs room, yes.

15 Q. Was that one of the items being carted out by officers?

16 A. Yes.

17 Q. Did you ever see Mr. Kelley using that Mac Mini or in
18 his possession?

19 A. Just I saw it upstairs in the room, and I don't ever
20 remember anyone actually being there anytime I was up there.

21 MR. LYNN: Understood. No further.

22 THE COURT: Any cross-examination?

23 - - -

24

25

CROSS-EXAMINATION

1

2 By Mr. Stabenow:

3 Q. So you guys were roommates or housemates for about six
4 or seven months?

5 A. Correct.

6 Q. And so who all lived in the house at that time?

7 A. Myself, Brooke Butler, Casey Gray, Chris Kelley, and
8 Tara Ballenger.

9 Q. And during the course of your all's conversations
10 together, did you learn that Chris -- I mean, this was, that
11 Ellis Library situation was not the only situation where he
12 would go into buildings and wander around in the night and then
13 leave, correct?

14 A. Correct.

15 Q. As a matter of fact, he and Ms. Ballenger referred to
16 that as urban exploring, and that was something they had done a
17 lot of.

18 A. Yes.

19 Q. And you had even heard of another incident in which he
20 had had a pole another time he had gone into a building and
21 thought he heard voices or somebody else in the building.

22 A. Nothing about a pole, no.

23 Q. There wasn't a discussion one time with he and Tara
24 about a time when they were in Oregon and they thought they had
25 heard somebody in the building and he had grabbed a pole in

1 case they ran into whoever that was?

2 A. The way I recall the story was that they were
3 attempting to climb to the roof of a building, and along the
4 way they found an open window and went in. They didn't mention
5 anything about anyone else being in the building or grabbing a
6 pole for defense.

7 MR. STABENOW: Just a moment.

8 Q. I'm sorry. Maybe you might have heard it as them
9 grabbing a microphone stand.

10 MR. STABENOW: No further questions, Your Honor,
11 thank you.

12 THE COURT: Any redirect?

13 MR. LYNN: No redirect.

14 THE COURT: Sir, you may step down.

15 THE WITNESS: Thank you.

16 MR. LYNN: Casey Gray.

17 - - -

18 CASEY GRAY,

19 being first duly sworn by the courtroom deputy, testified as
20 follows:

21 - - -

22 DIRECT EXAMINATION

23 By Mr. Lynn:

24 Q. Sir, would you state your name and spell your name for
25 the court reporter?

1 A. Casey Sean Gray; C-A-S-E-Y, S-E-A-N, G-R-A-Y.

2 Q. Mr. Gray, are you employed?

3 A. Yes.

4 Q. Where are you employed?

5 A. I'm employed at two locations. I'm a bar manager at
6 the Bread Basket Cafe, and then I also wait tables at
7 Houlihan's, both in Columbia.

8 Q. Are you a student, as well?

9 A. Yes, at Columbia College.

10 Q. I want to take you back to September 10th of 2011, fall
11 semester of 2011. Where were you living?

12 A. At 108 East Hubbell.

13 Q. Did you have roommates?

14 A. I did, I had four roommates: Chris, Tara, Matt, and
15 Brooke.

16 Q. Now, do you remember an incident on September 10th of
17 2011 that came to your attention?

18 A. Yes, I do.

19 Q. And on that date, how did you become aware of anything
20 going on?

21 A. I was actually in bed, and my little brother called me.
22 At the time I was a student at University of Missouri, and he
23 called me and told me to check my webmail.

24 Q. So did you check your webmail?

25 A. I did, yes.

1 Q. What did you see?

2 A. There was a Clery release sent to everybody with a
3 .Missouri.edu address about the fire at Ellis, and it had a
4 picture.

5 Q. It had photographs?

6 A. Yes.

7 Q. Photographs depicting an individual?

8 A. Yes.

9 Q. Did you recognize that individual?

10 A. I did.

11 Q. Who was it?

12 A. It looked like my roommate Chris.

13 Q. So when you saw that, what did you do?

14 A. I went upstairs. I told my roommate Matt what I had
15 seen, and then we went upstairs to wake Chris up and tell him
16 he should probably turn himself in.

17 Q. Did you, in fact, go and make contact with Chris?

18 A. Yes.

19 Q. And what did you tell him?

20 A. I showed him the e-mail, and I pretty much told him
21 that I would strongly recommend he should go turn himself in
22 because he's wanted for some pretty serious crimes.

23 Q. Did he have any response?

24 A. He claimed he didn't know anything about a fire.

25 Q. Okay. Describe Mr. Kelley's appearance when you

1 encountered him there.

2 A. Well, we had just woken him up, so he looked a little
3 dazed.

4 Q. Okay. Now, did he, in fact, go and turn himself in to
5 the police?

6 A. I believe so, yes.

7 Q. Did you later have an opportunity to talk with him
8 about the events at the Ellis Library?

9 A. I did.

10 Q. And what did he tell you about what had happened?

11 A. He told us, or me, at least, that he had been in the
12 library that night, had heard some suspicious sounds and then
13 left, but had not started any fires.

14 Q. Did he talk about grabbing some sort of rod or pole?

15 A. Yeah, some sort of pole, I think, that was used to hold
16 up a sign in the library.

17 Q. Did he say why he grabbed that?

18 A. I guess as defense from whatever was causing those
19 mysterious sounds.

20 Q. Okay. Now, you recall in February of 2012 officers
21 arriving at your residence?

22 A. Yes.

23 Q. Were you present when they seized certain items from
24 the residence?

25 A. I was.

1 Q. And where was -- do you recall the police officers
2 arriving?

3 A. Yes, I recall them arriving. They kind of surrounded
4 our house for some hours. At first they'd asked to come
5 upstairs and search Chris's area, and they were told not unless
6 they had a warrant. So they proceeded to surround the house
7 and essentially wait for a judge's warrant.

8 Q. So did they return several hours later, the officers?

9 A. Yes.

10 Q. Now, in the interim after the officers had left, what
11 did Chris do, where did he go?

12 A. He pretty much stayed upstairs.

13 MR. LYNN: No further.

14 THE COURT: Cross-examination?

15 MR. STABENOW: Just briefly.

16 - - -

17 CROSS-EXAMINATION

18 By Mr. Stabenow:

19 Q. You said -- did you show him the Clery release or tell
20 him about the Clery release?

21 A. As I recall, I had my laptop in my hand and just turned
22 it around and showed him the webmail and the picture in the
23 webmail.

24 Q. And he seemed surprised by the accusation that he had
25 set a fire or confused by the accusation, correct?

1 A. Yes. Yes.

2 MR. STABENOW: Thank you. Nothing further.

3 THE COURT: Any redirect?

4 MR. LYNN: No redirect.

5 THE COURT: Sir, you may step down.

6 MR. LYNN: Philip Thunhorst.

7 - - -

8 PHILIP THUNHORST,

9 being first duly sworn by the courtroom deputy, testified as
10 follows:

11 - - -

12 DIRECT EXAMINATION

13 By Mr. Lynn:

14 Q. Sir, would you state your name and spell your name, if
15 you would?

16 A. Yes, it's Philip Michael Thunhorst; it's P-H-I-L-I-P,
17 M-I-C-H-A-E-L, T-H-U-N-H-O-R-S-T.

18 Q. Mr. Thunhorst, how are you employed?

19 A. I'm employed as a fire protection equipment technician
20 with the University of Missouri-Columbia.

21 Q. How long have you been so employed?

22 A. Over 12 years.

23 Q. What are your responsibilities there as a technician,
24 fire protection and equipment technician?

25 A. I inspect, test, maintain, and program -- I inspect,

1 test, maintain, program, and troubleshoot fire alarm and
2 sprinkler systems at the university.

3 Q. Is Ellis Library equipped with a fire alarm system?

4 A. Yes.

5 Q. And are you responsible for that system?

6 A. Yes.

7 Q. Now, tell us about that system. Does it have -- is it
8 designed to detect smoke, fire, and heat?

9 A. Yes, it is.

10 Q. And what sorts of detectors does it have?

11 A. It has a fire alarm system that's set up to have smoke
12 detectors, heat detectors, duct detectors, sprinkler flow
13 switches.

14 Q. What about water flow detectors?

15 A. Yes, that's the water flows.

16 Q. Now, we'll come to the water flow detector, but how is
17 the Ellis fire alarm system connected to the university system?

18 A. The fire alarm goes through what we call a Metasys
19 system over at the energy management building on campus, and
20 then from there it's transmitted to the University Police
21 Department.

22 Q. Okay. So it's relayed ultimately to the university
23 police or campus police?

24 A. That's correct.

25 Q. Was there any time lag there back at that time?

1 A. Yes. Some of the issues that we run into is that the
2 fire alarm actually responds to energy management. From energy
3 management, the system would pull that time and then actually
4 has up to a minute to send it to the University Police
5 Department.

6 Q. Okay. So when the alarm went, there was a delay up to
7 a minute to send it to the University Police Department?

8 A. That's possible.

9 Q. Now, I want to take you back to September 10th of 2011.
10 Were you asked to retrieve information from the Ellis Library
11 fire panel?

12 A. Yes, I was.

13 Q. And did you, in fact, retrieve that information?

14 A. Yes, I printed a history and turned it over to the
15 detectives.

16 Q. Let me show you what's been marked as Government's
17 Exhibit 105. Do you recognize that?

18 A. Yes, sir, that's the history I printed for the
19 detectives.

20 Q. Okay.

21 MR. LYNN: Offer Government's Exhibit No. 105, Your
22 Honor.

23 MR. STABENOW: No objection, but we would request
24 that Mr. Thunhorst pull the microphone a little closer. I'm
25 struggling to hear.

1 THE COURT: If you would slow down a little bit
2 because you naturally talk fast, that would be helpful too.
3 Exhibit 105 will be admitted.

4 (Government's Exhibit 105 was admitted into evidence.)

5 BY MR. LYNN:

6 Q. Mr. Thunhorst, I'm going to show you a portion of this
7 report. Do you see a section that's highlighted there?

8 A. Yes, I do.

9 Q. And tell the jury, if you would, what that indicates.

10 A. That is the alarm from the water flow system that
11 responded to the fire panel.

12 Q. Okay. What has to happen in order to activate the
13 water flow alarm?

14 A. A sprinkler would have to activate, causing the water
15 to flow through the system, which in turn would activate that
16 flow switch.

17 Q. Okay. Once the water starts flowing, does the alarm
18 immediately go or activate?

19 A. No. We have set those up, we're allowed up to 90
20 seconds. At the university we have ours set between 30 and 60
21 seconds. In the case of this one, we've tested that one, it
22 comes in between 40 and 50 seconds.

23 Q. So the alarm wouldn't have actually activated until 40
24 or 50 seconds after the water was flowing toward the sprinkler
25 system; is that correct?

1 A. Correct, after we start the flow.

2 Q. Now, are you familiar with the rooms in which the water
3 flow alarm indicated?

4 A. Yes, I am.

5 Q. In what rooms were they?

6 A. 101, 102.

7 Q. Okay. Now, were the water flow alarms, the sprinkler
8 alarms equipped with sprinkler heads?

9 A. Yes.

10 Q. And what has to happen in order to activate those
11 alarms?

12 A. In this case, the sprinklers in those rooms are on what
13 we call a fusible link. The temperature in the room would have
14 to heat those up to approximately 160 degrees or it also could
15 have mechanical damage that would also cause those to activate.

16 Q. So the fire gets the head up to 160 degrees; is that
17 correct?

18 A. Correct.

19 Q. Causing what to happen?

20 A. The fusible link would release, the sprinkler head
21 would open up. Because there's water in that system, they
22 would start to flow water.

23 Q. Okay. And then 40 to 50 seconds later --

24 A. The fire alarm would activate, yes.

25 Q. -- the fire alarm would activate. Okay. Are you

1 familiar with the dimensions of those rooms?

2 A. Somewhat.

3 Q. Okay. Are they large rooms or small rooms, or how
4 would you characterize them?

5 A. 102 was actually a room that's about 50 by 50 with
6 11-foot ceilings, so approximately 2500 square feet. 101 is
7 probably about half that size.

8 Q. Now, assuming a fire occurs in a room such as you
9 described, would it immediately cause the water flow alarm to
10 go off?

11 A. No. You're going to have to heat up the air space
12 around that sprinkler head to 160 degrees, so it's going to
13 take some time.

14 Q. Would that depend upon the load?

15 A. The fire load and, yes, what was used as far as the
16 fuel, yes.

17 Q. What about paper and cardboard if that was the fuel
18 load?

19 A. It would take some time because there's not a lot of
20 density.

21 MR. LYNN: No further.

22 THE COURT: Any cross-examination?

23 MR. STABENOW: Just a moment, Your Honor. Nothing,
24 Your Honor, thank you.

25 THE COURT: Sir, you may step down. Mr. Lynn, I'd

1 like to take a break sometime between now and 3 o'clock. If
2 this is a good time, or if you have another couple of
3 witnesses, whichever you would prefer.

4 MR. LYNN: I have two more witnesses.

5 THE COURT: And they're short?

6 MR. LYNN: I think they're relatively short.

7 THE COURT: Then why don't we go ahead and go
8 forward.

9 MR. LYNN: Ann Riley.

10 - - -

11 ANN RILEY,

12 being first duly sworn by the courtroom deputy, testified as
13 follows:

14 - - -

15 DIRECT EXAMINATION

16 By Mr. Lynn:

17 Q. Ma'am, would you state your name and spell your name,
18 if you would?

19 A. My name is Ann, A-N-N; Campion, C-A-M-P-I-O-N; Riley,
20 R-I-L-E-Y.

21 Q. And what is your occupation?

22 A. I'm a librarian.

23 Q. What is your title?

24 A. I'm Associate Director for Access Collections and
25 Technical Services at the University of Missouri library.

1 Q. And you work at Ellis Library there; is that correct?

2 A. Yes.

3 Q. Directing your attention back to September 10th of
4 2011, were you familiar with certain fires that occurred there?

5 A. Yes.

6 Q. Did those fires occur in areas for which you had
7 responsibility?

8 A. Yes.

9 Q. Where did they occur, some of the areas that they
10 occurred?

11 A. They occurred in the access services area, at
12 circulation, interlibrary lending and borrowing, and reserves.

13 Q. How were those areas affected by those fires?

14 A. Well, there was damage, and they were shut down for
15 several days, three days.

16 Q. Now, are you familiar with the total amount of damage
17 that Ellis Library sustained as a result of those fires?

18 A. Yes.

19 MR. STABENOW: Objection, Your Honor, relevance.

20 THE COURT: Could the attorneys please approach?

21 (Counsel approached the bench and the following
22 proceedings were had:)

23 THE COURT: I'm inclined to sustain the objection
24 unless you can explain how this is going to --

25 MR. LYNN: That's the only question I'm going to ask

1 her. He's charged with maliciously starting fire, and our
2 theory is it was an act of malice, that he just simply wanted
3 to cause property damage, and I think it goes to the malicious
4 nature of his act.

5 THE COURT: I just don't see that it's relevant.
6 The prejudicial value outweighs the relevance.

7 (The following proceedings were had in open court:)

8 BY MR. LYNN:

9 Q. Moving on, Ms. Riley, let me ask you, are you familiar
10 with the interlibrary loan program there at the Ellis Library?

11 A. Yes, it's under my supervision.

12 Q. Would you tell the jury about that program, how that
13 program operates?

14 A. We borrow books for our students, faculty, and staff
15 who need them. Books we don't have, we borrow from other
16 libraries that do have them. We share information through a
17 computer system, and we then also lend to those libraries books
18 that their students and researchers want that we have that they
19 don't, and we do this with libraries all over the country and
20 all over the world.

21 Q. So this is just an exchange of information, books and
22 journals and other such items; is that correct?

23 A. Yes.

24 Q. Now, is this commercial in nature? Are there fees
25 associated with this program?

1 A. Yes. There are fees associated with some of the
2 interlibrary loans. Some within the state we don't charge for,
3 but others we do charge for.

4 Q. Does the University of Missouri expend moneys to
5 acquire materials?

6 A. Yes.

7 Q. Do they have a budget?

8 A. Yes.

9 Q. Do you know what that is about per year?

10 A. For interlibrary loan materials or for all materials?

11 Q. For all materials.

12 A. For all materials?

13 Q. For interlibrary loan.

14 A. For interlibrary loan, about \$70,000.

15 Q. Do other libraries spend money at Ellis to acquire
16 materials?

17 A. Yes.

18 Q. Are there other costs associated with this program?

19 A. Yes. There are also shipping costs, copying costs
20 sometimes.

21 Q. Are you familiar with the Digi Center there at the
22 Ellis Library?

23 A. Yes.

24 Q. What is that?

25 A. It's a place that offers services to patrons who come

1 in, students, faculty, staff, or others, to make digital copies
2 or xerox copies of materials that they need.

3 Q. And they charge a fee for that service?

4 A. Yes.

5 Q. Are you familiar with the Bookmark Cafe?

6 A. Yes.

7 Q. Is that located at Ellis Library?

8 A. Yes, it is.

9 Q. What sort of facility is that?

10 A. It's a cafe. It has food and beverages, mostly
11 coffees, Starbucks kind of like place.

12 Q. Do you know who provides the coffee?

13 A. I believe it's -- it comes from the University Food
14 Service, but I believe they purchase it from Kaldi.

15 Q. Kaldi? That's a commercial establishment there in
16 Columbia; is that correct?

17 A. Yes, yes.

18 Q. Obviously, University of Missouri is an educational
19 institution; is that correct?

20 A. Yes.

21 Q. Do students who attend there pay tuition?

22 A. Oh, yes.

23 Q. Obviously. And to your knowledge, do out-of-state
24 students come and attend at the university?

25 A. Oh, yes, many.

1 Q. And do they come from other countries, as well?

2 A. Oh, yes.

3 Q. And do these students use the Ellis Library?

4 A. Yes, they do.

5 MR. LYNN: No further, Your Honor.

6 THE COURT: Any cross-examination?

7 MR. STABENOW: No, Your Honor, thank you.

8 THE COURT: Ma'am, you may step down.

9 - - -

10 MICHAEL BAKER,

11 being first duly sworn by the courtroom deputy, testified as
12 follows:

13 - - -

14 DIRECT EXAMINATION

15 By Mr. Lynn:

16 Q. Sir, would you state your name, please?

17 A. Michael Baker.

18 Q. And how are you employed, sir?

19 A. I'm a criminalist supervisor with the Missouri State
20 Highway Patrol Crime Lab in Springfield, Missouri.

21 Q. And what are your responsibilities with the crime lab?

22 A. I work in the trace evidence section.

23 Q. And what is your educational background?

24 A. I have a Bachelor of Science Degree in forensic science
25 from Michigan State University.

1 Q. Okay. And how long have you been with the patrol, the
2 highway patrol lab?

3 A. About 16 years.

4 Q. Okay. So what are your duties generally?

5 A. In trace evidence, I look at a variety of different
6 types of evidence, including hairs, fibers, paint, glass,
7 flammables, and just general unknown substances.

8 Q. So you examine items to determine whether any trace
9 evidence exists on them?

10 A. Yes.

11 Q. Did you have occasion to do an examination in
12 connection with this case?

13 A. Yes, I did.

14 Q. Let me show you what's been received in evidence as
15 Government's Exhibit No. 104. Do you recognize this as an item
16 received by you at the lab?

17 A. Yes, I do.

18 Q. And how are you able to determine that?

19 A. There's a sticker on here that has a lab number, and
20 then there's also my initials.

21 Q. Okay. Now, when you received Government's Exhibit No.
22 104, was it in a sealed, untampered condition?

23 A. Yes.

24 Q. And upon receiving it, what did you then do with its
25 contents?

1 A. On that, I examined the clothing, looking for glass
2 particles.

3 Q. Were you able to find any glass particles?

4 A. Yes, I did.

5 Q. Were you able to characterize those particles further
6 as to their source?

7 A. I did look at them, and they had a similar elemental
8 composition of a sheet glass, which would be like a window or a
9 mirror or a windshield.

10 Q. Show you Government's Exhibit No. 100, I believe it is.
11 Do you recognize that as an item you received there at the lab?

12 A. Yes. Again, it has our lab number and my initials on
13 the paper bag.

14 Q. When you received that, was it in a sealed, untampered
15 condition?

16 A. Yes.

17 Q. Did you perform a similar test as you did with the
18 other exhibit --

19 A. Yes.

20 Q. -- for the presence of glass?

21 A. Yes, there was glass on the pole, and I did further
22 characterize it as having elemental composition of a sheet
23 glass.

24 Q. Was it different than the glass you found on the
25 clothing?

1 A. Yes. I compared the clothing with the glass on the --
2 the glass on the clothing I compared to the glass on the pole.
3 They had different optical properties, meaning they came from a
4 different source from each other.

5 MR. LYNN: Very well. No further.

6 THE COURT: Any cross-examination?

7 - - -

8 CROSS-EXAMINATION

9 By Mr. Stabenow:

10 Q. Was there any evidence on any of the clothing that you
11 received of soot, smoke, ignitable fluids, anything like that?

12 A. I did not see any soot or anything visibly on the
13 clothing, no.

14 Q. So glass fragments, but nothing you would associate
15 with a fire?

16 A. I did not see anything, no.

17 MR. STABENOW: Thank you.

18 THE COURT: Any redirect?

19 - - -

20 REDIRECT EXAMINATION

21 By Mr. Lynn:

22 Q. Did you test for that?

23 A. I didn't look specifically for any flammable material
24 or soot, but I would have noted anything black on there, I
25 would think.

1 MR. LYNN: Got you. No further.

2 THE COURT: Any recross?

3 MR. STABENOW: No, Your Honor, thank you.

4 THE COURT: Sir, you may step down. Why don't we go
5 ahead and take our afternoon break and be in recess until about
6 10 after 3:00.

7 (The following proceedings were had in the courtroom
8 out of the presence of the jury:)

9 THE COURT: Mr. Lynn, where do we stand with respect
10 to the government's case?

11 MR. LYNN: Your Honor, I think we're ready to rest.
12 I want to make sure my exhibits -- just do a final inventory,
13 but --

14 THE COURT: Okay.

15 MR. STABENOW: I'll be ready to proceed. I'm going
16 to talk to my witnesses briefly. It might take a couple of
17 minutes past 3:10.

18 THE COURT: If you need more than 15 minutes, just
19 let me know. Do you need 15 or 30?

20 MR. STABENOW: I think 30 would be a heck of a lot
21 more comfortable to talk to my client and my witnesses.

22 THE COURT: Why don't we do that. Kelly, would you
23 tell the jury we're going to take a 30-minute break instead of
24 a 15-minute break?

25 MR. STABENOW: Judge, I have a motion for judgment

1 of acquittal at the close of the government's evidence.

2 THE COURT: I'm going to overrule the motion, but it
3 will be noted for the record that you submitted the motion.

4 Why don't we take a recess; and then when you're
5 ready to start, just let Kelly know, and I'll come back out.

6 MR. STABENOW: I will. Thank you, Your Honor.

7 (A recess was taken from 2:58 p.m. to 3:33 p.m.)

8 THE COURT: Ready to proceed?

9 MR. STABENOW: We are.

10 THE COURT: Any issues that we need to take up?

11 MR. STABENOW: I don't think so.

12 MR. LYNN: Not by the government.

13 THE COURT: Are you ready to rest?

14 MR. LYNN: I am ready to rest.

15 THE COURT: Okay. If you could grab the jury.

16 MR. LYNN: I know there are a few exhibits that I
17 didn't admit, but I intentionally did not admit them.

18 THE COURT: Okay.

19 (The following proceedings were had in the courtroom
20 in the presence of the jury:)

21 THE COURT: I think we're ready to proceed. Mr.
22 Lynn?

23 MR. LYNN: Your Honor, the government rests.

24 THE COURT: Thank you. Mr. Stabenow, is the
25 defendant ready to proceed?

1 MR. STABENOW: Yes, Your Honor, we would recall
2 Mr. Cavanah to the stand. Sir, if you could come in and retake
3 the stand briefly.

4 And while you're doing that, once -- I'll remind you
5 that once you retake the stand, you're still under oath.

6 THE WITNESS: Okay.

7 - - -

8 MATTHEW CAVANAH,
9 having been previously sworn by the courtroom deputy,
10 testified as follows:

11 - - -

12 DIRECT EXAMINATION

13 By Mr. Stabenow:

14 Q. Mr. Cavanah, I do want to take you back briefly to the
15 morning where the Clery release came out. You had worked a
16 late shift the night before; is that correct?

17 A. Yes.

18 Q. And about what time had you gotten home from that late
19 shift?

20 A. It would have been between 2:00 and 2:30.

21 Q. And sometime between 3:00 and 3:30, did you hear
22 anything from upstairs where Chris lived?

23 A. I heard some footsteps.

24 Q. The next morning, the Clery release came out, and you
25 and your other housemate went up to talk to Chris about it,

1 correct?

2 A. Correct.

3 Q. All right. And do you remember if he had a visible
4 reaction to when you guys told him, hey, you're suspected of
5 starting these fires in the Ellis Library last night?

6 A. He looked a little surprised.

7 Q. Maybe surprised and confused?

8 A. Surprised would be the way I would describe it.

9 MR. STABENOW: Just a moment. No further questions,
10 Your Honor.

11 THE COURT: Any cross?

12 - - -

13 CROSS-EXAMINATION

14 By Mr. Lynn:

15 Q. So you confronted him with a picture of him in the
16 Ellis Library; is that correct?

17 A. Yes.

18 Q. And he looked surprised?

19 A. Yes.

20 THE COURT: Any redirect?

21 MR. STABENOW: No, Your Honor, thank you.

22 THE COURT: Sir, you may step down.

23 MR. STABENOW: The government (sic) will call
24 Investigator Greg Wills to the stand.

25 - - -

1 GREGORY WILLS,
2 being first duly sworn by the courtroom deputy, testified as
3 follows:

4 - - -

5 DIRECT EXAMINATION

6 By Mr. Stabenow:

7 Q. Investigator Wills, can you please tell us your full
8 name and where you work?

9 A. My name is Gregory Parker Wills. I'm an investigator
10 with the Federal Public Defender's Office for the Western
11 District of Missouri.

12 Q. So you are basically Craig Holloway's counterpart for
13 our office?

14 A. That would be correct, I guess.

15 Q. And are you familiar, sir, with certain tests and
16 requests for discovery in this case?

17 A. Yes.

18 Q. All right. And in this case are you familiar with
19 whether Mr. Kelley had sought video camera footage out in the
20 surrounding area around the Ellis Library or testing that would
21 associate him with fire evidence with soot and et cetera?

22 A. Yes, I'm familiar with that.

23 Q. Did he make those sort of requests to the government?

24 A. He had made those sort of requests, that's correct.

25 Q. And it's your understanding that it just turned out

1 that there was no camera footage preserved or available of the
2 surrounding area, and there was no testing that came back with
3 any sort of fire trace evidence linked to his clothing; is that
4 correct?

5 A. That's correct.

6 MR. STABENOW: No further questions.

7 THE COURT: Cross-examination?

8 MR. LYNN: No cross-examination.

9 MR. STABENOW: Just one second.

10 THE COURT: Hold on just one second.

11 BY MR. STABENOW:

12 Q. Mr. Wills, one other thing. We did hear some evidence
13 there was some feces found on the fourth floor. Mr. Kelley had
14 also requested DNA testing of the feces; is that correct?

15 A. Yes, he did.

16 Q. And that's when all of us, the defense side and the
17 government's side, found out that it had not been preserved for
18 testing?

19 A. That's correct.

20 MR. STABENOW: Thank you. Nothing -- hold on.

21 Nothing further.

22 THE COURT: Any cross?

23 MR. LYNN: No cross.

24 THE COURT: You may step down.

25 THE WITNESS: Thank you.

1 MR. STABENOW: The defense would call Ms. Tara
2 Ballenger to the stand. Miss Ballenger, come right over to the
3 back by the monitor and stop to be sworn.

4

- - -

5

TARA BALLENGER,

6

being first duly sworn by the courtroom deputy, testified as

7

follows:

8

- - -

9

DIRECT EXAMINATION

10

By Mr. Stabenow:

11

Q. Miss Ballenger, how do you know Chris Kelley?

12

A. He's my boyfriend.

13

Q. And were you living with him in September of 2011 when

14

this whole Ellis incident took place?

15

A. Yes.

16

Q. Were you two the only people living on the top floor of

17

the home where you lived?

18

A. Yes.

19

Q. And the night that the Ellis Library fires occurred,

20

what time did you go to bed?

21

A. About maybe 1 a.m.

22

Q. Did you get up and walk around anywhere the rest of the

23

night?

24

A. No.

25

Q. The next morning, was it brought to your attention that

1 Chris was in a Clery release?

2 A. Yes.

3 Q. And were you there to see his reaction when he was told
4 that he was accused of setting fires in the library?

5 A. I saw his reaction right after he came upstairs, so
6 within minutes.

7 Q. What was his reaction to the accusation he had set
8 fires in the Ellis Library?

9 A. Stunned. Disbelief, but also the real worry hadn't set
10 in.

11 MR. LYNN: Your Honor, I'm going to object to
12 hearsay.

13 THE COURT: Could counsel please approach?

14 (Counsel approached the bench and the following
15 proceedings were had:)

16 MR. LYNN: I think she's about to express
17 self-serving hearsay, his statements.

18 THE COURT: I don't think she's entitled to get in
19 self-serving hearsay.

20 MR. STABENOW: I could ask her physically what she
21 observed.

22 (The following proceedings were had in open court:)

23 BY MR. STABENOW:

24 Q. Miss Ballenger, I understand you drew certain
25 conclusions from his physical reactions. What we need to do is

1 just describe what you actually observed without the
2 conclusions. So what did you observe about his demeanor or
3 about his behavior when he was told he had been accused of
4 setting fires in the Ellis Library?

5 A. Can I say what he told me, or is that hearsay?

6 Q. You can't say what he told you, just what his reaction,
7 what his physical demeanor and reaction was.

8 A. His body language seemed like he was very surprised
9 that a fire was mentioned. Now I feel like I don't know
10 exactly what to say without it being --

11 Q. Imagine, if you will -- for just a second imagine that
12 we're watching a video of what's happening but the sound is
13 turned off.

14 A. Yes.

15 Q. So what are we seeing about Chris's demeanor as he's
16 hearing that he's been accused of setting these fires?

17 A. Questioning like this.

18 Q. By this, you mean like shrugging your shoulders, kind
19 of?

20 A. In disbelief, but I don't -- he seemed --

21 Q. Well, let me ask, then, from your observations of his
22 demeanor and not based upon what he said --

23 A. Right.

24 Q. -- you concluded that he was shocked or surprised by
25 that accusation; is that correct?

1 A. Yes, I can --

2 MR. LYNN: I object to her conclusion or opinion.

3 MR. STABENOW: Present sense impression.

4 THE COURT: I think we're getting a sense of what
5 she's trying to describe, so she can go ahead and testify to
6 this.

7 A. He seemed to have no idea of any kind of fire and was
8 in complete disbelief.

9 BY MR. STABENOW:

10 Q. Okay.

11 A. I'm so sorry.

12 MR. STABENOW: I'll move on, Your Honor.

13 Q. Miss Ballenger, has Chris talked to you about the fact
14 that, frankly, on many occasions he's gone into buildings and
15 wandered around at night?

16 A. Yeah.

17 Q. And has he even talked to you about the idea that
18 sometimes he has armed himself if he thought he heard noises,
19 et cetera?

20 A. Right, yeah.

21 MR. STABENOW: Just a moment. Nothing further, Your
22 Honor.

23 THE COURT: Any cross-examination?

24 - - -

25

CROSS-EXAMINATION

1

2 By Mr. Lynn:

3 Q. So he tells you he goes into places and wanders around;
4 is that correct?

5 A. Right.

6 Q. He trespasses into places and wanders around; is that
7 what you're saying?

8 A. He sneaks in after hours.

9 Q. Well, that's trespass, isn't it?

10 A. Yeah, right.

11 Q. So he trespasses unlawfully and arms himself; is that
12 what you said?13 A. Doesn't arm himself; but if he thought he heard a
14 noise, he'll have something there.

15 Q. While he's there trespassing?

16 A. Right.

17 MR. LYNN: No further.

18 THE COURT: Any redirect?

19 MR. STABENOW: No, Your Honor.

20 THE COURT: You may step down.

21 THE WITNESS: Thank you.

22 MR. STABENOW: The defense will call Command
23 Sergeant Major Kelley to the stand.

24 - - -

25

1 excited. The fact is, he hung around a little longer so he
2 could get a second degree. He loved Missouri, you know.

3 Q. How did he feel about books and libraries? Is there
4 anything in his life that's allowed you to draw a conclusion as
5 to learning and libraries?

6 A. When it comes to books, I'll tell you, I've never seen
7 a guy so in love with books. From the very beginning, Chris --
8 he was an early reader, he loved books. If you wanted to make
9 him happy, you would buy him a book about words. He loved the
10 written print -- excuse me, the written word. He just loved
11 books. If you just go into his apartment right now, you see
12 shelf after shelf, row after row of books. If you go into my
13 storage shed, you see tub after tub full of books. The idea
14 that he would do anything to a library in a negative sort of
15 way is just not believable.

16 MR. LYNN: Your Honor, I'm going to object to a
17 nonresponsive question.

18 THE COURT: I do think you need to focus your
19 question a little bit. And Mr. Kelley, you're speaking very
20 fast, and I think that's probably just your manner. But if you
21 would slow down just a little bit, it would make the court
22 reporter's job a lot easier.

23 THE WITNESS: Thank you, I will.

24 BY MR. STABENOW:

25 Q. Sergeant Major Kelley, have you been able to form an

1 opinion as to Chris Kelley's general character and whether he
2 would be the sort of person that would set fire to a library?

3 A. There's no way, I can say without hesitation.

4 MR. LYNN: Your Honor, I'm going to object as
5 nonresponsive.

6 THE COURT: Sustained.

7 BY MR. STABENOW:

8 Q. The first thing you have to do, Mr. Kelley, is tell me
9 whether you have formed an opinion as to --

10 A. I have formed an opinion.

11 Q. And briefly, without going into any specifics, can you
12 give us the gist of that opinion as to whether he would be a
13 person to set a library on fire?

14 A. My opinion is that he would never do such a thing.

15 MR. STABENOW: Thank you, nothing further.

16 MR. LYNN: No cross-examination.

17 THE COURT: Thank you, sir, you may step down.

18 MR. STABENOW: The defense would call Nick Brown to
19 the stand.

20 - - -

21 NICHOLAS BROWN,

22 being first duly sworn by the courtroom deputy, testified as
23 follows:

24 - - -

25

DIRECT EXAMINATION

1

2 By Mr. Stabenow:

3 Q. Mr. Brown, could you please spell your first name for
4 the court reporter?

5 A. N-I-C-H-O-L-A-S.

6 Q. Do you know Chris Kelley?

7 A. Yes, I do.

8 Q. How long have you known him?

9 A. Thirteen and a half years.

10 Q. How well do you know him?

11 A. Better than anybody.

12 Q. And when you say better than anybody, how much time
13 have you spent with him?14 A. Just a tremendous amount of time. As an aggregate, I
15 would say at least five years.16 Q. Have you ever seen anything from -- have you ever heard
17 him say anything or express anything that would express any
18 sort of hostility towards the University of Missouri?

19 A. No.

20 Q. Do you know how he felt about having attended the
21 University of Missouri and being located there with the
22 University of Missouri?23 A. Oh, he adored it. That was the best time of his life
24 that I've known him.

25 Q. What's his attitude towards books and libraries?

1 A. He loves them. You should see -- we currently live in
2 an apartment together. You should see the amount of books he
3 currently owns.

4 Q. I'm going to ask you some questions, a little bit
5 frank. Would it surprise you if you heard that Chris had
6 stolen some stuff?

7 A. No.

8 Q. In fact, have you known him over the time that you've
9 known him to sometimes engage in some small thefts?

10 A. Yes.

11 Q. Would it surprise you to hear that he had snuck into a
12 building and wandered around at night?

13 A. No.

14 Q. Would it surprise you to hear that he had been accused
15 of setting fire to a library?

16 A. Yes, absolutely.

17 Q. Very specifically, yes, no, in the time that you've
18 known him, have you been able to form an opinion as to whether
19 he would have the character of somebody who would set fire to a
20 library?

21 A. No.

22 Q. Yes or no is the question, have you been able to form
23 an opinion?

24 A. Yes. Yes.

25 Q. And what is your opinion as to whether he would be the

1 sort of person to do that?

2 A. No, he is not the type of person to do that.

3 MR. STABENOW: Thank you. Nothing further.

4 - - -

5 CROSS-EXAMINATION

6 By Mr. Lynn:

7 Q. Mr. Brown, you're the best of friends with Mr. Kelley;
8 is that the way you describe it?

9 A. Absolutely.

10 Q. You have a long relationship with him; is that correct?

11 A. Extremely long, yes.

12 Q. You said you know he steals stuff?

13 A. Yes.

14 Q. What kind of stuff does he steal?

15 A. Off the top of my head, he stole a human resources
16 sign, I believe from the science building, I think a placard of
17 some type.

18 Q. What about computer?

19 A. Not to my knowledge, but I can't say it would surprise
20 me.

21 Q. Well, that's -- you know that's unlawful, don't you?
22 To steal stuff?

23 A. Yes.

24 Q. Now, you said you were aware that he snuck into
25 buildings; is that correct?

1 A. Yes, it is.

2 Q. And you know that's trespassing?

3 A. Yes.

4 Q. That's unlawful, as well?

5 A. Yes.

6 MR. LYNN: No further.

7 THE COURT: Any redirect?

8 MR. STABENOW: No redirect, Your Honor.

9 THE COURT: Sir, you may step down.

10 MR. STABENOW: Your Honor, may I approach?

11 THE COURT: Yes.

12 (Counsel approached the bench and the following
13 proceedings were had:)

14 MR. STABENOW: Those are all the witnesses I have,
15 except that Mr. Kelley was still indicating five minutes ago
16 that he wasn't sure if he was going to testify, so I thought we
17 should probably do a brief break. If he decides he's going to
18 testify, he'll testify; if not, we might want to make a record.

19 THE COURT: Are you going to rest if he chooses not
20 to testify?

21 MR. STABENOW: Yes.

22 THE COURT: If he chooses not to testify, do you
23 want to state that in front of the jury on the record here
24 today?

25 MR. STABENOW: No, I don't want to state that on the

1 record, and I won't request an instruction that addresses that
2 either. He and I have talked about that.

3 THE COURT: Okay. What I'll probably do is -- well,
4 let me take a ten-minute break, and I'll have them come in
5 because I want to read them the instruction about not talking
6 before I dismiss them. So we'll take a ten-minute break.

7 (The following proceedings were had in open court:)

8 THE COURT: We are going to -- I don't know why I
9 stood up. We're going to take a ten-minute break. And I
10 realize we've taken a number of breaks today. Trust me, we've
11 been doing work that has moved this case forward while we've
12 been on these breaks, and that's what we'll do during this
13 ten-minute break. So if we could be in recess until five after
14 4:00.

15 (The following proceedings were had in the courtroom
16 out of the presence of the jury:)

17 THE COURT: Mr. Stabenow, I'm going to want to have
18 a colloquy, regardless of whether or not he testifies. If he
19 chooses not to testify, we can do it after we dismiss the jury;
20 but if he chooses to testify, obviously I'll want to do that
21 before. So if you all could chat, and I'll be back at about
22 ten after so we can do the colloquy if we need to.

23 MR. STABENOW: Thank you.

24 (A recess was taken from 3:56 p.m. to 4:09 p.m.)

25 THE COURT: Ready to proceed?

1 MR. STABENOW: My client is absent, but he's made
2 his election, and we can do it after the jury is released.

3 THE COURT: He's not going to testify?

4 MR. STABENOW: That's correct.

5 THE COURT: Has anyone had a chance to look at the
6 instructions?

7 MR. STABENOW: I have not.

8 MR. LYNN: I have not.

9 MR. STABENOW: But I would say, Jim and I talked
10 about this last night, not having seen your instructions, and
11 we both thought that our, both thought our proposed
12 instructions were so similar, it wouldn't take more than a
13 couple of minutes to resolve any issues.

14 THE COURT: I made a couple of changes to them. I
15 don't know that there are any substantive changes, but I
16 thought a few technical changes needed to be made. Do you want
17 to go ahead and get the jury back so we can excuse them for the
18 night and we can take this issue up?

19 So my thought is, again, have them come back at
20 8:30, but I would like you here right at 8:30 tomorrow to
21 discuss the instructions, so if either of you notice any
22 typographical or if you can convince me that any substantive
23 changes need to be made, we have time to make those changes and
24 bring the jury in at 9:00.

25 MR. STABENOW: That's of course acceptable to us,

1 Your Honor, but I would also think I could review them within
2 five or ten minutes if you wanted to take them up tonight, and
3 then have it comfortably done and then --

4 THE COURT: I would prefer to take them up tonight.

5 MR. LYNN: Sure.

6 MR. STABENOW: Absolutely.

7 THE COURT: If you're willing to do that, that would
8 be my preference. Why don't we dismiss them, we can take a
9 15-minute recess, you can look at them, and we can take the
10 issue up after that. Great. That's perfect. And I'll still
11 have them come back at 9:00 tomorrow.

12 MR. STABENOW: Of course, I have this that I'll
13 file, as well.

14 THE COURT: Sure. Sure. So you're not going to
15 rest on the record?

16 MR. STABENOW: I'm going to go ahead and rest.

17 THE COURT: Okay.

18 (The following proceedings were had in the courtroom
19 in the presence of the jury:)

20 THE COURT: Please be seated. Mr. Stabenow, are you
21 ready to proceed?

22 MR. STABENOW: The defense rests, Your Honor.

23 THE COURT: Thank you. Ladies and gentlemen, that
24 concludes the evidence in this case. The attorneys and I do
25 have to spend some time discussing the instructions that I've

1 made reference to and that we will give you after the closing
2 arguments in this case, and that's going to take us a few
3 minutes.

4 So we're going to go ahead and break for the day. I
5 would ask that you be back tomorrow morning at 9 a.m.; and at 9
6 a.m., we will move directly into closing arguments, so I would
7 expect to have the case submitted to you tomorrow morning for
8 you to begin your deliberations.

9 Now, before you take your recess, I do want to read
10 you this instruction to again remind you that during these,
11 this recess and every other recess, do not discuss this case
12 among yourselves or with anyone else, including your family and
13 friends. Do not allow anyone to discuss the case with you or
14 within your hearing. Do not discuss also means do not e-mail,
15 send text messages, blog, or engage in any other form of
16 written, oral, or electronic communication. As I instructed
17 you before, do not read any newspaper or other written account,
18 watch any televised account or listen to any radio program
19 about the trial. Do not conduct any internet research or
20 consult with any other sources about this case, the people
21 involved in this case, or its general subject matter. You must
22 keep your mind free and open, open and free of outside
23 information. Only in this way will you be able to decide the
24 case fairly, based solely on the evidence and my instructions
25 on the law. If you decide this case on anything else, you will

1 have done an injustice.

2 It is very important that you follow these
3 instructions. So, again, as I said before, that means do not
4 go to the library, do not go to Stephens College, do not do any
5 type of research whatsoever or conversations or talking with
6 anyone about this case. Tomorrow the deliberations will begin,
7 and then you guys can talk until your heart's content about it.
8 So with that, we'll be in recess.

9 (The following proceedings were had in the courtroom
10 out of the presence of the jury:)

11 THE COURT: I first want to have a conversation with
12 Mr. Kelley about the decision not to testify. I trust that
13 you've spoken with your attorney, Mr. Stabenow, about the fact
14 that you do have a right to testify?

15 THE DEFENDANT: Yes, Your Honor.

16 THE COURT: And you understand that you also have a
17 right to not testify?

18 THE DEFENDANT: Yes, ma'am.

19 THE COURT: And it's my understanding that you have
20 chosen to not testify in this case; is that correct?

21 THE DEFENDANT: Yes.

22 THE COURT: Have you had ample time to talk with Mr.
23 Stabenow regarding your decision?

24 THE DEFENDANT: I would have liked more, but under
25 the circumstances, I'll say yes.

1 THE COURT: Have you also spoken with your family
2 regarding your decision to not testify?

3 THE DEFENDANT: Just now, yes.

4 THE COURT: Okay. You've been aware, however, of
5 the fact that you had a right to testify for quite some time,
6 correct?

7 THE DEFENDANT: Yes, I did.

8 THE COURT: And so during your conversations -- and
9 I know from the previous conversation you and I have had that
10 you've had a number of conversations with Mr. Stabenow
11 regarding trial strategy, correct?

12 THE DEFENDANT: A few, yes.

13 THE COURT: And during those conversations, you had
14 the opportunity to discuss with Mr. Stabenow the right to not
15 testify, correct?

16 THE DEFENDANT: Correct. I do have -- one thing I
17 didn't know -- I could testify, but obstruction, what is --
18 obstructionism is bad and frowned upon?

19 THE COURT: It's more than frowned upon, let me tell
20 you that.

21 MR. STABENOW: Your Honor, I briefly -- to
22 summarize, we had talked previously in trial strategy that if a
23 defendant takes the stand and testifies as to something that
24 the court concludes is contrary, that is a material issue and
25 is contrary to the verdict, an obstruction enhancement might

1 apply. And we have talked -- we've talked about that
2 previously, but we talked about it in more detail today.

3 THE COURT: Yes, that is correct. Your attorney has
4 properly summarized the factors that go into a sentencing
5 calculation with respect to enhancements for what's called an
6 obstruction of justice.

7 THE DEFENDANT: I didn't know that was part of it;
8 otherwise, I might have had something prepared possibly, but
9 seems how I didn't learn about the obstruction aspect of it --
10 I thought it was just if I talked, that was another score up.
11 It may have been my misunderstanding; but from the git-go, he's
12 made a recommendation one way or the other, and I just didn't
13 know about that distinction, I figured I could talk around it
14 but --

15 THE COURT: You also understand that if you talk
16 around it, Mr. Stabenow has explained to you that talking
17 around it carries some risks in and of itself; is that fair to
18 say?

19 THE DEFENDANT: Yeah, it's tricky, yes.

20 THE COURT: So considering all of the information
21 that Mr. Stabenow has given you and pondering it, is it your
22 decision to not testify in this case?

23 THE DEFENDANT: Yes.

24 THE COURT: Okay. With that, why don't we take --
25 do you think 15 minutes is enough to go through the

1 instructions?

2 MR. LYNN: I think so.

3 MR. STABENOW: Your Honor, if I could just ask --
4 you said you made several changes.

5 THE COURT: I didn't say several. Well, I did --
6 I'm looking at my law clerk here because he may be better at
7 this than I. I will tell you that the reasonable doubt
8 instruction is the 2011 edition of the reasonable doubt
9 instruction, 3.11. The other instructions -- I took out, for
10 example, the instruction both of you had submitted with respect
11 to stipulations because it doesn't appear as if any
12 stipulations have been entered in this case. With the
13 exception of those two, I believe --

14 LAW CLERK: Defendant's statement.

15 THE COURT: Right. And we'll take out --

16 LAW CLERK: 2.07.

17 THE COURT: 2.07. Or I think you submitted 2.07
18 maybe, and we took it out.

19 MR. LYNN: The spillover?

20 THE COURT: The spillover instruction, yes, that's
21 exactly correct. I looked at that and feel as though the
22 issues that were addressed in your proposed instruction are
23 also addressed in other areas in the model instruction, and so
24 I've declined to give that instruction.

25 MR. STABENOW: Your Honor, I respectfully object to

1 that, and I would just note that on Instruction 3.04, I talked
2 to Mr. Kelley. Of course, that shouldn't apply, that very last
3 clause that we talked about, and we're not going to request any
4 instruction about the defendant's failure to testify as we are
5 making the determination that even to provide such an
6 instruction simply highlights his decision not to testify.

7 THE COURT: Okay. That -- the last sentence in 3.04
8 will be taken out. Do you need additional time to look at the
9 instructions?

10 MR. STABENOW: If those were the only things, I
11 really don't think we do. Of course, I would prefer the
12 reasonable doubt instruction from the model subcommittee for
13 2013, but I understand that the instruction -- and so I
14 proposed it, and I guess I object that you didn't choose that
15 one, but I also know that the instruction that is from the 2011
16 edition is obviously good law here in the Eighth Circuit, and
17 so I recognize that.

18 THE COURT: Right. Okay. Thank you. Mr. Lynn, I'm
19 going to be here, so if you want to take a few minutes and look
20 them over. I would kind of urge you to do that because I
21 really want to have a final copy at 8:30 tomorrow morning.

22 MR. LYNN: I've been perusing them as we've been
23 speaking, and I don't have anything I have any problem with.

24 MR. STABENOW: So I would say, Your Honor, maybe
25 five minutes to give them one last look, and then I think we're

1 good.

2 THE COURT: Okay, sounds good.

3 MR. STABENOW: As a matter of fact, I would say if
4 you don't hear from us, we're good.

5 THE COURT: Okay. For purposes of the record, I am
6 going to overrule your motion for judgment of acquittal at the
7 close of all the evidence. Okay.

8 Well, again, I will be here. If you want to discuss
9 the instructions, please let me know. If I don't hear from
10 either of you, I will assume that there are no additional
11 comments and I will see you all -- let's again do tomorrow at
12 8:30 again just in case something comes up, but we'll plan on
13 calling the jury back in at 9:00 and begin immediately with the
14 reading of the instructions and closing arguments.

15 MR. STABENOW: Your Honor, I have one question.
16 Some judges read the instructions and they also tell the jury
17 that a written copy will be provided to them, and I can't
18 remember what you indicated your preference is.

19 THE COURT: I'm going to read them to them. I will
20 let them know that a written copy will be provided. I'm toying
21 with the idea of -- and I haven't told Darin this, but having
22 Darin put the instructions on the Elmo as I read them.

23 MR. STABENOW: I think that's a good idea.

24 THE COURT: I've seen Judge Fenner do that, and
25 thought that it was helpful for people who learn through

1 different senses. So that's what I'm thinking about doing at
2 this time. I am not going to give them a copy of the
3 instructions to read while I'm reading them, but they will each
4 have a copy of the instructions in the jury room. But only one
5 verdict form.

6 MR. STABENOW: Did we ever resolve the video issue?
7 Are you more --

8 THE COURT: That's a good point. Jim, it was my
9 recollection that at some time the U.S. Attorney's Office was
10 talking about getting a computer, some type of system that you
11 could give pretty strong assurances that there was nothing on
12 the computer and no way that they could access the internet.
13 Has that been accomplished?

14 MR. LYNN: Not to my knowledge. And I thought that
15 the court here had some system.

16 MR. STABENOW: I can tell you this, Your Honor.
17 Just from my own complaints this morning, they wouldn't be able
18 to access the internet. Even my laptop here, you have to have
19 the password to access the internet here, and it kicks you off
20 every five minutes. You have to relog on with the password
21 every five minutes; which, given the amount of difficulty I
22 have had getting on the internet, I'm confident jurors would
23 not be able to.

24 THE COURT: You mentioned previously sending a
25 computer back to --

1 MR. LYNN: I had a case that I thought there was --
2 I don't know.

3 MR. STABENOW: I know we did it in December in Judge
4 Laughrey's case where we tried Eddie Prince Roberts, it was a
5 bank robbery, and they were provided a laptop.

6 MR. LYNN: I had a child pornography case where we
7 had things on disks.

8 THE COURT: Let me talk to IT, it sounds like we
9 have something here in the court with the IT --

10 MR. LYNN: We had to give them instructions on how
11 to access files and et cetera, but they had a computer back
12 there.

13 THE COURT: Let me talk with IT. That would
14 obviously be preferable, but it doesn't sound like you're going
15 to lodge any objection.

16 MR. STABENOW: I did not object to the disk, and
17 I've used it myself, those same files. It either works and you
18 see what you're supposed to see or nothing happens.

19 THE COURT: Okay. I'll talk with IT and try to
20 determine what they've used here in the past. Any other
21 issues?

22 MR. STABENOW: No, ma'am.

23 THE COURT: Okay. Then I'll see you tomorrow
24 morning.

25 (Trial adjourned for the evening.)

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CERTIFICATE

I certify that the foregoing is a correct transcript
from the record of proceedings in the above-entitled matter.

July 9, 2013

/s/ _____
Kathleen M. Wirt, RDR, CRR
U.S. Court Reporter