

STATE OF NEW MEXICO
COUNTY OF RIO ARRIBA
FIRST JUDICIAL DISTRICT COURT

No. D-117-CV-2017-00089

ERIC ARMSTRONG and
LUKE ARMSTRONG,

Plaintiffs,

vs.

EXPRESS RANCHES, LLC,

Defendant.

TRANSCRIPT OF PROCEEDINGS

JULY 9, 2019

THE HONORABLE MATTHEW J. WILSON PRESIDING

A P P E A R A N C E S

FOR THE PLAINTIFFS:

Lee Hunt, Esq.
Aimee Bevan, Esq.

FOR THE DEFENDANT:

Nicholas Rimmer, Esq.

I N D E X

	<u>Page</u>
OPENING STATEMENTS:	
Mr. Hunt for the Plaintiffs	15
Mr. Rimmer for the Defendant	40
 TESTIMONY:	
 James Rockenfield - Witness	
Direct Examination by Mr. Hunt	44
Cross-Examination by Mr. Rimmer	78
Redirect Examination by Mr. Hunt	87
 Andrew Gallegos - Witness	
Direct Examination by Mr. Hunt	89
Cross-Examination by Mr. Rimmer	107
 Eric Armstrong - Witness	
Direct Examination by Mr. Hunt	111
 Rebecca Armstrong - Witness	
Direct Examination by Mr. Hunt	144
 Chris Espinoza	
Direct Examination by Mr. Hunt	158
 Debbie Armstrong	
Direct Examination by Mr. Hunt	166
 Dr. Philip Marin - Witness by Video Deposition	
	184
 Paul Demeusy - Witness	
Direct Examination by Mr. Hunt	213
 Luke Armstrong - Witness	
Direct Examination by Mr. Hunt	224
Cross-Examination by Mr. Rimmer	262

P R O C E E D I N G S

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

THE COURT: All right. We are on the record in the matter of D-117-CV-2017-89, Eric and Luke Armstrong versus Excess Ranches, LLC. I note that counsel and -- well, I'll note that counsel is present.

Are there any preliminary matters we need to address in this matter?

MR. HUNT: Good morning, Judge.

THE COURT: Good morning.

MR. HUNT: Lee Hunt on behalf of Plaintiffs. I think exhibits. I know -- I think what we were going to talk about was having exhibits admitted --

THE COURT: Okay.

MR. HUNT: -- as the first order of business.

THE COURT: Sure.

MR. HUNT: And we have the notebooks.

THE COURT: You may approach.

MR. HUNT: And these are the same exhibits that have previously been provided to the Defense. And the only addition is at the back, there are demonstrative exhibits. I don't know that you had seen those. They are fairly straight-forward.

We would just move the admission of all the exhibits in the notebook.

THE COURT: All right. Do you have any objection to

1 the exhibits being admitted? And these are One through Six.

2 MR. RIMMER: And just to be clear, Judge -- and Nick
3 Rimmer on behalf of the Defense. Exhibits One through Five,
4 I have no objection. Will the demonstrative exhibits, they
5 are going to be admitted into evidence, is that right? What
6 I'm understanding?

7 THE COURT: Let's see. So, One through Five, you do
8 not have any objection to those being admitted.

9 MR. RIMMER: Correct.

10 THE COURT: Okay.

11 MR. RIMMER: And the demonstrative exhibits, my
12 understanding is there -- demonstrative exhibits are typically
13 not admitted into evidence, however, [inaudible].

14 THE COURT: All right. That's fine.

15 MR. RIMMER: And I haven't seen it before. I -- I
16 have no -- potentially no objection to their admittance. I
17 just don't know how they are going to be used during trial.

18 THE COURT: Okay.

19 MR. HUNT: Sure. And I mean I -- I understand. We'll
20 see how they get used during trial. My preference would be if
21 they're used during trial that the jury gets to have them
22 during deliberations, but it's -- if we want to take that up
23 as they come, that's fine as well. But as I understand it,
24 there's no objection to using them. Just whether or not the
25 jury gets them in the end is the only question.

1 MR. RIMMER: Absolutely. And I don't think that will
2 be an issue. I have often seen the juries ask to have the
3 demonstrative exhibits when they're deliberating anyway, so
4 we'll see.

5 MR. HUNT: Sure.

6 THE COURT: All right. As a preliminary matter, I am
7 going to go ahead and admit Exhibits One through Five, without
8 objection from Defense counsel.

9 [WHEREUPON, Plaintiffs' Exhibits
10 One, Two, Three, Four and Five were
11 admitted into evidence.]

12 THE COURT: And I'll note that the representative for
13 the Defendant is present in the Courtroom, Mr. Rockenfield.
14 And with regard to Demonstrative Exhibit Number Six -- excuse
15 me -- Plaintiffs' counsel will be permitted to use that
16 throughout the trial without objection, and then you're
17 reserving on -- it's my understanding -- whether or not that
18 goes back with the jury at this time --

19 MR. RIMMER: Yes, Judge.

20 THE COURT: -- during deliberations. Okay.

21 MR. RIMMER: Thank you.

22 THE COURT: All right. Any other preliminary matters
23 we need to address from Plaintiffs' side?

24 MR. HUNT: The only other one from our side is we had
25 this discussion with the Court at a previous hearing about the

1 Police Report, and then also about -- I think there was a New
2 Mexico Game and Fish Report. I think -- my understanding is
3 the Reports, as it's clear or not, part of the evidence in the
4 case. I don't anticipate Mr. Rimmer intends to comment on
5 conclusions reached by either the State Police or the New
6 Mexico Game and Fish.

7 And additionally -- because it came up during
8 deposition -- I just want to make sure that when Mr.
9 Rockenfield testifies, he also does not say anything along the
10 lines of, "Well, my understanding is the State Police said
11 nobody was at fault." Or just -- just I want to have that out
12 front so we don't have to deal with it in case it just
13 accidentally comes out.

14 THE COURT: All right. Mr. Rimmer?

15 MR. RIMMER: I appreciate that. Mr. Rockenfield and
16 I actually had that conversation about thirty minutes ago.

17 MR. HUNT: Good enough.

18 THE COURT: Okay. So, I'm assuming you told Mr.
19 Rockenfield not to discuss the Police Reports and their
20 conclusions.

21 MR. RIMMER: Correct. I said that, insurance,
22 (laughs), --

23 THE COURT: Okay.

24 MR. RIMMER: -- the orange outerwear. We're not going
25 to discuss what anyone was wearing. I think that's the Big

1 Three.

2 THE COURT: Okay.

3 MR. HUNT: Like some of the report, like data from
4 it, may come in through measurements and things that are relied
5 on, which is just separate from, so that may be part of it,
6 but that's not my --

7 THE COURT: Okay.

8 MR. HUNT: [inaudible] for raising the conclusions.
9 That's [inaudible].

10 THE COURT: So, with regard to the Police Reports,
11 generally, I mean, they don't come in unless the parties agree,
12 'cuz they're hearsay. I can think of one hearsay exception,
13 and that would be under the Business Records Exception. And
14 otherwise, they don't come in. And so, I'm going to hold you
15 to it, Mr. Rimmer, in terms of instructing your witnesses not
16 to reference those Police Reports, unless, of course, they've
17 been admitted for some reason.

18 MR. RIMMER: Understood. Thank you.

19 THE COURT: All right. Any other preliminary matters?

20 MR. HUNT: On that note -- I'm -- I'm sorry to keep
21 raising that. I want to be clear on one issue about that, so
22 I don't want to foul it up either.

23 THE COURT: Sure.

24 MR. HUNT: On the Police Report, during -- Mr.
25 Rockenfield was interviewed. He's a party, so I think

1 statements he made to the police during those interviews
2 are -- can be referenced during the trial. So, I intended on
3 referencing a statement that he made to the police, not the
4 report itself. So, I just wanted --

5 MR. RIMMER: And I anticipated, Judge, also asking
6 the Plaintiffs the same sort of question. "Do you remember
7 the conversation where you --"

8 THE COURT: Told the police.

9 MR. RIMMER: Exactly. Not referencing the -- the
10 lines of the Report.

11 MR. HUNT: Good enough.

12 THE COURT: Yeah. That's fine.

13 MR. RIMMER: Okay.

14 THE COURT: I -- I guess the concern, the way I
15 understand it, is the police officer conducted an
16 investigation, wrote a report, and the police officer's
17 conclusions are hearsay unless the officer comes in and
18 testifies. So, there's not going to be any reference to this
19 third-party witness and their conclusions in the case, unless
20 there is an exception to that rule. All right.

21 MR. HUNT: Thank you, Judge.

22 THE COURT: All right. Thank you. Any other
23 preliminary matters, Mr. Rimmer?

24 MR. RIMMER: None for me. Thank you.

25 THE COURT: Okay.

1 MR. HUNT: Nothing from us, Judge.

2 THE COURT: All right. And Mr. Hunt, are you going
3 to have your clients sit at counsel's table?

4 MR. HUNT: You know, Judge, here was our thought
5 process on it. It's awkward them sitting with their back --

6 THE COURT: Right.

7 MR. HUNT: -- to the jury.

8 THE COURT: I agree.

9 MR. HUNT: So, if it's okay, they're in the front row
10 right here. I'll tell the jury that space is tight and they
11 are going to be here during most of the trial and they'll be
12 sitting in the front row right there.

13 THE COURT: Okay. So, maybe we can -- if you want,
14 maybe we can make some furniture adjustments. Or if you want
15 them in the front row, that's fine, too. Whatever your
16 preference is. Because I -- I prefer those representatives to
17 be at counsel's table, but if -- if you don't --

18 UNIDENTIFIED MALE: Yeah. I'm afraid if we switch
19 the seats, it's just as awkward having them staring eyeball-
20 to-eyeball.

21 THE COURT: Well, what I was thinking of is maybe
22 moving Mr. Rimmer's table a little bit to the left, Plaintiffs'
23 table a little bit to the left, and bringing the portable table
24 around so they can face the jury.

25 MR. HUNT: Okay.

1 THE COURT: If you don't want to do it --

2 MR. HUNT: Oh, I'm happy to do that. No, that's fine.

3 I -- I mean, I would -- my preference is the same. I'd rather
4 be on this side of them.

5 THE COURT: And if that's going to be awkward though,
6 let's not do it.

7 [Discussion among counsel regarding seating arrangements and
8 podium placement -- not transcribed.]

9 THE COURT: I'm going to allow the attorneys to adjust
10 the podium.

11 [Discussion among counsel regarding podium placement -- not
12 transcribed.]

13 THE COURT: And then when we start with evidence, you
14 can move it again.

15 [Discussion among counsel while adjusting podium placement -- not
16 transcribed.]

17 THE COURT: And when you start with your witnesses,
18 you can go ahead and adjust the podium again.

19 MR. HUNT: Okay.

20 [Discussion among counsel while adjusting podium placement -- not
21 transcribed.]

22 MR. HUNT: Where -- one more just for logistics, since
23 we're talking about this. Boards -- we have a couple. There's
24 never a real good place to put them, 'cuz I've put them there
25 and you can't see them or the jury. So, I don't know that I

1 want to do that. (Laughs.)

2 THE COURT: (Laughs.)

3 MR. HUNT: I can put it back here a little bit.

4 THE COURT: Can we do that? That would be much better.

5 MR. HUNT: Okay.

6 THE COURT: That way, I could also see the exhibit
7 perhaps and the jury can see as well. But I can adjust myself
8 if I need to.

9 MR. HUNT: Okay. And the other choice is way up
10 there, but then I'm walking -- I don't mind walking up there,
11 but --.

12 THE COURT: And then the Bailiff is going to be sitting
13 over there as well. We can move him if you'd like. And that
14 interferes with the witness.

15 MR. HUNT: Well, just on opening.

16 THE COURT: Well --

17 MR. HUNT: It's okay. I think it's just the
18 Plaintiffs. It's big enough. I think the jury can see it all
19 right. So --. Other than -- other than blocking you from the
20 jury. Do you mind?

21 THE COURT: So, Victoria, I am going to pull up FTR
22 and let you know if there are any problems. (Pause.) And
23 there are no problems.

24 MR. ARMSTRONG: Your Honor, is it okay if I sit at
25 this location?

1 THE COURT: That's fine.

2 MR. ARMSTRONG: Thank you.

3 THE COURT: You're fine. All right. I am going to
4 go into recess until the jury is ready to come out. So, we'll
5 be in recess.

6 [WHEREUPON, the proceedings stood
7 in recess from 8:59 a.m. to 9:01
8 a.m.]

9 THE COURT: Counsel and the parties are present in
10 the Courtroom, and my Bailiff tell me that the jury is present.
11 All fourteen jurors are present?

12 THE BAILIFF: Yes, sir.

13 THE COURT: All right. So, unless we need to address
14 some other preliminary matter, I am going to bring in the
15 jury.

16 MR. HUNT: Judge, sorry. No preliminary matter, but
17 all of a sudden, our computer has frozen. I know you're going
18 to be ready to do opening, and so are we. (Pause.)

19 We're making progress. (Pause.)

20 Thank you, Judge.

21 THE COURT: Are you ready?

22 MR. RIMMER: We're ready.

23 THE COURT: All right. So, let's bring in the jury.
24 All rise for the jury.

25 [WHEREUPON, the following

1 proceedings were held before the
2 jury in Open Court.]

3 THE COURT: All right. Good morning. Come on in and
4 have a seat wherever you feel comfortable. And you may be
5 seated, members of the jury.

6 All right. Members of the jury, feel free when you
7 come in from recesses and adjournments to go ahead and have a
8 seat. Myself and the parties and the attorneys are standing
9 out of respect for you. All right?

10 The attorneys and parties may be seated.

11 I'm going to give you some more preliminary
12 instructions, if you would pay attention, please.

13 All right. Members of the jury. Trial begins with
14 the lawyers telling you what they expect the evidence to show.
15 These statements and other statements made by the lawyers
16 during the course of the trial can be of considerable
17 assistance to you in understanding the evidence as it is
18 presented at trial.

19 Statements of the lawyers, however, are not themselves
20 evidence. The evidence will be the testimony of the witnesses,
21 the exhibits and any facts agreed to by the parties. After
22 you have heard all the evidence, I will give you final
23 instructions of the law, the lawyers will argue the case,
24 and then you will retire to the jury room to arrive at a
25 verdict.

1 The Plaintiffs' attorney will now make an opening
2 statement. Mr. Hunt.

3 MR. HUNT: Thank you, your Honor.

4 Good morning.

5 THE JURY: Good morning.

6 MR. HUNT: What brings us all here is something that
7 we talked about yesterday, which are basic hunting safety
8 rules. Hunting is an important part of New Mexico's culture.
9 It's an important part of New Mexico. And also important is
10 making sure that safe hunting practices are followed by
11 everybody. It doesn't matter whether you're hunting on public
12 land, whether you own a ranch where you hunt privately, whether
13 you're a guide, or whether you're simply a hunter.

14 And so, what we're going to talk about is when those
15 hunting safety rules are violated, even if they're violated by
16 good people who have a lot of experience, and someone gets
17 injured because of that, then there are consequences, and then
18 there's accountability.

19 And so, in this case, what happened -- and first, let
20 me -- let me tell you about the basic rules that we have for
21 us.

22 The basic safety rules that apply on every hunt.
23 Hunting ranches and guides must make safety of the public the
24 highest priority. Everybody is going to agree with that.
25 Hunting ranches and guides must give the correct distance to

1 hunters to protect members of the public on nearby land.
2 Hunting ranches and guides must not allow hunting in areas
3 where a missed shot can travel onto the neighbor's land and
4 hunters are on that land.

5 If those rules aren't followed and somebody gets hurt,
6 then you as a jury get to make a decision whether or not you
7 enforce those rules. Only through juries enforcing those rules
8 can they make a difference in every day.

9 So, let's talk about what happened. You've heard a
10 lot about sort of the circumstances, but not the reality of
11 what happened. And so, let's go back -- first of all, go back
12 a little further to 1999.

13 Bob and Nedra Funk are a couple from Oklahoma that
14 started a company called Express Services, and it -- personnel
15 services, and it became a multi-national corporation. And Bob
16 Funk liked to hunt. And he came out to New Mexico, and there
17 was a ranch called the Atmore Ranch near Cimarron, New Mexico.
18 And he had hunted there, and then he bought the ranch.

19 Later on, he bought -- you heard one of the folks talk
20 about yesterday is a ranch nearby, UU Bar Ranch, which I think
21 they talked about is a -- a big ranch out there -- a hundred-
22 and-fifty thousand acres, something like that. And this is
23 the Amore Ranch, and it was used primarily for family hunting
24 and for fishing and that kind of stuff.

25 And so, on October 7, 2014, two people who were

1 friends of the Funks had permission to come out and go hunting.
2 And they went out hunting and Mr. Rockenfield was the guide.
3 He's the Ranch Manager, and he also takes people on guided
4 hunts when they come out to the ranch.

5 And so, on the morning, they went out and they went
6 out to different parts of the ranch and they didn't see
7 anything that they wanted -- didn't see any shots that they
8 wanted to take. They saw some elk, but not one that were ready
9 for them to take shots at. And there were both -- the two
10 men, one of them had a bull tag and one of them had a cow
11 tag.

12 So, they went back out in the afternoon, about four
13 o'clock, and again went looking around the ranch. They saw
14 some elk, but they didn't see any that they wanted. And they
15 decided to head back down to the Lodge.

16 And what you can see on this picture is over
17 there -- you can't really see it very well with the -- the
18 pointer, but over -- right there is the Lodge. And this --
19 the Lodge is where -- the Lodge is kind of off the main road,
20 which is back this way. And this side of the property is
21 partly the Ute Creek Ranch.

22 And what you can also see up here is you see there's
23 kind of a line right there. It's a tree line. And you can
24 also see, if you look closely, there's a gate there. That is
25 also -- everything above that is the Ute Creek Ranch. And it

1 also kind of goes down -- the lake here is also part of the
2 Ute Creek Ranch.

3 But this part in here is on the Atmore Ranch. And
4 what you can see back in there is -- is a road. And that's a
5 pretty well-traveled road that the folks that use -- on the
6 Ute Creek side of things use that road.

7 And so what happened was, the hunters in the
8 evening -- afternoon, however they said -- there's about thirty
9 or forty minutes of legal hunting time left. They are coming
10 back towards the Lodge, and they hear and see some of the elk
11 over here at the lakes -- at the lake. And the hunters are
12 all the way back at the Lodge. And they decide to wait -- and
13 well, let's see what happens with the elk that were down here
14 at the lake, are they going to move across the hillside. And
15 the elk started moving across that hillside.

16 And one of the things that you also have to know about
17 the hillside. This is where, once the elk -- this is
18 where the hunters were standing. And this picture, if you
19 look -- let me back you up -- or actually, we can go forward.
20 On this -- right in here is the Lodge, and there over here is
21 a big long building that's called the skinning shed, and you'll
22 hear about that throughout the case.

23 The hunters were next to the trees right there, right
24 near where the skinning shed and that kind of little barn
25 building were. And you can see in this picture there's the

1 fence line. So, they were still within the fenced area of the
2 Lodge.

3 And they set up, probably just a little bit left of
4 that tree on the picture there. And they're looking up at that
5 hillside. And this is the view that they see. And this is
6 the view. You see there's a little -- almost a U-shaped opening
7 right here. And you see there's kind of a juniper tree in the
8 middle.

9 The testimony that you'll hear is that's about where
10 the elk were -- about where that juniper tree was. And there
11 were two of them -- there was a bull and there was a cow elk.
12 And there were probably about six or seven other ones, but
13 those were the two that the hunters were focused in on.

14 And what you can also see on this picture is up
15 here -- see all those trees? That's the Ute Creek Ranch. So,
16 the -- the Atmore Ranch ends right there, and then that's the
17 Ute Creek. And what we saw a second ago -- this kind of
18 corresponds right here. And so, you're looking there. There's
19 the tree line with the road right behind it.

20 And one of the issues in this case is that hillside.
21 And so certainly what you're going to hear, without any
22 question whatsoever -- Mr. Rockenfield is going to tell you,
23 "I knew that beyond the hillside was the Ute Creek Ranch. I
24 just thought I had an adequate backstop," is what you're going
25 to hear.

1 And so, what happened next was -- stepping back into
2 the hunt. So, the hunters are there, and they're -- they're
3 getting to aim and take aim at the two elk -- one on the bull
4 and one on the cow. And the decision was made, let's -- to
5 take the shots basically simultaneously. First the cow --
6 first the bull and then the cow, but basically at the same
7 time.

8 And Mr. Rockenfield tells the hunters, the elk are a
9 hundred-and-sixty yards away -- I'm sorry -- and this is
10 important and I just mis-spoke. The elk were a hundred-and-
11 sixty yards away. That will be the testimony in this case.
12 From where the hunters were standing to where the elk were was
13 a hundred-and-sixty yards.

14 Mr. Rockenfield is standing in between the two
15 hunters -- one on each side of him. And Mr. Rockenfield tells
16 the hunters that the elk are between two-hundred-and-forty and
17 two-hundred-and-fifty yards away.

18 So, the hunters rely on that information. The hunters
19 aim as if they're two-hundred-and-forty to two-hundred-and-
20 fifty yards away, because that's the information they were
21 given. And they take their shot. Mr. Rockenfield, again
22 standing between them, says he counted down, "Three, two, one,
23 shoot," and they both shoot. Neither one hits the elk. Both
24 shots go high.

25 And at the same time that this happened, Eric and Luke

1 Armstrong were with Debbie Armstrong, who you'll also get to
2 hear from, and one of Luke's kids who was also there. And
3 they were on this road. Debbie was driving an F250 diesel
4 pickup truck and Eric and Luke were walking along the road,
5 along with their brother, Mark, and Luke's daughter. And they
6 were also involved -- Mark had a tag, and so he was hunting,
7 but they didn't see anything that they had wanted.

8 And so, as soon as those shots are fired, what Mr.
9 Rockenfield is going to tell you is he hears somebody say,
10 "Hey," and he says, "My stomach dropped, because I knew at that
11 moment that somebody was down-range."

12 Eric -- I think what you're going to understand is
13 most likely what happened is the bullet from one of the two
14 hunters -- and it's not known which one -- hit on a rock or
15 something way up on the hillside near the Ute Creek property,
16 ricocheted, and one bullet went through Luke's lip, kind of
17 left-to-right. He's walking this way, and the bullet goes
18 through that way. And it goes through with such force that it
19 knocks him to the ground.

20 And he says, "I remember hearing the shot, and the
21 next thing I remember is I'm face-down on the ground, and I
22 look up and I see my brother who is laying next to me." Luke
23 is hit right here, and it knocks him to the ground as well.
24 And he sees his brother on the ground with blood on his
25 pants.

1 And he says, "I'm trying to talk to him. I'm trying
2 to say, 'Hey, Eric, you're hit, but I couldn't talk.'" And he
3 looks down -- and you know how when you get either a nose or
4 your lip or something, I mean it just bleeds like crazy, so
5 you can imagine. I mean, there's just -- there's a whole bunch
6 of it. And they realize what had happened and they get in the
7 truck and they head off to the hospital.

8 And you're going to get to hear about the effects of
9 the two men getting shot and hit by the bullets as the case
10 goes on.

11 But the first question is, why are we here? Four-
12 and-a-half years later, why are we here in this case? Why are
13 you as a jury -- asked to come from all parts of the State at
14 some level -- all parts of the Northern, to decide this case.
15 And the answer is, because Express Ranches has refused to
16 accept any responsibility in this case. They will tell you
17 from beginning to end that it was a bad accident, nobody did
18 anything on purpose, but we weren't negligent, and it's not
19 our responsibility.

20 And so, you as a jury get to decide that. And so,
21 let's talk about that.

22 One of the hunting safety rules that we believe won't
23 be refuted in this case is hunting ranches and guides must give
24 the correct distance to hunters to protect members of the
25 public on nearby land.

1 And what I mentioned was -- and some of you that hunt
2 know this -- if it's a hundred-and-sixty-yard shot, you're
3 taking dead aim at the animal. If -- if it's not and you're
4 told it's two-hundred-and-fifty yards, the aim is going to be
5 a little different. And this isn't exactly to scale, but the
6 aim is going to be a little high. And so, how do we know in
7 this case? How do we know that in fact Mr. Rockenfield gave
8 the wrong yardage to the hunters?

9 And so, we talked to them about that during their
10 deposition. Michael Norman was one of the witnesses who
11 testified. And here's what he said. He said, "I believe we
12 were both on shooting sticks, if I remember right. And then
13 I can't recall if Jimmy was using a range-finder. I just
14 remember him giving us a yardage, and I was thinking it was
15 two-hundred-and-fifty -- two-hundred-and-forty or two-hundred-
16 and-fifty yards."

17 And we asked him, "You testified that Mr. Rockenfield
18 gave you a range, and your memory is either two-hundred-and-
19 fifty or two-hundred-and-fifty yards." I think one of those
20 is supposed to be two-hundred-and-forty.

21 "Yes, sir."

22 "And did you later learn that range that he gave you
23 was not accurate?"

24 "Not until I got the report from the Wildlife
25 Department that reflected a hundred-and-sixty yards."

1 And -- and you can't -- let me --. At the bottom --
2 you can't see that very well, just 'cuz I can't make those go
3 away. There we go.

4 We asked him, "If you're given a range between two-
5 hundred-and-forty and two-hundred-and-fifty yards, how do you
6 adjust your sight when you're taking that shot?"

7 "I'm going to shoot just a little high," is what he
8 says.

9 And we asked Mr. Wilson the same thing. Asked if
10 you're -- he mentioned, he thought it was yarded at two-
11 hundred-and-forty yards. "And then he asked if we were ready
12 and he -- and he said, 'Okay. Shoot.'"

13 "Based on what you understood, he told you it was a
14 two-hundred-and-forty-yard shot, but based on what you later
15 learned, it was in fact -- I think you said a hundred-and-
16 sixty-yard-shot; right?"

17 And he said, "According to the report, yes. Well,
18 like I said, my rifle, I sighted in for two-hundred. He told
19 me it was two-hundred-and-forty, so that would tend to make me
20 aim just a touch higher than I normally would have, which would
21 actually have increased the difference. If it was actually a
22 hundred-and-sixty, so I would have probably been aiming a
23 little bit higher than I normally would have."

24 So, if in this case, if what we're talking about is
25 what were the circumstances that led to the high shot, the

1 circumstances are exactly that. The wrong distance was given
2 by the guide on a shot that was an elevated target.

3 And so, what -- we asked Mr. Rockenfield about that,
4 and we asked him the same thing. And then we asked him, "As
5 far as the distance, you kind of know what the distance is now,
6 but do you specifically remember what you told them?"

7 And he says, "I don't remember the exact distance at
8 this time, five years later."

9 But he had a chance to talk to the State Police the
10 night that this happened. And when he talked to the State
11 Police, what he told them was -- and this was in the interview
12 with the officer. He estimated the target distance -- and he
13 being Mr. Rockenfield -- was between two-hundred-and-forty-
14 three and two-hundred-and-fifty-one yards.

15 This is essentially -- when you look at -- and this
16 will be part of the information that's -- that's through in
17 this case as well. When you look at this hillside that we're
18 talking about -- and it's really a bench -- that there's a big
19 rise at the beginning. The elk were kind of on top of that.
20 And then it continues to rise up to the Rockenfield -- excuse
21 me, the Ute Creek Ranch where the -- where the Armstrongs were
22 hunting. But the rise is fairly gradual. It's not like it's
23 a big backstop behind the elk.

24 And so, in this case, when the bullet goes high, it's
25 going to keep going towards the Ute Creek property -- towards

1 where there were hunters. That's what makes it not only a shot
2 that was unreasonable because of the wrong range, but also
3 because of where it was.

4 And so, even though the testimony up to this point
5 has been unequivocal that Mr. Rockenfield gave a range of two-
6 hundred-and-forty to two-hundred-and-fifty yards, that was in
7 fact wrong, and that that's what led to the high shot, that's
8 what led to the individuals getting hit, Express Ranches still
9 says they didn't do anything wrong.

10 And what you're going to get the chance to decide at
11 the end -- and the Judge will give you the instructions on
12 negligence -- unreasonable. Is it unreasonable -- is it -- is
13 it negligent to give the wrong range? And we believe that
14 based on the evidence, the answer to that question is yes, and
15 that that's what led to what happened in this case.

16 But that wasn't the only thing. What you also
17 understood from the hunting safety rules, and what many of you
18 understand just naturally is, hunt -- number three. Hunting
19 ranches and guides must not allow hunting in areas where a
20 missed shot can travel onto the neighbor's land and hunters
21 are on that land.

22 And so, this is a case not only where there was an
23 inadequate backstop -- clearly the hunters were down lower and
24 they're shooting at an elevated target. They're shooting at
25 an elevated target, knowing that on the -- in the background

1 of that elevated target is the neighbor's property -- is the
2 property line. And not only that it's the neighbor's property
3 and a property line, but that there's the road that goes right
4 by there.

5 And so, one -- we asked Mr. Rockenfield about that.
6 And we asked him a couple of questions about knowing that this
7 was the Ute Creek Ranch. And so, we asked him. "You agree
8 your obligation as a guide is to know that there are potential
9 people that are in danger from your hunters' shots. You agree
10 with that."

11 He said, "Correct."

12 "And part of that is knowing whether or not somebody
13 is on the adjoining ranch. If you know a shot potentially
14 could go onto somebody else's property, and you have to take
15 that into consideration, is there someone there?"

16 And he said, "Correct."

17 And so we asked him, "You knew that folks were on the
18 Ute Creek Ranch; correct?"

19 And he said, "Correct."

20 "You just didn't know where on the ranch."

21 And he answered, "Correct."

22 "And you knew that taking this shot on the hillside
23 was a risk that one of the hunters would shoot high, and a
24 bullet could go on to the Ute Creek Ranch. We've already
25 talked about that."

1 And he says, "That's correct."

2 The hunting safety rules that protect hunters demand
3 that when you're a guide, you're responsible for making sure
4 your hunters know where they're shooting. Mr. Rockenfield's
5 testimony, as he's already given in this case, shows that he
6 knew the shots were headed towards the Ute Creek Ranch. He
7 knew that there were hunters on the Ute Creek property. He
8 just didn't know where they were on the property. His
9 obligation at that time is, that's a shot you can't take if
10 it's potentially going to put people in danger.

11 And what you're going to hear during this case is the
12 road that is where the Armstrongs were, is a road that's
13 frequently traveled. It's a road that when the Armstrongs are
14 there hunting on that ranch -- and they've hunted there for
15 about ten years before this -- they use that road every single
16 day when they're hunting. And there was clear knowledge that
17 they were hunting on this day.

18 And so, when you put those factors together, what
19 becomes clear is that this was a shot that put people at risk.
20 And we've already looked at this a little bit, but here's kind
21 of the -- the drawing. And this is -- what you're going to
22 see on a couple of these is from the yardage -- where the
23 Armstrongs were is the elevation is about seven-thousand-nine-
24 hundred feet. The shooters' elevation was seven-thousand-
25 seven-hundred-and-forty-five.

1 There is an initial rise up to where the elk were, a
2 little over fifty or so feet higher than where the hunters
3 were. And the rise continues all the way up to where the
4 hunters -- to where the Armstrongs were. But it continues
5 along the same path as the bullet in this case did. And that's
6 why, for many reasons, although -- and you'll get to decide,
7 is that -- what you're going to get to see -- an adequate
8 backstop to take a shot towards the neighbor's property. And
9 in this case, the proof is, it wasn't. The proof is, two men
10 were hit.

11 And it's for those reasons -- and you're going to get
12 to hear also from an expert, and his name is Andrew Gallegos.
13 You heard him mentioned yesterday. He's been an outfitter for
14 about sixteen years. He lives in Santa Fe and hunts all over
15 Northern New Mexico. And what he's going to tell you is that
16 there's a number of things that really occurred that came
17 together in this case to create the danger. A number of things
18 that were -- one, that you're also going to get to hear about,
19 is sighting in the rifles.

20 The first thing that Mr. Gallegos does any time he
21 takes hunters out is sights in the rifles where they're
22 hunting -- at the very least, near to where they're hunting.
23 The hunters in this case sighted in their rifles in Oklahoma.
24 Oklahoma has an elevation of one-thousand feet. The ranch here
25 has an elevation of eight-thousand feet. A rifle sighted in

1 in Oklahoma does not shoot the same when you get to New Mexico.
2 Nothing was done with these hunters on this hunt to make sure
3 it was sighted in for New Mexico.

4 Secondly -- we've talked about that at length -- not
5 getting the correct yardage to the elk. There's many different
6 ways of doing that, but what you can't do is think you know
7 the answer, even if you've lived there for twenty years, even
8 if you think you know, you have to double-check, whether it's
9 with a range-finder or whether it's with something else. You
10 have to double-check.

11 Shooting at an elevated target with the neighbor's
12 land in the background. Shooting towards a well-traveled road
13 on the neighbor's property. Not confirming the location of the
14 other hunting party. And no policy at the ranch relating to
15 safe hunting areas.

16 You're going to get to hear about that. And what
17 you're going to hear is, all of those factors came together on
18 this day to make it a negligent hunt, to make it, at the very
19 least, negligent shots that were taken at those two elk that
20 resulted in the injuries.

21 And what we're going to ask, and what you're going to
22 have the opportunity to do, is are you going to enforce the
23 safety rules, as a jury, for this community and for hunting in
24 New Mexico.

25 But we also had to really understand a couple of other

1 things. We had to understand -- let me back up. Sorry.

2 One thing -- we didn't talk about this yesterday, and
3 that's the burden of proof in a case like this, and it's
4 important because it's different than what a lot of folks sort
5 of think. And the Judge is going to give you those instructions
6 at the end of the case.

7 What the Judge is going to say is that, it's our
8 job -- I mean, we're -- just like yesterday. You know, we
9 spent a whole lot more time than the Defense did during their
10 case, and that's partly because it's our job to prove the case
11 to you. We have to prove that more likely than not, it was
12 negligent and unreasonable to take those shots.

13 And so, more likely than not simply means that,
14 basically fifty-one percent. If you think we're right, but
15 you still have some doubts, the law says, that's okay. This
16 isn't a criminal case. Nobody is going to jail. Doubt doesn't
17 create an out in a civil courtroom.

18 What you have to say is, you know, "I think most
19 likely they shouldn't have taken those shots." If you feel
20 that way, then the law says, that's enough. And same thing on
21 the damages side of things.

22 But we had to decide a few other issues before coming
23 into Court. And one of them was, you're going to get to hear
24 about a gate. And what you're going to hear about the gate is
25 that on this part of the land, kind of up here where you see

1 the roads come back around, there's a gate up there. And
2 there's a gate that kind of goes into this area, and it's a
3 gate that's kept open because the elk don't care about a gate,
4 and they're coming and going both ways, so if they leave the
5 gate up, they just tear up the fences, so the gate is
6 always open, as I understand -- at least during this time of
7 year.

8 Mr. Rockenfield is going to tell you, "Well, my
9 understanding was if the Armstrongs were on that part of the
10 land, they would park the truck at the gate."

11 And so, he says, "I looked. I didn't see the truck
12 on the gate, so I thought it was okay."

13 And so, we asked him about that. And we said, well,
14 let's -- let's back that up a little bit and make sure that we
15 understand that. Was there ever any conversation about that?
16 Was there ever any conversation with the Armstrongs that -- so
17 that they knew if they're up there, then they should park at
18 that gate?

19 And we asked him, and we said, "All right. And did
20 you and Eric ever talk about that?" meaning the gate.

21 And he says, "No."

22 "It was simply your understanding that one way you
23 would know if somebody is on that ranch is if the truck was
24 parked at the gate."

25 "Yes."

1 "But there wasn't any agreement where Eric said,
2 'Okay, Jim, if I'm on that ranch, I'm going to leave my truck
3 at the gate.' That never happened, did it?"

4 And he said, "No."

5 And what -- you'll get to hear from the Armstrongs as
6 well -- Eric in particular. And Eric is going to tell you,
7 "We never talked about leaving a gate there as a signal that
8 we were up on the Ute Creek Ranch. Yeah, sometimes we parked
9 it and we walked there, but other times we drove it up there
10 because we were going to keep going this way, and we needed
11 the truck, not back here, but we needed it so we could keep
12 going that way."

13 And so, as a professional guide, you have to do more
14 than assume you know what somebody else is doing when you're
15 shooting towards a well-traveled road. If there had been an
16 agreement, and they had said, "Okay, this is how we're going
17 to operate," maybe it would be a different circumstance. But
18 the proof is, there wasn't an agreement. There was an
19 assumption. And I think we all know the saying about
20 assumptions. That's not enough.

21 And the other thing you're going to get to hear about
22 as well, it was just a freak accident, and I think you're going
23 to hear that quite a few times. It was a crazy thing that
24 happened, and nobody could have predicted it. When we were
25 standing down here at the Lodge, we couldn't see them up there

1 'cuz they were back here, and so we didn't know they were
2 there. And it's just an accident, and we're really sorry it
3 happened. We wish it hadn't happened. We feel bad about it
4 happening, but don't hold us responsible.

5 Accidents occur when people are careless. Accidents
6 occur when people take shots towards a neighbor's property,
7 and a road without being certain that no one is in danger.
8 Accidents happen when the wrong yardage is given. Accidents
9 happen when there isn't an adequate backstop.

10 And so, although we agree, it was unfortunate and
11 un- -- whatever -- however you want to phrase it, an accident
12 here is something different. The accident -- the incident
13 happened because of careless conduct, not intentional. And we
14 talked about that. As we also talked about yesterday, you
15 don't have to find that Mr. Rockenfield is a bad person. You
16 don't even have to find that he is a bad guy. We're not asking
17 you to find that and we don't contend that. But on this day,
18 for whatever reason, bad decisions were made, and that's
19 different than an accident.

20 Now, as a result of this incident, what happened was
21 Mr. Luke got hit in the face with the bullet. And I -- and
22 when he got hit in the face with the bullet, as I already told
23 you, he got knocked to the ground, and he had to go to the
24 hospital. He had two different surgeries. He first had a
25 surgery to kind of close it up and they -- I think -- I don't

1 know -- he had thirty-something stitches the first time. But
2 it didn't fix it, and it didn't fix the problem because there's
3 a whole bunch of nerves that go through there. And also, with
4 a bullet, it wasn't just a clean kind of cut. I mean, it was
5 really a tear on the -- on the upper lip.

6 In the second surgery, they took out a whole bunch of
7 scar tissue and they had to pull up the skin to kind of fix
8 the lip. And what you'll -- you'll see is that Luke was
9 fortunate, and he had a really good surgeon. The surgeon did
10 a good job. But what the surgeon couldn't fix was the feeling
11 issues -- the sensation.

12 What you're going to hear from Luke is that it's
13 different than it was before. For the longest time, he felt
14 like he had a nine-volt battery strapped to his lip. Just the
15 tingling feeling of nerve pain in his face. Some of that kind
16 of subsided when he had the second surgery, but now essentially
17 what he has is a lip that is forever numb and without feeling.
18 So, when he is drinking water out of a cup, usually he carries
19 straws with him because he can't tell when it's falling down
20 his shirt. When he eats out at a restaurant, or food at home,
21 it often falls out and he gets it on his shirt. And what
22 you're going to hear from his wife about how that kind of
23 affects their -- them going out.

24 And it affects him in other ways, too. Pretty
25 significant ways. And what we're going to ask at the end of

1 the case is to understand that now -- Luke is forty-eight
2 today. And he is going to have this for the rest of his life.
3 This isn't something that's going to get fixed. The nerve
4 issues, the loss of feeling.

5 And he also, when this happened, it broke several of
6 the -- his teeth just from the impact. And also, there's some
7 TMJ issues that are essentially jaw-related issues that have
8 caused migraines that have been increasing over the last couple
9 of years.

10 All of these are effects that come from this case.
11 And what -- what we put in there were just some of the issues,
12 some of the permanent harm to Luke. And what -- ultimately,
13 what we're going to talk about and ask you to consider and ask
14 you think about is that in this case, the effect on Luke is
15 something that he lives with really from when he wakes up in
16 the morning and the first thing you do is go brush your teeth,
17 and there's just no feeling, throughout the rest of the day,
18 when you're drinking, when you're eating, when you're
19 interacting with people.

20 And Luke -- what you're going to hear also -- we told
21 you yesterday, Luke's a State Police Officer with the Colorado
22 State Police. He was in the Military before that. He has
23 been around bullets for his entire adult life. But he had
24 never been hit by one.

25 What Luke is going to tell you is getting hit kind of

1 changed how he felt about it. Kind of changed how -- almost
2 when -- you know, the first time you get tackled in a football
3 game or something like that, the first time you get hit in any
4 sort of way, it changes how you look at things.

5 And he's going to say, "You know, I never felt
6 invincible before, but I feel a little bit more vulnerable now
7 that this happened. And I just feel a little bit -- it's just
8 different."

9 And what we're going to ask of this jury is that
10 that -- that you consider that when you ultimately decide the
11 issues in this case.

12 Eric was walking about three steps behind his brother.
13 And again, the bullets were coming from the left, and Eric got
14 hit right in the abdomen. And the piece -- you also heard --
15 I'm sorry.

16 You also heard that Luke got hit in the shoulder. He
17 got hit by probably three pieces of the bullet. The one that
18 he got hit in the shoulder fortunately hit him, caused some
19 bruising. It didn't pierce the skin. And he didn't require
20 surgery or anything like that. So, I wanted to clear that
21 up.

22 When Eric got hit, it goes through his clothes,
23 through the skin, and lodges in his abdomen. And it lodged in
24 such a place that they couldn't -- that's where it goes in,
25 and it lodges in a spot where they couldn't go get it out. And

1 we even heard this yesterday from one of the members of the
2 jury. Sometimes when people get hit with bullets, it's safer
3 just to leave it than it is to go try to dig it out.

4 But there's consequences when you leave a bullet
5 inside of somebody. And those consequences are, now he has a
6 lead fragment of a bullet inside him. And it also caused --
7 when he was walking -- as -- what we told you is when he got
8 it, it hit with such force that it knocked him to the ground.
9 And when it knocked him to the ground at basically his
10 thoracic -- kind of the middle of his back, it tore some of
11 the ligaments, it tore some of the muscles, and he's been
12 dealing with those back issues ever since this.

13 Which -- you're going to get to hear from Monty
14 McGowen, that's going to say, "He has extremely tight on this
15 left side, which is where the bullet is, where the scar tissue
16 is, and where the problems are for his back." And that here
17 we are, four-and-a-half years later, the bullet is still there,
18 and it will remain there. I mean, I guess we heard fifteen
19 years later they might have to go get it, but it's still
20 there.

21 The issues that he's dealing with are also permanent.
22 And they're significant.

23 And what -- what you're going to understand, and what
24 you do understand inherently is that this is their one
25 opportunity to come to Court. If ten years from now, fifteen

1 years from now, twenty years from now other things come up
2 because of these injuries, they don't get to come back. And
3 so, when we present the damages side of the case to you, and
4 the human losses side of the case, what we're ultimately going
5 to ask is that this jury sit as an appraiser. What's the fair
6 trade value for these two men who are between forty-eight and
7 fifty-two, who are now going to live with the effects of this
8 for the rest of their lives?

9 And this jury's role, and this jury's opportunity --
10 again, like we talked about, because you decided to show up
11 for your Summons, you'll have the unfettered authority to
12 decide what's right in this case, what's right in terms of
13 whether safety rules were followed, and what's right in terms
14 of the harm that were suffered by the Armstrongs.

15 And we're going to try to present this case to you
16 efficiently. There's -- and we're going to try to present it
17 to you without a ton of witnesses, because we think you
18 understand the issues in this case.

19 And so, we thank you for being here, and we look
20 forward to presenting this case to you.

21 THE COURT: At this time, the Defendant may make an
22 opening statement or the Defendant may elect to reserve its
23 opening statement until the beginning of the Defendant's case-
24 in-chief. All right. Mr. Rimmer?

25 MR. RIMMER: I'll make a brief statement, Judge.

1 THE COURT: All right.

2 MR. RIMMER: Good morning, everybody.

3 THE JURY: Good morning.

4 MR. RIMMER: So, you've heard from Mr. Hunt. Since
5 February, 2017, the parties in this case have been conducting
6 discovery and attempting to figure out what happened on October
7 7, 2014, the day of this accident.

8 As you've seen, the parties have been conducting
9 discovery. Those have included exchanging questions to one
10 another, exchanging exhibits, documentation, and also
11 conducting interviews of the witnesses. We call those
12 depositions, and we've seen that. And as you've heard from
13 Mr. Hunt, we're here in this Courtroom because we could not
14 get this accident sorted out during that process.

15 And so, what -- and what you've also heard is that
16 the parties agree on a majority of the issues in this case.
17 What -- some of the stuff, I think -- what we all agree on is
18 that on October 27 -- or October 7, 2014, Mr. Rockenfield, who
19 is sitting over there, was guiding Michael Norman and James
20 Wilson on a hunt on the Atmore Ranch.

21 You -- you've heard how, as he was guiding them on
22 this afternoon of the hunt, Mr. Rockenfield, Mr. Norman and
23 Mr. Wilson approached the ranch house, which you saw, and they
24 saw elk up on that ridge. You will hear how those three men
25 got out of their vehicle, looked at the elk, got back in the

1 vehicle, traveled down to that spot where they took the shot,
2 and they began to set up the shot, all the while, Mr.
3 Rockenfield coordinating the shot.

4 And -- and the way -- the way I understood it is Mr.
5 Norman and Mr. Wilson were going to shoot at the same time. I
6 guess if there's a -- one shot goes before the other, the elk
7 will bolt. So -- and -- and Mr. Rockenfield was going to count
8 down, "Three, two, one, shoot," which he did. Both shots
9 missed the mark.

10 Unknown to Mr. Rockenfield and Mr. Wilson or Mr.
11 Norman, the Plaintiffs were scouting in that area. You saw
12 that up on the ridge. And all the parties agree that the
13 Armstrongs were hit by bullet fragments or shrapnel, I believe
14 is what the evidence presented will show. That it was
15 fragments or shrapnel that caused the injury.

16 The question presented to you all, as Mr. Hunt said,
17 is what, if anything, did Mr. Rockenfield, Mr. Norman and
18 Mr. -- Mr. Wilson do wrong. Are they at fault here because
19 they missed their shot? Are they at fault because of the
20 miscalculation of the distance to the elk? Was there anything
21 anyone could have done to prevent -- prevent this from
22 happening?

23 That's a question that you'll have to decide, and
24 there's obvious answers to this question, and there's not-so-
25 obvious answers.

1 The obvious answer is -- that you will hear from Mr.
2 Rockenfield that he deeply regrets what happened. You will be
3 exposed to photographs which we have seen, and testimony that
4 show -- show serious gruesome injuries to both Plaintiffs. I
5 mean, they were definitely hurt because of this. And
6 there's no question that my client or Mr. Rockenfield would
7 sacrifice anything to go back in time and make sure this didn't
8 happen.

9 That -- that's the obvious answer. The harder
10 question is whether my client is liable under civil law.
11 That's the question you will have to decide.

12 I always explain to juries in civil cases like this
13 that the case has two parts -- what caused the accident and
14 what the accident caused. As you heard Mr. Hunt say, we know
15 what the accident caused to some extent. It caused those
16 injuries -- the photographs you've seen. You're also going to
17 hear testimony about permanent injury and that sort of thing.
18 That's for your -- it's your province to make a determination
19 on what the accident caused.

20 Now, the real question is what caused the accident.
21 And I almost hesitate to say it, but you're going to get to
22 decide whether this was a freak accident -- and I may say it
23 once and I may say it twice -- whether this was negligence, or
24 whether this was something else.

25 As a jury, it's your province to render a verdict on

1 both issues -- what caused the accident and what the accident
2 caused. All that I ask is you have -- listen to the evidence
3 and testimony of the case and come to a fair decision.

4 Thank you.

5 THE COURT: Mr. Hunt, if you would call your first
6 witness, please. And if we need to adjust the podium, Andrew,
7 if you can help Mr. Hunt do that.

8 Your first witness?

9 MR. HUNT: Thank you, Judge. We'll call Mr.
10 Rockenfield.

11 THE COURT: All right. Mr. Rockenfield, if you can
12 come up to the witness stand for me. I'm going to swear you
13 in.

14 Watch your step going up the ramp there. There's an
15 incline.

16 And if I can have you raise your right hand. Do you
17 swear or affirm that the testimony you will give in this case
18 will be the truth, the whole truth and nothing but the truth
19 under penalty of law?

20 THE WITNESS: I do.

21 THE COURT: All right. You may be seated, sir.

22

23

JAMES ROCKENFIELD

24 The witness herein, having been first duly sworn upon oath,
25 was examined and testified follows:

DIRECT EXAMINATION

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

BY MR. HUNT:

Q Good morning, Mr. Rockenfield.

A Good morning.

Q Let me -- I -- I think I said this at your deposition, and I want to say it again. But take your time this morning. If there's any questions I ask you that you don't understand, feel free to tell me to rephrase it. We want to make sure that the jury gets a chance to hear everything, and that -- you know, my intent is not to confuse you with any questions or anything like that. Is that fair?

A Yes.

Q Tell the jury a little bit -- your -- where are you from.

A How -- how much leeway do I have on this or --?

Q (Laughs.) Where do you live currently, sir?

A I live in Ute Park, New Mexico.

Q All right.

A I was born and raised there.

Q And you -- as -- as of right now --

MR. HUNT: And we're going to probably use the Elmo, Judge, so I just want to get that --

THE COURT: Sure.

Q (Mr. Hunt continuing) You're the Ranch Manager at the

1 Atmore Ranch; is that correct?

2 A Correct.

3 Q All right. And you were in the Courtroom a minute ago
4 when we talked about some of the safety rules relating
5 to hunting. You saw when we put those up on the stand;
6 didn't you?

7 A Correct.

8 Q Um --

9 A Well, part of it. The tablet was largely in my --

10 Q Okay.

11 A -- in my way on some of those displays.

12 Q All right. Well, what we talked about -- and I'm --

13 MR. HUNT: And Judge, if I might. I think we're --

14 THE COURT: Do you need -- Andrew might be able to
15 assist you on that. (Pause.)

16 MR. HUNT: I think -- did we send it to you?

17 THE COURT: Oh, let me -- if you can check that for
18 me, Andrew. (Pause.)

19 MR. HUNT: I think we sent it now. It might be muted
20 on your end.

21 THE BAILIFF: Let's do it this way. [Inaudible] from
22 there.

23 MR. HUNT: Okay. (Pause.) Sorry about this. (Pause.)
24 Judge, if we need to, we can go ahead. I don't want to break
25 and I don't want to hold everybody up, so I can proceed without

1 that for -- at the moment.

2 THE COURT: Okay. If you -- why don't you go ahead
3 and approach and let me have Mr. Rimmer approach. Go ahead
4 and approach.

5 MR. HUNT: Okay.

6 [WHEREUPON, the following side bar
7 was held at the Bench.]

8 THE COURT: If we need to take a break to get I.T.
9 down here, we can do that to get -- to get it working.

10 MR. HUNT: That's fine. We can do that at the morning
11 break, potentially.

12 THE COURT: Okay.

13 MR. HUNT: But for now, we're fine.

14 THE COURT: All right. Thank you.

15 [WHERUEPON, the following
16 proceedings continued in Open
17 Court.]

18 Q (Mr. Hunt continuing) All right, Mr. Rockenfield,
19 we'll -- we'll do this without technology, but I don't
20 think that will hold us up. Fair enough?

21 What we earlier looked at were some of the hunting
22 safety rules that we put in front of the jury. And the
23 first one was: Hunting ranches and guides must make
24 safety of the public the highest priority.

25 Do you agree with that rule?

1 A Yes, sir.

2 Q And certainly hunter safety is something that at all
3 times you've recognized as important.

4 A Yes.

5 Q Certainly it's something that at all times you've tried
6 to practice, haven't you?

7 A Yes, sir.

8 Q All right. And you recognize especially -- and what
9 the jury is going to hear a little bit, is the Atmore
10 Ranch is a little over two-thousand acres -- I think
11 it's about two-thousand-one-hundred-and-fifty acres.
12 Is that -- is that right?

13 A It's two-thousand-one-hundred-sixty.

14 Q Okay. And so not -- in the scale of ranches in New
15 Mexico, not a huge ranch; right?

16 A That's correct.

17 Q And so certainly on a ranch of that size, one of the
18 things that's important is to make sure that you know
19 where property lines are, you know where boundaries
20 are, so that if you're taking shots, to know when
21 you're at risk of going on to the neighboring property;
22 right?

23 A Yes.

24 Q And what we also put in front of the jury as the second
25 rule was: Hunting ranches and guides must give the

1 correct distance to hunters to protect members of the
2 public on nearby land.

3 You certainly agree with that general rule, don't
4 you?

5 A Yes.

6 Q And agree that as a guide, one of your obligations is
7 if you give distance to a hunter, one of your
8 obligations is to give the correct distance;
9 right?

10 A Yes.

11 Q And one of the concerns is -- and I think we talked
12 about this the first time. If there's a distance that's
13 given that's incorrect, there's a chance that the shot
14 is going to be missed because the hunter relied on that
15 distance. True?

16 A Correct.

17 Q All right. And the last rule that we put in front of
18 the jury was: Hunting ranches and guides must not
19 allow hunting in areas where a missed shot can travel
20 onto the neighbor's land and hunters are on that
21 land.

22 You would agree with that general rule, too,
23 wouldn't you?

24 A Yes.

25 Q All right. And in -- in this instance, what the jury

1 has already had a chance to look at is -- first of all,
2 just make sure that -- this image right here, the one
3 that we've seen before. This is the hunting lodge;
4 right?

5 A Correct.

6 Q Where the hunters were staying. And this is the road
7 that we've talked, that you heard mentioned during
8 opening statements. That's a road that's on the Ute
9 Creek Ranch property; is that right?

10 A Correct.

11 Q And right along here, that's the property line.

12 A That's correct.

13 Q Okay. And you've been on the Ute -- excuse me, the
14 Atmore Ranch and worked there, I think you said for
15 over twenty years.

16 A Been on -- living on the ranch for over ten years. The
17 Atmore Ranch was my first paying job when I was twelve.

18 Q Okay. So, worked at the Atmore for a long time.
19 Certainly knew the property as well as anybody
20 around.

21 A Yes.

22 Q Knew the elk --

23 A And --

24 Q -- as well as anybody around.

25 A Yes. And the same with the Ute Creek Ranch.

1 Q Mm-hmm.

2 A I had been managing the Ute Creek Ranch for ten years
3 prior to this.

4 Q Okay. And let's get a couple of things kind of out of
5 the way at the beginning. The jury understands Express
6 Ranches is the name of the Defendant. Do you have any
7 ownership interest in Express Ranches?

8 A No, sir.

9 Q Who owns Express Ranches?

10 A At this point, it is Nedra Funk.

11 Q All right. Go ahead, sir.

12 A And I don't know if it's put in -- you know, it's a --
13 if it's an LLC or what the legal mechanism for ownership
14 is at this point.

15 Q Okay. And the ranch was purchased in 1999 by Nedra and
16 Bob Funk?

17 A Yes.

18 Q And shortly after that -- or I guess after that,
19 somewhere around 2006 or '07, did the Funks also
20 purchase the UU Bar Ranch?

21 A I'm not sure of the date, but yes, Mr. Funk did.

22 Q All right. Was Nedra Funk also part of that?

23 A No.

24 Q All right. And Nedra Funk, where does she live?

25 A In Piedmont, Oklahoma.

1 Q All right. And how often does she come out to the
2 ranch?

3 A Multiple times a year.

4 Q All right. And is it your understanding that Express
5 Ranches also owns other ranches?

6 A That's correct.

7 Q In Oklahoma?

8 A Yes.

9 Q In other states as well?

10 A I believe so.

11 Q All right. Express Ranches is a big operation; isn't
12 it?

13 A Relatively so.

14 Q Lots of cattle? I think -- do they do cattle as
15 well?

16 A Yes.

17 Q Do you know -- all of the Express Ranches together, do
18 you know how many acres that is?

19 A No, I don't, especially since they've sold the UU
20 Bar.

21 Q All right.

22 A And it's no longer part of the Express Ranch.

23 Q All right. And the UU Bar -- so, it's no longer part
24 of the Express Ranch. They sold it within the last
25 five or six years?

1 A They sold it last Fall. I believe Mr. Funk has a lease
2 on it, but I am in no way connected with any of that
3 operation.

4 Q And although you don't know the exact amount of acreage
5 owned by Express Ranches, do you believe it to be over
6 two-hundred-and-fifty-thousand acres?

7 A At this point, no, since they sold the UU Bar. That
8 was -- that was like the water pitcher, and the rest
9 of them are smaller places, like the Atmore, that are
10 a couple of thousand acres. I believe the ones in
11 Oklahoma are even smaller yet.

12 Q And the -- I guess, the UU Bar, that was the big one.
13 You said a hundred-and-fifty acres -- a hundred-and-
14 fifty-thousand, something like that?

15 A Yes.

16 Q Do you know what that sold for?

17 A No, I don't.

18 Q Any -- any idea?

19 A No, sir.

20 Q Do you know the market value of the Atmore Ranch?

21 A Depends on what idiot comes and wants to buy it.

22 Q All right. (Laughs.)

23 A (Laughs.) Is it being used for ranching? Is it being
24 used to subdivide and put your five million dollar
25 houses, like you see between Tierra Amarilla and Tres

1 Piedras, or -- it's -- it's all in the eye of the
2 beholder.

3 Q Let's talk about elk for a second. How many elk are
4 on the Atmore?

5 A On a given basis, within the Valley, including the
6 Atmore Ranch, the Ute Creek Ranch, the Cimarroncita
7 Ranch, and part of Philmont that is in that same Valley,
8 approximately a hundred-and-twenty-five year-round,
9 and in the spring when it greens up, there's generally
10 another hundred-and-twenty-five to hundred-and-forty
11 that come in at that point.

12 Q All right. So, at some parts of the year, about three
13 hundred elk?

14 A Yes, in the spring.

15 Q Sure.

16 A Mm-hmm.

17 Q And any cattle being raised on the ranch, or is it just
18 used for hunting and wildlife?

19 A We occasionally have pasture leases, yes.

20 Q Do you have any right now?

21 A No.

22 Q All right. Now, let's talk about this particular hunt
23 and the two hunters. Did you know them?

24 A Yes.

25 Q Had they hunted there before?

1 A Yes.

2 Q And they were Oklahoma State Patrolmen?

3 A Yes.

4 Q And essentially, they were friends of the Funk -- the
5 Funks; is that right?

6 A Yes.

7 Q That's what allowed them to come hunt there.

8 A Yes.

9 Q Family friends. And at this stage, over the time since
10 Nedra Funk has owned the ranch, has it been exclusively
11 used for friends and family?

12 A Yes.

13 Q Any public hunting allowed on the land?

14 A No.

15 Q Any access to public land allowed through the
16 ranch?

17 A No.

18 Q And the hunters that came out that day, you heard me
19 talk about this before, but did you personally do
20 anything with them when they got to New Mexico, to make
21 sure that their rifles were sighted in?

22 A I had them bring targets from when they sight in, in
23 Oklahoma. Given the size of the ranch, if someone
24 suspects they have a problem with their firearm, I tell
25 them, go to the NRA Whittington Center, which is the

1 world's largest shooting range, that is right near
2 us -- thirty-eight miles or thirty-nine miles, and
3 approximately the same elevation.

4 Q Sure. And so, the Whittington Center is right around
5 the corner. Did you take Mr. Norman and Mr. Wilson to
6 the Whittington range to sight in their rifles?

7 A No.

8 Q Did you make sure that they sighted in their rifles at
9 the Whittington range before starting this hunt?

10 A No.

11 Q And when -- when you took them hunting on the day that
12 this happened -- I want to back up a little bit, but
13 you took -- was this the first day of their hunt?

14 A No.

15 Q All right. They had been there one day before?

16 A I don't recall what day of the week it -- the 14th was,
17 or -- or the -- or the 7th. We generally start our
18 hunts on Saturday, and so relative to that, that's how
19 many days we had actually been hunting.

20 Q Okay. And you agree -- and we've talked about this --
21 but as the guide, you were responsible for being with
22 them at all times during the hunt.

23 A Yes.

24 Q You -- at no time did -- were they allowed to go hunt
25 by themselves without you present.

1 A No.

2 Q And you were also responsible for making sure that they
3 knew where to take shots; correct?

4 A Yes.

5 Q They wouldn't be allowed to take a shot unless you
6 said, "This is a good shot. You can take it on these
7 particular elk."

8 A Yes.

9 Q So, you were responsible for the safety of the hunters,
10 and also the safety of anyone else related to the
11 hunters' actions; correct?

12 A Yeah. That's correct.

13 Q And I think we -- in -- in reference to this hunt in
14 particular, at any time, did Mr. Norman or Mr. Wilson
15 do anything that was contrary to what you told them to
16 do?

17 A No.

18 Q And at all times, had you found Mr. Norman and Mr.
19 Wilson to be honest men?

20 A Yes.

21 Q And did you have any problem with their actions on
22 October 7th?

23 A No.

24 Q Now, we looked at this diagram a minute ago. Do you
25 see it okay? I'm going to put it here just so that the

1 jury can see it as well.

2 So, this is a diagram of the hunters, where the
3 hunters were. And I believe it's been --. So, as I
4 understand it, you guys went out in the morning, didn't
5 find anything that you wanted to take a shot at. Is
6 that fair?

7 A Yes.

8 Q Okay. And then went out again in the afternoon.

9 A That's correct.

10 Q Okay. And were coming back to the Lodge in the
11 afternoon, and with Mr. Norman and Wilson, made it all
12 the way to the Lodge and parked at the Lodge; is that
13 right?

14 A Yes.

15 Q And when you were coming down this road -- and let me
16 ask. When did you first --

17 A No, we did not operate on that road at all.

18 Q Okay. And so maybe this is the better picture. When
19 you were coming back to the Lodge, where were you coming
20 from?

21 A It is not in your frame of reference. It is
22 considerably farther to the left --

23 Q Okay.

24 A -- of the location of the Lodge.

25 Q All right. So, you were coming from a different part

1 of the ranch.

2 A Yes. We were coming from the County Road --

3 Q Okay.

4 A -- that bisects the property.

5 Q So, the County Road, for the jury, is kind of around
6 here; is that right?

7 A Uh, probably where that black monitor is on the -- kind
8 of relative to your photograph. Way over.

9 Q Way over. Okay.

10 A Yes.

11 Q Understood.

12 A Would you like me to come up to where I can point stuff
13 out on the map?

14 Q That would be fine.

15 A Okay.

16 MR. HUNT: Judge, is that okay?

17 THE COURT: He may do so.

18 MR. HUNT: All right.

19 Q (Mr. Hunt continuing) And so, when you were coming up,
20 there's a County Road that you said was kind of over
21 here.

22 A Yes.

23 Q All right.

24 THE WITNESS: I'll stand on this side if that's all
25 right, your Honor.

1 THE COURT: That's fine.

2 A (The witness continuing) Yes, the -- these two roads
3 right here merge.

4 Q Yeah.

5 A And we have the main drive that comes all the way across
6 a hayfield with this point, with the County Road
7 running approximately southeast to northwest through
8 the Valley.

9 Q Okay. And so when -- I'm sorry. So, when you get --
10 you go out in the afternoon, hunt on that side of the
11 ranch, don't see what you want to see, come back to the
12 Lodge. Is that right?

13 A That's correct.

14 Q Okay. And did you park at the Lodge initially?

15 A No.

16 Q All right. Where did you go after you came back to the
17 Lodge?

18 A Well, we came to the Lodge because we had seen the elk
19 at that point, coming across the top of the dam on the
20 Ute Creek Ranch, skirting this point, and then coming
21 down onto this bench, on this hill.

22 Q All right. And so, you're at the Lodge --

23 A No, sir.

24 Q -- and see the -- I'm sorry. Where are you then?

25 A We are still physically on the Baldy Road.

1 Q Okay. You're still on the road in the truck.

2 A Yes. Yes.

3 Q Okay.

4 A Mm-hmm.

5 Q And at some point, you get to the Lodge; right?

6 A After about ten minutes.

7 Q Okay. You sat there and watched them for about ten
8 minutes?

9 A Yes.

10 Q Okay.

11 A We -- we sized them up twice. We sized up the elk and
12 the surrounding area, because we can see this road. We
13 can see our fence line; we can see this indefinite road
14 going back through the trees, and with binoculars and
15 the elevation difference, you cannot -- you know, you
16 can -- if there's a moving vehicle anywhere on that
17 road, you can see it from the Baldy Road.

18 Q All right.

19 A With the exception of the one curve right in
20 there.

21 Q All right. So, you -- and you knew this was a road
22 that was well-traveled, did -- wouldn't -- meaning
23 this.

24 During hunting season, this is a road that's used
25 by folks on the Ute Creek Ranch; isn't it?

1 A Yes.

2 Q All right. And if -- you can sit down if you'd
3 like.

4 A (Witness complies.)

5 Q Talking about that road for just a minute, Mr.
6 Rockenfield, you would agree with me that at no point,
7 if -- if your folks -- the hunters you are with are --
8 are down here, and you thought there was -- and you
9 thought there was somebody on this road, you wouldn't
10 take that shot; would you?

11 A Absolutely not.

12 Q And you agree that as a guide, part of your obligation
13 was to make sure that before you take a shot, or you
14 tell your hunters to take a shot, that there's nobody
15 down-range. That's part of your obligation; isn't it?

16 A Yes.

17 Q And what you understood is even from the Baldy Road,
18 as you described, or from the Lodge, there's parts of
19 this road that you can't see; aren't there?

20 A That's correct.

21 Q And -- and if we look at -- at this, this was the view
22 from where the hunters were at the time they were taking
23 the shot; correct?

24 A That's correct.

25 Q And this is the tree line, and just beyond that tree

1 line is where the road is; correct?

2 A I don't know the actual yardage -- a couple hundred
3 yards beyond the -- the fence line, yes.

4 Q And -- and I think at one point in the report, it talked
5 about fifty yards. Do you know the exact distance
6 between the tree line and where the road is?

7 A No, sir.

8 Q All right. And it probably -- it varies a little
9 bit, depending on which part of the tree line, doesn't
10 it?

11 A (No audible response.)

12 Q All right. And at the time we've -- there's been a
13 discussion -- I think I brought it up -- about the
14 gate; right?

15 A Yes.

16 Q And you heard me talk about that. And I think you and
17 I talked about it at your deposition. You recall that.
18 And what we talked about is that there's a gate that's
19 over here; right?

20 A Yes.

21 Q And what you looked for to see whether or not there was
22 a truck at the gate; correct?

23 A That's correct.

24 Q And what we also covered was that wasn't something you
25 had talked about with Eric in the past; was it?

1 A No, we had not discussed that.

2 Q All right. And so, there wasn't an agreement between
3 the two of you, "Okay, Eric, if you're on the road up
4 there, leave the truck at the gate." There was no
5 agreement like that, was there?

6 A No.

7 Q It was just simply your understanding that if he was
8 going to be up there, that he'd park at the gate;
9 correct?

10 A Yes.

11 Q And as we sit here today, you wish you had done more
12 to kind of confirm that, don't you?

13 A Yes.

14 Q Kind of might have prevented this, wouldn't it?

15 A Yes.

16 Q Yeah. And you looked up there and you didn't see the
17 car at the gate; right?

18 A Correct.

19 Q So, you assumed that that meant they weren't up there
20 hunting.

21 A Correct.

22 Q All right. And turns out that assumption was wrong,
23 obviously, wasn't it?

24 A That's correct.

25 Q Now, let's also talk about the hunt itself. Meaning

1 you were standing with both of the hunters, weren't
2 you?

3 A That's correct.

4 Q Was one on your left and one on your right? You were
5 kind of in the middle?

6 A That's correct.

7 Q All right. And what you saw was that the elk were --
8 this was the view from the hunters, and the view
9 you had, because you were standing in between them.
10 Right?

11 A That's correct.

12 Q Okay. And the elk were on this part of the
13 hillside.

14 A May I approach and show you?

15 Q You may.

16 THE COURT: That's fine, sir.

17 A (The witness continuing) The elk -- I'll try to do
18 this where everybody can see. And your Honor, I'll do
19 it again to where you can see.

20 The elk were down in this little pocket right in
21 here, with the cedar tree to the right of them. We
22 could see probably four inches up on their legs, their
23 entire chest, neck, heads. Their legs were hidden by
24 the oak brush right here on the lower part.

25 Q (Mr. Hunt continuing) All right. And so, they were

1 on kind of I think what has been described as a bench;
2 right?

3 A That's correct.

4 Q And looking at this diagram, this is -- Google Earth
5 does some amazing things as far as giving the
6 topography, so we didn't draw this line. We got it
7 from doing the earth images.

8 And at the four-hundred-and-eighty feet or the --
9 which is where the police measured as the approximate
10 distance, they had -- there was an initial rise on this
11 part of the land, and they were up above that rise;
12 correct?

13 A Yes. The elk were somewhere right in this area right
14 here.

15 Q Okay. And what you knew was, beyond that, if the shot
16 goes high, there is the potential that it goes on to
17 the Ute Creek. You certainly knew that at the time,
18 didn't you?

19 A Yes.

20 Q And that was something that you knew you had to guard
21 against and protect against, wasn't it?

22 A Yes.

23 Q If the shot goes on to the Ute Creek, people can be put
24 in danger if they're there, even if you didn't think
25 they were there, couldn't it?

1 A Yes.

2 Q And on the day that this happened, so October 7th, it's
3 true that you knew the Armstrongs were hunting that
4 day, didn't you?

5 A I didn't know if they were hunting or just scouting.
6 But --

7 Q Fair enough. What you knew was that they were on the
8 property looking for elk, similar to what you were
9 doing.

10 A Yes.

11 Q Okay. Now, -- and you're welcome to sit down if you'd
12 like.

13 A (Witness complies.)

14 Q Just so that -- I think it's -- it's quite clear on
15 that, but at the time that you were having the hunters
16 line up their shots, what you knew was that the
17 Armstrong party was somewhere on the Ute Creek Ranch;
18 correct?

19 A Yes.

20 Q You knew that this part of the property was a part of
21 the property that the Armstrongs frequently use when
22 hunting; correct?

23 A Yes.

24 Q And you knew that if a shot went high, it could go on
25 to that part of the property; correct?

1 A Yes.

2 Q Okay. And let's talk about the distance. And what you
3 saw a minute ago -- and not long at all -- was that
4 both Mr. Norman and Mr. Wilson testified under oath
5 that you gave them a distance of two-hundred-and-forty
6 to two-hundred-and-fifty yards. You recall that
7 testimony, don't you?

8 A Yes.

9 Q I mean, you don't disagree with that testimony, do
10 you?

11 A No.

12 Q All right. And based on the evidence that was developed
13 by the investigation after-the-fact, including your own
14 investigation after-the-fact, what you understood was
15 that the elk were around a hundred-and-sixty yards from
16 where the hunters were; correct?

17 A Yes.

18 Q All right. And so, when you gave the two-hundred-and-
19 forty to two-hundred-and-fifty yards, that was not
20 accurate, was it?

21 A No.

22 Q Okay. And did you give that yardage based on what you
23 believed -- meaning what -- how far you -- away you
24 thought the elk were?

25 A No. What I'll usually do is give a reference point --

1 in this case, the little green tree. And I said, that's
2 approximately two-forty to two-fifty. The elk are this
3 side of it.

4 Q All right. Now, you saw the testimony from Mr. Norman
5 and Mr. Wilson --

6 A Yes.

7 Q -- didn't you? And you saw the testimony where they
8 said what you told them was that the elk were two-
9 hundred-and-forty to two-hundred-and-fifty yards;
10 correct?

11 A Yes.

12 Q And what you told the State Officer the day after this
13 happened was that you had estimated the distance to the
14 elk two-hundred-and-forty to two-hundred-and-fifty
15 yards. That's what you told the Officer, isn't it?

16 A That's -- is a possibility.

17 Q Okay.

18 A Yes.

19 Q And your memory would have been best at that time,
20 wouldn't it?

21 A Yes.

22 Q And you certainly trust Mr. Wilson and Norman when they
23 say, "Mr. Rockenfield gave us the distance of two-forty
24 to two-fifty." You trust that that's what they
25 understood -- that's what they heard; correct?

1 A Yes.

2 Q All right. And you didn't use your range-finder, did
3 you?

4 A No.

5 Q You had one though, didn't you?

6 A In the truck.

7 Q In the truck, and the truck wasn't too far away, was
8 it?

9 A Not -- probably a hundred yards or better.

10 Q Okay. And you had gotten out of the truck to go over
11 to the spot near the Lodge where -- near the -- where
12 the shots were taken; right?

13 A Yes.

14 Q Why didn't you take it with you?

15 A Because the elk were so close.

16 Q You didn't think you needed it.

17 A Not with the 270 and the 06.

18 Q Okay. They were -- they were shooting 30-06 rifles?

19 A And a 270 Winchester.

20 Q All right. And I think -- well, either way. I mean,
21 I thought the testimony was that they both had 30-06,
22 but I don't know that it makes a difference.

23 But it turns out that you probably should have
24 taken your range finder because the range that you
25 gave, that they heard of two-forty, was different than

1 the one-sixty; wasn't it?

2 A Yes.

3 Q And -- and -- and you know, Mr. -- you heard Mr. Rimmer,
4 and I appreciated his -- you know, he and I have got
5 along well. There's a disagreement, and that's fair.
6 But what he said to this jury and told them was that
7 you feel really bad about what happened.

8 A I feel horrible. I wish it never happened. I don't
9 want anyone to be hurt.

10 Q And -- and I understand that, Mr. Rockenfield. And
11 obviously I think what he also said was if there was
12 anything you could do to take it back, you would.

13 A Yes.

14 Q And part of -- part of the reason you feel bad about
15 it is you think there was some mistakes that were made
16 that day, weren't there?

17 A Yes.

18 Q One of them was the wrong range; right?

19 A (No audible response.)

20 Q That was a mistake, wasn't it?

21 A Yes.

22 Q And that was probably a negligent mistake, wasn't
23 it?

24 A I would say yes.

25 Q Okay. And another mistake that was made that day was

1 shooting at an elevated target, not knowing if the
2 Armstrongs were down-range. That was also a mistake,
3 wasn't it?

4 A Correct.

5 Q And one of the basics as a guide is, don't take a shot
6 where the bullet could go on to the other folks'
7 property; right?

8 A Yes.

9 Q Especially if it's a part of it where you know they use
10 it a lot; right?

11 A Yes.

12 Q So, that was a mistake to have them take that shot,
13 wasn't it?

14 A Yes.

15 Q And that was also a negligent mistake, wasn't it?

16 A Yes.

17 Q And that -- you were responsible for that, weren't
18 you?

19 A That's correct, although I felt I had adequate
20 backstop.

21 Q Understand. But you didn't, did you?

22 A I --

23 Q Thought you did, but it turns out you didn't.

24 A Yes.

25 Q Okay.

1 Q Mr. Rockenfield, I appreciate you taking
2 responsibility. It's the first time anybody in four-
3 and-a-half years has admitted that there was negligence
4 involved, so thank you for doing that.

5 Now, this lawsuit is against Express Ranches. And
6 you understand, you're not a part to the case; right?
7 I mean, this doesn't -- you -- you were their Manager
8 and they're responsible. You understand that, don't
9 you?

10 A Yes.

11 Q And also, it really wasn't up to you whether this case
12 came to Court, was it?

13 A No.

14 Q That was made by some other folks -- decisions about
15 that; right?

16 A That's correct.

17 Q And Nedra Funk is the one who owns Express Ranches.
18 She is not going to be in Court, is she?

19 A No.

20 Q Why isn't she here?

21 MR. RIMMER: I object, Judge. May we approach?

22 THE COURT: I'm going to sustain the objection. I
23 need some foundation on that.

24 MR. HUNT: Okay.

25 Q (Mr. Hunt continuing) Given that this jury has already

1 heard that Express Ranches is owned by Nedra Funk, and
2 that you are the General Manager, but you're an
3 employee of the company; correct?

4 A Correct.

5 Q All right. And -- but in as far as any -- do you hold
6 any office or position, anything at all, with Express
7 Ranches?

8 A No.

9 Q All right. Is any -- to your knowledge, does any
10 corporate person representing Express Ranches plan to
11 come to Court? Do you know?

12 A Not that I am aware.

13 Q And at the end of this case, the jury is going to have
14 the opportunity to evaluate the whole circumstances.
15 And I think what you've already expressed is that as
16 soon as this happened, you immediately felt sick,
17 didn't you?

18 A Yes.

19 Q And still, at some level, do, all these years later.
20 Mr. Armstrong -- Eric and -- you guys have known each
21 other for quite a while, haven't you?

22 A The period that he has hunted out on the Ute Creek
23 Ranch.

24 Q Yeah. And in the period that he hunted at the Ute
25 Creek Ranch -- so about the last ten years, you guys

1 have known each other?

2 A Yes.

3 Q All right. And you hope that after this is over, that
4 you guys can go back to working together in -- in a
5 good way?

6 A Yes.

7 Q Has there ever been bad blood between you?

8 A No.

9 Q No. But one thing, it's fair, and you can tell this
10 jury, you're here today and what you're doing is
11 accepting responsibility for what happened to the
12 Armstrongs, isn't it?

13 A Yes. I -- I accept my -- my portion of this.

14 Q All right. And your portion of it also includes the
15 hunt -- the -- the -- the hunters; correct?

16 A Yes.

17 Q All right. And just so that we're clear on a
18 couple of other little issues that I think may be
19 important.

20 Were there any policies in place at Express
21 Ranches that you were aware of, relating to safe
22 hunting practices?

23 A Nothing in writing. Nothing verbally.

24 Q Okay. So no, were there any policies. Were there any
25 policies at Express Ranches for hunter safety?

1 A Again, nothing in writing, verbally.

2 Q Okay.

3 A I would make my hunters be with me, wouldn't let them
4 out on their own, and --.

5 Q Understood. Did the ranch itself have any -- anything
6 you gave to the hunters before they came about, "Here's
7 the places we can hunt. Here's the places we can't."
8 Anything like that?

9 A No.

10 Q They just relied on you for that, I guess.

11 A That's correct.

12 MR. HUNT: Mr. Rockenfield, I appreciate your time
13 this morning, and I appreciate your honesty. I don't have
14 any other questions right now.

15 THE COURT: All right. Now is the time to take
16 our -- a good time to take our morning break. I'm going to
17 give you some instruction.

18 We're going to take a break for about fifteen
19 minutes, then Mr. Rimmer will have an opportunity to cross-
20 examine the witness.

21 During recess, do not discuss this case with anyone
22 other than yourselves, and then only in the jury room when
23 all of you are present. Do not attempt to decide the outcome
24 of this case before you begin final deliberations.

25 Please continue to wear the juror badges while in

1 and around the Courthouse. If someone other than a fellow
2 juror happens to discuss this case in your presence, report
3 that fact at once to a member of the staff. If you happen to
4 see or hear any news accounts of this trial, please report
5 that fact to the member -- or to a member of the staff.

6 All right. This is going to be about a fifteen-
7 minute recess. At the end of the recess, my Bailiff will
8 bring you back into the Courtroom.

9 All right. All rise for the jury.

10 [WHEREPUON, the jury left the
11 Courtroom, and the following
12 proceedings were held in Open Court
13 outside the presence of the jury.]

14 THE COURT: Mr. Rockenfield, you can go ahead and
15 return to counsel's table.

16 All right. The attorneys and parties may be seated.
17 Do we need to address anything before we take our fifteen-
18 minute break?

19 MR. HUNT: No.

20 THE COURT: Do we need -- do -- I can call up to I.T.
21 and have them come down.

22 MR. HUNT: You could. I don't know that -- whether
23 we'll -- I don't need it right now, obviously, but I think we
24 will throughout the day.

25 THE COURT: Sure. Yeah.

1 MR. HUNT: So, it's worth having them come.

2 THE COURT: I'll have my staff get ahold of I.T. and
3 have them come down.

4 MR. HUNT: Always good to have back-ups.

5 THE COURT: Yep.

6 MR. HUNT: (Laughs.)

7 THE COURT: All right.

8 MR. RIMMER: Not for me, Judge.

9 THE COURT: Okay. Thank you.

10 [WHEREPUON, a short recess was
11 taken.]

12 THE COURT: Any -- let's go ahead and go on the
13 record. We're back on the record in the matter of D-117-CV-
14 2017-89.

15 Any matters we need to address before we bring the
16 jury back out?

17 MR. HUNT: None from the Plaintiff, except that I
18 think it was Andrew -- not Andrew, but the guy that
19 helps --

20 THE COURT: Dave Moore?

21 MR. HUNT: Dave. The cap was on.

22 THE COURT: Oh.

23 [Laughter in the Courtroom.]

24 MR. HUNT: It's like -- Dave's like, "Really, guys?"
25 He has to come help every child do something dumb. So,

1 anyway -- but let's not tell the jury that.

2 [Laughter in the Courtroom.]

3 THE COURT: Mr. Rockenfield, why don't you go ahead
4 and return to the witness stand for me.

5 THE WITNESS: (Complies.) That sounds like a mistake
6 I would make.

7 MR. HUNT: I'll do it again, too.

8 THE COURT: All right. Let's all rise for the jury.
9 Andrew, why don't you bring in the jury.

10 [WHEREUPON, the jury entered the
11 Courtroom and the following
12 proceedings were held in Open
13 Court.]

14 THE COURT: And again, you can be seated as soon as
15 you come in. Feel -- feel free to be seated. We're standing
16 out of respect for you.

17 All right. The parties and counsel may be seated.
18 And Mr. Rimmer, you may proceed with your cross-examination.

19 MR. RIMMER: Judge.

20

21

CROSS-EXAMINATION

22 **BY MR. RIMMER:**

23 Q All right. Mr. Rockenfield, I was just going to go over
24 a couple of points in your testimony. I think I'm just
25 going to start at the end and move my way backwards.

1 So, let's -- let's do it that way.

2 You testified that you believed you had adequate
3 backstop. Why did you believe you had adequate backstop
4 to take those shots?

5 A Because of the fact that one of the volunteer things I
6 did around the area for thirteen years was I was a Hunter
7 Education Instructor with the New Mexico Department of
8 Game and Fish, and I had made it a point to get the Range
9 Officer Certification for Live Firing Exercises that
10 allowed us in these classes to go out with children,
11 inexperienced people, and shoot.

12 And part of the -- part of the Range Officer
13 Certification is backstop safety, et cetera, along with
14 the Hunter Education program itself and -- and in terms
15 of the large portion of it that puts you in shoot or
16 don't shoot situations on -- you know, both on the --
17 the trail where you actually make the students walk
18 through with firearms and look at situations and make
19 them decide, is this a safe shot or is this not a safe
20 shot, along with all the printed and video materials
21 that go with the course itself.

22 Q And on the day of this accident, what about the physical
23 terrain led you to believe that you had a safe
24 backdrop?

25 A The position of the elk in that one diagram relative to

1 the amount of slope that was behind the elk, you know,
2 was very similar to the materials used in those Hunter
3 Ed classes. Is there an adequate backstop? Are you
4 shooting at something that has, you know -- is either
5 obviously skylined with nothing to stop the bullet, or
6 shooting at a hard, flat surface or a body of water?
7 And the -- the slope in that photograph, you know,
8 appeared to be adequate to -- to be able to take a safe
9 shot, given the position of those elk on the slope.

10 Q Okay. And so, I want to back up a little bit further,
11 and I want to talk about when you're driving along Baldy
12 Road and you see those elk up on the ridge.

13 A Yes.

14 Q Walk me through the process when you first saw the elk
15 and you -- what -- what do you do?

16 A Okay. We were -- we were driving down the road, headed
17 towards the -- the southeast, and I observed the elk
18 walking across the dam that is in one of the Exhibits
19 over here for the -- for the large lake.

20 The elk were -- and that dam is on the Ute Creek
21 Ranch. The elk were going single-file across the top of
22 that dam. Some of the elk on the face of the dam, down
23 below the skyline, and they were coming to a point on
24 the hill within that lake pasture, and jumping into the
25 Atmore Ranch and continuing on downhill towards the

1 southeast, to the area that I pointed out on the -- on
2 the Exhibit when Mr. Hunt had me come up and -- and show,
3 you know, where we were, where the -- where the elk were
4 at that point in time.

5 Q Okay. And so that process of observation you just
6 described was about ten minutes while you're at the Baldy
7 Road area?

8 A Yes. We -- we stopped initially, we looked at the elk,
9 we sized up the elk, and -- to see if there was an animal
10 or animals within that group that -- that we wanted to
11 harvest, and also give that whole hillside a go-over to
12 see if there was any indication of anybody being on --
13 in that location. We spent probably five minutes on the
14 Baldy Road.

15 We proceeded down to the entrance going into the
16 Lodge, made a -- made a right-hand turn going to the
17 west to approach the Lodge. I wish that map was
18 substantially larger, 'cuz I -- I mentioned the big
19 hayfield that was east of the hunting Lodge.

20 There's a strip of trees between the Baldy Road
21 and that hayfield, and I pulled down to the bottom of
22 the hill and stopped at that tree line, and once again,
23 spent approximately another five minutes looking at the
24 elk, sizing up the -- the hillside and the background,
25 looking to see if there was a pick-up or people or any

1 indication that there was activity on that hillside
2 other than the elk. And then, we proceeded down to the
3 Lodge where we parked and went and set up in -- in the
4 location in this other photograph.

5 Q Okay. And one of the locations you looked over was that
6 gate area; is that right?

7 A Not only the gate, but the entire hillside.

8 Q Right. Okay. So, you and -- and you're using
9 binoculars. Is that what you --

10 A That's correct.

11 Q Okay. And -- and just to be clear, are Mr. Wilson and
12 Mr. Norman with you also, using binoculars and looking
13 at the area?

14 A Yes.

15 Q Okay. And so, you go down to the tree line and you set
16 up the shot. Just describe that process for me, how you
17 set it up, what you're doing.

18 A That was a fairly lengthy point in time -- excuse me.
19 I -- I need to -- I mentioned in the deposition that
20 since my cancer treatments, dry mouth. (Laughs.)

21 That was actually a -- a relatively lengthy
22 process. Got -- got them positioned. And then once
23 again, had to wait, number one, for the elk that were
24 more or less coming across single-file, but there was a
25 cluster of them that we had to allow to separate rather

1 than have a whole gob of them in one spot, because you
2 wanted to make sure that you were shooting at a single
3 elk without something in the background relative to it.
4 And I -- I don't know the actual timeframe. I'd say
5 probably forty-five minutes to get the elk lined up
6 properly, to get the hunters on their rests that they
7 were using to -- to assist in their shooting. And so,
8 there was probably four to five minutes on that.

9 Q Okay. And during this time, I just want to get a sense
10 for -- if you could describe how quickly the elk were
11 moving, just to give us a sense of --.

12 A Moderate walk. You know, they -- they were just relaxed
13 and -- and that -- the elk being relaxed was never a
14 thing that I was using to determine whether or not there
15 was anything else around. I mentioned that in my
16 deposition.

17 That -- the wind was coming from the -- from the
18 elk towards us, and I assume that if there was -- and
19 unfortunately, I assumed incorrectly that if there were
20 people on that hill, the elk would smell them and spook.
21 And the elk were totally relaxed as they were coming
22 across the bench in this diagram.

23 Q Okay. And I know you -- it's fair to say you take your
24 management of the elk on the Atmore Ranch seriously; is
25 that right?

1 A Extremely seriously.

2 Q Okay.

3 A Yes.

4 Q And when you say extremely seriously, what do you
5 mean?

6 A We're managing for quality. We're -- we're not going
7 out just to -- to kill something, you know. We are --
8 you know, we're not actively -- not actively feeding
9 like you see some operations do, but just the same as
10 you would with a herd of cattle. You don't go out and
11 kill your best bulls before they have a chance to breed
12 the cows.

13 You -- you hunt a certain age-class of elk. You
14 try to get less desirable genetically composed animals
15 out of the picture so they're not doing the breeding.
16 And yeah, that's something that -- that I take seriously
17 as part of my job.

18 Q And do you remember anything specific about the bull elk
19 that was being targeted on this day?

20 A Yes.

21 Q And what do you remember about it?

22 A Genetically, he was a five-by-five elk. It was about a
23 six-year-old elk, estimating the -- by his body shape,
24 size of his head, body mass, the way he's built. Kind
25 of like me, the older you get, the saggier you get.

1 (Laughs.)

2 But with those -- with those elk, we've -- we've
3 had this gene in the Valley for years. They never get
4 bigger than a five-by-five, and that's referring to five
5 antler points on each side. They never grow that --
6 that sixth tyne the -- on their antlers. And in terms
7 of trophy quality, and the value of that elk for
8 not only us but every ranch around, it -- it diminishes
9 it.

10 Q Okay. And so, when you saw the -- that bull elk on that
11 ridge, you decided to target that elk?

12 A That's correct.

13 Q Okay. And you -- you guys set up the shot. And walk me
14 through the moment up until the shots went out. I had
15 earlier said in my opening that it was simultaneous.
16 Is -- was that fair?

17 A Yes. I -- I remember -- and I told them, I said, you
18 know, said "We'll shoot on three." I remember counting
19 down.

20 You know, prior to that I asked the hunters, I
21 said, "Are you solid? Are you comfortable?" And both
22 of them affirmed that.

23 Q Okay. And then you count down, "Three, two, one,
24 shoot."

25 A Yes.

1 Q Okay. I just want to back up a few more steps and just
2 clarify something.

3 Earlier you were testifying about the ownership at
4 the Atmore Ranch, and I just want to clarify. Is it
5 your understanding that Bob Funk owned the Atmore Ranch
6 in 1999?

7 A In 1999, yes.

8 Q Okay.

9 A Mm-hmm.

10 Q And then him and Nedra Funk were divorced in 2016. Is
11 that right?

12 A They fought it out for years. It was somewhere in that
13 time period.

14 Q Okay.

15 A Yes.

16 Q Fair enough. And as you sit here -- I know you mention
17 other ranches in Oklahoma -- is it your understanding
18 that those ranches are owned by Bob Funk?

19 A Yes.

20 Q Okay. And I just want to clarify that. Just to back
21 up, what age did you start hunting?

22 A I killed my first deer at nine years of age.

23 Q And do you ever hunt on the Atmore Ranch?

24 A Yes.

25 Q Okay. And is that a yearly thing?

1 A May I step back a question? Do I currently hunt on the
2 Atmore Ranch or --

3 Q Correct.

4 A -- have I ever?

5 Q Let me ask, do you currently?

6 A No. I -- I -- at this point in my time, I've guided so
7 many hunters over the years that I have no interest in
8 killing one myself.

9 MR. RIMMER: That's all I had. Thank you.

10 THE COURT: Mr. Hunt.

11 MR. HUNT: Thank you, Judge.

12

13

RE-DIRECT EXAMINATION

14 **BY MR. HUNT:**

15 Q All right. Mr. Rockenfield, I know that we've covered
16 just about everything. You talked to the jury, and I
17 think what you said was, you thought there was an
18 adequate backstop; right?

19 A Yes sir.

20 Q And I think what you also said was that turned out not
21 to be true.

22 A Yes.

23 Q And that's why what you mentioned to the jury earlier
24 when you said, "Although I didn't do it on purpose,
25 it turns out it was negligent to take that shot."

1 Agreed?

2 A Yes.

3 Q And same thing on the yardage. Although you didn't do
4 it on purpose, it turns out it was negligent for you to
5 tell them that it was a hundred and -- two-hundred-and-
6 forty to two-hundred-and-fifty yards; right?

7 A Yes.

8 Q And I think what you also said, and what was important,
9 was that from the moment this happened until today, you
10 felt terrible about it and wish you could make it right,
11 don't you?

12 A Yes.

13 Q And this jury, in a couple of days, is going to have a
14 chance to make that right. And you think this jury
15 should do what they can to take care of the Armstrong's,
16 don't you?

17 A I think the jury is bound by what the Court requests,
18 yes. Mm-hmm.

19 Q And similarly from your side of it.

20 A Yes.

21 Q If you could take care of them, you would, wouldn't
22 you?

23 A Yes.

24 Q But it's not up to you.

25 A I'm out of the picture, yes. That's correct.

1 Q Understood.

2 MR. HUNT: Thank you again for being here. I don't
3 have any other questions Judge.

4 THE COURT: All right. Mr. Rockenfield, you can go
5 ahead and -- excuse me -- return to counsel's table. And Mr.
6 Hunt, if you would please call your next witness.

7 MR. HUNT: I call Andrew Gallegos. He's in the
8 hallway, Judge. Can I --

9 THE COURT: You may. Why don't you go ahead and
10 retrieve Mr. Gallegos.

11 All right, sir. I'm going to ask that you watch your
12 step going up the ramp there. There's an incline.

13 I'll have you raise your right hand. Do you swear or
14 affirm that the testimony you will give in this case will be
15 the truth, the whole truth and nothing but the truth under
16 penalty of law?

17 THE WITNESS: I do.

18 THE COURT: All right. You may be seated.

19

20

ANDREW GALLEGOS

21 The witness herein, having been first duly sworn upon oath,
22 was examined and testified follows:

23

DIRECT EXAMINATION

24 **BY MR. HUNT:**

25 Q Can you please state your name for us.

1 A Andrew Gallegos.

2 Q Mr. Gallegos, tell the jury a little bit about your
3 background.

4 A I'm a Registered Guide here in New Mexico since 2014.
5 Before that, I was a landowner/agent on our family's own
6 ranch since 2007, and I've been guiding hunters since
7 2007.

8 Q And what does it mean to be a Registered Guide?

9 A Registered landowner -- land agent basically is acting
10 on the landowner's behalf to guide hunters on that ranch
11 specifically -- only on that ranch.

12 Q Okay. And how many different places do you do
13 guiding?

14 A Now, throughout the State, so in New Mexico.

15 Q And are you licensed?

16 A Yes.

17 Q How do you become licensed as a guide?

18 A So as a guide, there is a test you have to take to be an
19 outfitter, which I'm an outfitter also. Basically,
20 there's CPR courses you have to take, there's licensing,
21 there's insurance that you have to take, or horses --
22 just everything you need to be governed by the State.

23 Q And in -- how long how have you been hunting?

24 A My whole life. (Laughs.)

25 Q (Laughs.) And I -- is sixteen years, is that -- if we're

1 doing the math, how long have you been serving as a
2 guide?

3 A So, since 2007 through 2019.

4 Q Okay.

5 A Yeah.

6 Q Thirteen?

7 A Yeah.

8 Q Twelve. All right.

9 A Twelve, yeah.

10 Q And hunter safety. Have you taken courses on hunting
11 safety?

12 A I've taken [sic] it when I was a kid, and I've taken
13 [sic] it again with my daughters who hunt also.

14 Q Have you ever done any training?

15 A Yes.

16 Q Tell us about that.

17 A So trainings, basically just I've done some special
18 training with -- with youth, 'cuz that's for mentors
19 hunt, so you have to go through special training of
20 basically teaching them the proper hunting ethics in
21 certain situations, when to shoot, when not to shoot,
22 how to basically handle a firearm.

23 Q Okay.

24 A Also for safety.

25 Q And when you're with your hunters -- so how many times

1 a year do you take hunters out in the field?

2 A At least seven to eight times a year.

3 Q And what's -- what's one of the first things you do?
4 How do you make sure that the hunters are ready and that
5 you're ready for a hunt?

6 A So, ninety percent of my clients are from out-of-state,
7 so -- who have never hunted in New Mexico. So, we're in
8 constant contact throughout the summer, just making sure
9 they're shooting, getting acclimated -- just getting in
10 shape for it.

11 Priority one though is when a hunter arrives into
12 camp, they're always required to be there a day early.
13 First thing that we're going to go is go to the range
14 and we're going to shoot that rifle. Every hunter
15 carries a different caliber rifle, and so first thing is
16 to make sure -- anyone can tell you they can shoot a
17 distance, but you need to actually see it for
18 yourself -- what they're capable of shooting.

19 So, most rifles, most hunters zero them in at two
20 hundred yards, so we'll start right there, seeing if the
21 rifle even is zeroed in, because eleva -- elevation --
22 mostly people are coming from near sea level, you can
23 lose -- a rifle will gain almost an inch, depending
24 from -- anywhere from nine to eleven thousand feet, it's
25 gonna gain an inch on it.

1 So, we're going to verify where they're shooting,
2 what they're comfortable of shooting. Again, a hunter
3 can tell you he can shoot four hundred yards all day
4 until you see it yourself.

5 Q Gotcha. And so, if a hunter zeroes in their rifle at
6 sea level and then they come out here for a hunt at eight
7 thousand feet, is it still going to be zeroed in?

8 A No, no.

9 Q Which way is it going to be shooting? Higher?

10 A It's going to go up. As elevation rises, there's less
11 air, so the bullet has less resistance.

12 Q So, that's one of the reasons -- is that why you have
13 them sighted in day one?

14 A That, and just to affirm for myself that I know what
15 this hunter is capable -- there's no way in chasing elk
16 that are five hundred yards if your hunter cannot shoot
17 that.

18 Q Okay. And of the seven hunts or so that you guide per
19 a year, how many of them are elk?

20 A Probably six of them.

21 Q Okay. And do you hunt up North?

22 A Yes.

23 Q Yeah? And so, in -- when you're talking with your
24 hunters -- so the first thing, day one, get the rifle
25 zeroed in, make sure that you're comfortable with their

1 distance and they're comfort -- that the rifle is
2 accurate.

3 What else do you do to make sure that that hunt is
4 going to be a safe one?

5 A From that point, that's basically just watching your
6 hunter, see how they interact with the firearm, how they
7 get out of the vehicle, how -- I mean, how they carry
8 the rifle. Just -- their disposition of what -- how
9 they handle a firearm.

10 Q Okay. Now related to range, when you're hunting with
11 a -- somebody -- or excuse me. When you're guiding a
12 hunter, how do you make sure that you know the range to
13 the animal?

14 A With the range finder. That's the only accurate way. I
15 mean, --

16 Q Okay.

17 A -- that's whether it's archery or rifle, you have to
18 have a range finder.

19 Q You --

20 A Every -- everything else is a guess.

21 Q You always carry one?

22 A Always.

23 Q And do you always use it, even if you think you know?

24 A Always. That's -- there's -- I mean growing up in the
25 mountains, I mean respect for the animal, I mean I'm not

1 going to guess at something that you're going to -- I
2 mean, it's a living animal, and you need the upmost
3 respect for it. If you can't kill the animal properly,
4 you shouldn't shoot it.

5 Q All right. And in looking at this case, tell us a little
6 bit of what you've looked at to be ready for your
7 testimony today.

8 A First thing was, just -- I mean, the backdrop for it. I
9 mean, again, having a family that has a ranch, we're
10 bordered on three sides by National Forest. One side is
11 public -- or not public, private. It's in a valley.
12 There's cabins down there. We purposely stay away from
13 that because there are people that are always there.
14 So, it's just --.

15 Q Let --

16 A The -- the -- the mountainside -- I mean, shooting with
17 the backdrop of someone else's ranch, and I just --
18 there's a road that's there. I've seen bullets ricochet
19 personally. I mean, I've heard them ricochet from people
20 shooting before. It's one of the scariest feelings that
21 I've -- that mountain is not going to do nothing to stop
22 a bullet. I mean --

23 Q So, let's back up for just a second.

24 A Okay.

25 Q Did you look at any testimony from this case?

1 A Yes.

2 Q And so, did you look at the testimony of the
3 hunters?

4 A Yes.

5 Q Did you look at the testimony of Mr. Rockenfield?

6 A Yes.

7 Q Did you also look at, I guess, some of the maps and some
8 of those?

9 A Yes.

10 Q So, let's talk about those for just a minute. Let's
11 look at -- this is the map -- excuse me -- the -- the
12 photograph the jury has looked at. Mr. Rockenfield also
13 testified about it, that this was the view that the
14 hunters had. Is that what you understand?

15 A Correct.

16 Q When you're looking at this, as a seasoned outfitter and
17 guide in New Mexico, is taking a shot with the elk in
18 this area, is that a shot that you, as a guide, would
19 recommend that a hunter take, especially given that the
20 hunter is below the target?

21 A No.

22 Q Why?

23 A They're nearly skyline on it. There -- there's nothing
24 that's going to stop that bullet from traveling. I mean,
25 even if they did hit the animal, the bullet will still

1 travel through the animal. There's nothing to stop that
2 bullet from --. There's rocks, there's bushes. All of
3 that is going to change the trajectory of that bullet.
4 There's -- it's not a good backdrop.

5 Q And so -- and we've also looked -- and I think this
6 picture -- do -- have you seen this as well?

7 A Yes.

8 Q And do you understand to -- this to be an accurate
9 representation of the topography of the area where the
10 elk were?

11 A Correct.

12 Q Given that it continues to rise at some level beyond the
13 elk, does that make it an adequate backstop?

14 A No, because that's private property. That's someone
15 else's ranch. There's a road right there. That
16 dwelling, which I don't even know if it's used, but
17 there's --.

18 Q So, what would -- from you, again as a guide and an
19 outfitter in New Mexico, what's -- when -- when
20 we've heard the term adequate backstop, what does that
21 mean?

22 A So, basically something that you know for sure is going
23 to stop that bullet, where you know -- I mean obviously
24 rocks -- you would not shoot any rocks. That's going
25 to -- a bullet will ricochet. So, you need a solid

1 backdrop. I mean those trees aren't going to do -- you
2 don't know what's in those trees. You don't know who's
3 in those trees.

4 Q Right.

5 A I mean, you need something affirmed that you -- there's
6 nothing behind it basically.

7 Q And in -- in this instance where -- and let me ask you,
8 does the fact that the hunters and the guide in this
9 case are at a lower elevation play into the decision
10 about whether or not this is an adequate backstop? The
11 shooting up?

12 A It -- it -- it would, because again, the bullet of not
13 knowing where it's going to travel, where it's going to
14 land.

15 Q Help -- help us understand this. The fact that -- and
16 I think what the jury heard and you weren't in here, but
17 Mr. Rockenfield testified that this road was one that
18 was used frequently during the hunting season.

19 Is -- are there any extra precautions when the
20 backstop includes a road that you may or may not see
21 where the people are on?

22 A Definitely. You wouldn't shoot near if -- I mean,
23 it's -- it's private land, so the roads don't fall into
24 the public lands, but obviously you can't shoot
25 across the road. So, there's a road near the backdrop,

1 which -- which they're thinking is a back -- backstop on
2 it. I mean, you're just -- you don't know who's on
3 that road. You can't even see the road through those
4 trees.

5 Q And -- from your view, as an outfitter, do you have an
6 opinion about whether it was unreasonable to have
7 hunters take the shot that's depicted on this
8 picture?

9 A Yes. Just because, again, you do not know what's behind
10 there. The other thing, in reading the deposition -- so
11 the call was made to the State Police at seven-thirty.
12 At that time of the year, legal sun -- sunset would be
13 at six-forty, so you can have -- hunt half-an-hour past
14 that. That puts you about seven-twenty.

15 So, I mean, legal shooting, like this is right,
16 right there. I mean, how much light is available to you
17 to actually even see what you're shooting? And I don't
18 know if it was the first day of the hunt or the last day
19 of the hunt, but legal shooting light, you're getting
20 right there where -- are you sure they can even see the
21 animal properly.

22 Q So, based on your investigation of the case, based on
23 when the phone call was made to the police, this was
24 right on the border --

25 A This was --

1 Q -- of whether it was a legal --

2 A I mean, right there. I mean seven is -- if it was six-
3 forty, half-an-hour, you're at seven-twenty, so it may
4 have took ten minutes. This thing is right at legal
5 shooting hour.

6 Q Talk to the jury for a second. What they also heard
7 from Mr. Rockenfield and also from just some of the
8 testimony that was from the officer -- from the folks
9 that were involved -- the shooters -- the hunters. The
10 range was given as between two-hundred-and-forty and
11 two-hundred-and-fifty yards, and it turns out the actual
12 range was a hundred-and-sixty.

13 Do you have an opinion about whether or not giving
14 the wrong range, was that negligent?

15 A Definitely. I mean without a range finder, again,
16 it -- it's -- it's all a guess. It's --

17 Q At -- at some point, does it -- in -- in your opinion,
18 at what point does it go beyond a mistake and become
19 something more than that?

20 A Again, respect to the animal. I mean, to the other ranch
21 behind there, it's just -- it's not a shot to take, no
22 matter what, because without a range, you're -- you're
23 guessing it. You've never seen what that hunter's
24 capable of shooting. How do you even know they're --
25 for one, you don't know if the rifle is on target. You

1 don't even know if they can see that far and see the
2 target. I mean, it -- would never do it.

3 Q Now, you talked about that you hunt on ranches with
4 public land and private land kind of bordering where
5 you're hunting.

6 A Correct.

7 Q What's your practice in terms of communication with
8 folks that you know are hunting on adjoining land?

9 A So again, three sides are -- are public, National Forest.
10 One side is private. That ranch owner, I do know him.
11 I buy landowner tags from him. But the thing is, there's
12 probably ten cabins littered across that Valley, which
13 again, we would never -- we purposely do not hunt that
14 side of the Valley because there's nothing to stop a
15 bullet from traveling. And they do hit -- there's -- I
16 mean, besides residents, there's cattle on there.
17 There's just -- there's too many --

18 Q Sure.

19 A -- open areas.

20 Q Sure. And in looking at again -- and maybe the best way
21 to do this, Mr. Gallegos, is the jury has heard a -- a
22 fair bit about the proof of what happened on this hunt.

23 From your perspective, explain to the jury the
24 reasons why, as you've already described, that you
25 believe that the shot was one that shouldn't have been

1 taken, and that it was negligent to instruct the hunters
2 to take the shot.

3 A For one, the range. I mean, you don't know exactly what
4 the range is. I mean hunters are only following what
5 they're -- what they're told. There's not an adequate
6 backstop for that bullet. You're basically -- you have
7 someone else's property behind that, and obviously,
8 it -- it shows. I mean the bullet traveled high.

9 Q And you add in to that not getting it sighted in.

10 A Yeah. I mean, you're not -- there was no knowledge of
11 what these hunters are capable of shooting -- what their
12 rifles are.

13 Q Sure. Ultimately, the jury will get to decide some of
14 this as well. But disregard for consequences is one of
15 the questions. And there's -- there's negligence where
16 somebody makes a mistake, and then there's reckless,
17 where somebody does something that puts other people in
18 danger.

19 Do you believe that taking the shot knowing that
20 the roadway that was commonly used during hunting season
21 and just beyond the tree line on somebody else's
22 property, --

23 MR. RIMMER: I'm going to object.

24 Q (Mr. Hunt continuing) -- do you believe that's a
25 reckless shot?

1 MR. RIMMER: I'm going to object, Judge. The
2 witness is not testifying about legal matters. Can we
3 approach?

4 THE COURT: Yes, you may approach. All right.
5 So -- excuse me again, jury -- ladies and gentlemen. There's
6 some matters that need to be addressed outside of your
7 presence. Please don't speculate as to what we're discussing.
8 We're not trying to be rude, but there are some matters that
9 may -- you may or shouldn't hear in this case.

10 If you can just bear with us for a minute.

11 [WHEREUPON, the following side bar
12 conference was held from the Bench.]

13 THE COURT: All right. So, I do have a concern. He
14 hasn't been qualified as an expert.

15 MR. HUNT: Okay. I can qualify him.

16 THE COURT: All right. So, I'm going to sustain the
17 objection. If you qualify him, I'll give him the -- are
18 you -- are you going to have an objection to him being
19 qualified as an expert?

20 MR. RIMMER: I -- I think to testify about best
21 hunting practices. I just don't think he can testify whether
22 this constitutes a reckless act under law. I mean, he's
23 basically being called to provide a legal opinion. I think
24 he could say this is something I'd never do in my experience
25 and based on my review of what I've seen, I don't think this

1 is appropriate, but I -- I think it's -- goes far beyond
2 asking him --. Basically, it's -- I think --

3 THE COURT: All right. So what -- what I'm going to
4 do is I'm going to -- I'm going to ask you, Mr. Hunt, to
5 qualify him as an expert in the field that you want to qualify
6 him in, hunting guide, and then I'm going to read the
7 instructions on expert witnesses and opinion, and then you
8 can follow up with other questions, and if -- if you want to
9 renew your objection, --

10 MR. RIMMER: Yes, Judge.

11 THE COURT: -- we can do that.

12 MR. RIMMER: That works. Thank you.

13 MR. HUNT: And that's fine. I'm happy to do that.
14 I'm not asking him to give -- and I think he's qualified as
15 an expert to testify -- it goes beyond negligence. I've asked
16 him negligence questions. Those weren't objected to as
17 proper. Reckless is another stand, and I don't think it's
18 any different, so I'm certainly willing to do that.

19 THE COURT: Okay. But I'm -- I am going to ask you
20 to qualify him as an expert.

21 MR. HUNT: Okay.

22 THE COURT: Okay. Thank you.

23 [WHEREUPON, the following
24 proceedings continued in Open
25 Court.]

1 Q (Mr. Hunt continuing) All right, Mr. Gallegos. One
2 of the things that is important to do, and I think
3 we've already gone through your background, so I'm not
4 going to do that again with this jury. But one of the
5 things I -- is we would now --

6 MR. HUNT: To the Court, Judge, we would move to admit
7 Mr. Gallegos as an expert in hunting practices, in safe
8 hunting as a guide -- on both of those general areas.

9 THE COURT: All right.

10 MR. HUNT: Based on his testimony that he's already
11 given.

12 THE COURT: All right, thank you. Do you have any
13 objection or do you wish to voir dire the witness?

14 MR. RIMMER: I don't have any objection to this.

15 THE COURT: All right. I'm going to qualify the
16 witness as an expert. I have some instructions for the
17 jury.

18 The Rules of Evidence do not ordinarily permit a
19 witness to testify as to an opinion or conclusion. However,
20 a witness who is qualified as an expert in a subject may be
21 permitted to state an opinion as to that subject.

22 After considering the reasons stated for an opinion,
23 you should give it such weight as it deserves. You may reject
24 an opinion entirely if you conclude that it is unsound.

25 An expert witness is permitted to state an opinion

1 based upon a question which, for the purpose of trial, assumes
2 as true certain facts which may or may not be true. It will
3 be for you in your deliberations, however, to determine from
4 all of the evidence whether or not the facts assumed have
5 been proved to be true.

6 So, I am going to qualify this witness as an expert
7 as requested by Mr. Hunt.

8 MR. HUNT: Thank you, Your Honor.

9 Q (Mr. Hunt continuing) Mr. Gallegos, the question that
10 we were on a second ago was, you've already explained to
11 the jury the reasons why you believe that the shot --
12 the hunt was negligent. I don't want to go over that
13 again.

14 But my question was a little different than that.
15 It was, for the guide, knowing that there's a well-
16 traveled road just beyond the property line and in the
17 direction down-range from where he's instructing the
18 hunters to shoot, is that, in your view, first of all,
19 a shot that puts people in danger?

20 A Yes.

21 Q Is it also a shot that, in your view, disregards the
22 safety of people who may be on that roadway?

23 A That is correct.

24 Q Do you believe it's also a shot that would be considered
25 reckless?

1 A Yes.

2 MR. HUNT: Mr. Gallegos, I appreciate your time and
3 thank you for being here today. I don't have any other
4 questions right now.

5 THE COURT: All right. Mr. Rimmer, you may proceed
6 with your cross-examination.

7 MR. RIMMER: Just a couple of follow-up questions,
8 Mr. Gallegos.

9

10

CROSS-EXAMINATION

11 **BY MR. RIMMER:**

12 Q It's my understanding that the shot actually occurred at
13 six-twenty p.m., and this is from the --

14 A Okay.

15 Q -- State Officer Report. Is -- is that new information
16 to you?

17 A I was going through the report. It says the first call
18 was at seven-thirty.

19 Q Okay.

20 A It was --

21 Q And -- and one of the officers, Quentenson, indicates
22 it's at six-twenty. Do you have any reason to disagree
23 with that?

24 A I did -- I didn't see that on it, so I'll --.

25 Q Okay. And -- and knowing that, does it change the basis

1 of your opinion regarding lighting?

2 A Oh, the legal shooting light, yes. But still -- there's
3 still that half-hour window, which, I mean, everything
4 plays a factor in that location. The trees, I mean,
5 cloud cover. There's so many things that factor into it
6 that would have -- it would be an on-sight -- that is
7 the job of the landowner/agent or the guide to control
8 that situation.

9 Q Okay. Fair enough. And your family owns a ranch? Is
10 that what I understand?

11 A We did. We sold it two years ago.

12 Q Okay. Fair enough. And do you have any personal
13 relationship with any of the parties involved?

14 A No, sir.

15 Q You don't know any of them from Adam?

16 A No, sir.

17 Q Okay. And you indicated earlier that you've had bullet
18 fragments fall around you like I have.

19 A Yes.

20 Q Okay. Have you -- when those fragments that fall around
21 you in the past -- were you -- did you know where
22 the shoot -- the people shooting the bullets were
23 located?

24 A No.

25 Q Okay. So, a fragment would hit near you, and you --

1 A No. I -- I believe -- so -- my -- we were cutting trees
2 actually -- my -- my wife and the kids and I -- and
3 someone was target practicing, and we did not -- there
4 was a hill, which there's a road where obviously I
5 thought they were parked and that's where they were
6 doing, but I mean, you could just hear them just whizzing
7 by, and we -- we got out of there as fast as we could.

8 Q Yeah. Same -- same here. And it's fair to say, based
9 on your expert opinion, were those -- were the -- were
10 those people doing target practice doing anything
11 wrong?

12 A Well, yeah. That was -- it's on -- it's not a place
13 where you should be shooting at all.

14 Q Okay. Fair enough. And have you visited the location
15 in question?

16 A No, sir.

17 Q Okay. So, you're basing your opinion solely on the
18 photographs?

19 A Photos.

20 Q Okay. And at the beginning of your testimony -- and I
21 like to work my way backwards to the beginning -- you
22 indicated that you guide people on hunts.

23 A Yes.

24 Q Are these commercial hunts people were paying you?

25 A Yes.

1 Q Okay.

2 MR. RIMMER: I have no other questions. Thank you.

3 THE COURT: Any redirect, Mr. Hunt?

4 MR. HUNT: Judge, I think we've covered. I don't
5 have any further questions. Thank you.

6 THE COURT: All right. Is there any reason to retain
7 this witness or can I release this witness?

8 MR. HUNT: You may release him.

9 THE COURT: Any reason to retain the witness?

10 MR. RIMMER: He may be excused.

11 THE COURT: All right.

12 THE WITNESS: Thank you.

13 THE COURT: You've been released as a witness; you're
14 free to go about your business. Thank you.

15 THE WITNESS: Thank you.

16 THE COURT: And Mr. Hunt, if you'd call your next
17 witness.

18 MR. HUNT: Sure. Eric Armstrong.

19 THE COURT: All right. Mr. Armstrong, watch your step
20 going up the ramp there. There's an incline.

21 And let me have you raise your right, please. Do you
22 swear or affirm the testimony you will give in this case will
23 be the truth, the whole truth and nothing but the truth under
24 penalty of law?

25 THE WITNESS: I do, your Honor.

1 THE COURT: All right. You may be seated. And Mr.
2 Hunt, you may proceed.

3 MR. HUNT: Thank you, Judge.

4

5

ERIC ARMSTRONG

6 The witness herein, having been first duly sworn upon oath,
7 was examined and testified follows:

8

DIRECT EXAMINATION

9 **BY MR. HUNT:**

10 Q Good morning, Mr. Armstrong.

11 A Good morning.

12 Q Can you tell the jury your name?

13 A My name is Eric Roy Armstrong.

14 Q And Eric, tell us where you live.

15 A I live in Folsom, New Mexico.

16 Q How long have you lived there?

17 A Twenty-six years.

18 Q And what brought you to the area?

19 A My wife and I came to the area in 1995 and started a
20 physical therapy practice in Raton.

21 Q And let's talk a little bit about -- I -- I stand
22 corrected. Earlier -- you have children; correct?

23 A Yes sir.

24 Q How many?

25 A Two.

1 Q And was one of them with you on the day of the
2 hunt?

3 A Yes, it was my daughter that was with us, and not
4 Luke's.

5 Q I think I said Luke instead of yours, but --. And tell
6 the jury a little bit about your hunting background.

7 A I grew up in Western Pennsylvania, and hunting, next to
8 Steeler fans, is probably a religion, especially the
9 Monday after Thanksgiving, which is always the opening
10 day of deer season. And I can remember going out with
11 my dad when I could put on enough clothes to stay
12 warm.

13 Q All right. And have you continued that?

14 A Yes, sir.

15 Q Do you continue even to this day?

16 A I do.

17 Q Did you take your kids hunting?

18 A I took my kids hunting.

19 Q And is hunting an important part of your family?

20 A I would say it was a vital part of our family, yes.

21 Q And safe hunting. Talk a little bit about that. Do you
22 consider yourself somebody who practices safe hunting
23 practices?

24 A I do.

25 Q And how do you do that?

1 A I think it was mentioned yesterday by one of the
2 prospective jurors that it's just something that you've
3 done all your life, that has been engrained in us, that
4 you pick up a firearm and you always check to make sure
5 it's safe. That you practice -- that you always make
6 sure that that firearm is unloaded when you're finished,
7 that it is stored safely, that you -- just all the
8 aspects of hunting that --. Hunting is an inherently
9 dangerous activity, you know, whether it's with archery
10 equipment or with a rifle, and you just have to be really
11 careful.

12 Q Yeah. Now, I want to talk a little bit about your time
13 hunting in this general area. So, let's talk about,
14 first of all, the Ute Creek Ranch, which is where you
15 hunted.

16 A Yes, sir.

17 Q And do you still hunt there?

18 A We do.

19 Q Okay. How did you become involved in hunting on the Ute
20 Creek?

21 A The Ute Creek Ranch is owned by the Allen family, and I
22 was the Scout Master for Troop 77 in Raton, New Mexico,
23 and I knew Bill Allen and his family, and his father,
24 Bob, as -- as -- through my physical therapy practice,
25 but also their son, Hunter, was one of my Eagle

1 Scouts.

2 Q Okay.

3 A And it was in 2010 that Bill had approached me and asked
4 me if I was interested in leasing some of the tags from
5 his ranch. Anybody who hunts in New Mexico understands
6 the tag system on public land. And there were many years
7 that we were unable to draw tags for any species, and it
8 being an important part of the way I wanted to raise my
9 children and my family, we agreed to lease some of the
10 tags from Bill.

11 Q All right. And how many tags did they give? Do you
12 remember?

13 A When we originally talked, nobody had been using the cow
14 tags, and he wanted the herd thinned. And so, when the
15 opportunity came to get the tags, I asked if we could
16 start a program with an organization out of Texas called
17 Hunts for Heroes, and we would take wounded soldiers
18 that were still in rehab, and we took them from Brook
19 Army Medical Center to San Diego Burn Unit and some other
20 military hospitals from around the Country, and we would
21 bring them onto the ranch and take them elk -- or cow
22 elk hunting.

23 Q Okay. And what you heard earlier with Mr. Rockenfield,
24 you've known him for -- since you hunted out there,
25 haven't you?

1 A Yes, I've known Jim for ten years.

2 Q All right. And did you do anything to communicate with
3 Mr. Rockenfield and the folks at the Atmore Ranch to let
4 them know when you were going to have hunters and when
5 you were going to be on the Ute Creek?

6 A Yes. Every year, there's two entities -- myself and
7 a -- and a group out of Texas that also gets some of the
8 tags, and we would come up with a calendar of who was
9 going to be on the ranch when. So, when we had those
10 dates sorted out, typically by August or September, we
11 would just give a list of those dates and who was going
12 to be on the ranch during that time period.

13 And then -- because, you know, we would -- just
14 came down from Raton or Folsom, I would typically try to
15 get ahold of Jim and let him know we were coming, and he
16 was usually, you know -- when I got ahold of him, he was
17 kind enough to let us know where -- where he'd been
18 seeing the elk and things like that. We had a very
19 cordial relationship.

20 Q Sure. And did you also do anything as far as text
21 messages, that kind of thing?

22 A Yes. I would either call him. If I didn't get him,
23 because sometimes reception is questionable there, I
24 would send a text.

25 Q And do you know in 2015 -- or I'm sorry, 2014, did you

1 also send -- did you give a calendar to Mr. Rockenfield
2 in 2014 letting him know when the hunts were going on,
3 on the property?

4 A To the best of my recollection, we did, because it was
5 just a general practice.

6 Q And in -- for this hunt, who all was hunting? And let's
7 get -- let's just jump ahead.

8 A Okay.

9 Q So October 7th,

10 A October 7th.

11 Q Who was hunting on that day?

12 A My brother, Mark. That was the last year on the ranch
13 that we were going to be able to have two bull tags.
14 Everybody in my family, except my two brothers, had had
15 an opportunity to come and hunt a -- a bull, and the
16 tags were becoming more expensive. And so, we were
17 releasing -- the only thing we were going to do was hunt
18 cow elk from then on, and we were just interested in the
19 meat for ourselves anyway.

20 And so, by that time, we weren't taking out wounded
21 soldiers anymore. The military had changed their policy
22 in letting soldiers who were still in rehab handle
23 firearms. And because both my brother Mark and my
24 brother Luke were Veterans, we decided to take the last
25 two bull tags that we had and bring them on a hunt.

1 So, that first day, my brother Mark's tag was
2 valid, but Luke's was not.

3 Q Okay. And so, on -- if we're looking at this photograph,
4 which the jury has looked at quite a lot, what we've --
5 the proper -- the fence line kind of runs right along
6 there, as far as the Ute Creek does; correct?

7 A Correct.

8 Q Help the jury -- and maybe, if you don't mind, can --

9 MR. HUNT: May the witness approach this photo for a
10 minute?

11 THE COURT: Absolutely. Can you step down and aide
12 the jury with demonstrative demonstration.

13 Q (Mr. Hunt continuing) And the first thing I'd like you
14 to do, Eric, is help the jury understand where the
15 boundary lines are, so between the Atmore and the Ute
16 Creek.

17 A Well, in -- in this picture, the only boundary line we
18 can really see is this fence line that comes here. It
19 drops down into these trees, and then goes around a
20 lake.

21 Q Okay. All right. So -- and so, the Ute Creek Ranch
22 includes the lake, and then the boundary line over this
23 way and then across?

24 A Correct.

25 Q And then at some point, does -- does it come back down?

1 And although I understand you can't see on this
2 photograph, --

3 A It kind of comes back down around here. And again, Mr.
4 Rockenfield talked about a hayfield. That hayfield kind
5 of continues on -- onto the Ute Creek, and then literally
6 kind of right here would be our bunkhouse and our
7 Lodge.

8 Q Okay. Okay. So, the direction -- what we've understood
9 is that the elk were moving in that direction? Is that
10 what you understand to be the case?

11 A Where the elk were when they saw them, I --

12 Q Don't know.

13 A -- don't know.

14 Q Okay. The elk -- if they were traveling in this
15 direction, would they be going towards the Ute Creek
16 property?

17 A Correct.

18 Q How far in distance roughly? Five hundred yards?
19 Half --

20 A Mmm, between five hundred and eight hundred yards if
21 they continued straight down here, because that fence
22 line comes back down around here.

23 Q Okay. Now, at the time -- so, we're in the afternoon.
24 I think what we've established is somewhere between five
25 and six is probably about the timeframe that -- what

1 were you and your party doing at that time?

2 A So, one of the rules on the Ute Creek Ranch is that
3 nobody is to be unescorted. They need to be shown where
4 the property lines are and things like that. And so, we
5 had -- we had left the bunkhouse and we came up this
6 road. And we typically park right here on this curve,
7 because we like to go down and look and see if there's
8 animals here at the lake.

9 And as soon as we got out of the truck, we could
10 hear an elk bugling -- a bull elk bugling. So, my
11 brother, Mark, and I came to the gate and we looked down,
12 and there were actually elk swimming in the lake.

13 Q Okay. And so -- I'm sorry. I think you said this and
14 maybe I --. So, you had come from this direction?

15 A This direction, right up the road.

16 Q Okay. Okay. And so, you saw the elk were down in the
17 lake. How many?

18 A Maybe twenty.

19 Q Okay.

20 A Twenty-five. They were cows, calves and a -- a little
21 bull.

22 Q All right. And --

23 A And the calves were kind of stuck on one side of the
24 fence, and the cows were on the other side of the fence
25 talking back and forth to them. And we were just kind

1 of looking at boundaries anyway. And we had seen the
2 elk. And there is a rule at Ute Creek that there's no
3 hunting inside the -- the boundary of the lake, and we
4 weren't interested in that animal anyway.

5 And so, we turned and went back to the truck and
6 we discussed the plan to -- typically, what we do is
7 park there and then we walk the road and make a loop
8 around it. There's a mountain kind of right here, and
9 we walk the loop around that, depending on -- we go this
10 way on -- based on the wind, or this way, based on the
11 wind.

12 Q All right.

13 A And based on the wind, we decided to begin to walk this
14 way.

15 Q Okay. And at any point, did you see folks associated
16 with the Rockenfield group?

17 A At one point, we saw Jim's -- well, he had a white pick-
18 up.

19 Q Okay.

20 A And there was a white pick-up coming down the -- the
21 Baldy Mountain Road when we were deciding what we were
22 going to do, but --.

23 Q All right. Did you ever see anybody else? I mean, did
24 you ever see any of the hunters?

25 A There were two people standing in the front yard of the

1 Lodge.

2 Q Okay.

3 A But whether or not they were hunters, I -- I -- I
4 didn't --.

5 Q Okay. So, from up here, you thought you saw two people
6 kind of in the hunting lodge area?

7 A Correct.

8 Q All right. And did they look to be actively hunting at
9 the time you saw them?

10 A No.

11 Q And what did you guys do next?

12 A So, then we began to walk down this road. Because of
13 the wind, we were going to walk down this road. And
14 then there's a little vega over here, and we were going
15 to walk over here to this little vega.

16 Q Okay. And just help the jury, what happened?

17 A You want me back here?

18 Q And you can sit down if you'd like, if that's easier.
19 And -- go ahead.

20 A So, we -- excuse me, I'm sorry.

21 Q That's okay. Take your time.

22 A So, we began walking down that road to make the loop,
23 past what we call the bathtub, which is to the right
24 where I was just pointing. And it was -- Luke and I
25 were almost abreast, and my daughter was behind me maybe

1 six or seven steps, and my brother, Mark, was behind
2 her. And then Debbie stayed with the pick-up, and we
3 would just let her know if we needed her to come down
4 and around.

5 And we were partway down that hill when we heard
6 a gunshot. And I -- I remember yelling -- hearing
7 crackling through the trees, just like Mr. Gallegos
8 stated about hearing bullets or hearing shrapnel.

9 And I remember being picked up, turned, and I
10 landed on my face going back uphill, kind of in a push-
11 up position. And I remember hitting my chin. And I
12 remember looking uphill and everybody was crouched down.
13 I said, "Get down."

14 And I looked over there to my brother and he was
15 laying flat on his back -- Luke was laying flat on his
16 back. And there was just blood just gushing out of his
17 face. And I -- I was about three feet from him, because
18 we were walking down the ranch road, kind of in the ruts
19 on either side, so you had the -- the -- the -- in the
20 middle, and he was spun clear off the road and was laying
21 just on the -- kind of the shoulder of the road.

22 And I called over to him, and I mean his eyes were
23 rolled back up into his head, and the blood -- and he
24 was just -- he was gray. And I remember taking my
25 knuckle and I drove it right down into his chest, and I

1 started a sternal rub. And his eyes kind of fluttered
2 and I did it again. And his -- his eyes kind of
3 fluttered, and he went like this, and there was just
4 blood everywhere. And he rolls over and he looks at me,
5 and he goes, "You're hit."

6 I go, "What?"

7 He goes, "You hit."

8 I go, "Luke, are you okay?"

9 And he points -- and he points at my shirt and I
10 look down and I just had blood down my shirt and onto my
11 pants. And that was the first time I realized that I
12 had been hit as well.

13 Q Okay.

14 A But my concern was for him, so I pulled my shirt off and
15 I had a T-shirt underneath -- I had a long-sleeve black
16 shirt on. Pulled my T-shirt off, and I balled it up,
17 and I put it on his face.

18 And I started holler -- and we were hollering and
19 yelling. And I think Mr. Rockenfield stated that he
20 heard us. And so, we were yelling at Debbie to bring
21 the truck, 'cuz she was kind of on the rise over the
22 top, so she didn't see any of this happen -- she just
23 heard us yelling.

24 And then she came down in the truck. And Mark and
25 I got Luke in the back, and we got in the back, and we

1 drove partway down that hill, and then actually were
2 honking the horn on the truck. And then because it's
3 shorter to get to the County Road, we actually cut across
4 onto the Atmore through the lower gate on the road.

5 Q So, the -- the road that you can see on this picture is
6 the one you guys came down?

7 A Yes.

8 Q Okay.

9 A And we came over the top, and we were honking the horn.
10 And we came around the corner and we could see two guys
11 stick -- with rifles standing on a little rise, and then
12 Jimmy was down at the road. And I said -- 'cuz we --
13 there's no -- there was no cell phone service in the
14 Valley unless you had AT&T, and we had Verizon.

15 And I said, you know, "We've been shot," you know,
16 "Call the police and call the hospital. We're on our
17 way."

18 And Jimmy said that he would, and we continued out
19 and went to the hospital.

20 Q Okay. And I -- we said this earlier, but -- so, it
21 was -- was your daughter with you when this happened?

22 A Yes, sir.

23 Q How did she -- how old was she at the time?

24 A 2014, so, she was twenty-one.

25 Q Okay.

1 A Twenty-two maybe.

2 Q Okay. And did she come over to you when you were on the
3 ground?

4 A Yes.

5 Q And then I think what you said is you went ahead and got
6 to the hospital.

7 A Correct.

8 Q And just so we can kind of do a couple of things. I'm
9 going to use this again.

10 MR. HUNT: These are Exhibits that have been admitted.
11 These are -- so this is from Exhibit Three.

12 THE COURT: All right. So, I'm going to interrupt
13 you, Mr. Hunt. I have some further instructions for the jury.

14 When an Exhibit is presented to you in Open
15 Court, you should not discuss it with other jurors. You
16 should not point out to another juror matters that seem
17 important to you. You should not whisper back and forth with
18 your other jurors about the Exhibit. You'll have an
19 opportunity to discuss the Exhibit in the jury room. Thank
20 you.

21 MR. HUNT: Can you guys see it over there or no? Okay.
22 I think it's still muted on your end, Judge.

23 THE COURT: All right. So, Andrew, you're going to
24 need to help me with this.

25 MR. HUNT: I can see it. Let's see. Did you get it?

1 UNIDENTIFIED JUROR: We can see it.

2 MR. HUNT: Can you see it? Can you see? You guys
3 are okay now?

4 UNIDENTIFIED JURORS: There it is.

5 MR. HUNT: All right. Let me --

6 THE COURT: What Exhibit number is this Mr. Hunt?

7 MR. HUNT: Sorry? You can't on yours? Okay. So,
8 you guys can, but yours --. Okay. All right.

9 THE COURT: And what Exhibit number are you on?

10 MR. HUNT: I'm on -- we're going -- we're on Exhibit
11 Number Three.

12 THE COURT: All right. So, I've previously admitted
13 Exhibit Number Three into evidence.

14 All right. So evidently, some of the jurors do not
15 have reception.

16 MR. HUNT: So, I think -- yeah, at the back maybe.

17 THE COURT: Okay. So, Andrew, do you know how to fix
18 that?

19 MR. HUNT: I'm sorry. Do you want me to go ahead?

20 THE COURT: No, I'm going to try to fix it first.

21 MR. HUNT: No, I understand that. I just didn't know
22 if -- I think -- do you guys have it now? Okay. Now we're
23 good. And just let me back up -- and I'm sorry, I want to
24 just make sure -- maybe I can ask a question. I know that as
25 far as the jury, you guys are ultimately going to get these

1 Exhibits in the jury room.

2 THE COURT: So -- so, why don't I go ahead and have
3 you go ahead approach -- have the attorneys approach?

4 [WHEREUPON, the following side bar
5 conference was held from the Bench.]

6 MR. HUNT: My only question is, do you plan to give
7 them all of the Exhibits, even if they're not discussed?

8 THE COURT: If they've been admitted and they ask
9 for the Exhibits, I'm going to give them to them.

10 MR. HUNT: Great, that's all I need. The reason I
11 ask is like some of these we used on the board, but I haven't
12 used them as this exhibit, but they'll still get it.

13 THE COURT: Yeah.

14 MR. HUNT: Yeah.

15 THE COURT: Anything that's admitted.

16 [WHEREUPON, the following
17 proceedings continued in Open
18 Court.]

19 Q (Mr. Hunt continuing) Okay. Now, let me -- this is a
20 picture that we -- the jury saw earlier today, obviously,
21 but tell them what it is, just so that the foundation is
22 there for it.

23 A That is -- that is my left flank.

24 Q Okay.

25 A That is the left side of my abdomen.

1 Q And was that picture taken -- when was it taken?

2 A That was taken -- we literally came by the bunkhouse,
3 grabbed a different -- we had some bandages at the
4 bunkhouse. We grabbed those and took a picture of Luke's
5 lip and took a picture of my abdomen.

6 Q Why did you do that?

7 A I guess just to -- just to have it.

8 Q Couldn't kind of believe what happened?

9 A It was -- it was pretty surreal at the time.

10 Q And then what did you do after that?

11 A We went to Miners Colfax Medical Center in Raton, New
12 Mexico.

13 Q And when you got to the hospital, who did you see?

14 A We had actually had service in Cimarron, and so I had
15 called the hospital just to make sure that they knew
16 that we were coming, and talked to the Emergency Room.
17 And then we have like three or four miles of service,
18 and so we called and let them know we were coming. And
19 so, when we got there, they had called the surgeon in,
20 Dr. Chao. And then Dr. Loretta Conder was on -- on duty
21 as well. She's an internist.

22 Q And what decision was made as far as medical treatment
23 that you would receive?

24 A So, Dr. Chao, the surgeon, took Luke and began working
25 on his lip. They examined me and they -- they sent me

1 for x-rays and that's when they came back and they said
2 that, "You have a bullet fragment in you."

3 And then Dr. Chao came at some point when he was
4 done with Luke and said, "We're going to leave it for
5 right now, and I want you to come back for a follow-up
6 visit."

7 Q Okay. And let me just -- the jury will also have this,
8 but the x-ray -- this is an x-ray that was taken -- I
9 think you can see at the bottom, October 7, 2014, so the
10 day of the incident.

11 THE COURT: So, why don't you go ahead and identify
12 the Exhibit number --

13 MR. HUNT: Sure.

14 THE COURT: -- for the record.

15 MR. HUNT: Thank you Judge. This is from Exhibit
16 Five. And it's the eighth page of Exhibit Five.

17 Q (Mr. Hunt continuing) That part of it, is that the
18 bullet fragment that was from this incident?

19 A That's the bullet fragment, yes.

20 Q And is it still there today?

21 A Yes, it is.

22 Q And have -- do you understand why it wasn't removed?

23 A Yes.

24 Q Okay. What do you understand about that?

25 A I did a follow-up visit with Dr. Chao, and he said it

1 would be much more dangerous to try to go in and get it
2 removed, 'cuz we didn't know if it was flat and long or
3 what it looked like, and that it was embedded in the
4 muscle, and it would be -- trying to go in and get it
5 may just push it deeper.

6 Q And here we are, four-and-a-half years later, and what's
7 the current status of the bullet fragment?

8 A I had a checkup in the Spring, and the bullet fragment
9 is still there. And the status is that it's there until
10 it moves or possibly moves, I guess.

11 Q And let me show the jury a -- a record.

12 MR. HUNT: This is also from Exhibit Five, Judge.

13 Q (Mr. Hunt continuing) It's a little bit difficult to
14 read, but -- or it's just in small print. Dr. Dell --
15 do you know who Dr. Dell is?

16 A Dr. Dell is the radiologist that -- that reads for Miners
17 Colfax Medical Center.

18 Q Okay. And it reads here, "He spoke with our radiologist,
19 Dr. Dell, who told him there's a twenty percent chance
20 that it could migrate and cause a problem if he has any
21 trauma in that area."

22 A Correct.

23 Q Is that what you --

24 A That -- I've been -- I've been told that by Dr. Chao,
25 who was the original surgeon, by Dr. Dell, the

1 radiologist, and then Dr. Cook, who is the surgeon I saw
2 this Spring.

3 Q And just -- and one of the tasks that the jury is going
4 to have at the end of this is really to make a decision
5 on, okay, how -- how does this affect Eric, the fact
6 that he has a bullet fragment in him.

7 So, just help them understand. And we'll talk to
8 some other folks about that, too, but from your side,
9 how has it affected you, if it has?

10 A Probably the biggest lifestyle change that I've had is
11 that I don't do any kind of contact activity anymore.
12 When Dr. Chao -- when I saw Dr. Chao shortly after, he
13 said the probability of it moving on its own, maybe, but
14 certainly with any kind of trauma -- direct trauma to
15 that area, even including being a passenger, because it
16 sits near this rib where your seatbelt goes, and if
17 you're in any kind of car accident or anything and that
18 seatbelt could push it in.

19 So, I have not done any Martial Arts. My -- I
20 don't play basketball anymore. I don't play Ultimate
21 Frisbee, which we used to play every Tuesday and
22 Thursday. I don't ski anymore.

23 I'm just -- I just don't do those kind of
24 activities that -- that may cause trauma to that area.

25 Q Sure. Now, in -- this was -- just to be fair to the

1 jury, and to be fair, so there's not any questions, is
2 this the only health issue you've had over the last few
3 years?

4 A No sir.

5 Q You've had some other ones, too. I think Mr. Rockenfield
6 mentioned, unfortunately, he had to deal with cancer.
7 You had to deal with a bout of it yourself, didn't
8 you?

9 A I did, yes, sir.

10 Q And that certainly put a damper on some of the activities
11 as well for -- did it?

12 A Yes. I -- I ended up having basically bone cancer, and
13 they removed most of my right shoulder blade, and several
14 other muscles that attach there.

15 Q And so, when you're talking about some of the stuff
16 that -- that you don't do anymore relating to the -- the
17 bullet fragment and the risk that you've understood the
18 trauma part of it, why is it that you don't do those
19 things?

20 A Partly, I'm limited by my shoulder, but partly is due
21 to the trauma from -- you know, just the -- just
22 the apprehension of potentially moving that bullet
23 fragment.

24 Q Now, have you ever been tested for lead poisoning?

25 A I have, yes.

1 Q And when was that? When were you tested?

2 A In the Summer, prior to the incident.

3 Q Okay. Have you been tested since?

4 A I have not.

5 Q Anybody ever said -- and if not, that's fine -- but has
6 anybody ever told you that there's some concern that the
7 lead from the bullet can cause problems?

8 A No, not really. I mean, you know, there's obviously
9 concern that you have a foreign object in your body.
10 So, you know, even like a post-surgical staple or
11 anything like that, there's always a -- there's always
12 a concern when there's a foreign body, but not
13 particularly lead poisoning, because we don't even know
14 if it's lead. It might be, you know, copper or
15 something like that. I'm -- we're not even aware of
16 what it is.

17 Q Sure. Now, I want to -- let's step away from the bullet
18 fragment. Were there any other injuries that you
19 suffered from this incident?

20 A When I got spun to the ground, I -- I basically twisted
21 my mid-back, kind of the -- where the thoracic lumbar
22 junction -- where your thoracic spine meets your lumbar
23 spine, I kind of twisted that area.

24 Q Okay.

25 A And I had a lot of bruising and a lot of swelling in

1 that area for a while.

2 Q All right. And have you gotten any treatment on that
3 area?

4 A Yes. I go -- I -- I go to see my chiropractor, Monty
5 McGowen, a couple times a month probably.

6 Q And that's -- and you see him a couple times of month
7 related to what?

8 A To my thoracic area.

9 Q Had you had problems with the -- that part of the
10 thoracic back before this?

11 A Never. I'd seen him for headaches and -- and adjusting
12 my neck, but never in my low back area, or rarely, I
13 should say.

14 Q Now, I want to ask you some other questions. I want to
15 ask you these questions about your brother.

16 MR. HUNT: And I think, Judge, if it's okay -- and I
17 think what I'd like to do is ask Luke to step out of the
18 Courtroom just for a minute. Sometimes it's easier to talk
19 about siblings and close friends when they're not in the room.
20 Is that okay if he --

21 THE COURT: Do you have any objection, Mr. Rimmer?

22 MR. RIMMER: I don't, Judge.

23 THE COURT: All right. Without an objection, I'm
24 going to go ahead and allow Mr. Armstrong to step out of the
25 courtroom.

1 Q (Mr. Hunt continuing) Let's talk about Luke for a
2 minute, Eric. How close are you guys? How often do you
3 see each other?

4 A He's probably my best friend. And it's -- it's always
5 fascinated me that he ended up, through his military
6 career, in Pueblo, Colorado, 'cuz he was at Fort Carson,
7 and I ended up in Raton, New Mexico. Both of us came
8 from outside of Pittsburg on a farm originally.

9 Q Yeah. And you stay in touch and see each other pretty
10 frequent?

11 A A lot. Yes, sir. We talk almost every day.

12 Q And the injury -- and the jury has seen the photograph,
13 and they've heard a little bit about it, and they'll get
14 to hear some more as the -- as the day progresses.

15 But what I want you to help the jury understand is
16 just from your side of it, over the last four-and-a-half
17 years, not so much at the -- at the time it happened,
18 but the effect it's had, even going on to today. Help
19 the jury understand that with Luke, just in your own
20 words.

21 A I -- you know, I think it was touched on earlier that,
22 you know, Luke graduated high school and joined the Army
23 the next day, and went to basic training. He became an
24 MP, so he was a military policeman in the -- in the Army.
25 And then when he got out, he joined the Colorado State

1 Patrol. So, he's been in law enforcement for a long
2 time. And I know that that -- after the incident, he's
3 been more circumspect as far as his job and as far as
4 the dangers associated with it. And talks a lot more
5 about not wanting to be a policeman anymore, just because
6 this has really changed his life.

7 As far as his lip --

8 Q When you say it's really changed his life, what -- what
9 do you mean?

10 A It's just -- it's just changed his -- his outlook, and
11 I think he feels more vulnerable.

12 Q Okay. At any time before this, had he ever talked about
13 getting out of the police or anything?

14 A No.

15 Q And on the -- the physical side of it, how have you see
16 this has affected him?

17 A I know he's had a lot of headaches and a lot of dental
18 work. He's had a couple of surgeries, and I know the
19 surgeon wants to do another one.

20 Q But I don't really mean the medical part of it --

21 A Okay, I'm sorry.

22 Q -- so much. No, that's okay. I didn't ask a very good
23 question. Just the -- the human effect of it. Not the
24 treatment or any of that stuff, but the human effect of
25 it. I mean, have you seen either things where you've

1 been out with him and seen how it's kind of affected
2 him, or just any kind of little stories, that sort of
3 thing.

4 A I know that if we -- if we go out to eat, he always
5 insists on a straw. I mean, you know, how they -- the
6 waiters or waitress will bring glasses and everybody
7 starts to drink and if they forget straws, I mean he
8 literally won't drink because it will dribble out the
9 corner of his mouth. And I -- he's pretty self-conscious
10 about that.

11 Q Sure. I understand he's now a pretty big fan of
12 Chapstick.

13 A Yes. He -- we actually found some lip balm that has
14 SPF -- a higher SPF than most. Because -- because of
15 that exposed area where he's had the surgeries, it's my
16 understanding that he'd be very susceptible to skin
17 cancer in that area.

18 Q And I know that you -- and I don't want you to --
19 obviously as a witness and I'll think, you know, telling
20 the jury what he told you isn't -- and it's not something
21 you're supposed to do. And so I want -- and again, just
22 from your being around your brother, being his best
23 friend, has this event, in your estimation, has it had
24 a big effect on him?

25 A I would say yes.

1 Q And other than what you've already described, help us
2 understand that.

3 A It's just different. I mean, he became involved with
4 me on the ranch. And when we first started bringing
5 the -- the -- the wounded soldiers down, something that
6 he was very, very passionate about, he has not back --
7 been back to hunt on the ranch since. Just it's --
8 it's -- especially when we're going and doing something
9 outdoor activity-wise, it's -- it's a little bit
10 different, I would say.

11 Q And when you say it's a little bit different, you mean
12 he is?

13 A He is, yeah.

14 Q In what way?

15 A He just -- just doesn't seem to be as fun-loving, and
16 is -- he always has a joke about everything, and if
17 you're going to be easily offended, then you better not
18 spend much time around him. (Laughs.) But he seems
19 more reserved now.

20 Q Eric, I appreciate you answering my questions. I don't
21 have any others right now.

22 A Thank you.

23 THE COURT: All right. We're at about a minute or
24 two before noon. Now is a good time to take our lunch break.
25 I'm going to give you the same instruction I have given you

1 previously.

2 During recess, do not discuss this case with anyone
3 other than yourselves and then only in the jury room when all
4 of you are present. Do not attempt to decide the outcome of
5 the case before you begin final deliberations.

6 Please continue to wear the juror badges while in
7 and around the Courthouse. If someone other than a fellow
8 juror happens to discuss the case in your presence, report
9 that fact at once to a member of the staff. If you happen to
10 see or hear any news accounts of this trial, please report
11 that fact to a member of the staff.

12 So, I'm going to ask that you be back in the
13 courthouse at the same place where you met Andrew this
14 morning. Someone will bring you back to the jury room and we
15 can continue with the trial.

16 MR. RIMMER: Judge, before we break, may I approach
17 for a moment?

18 THE COURT: You may.

19 [WHEREUPON, the following side bar
20 conference was held from the Bench.]

21 THE COURT: Yes sir.

22 MR. RIMMER: I wasn't going to ask Mr. [inaudible]
23 any questions, and I just wanted to let you know that, so
24 [inaudible] before we take a break.

25 THE COURT: Well, we'll -- we'll cover that

1 when -- when we get back. You can just say -- you can just
2 say, "I don't have any -- any questions," and I'll allow him
3 just to have a seat at counsel's table and --.

4 MR. RIMMER: Appreciate it. I thought just for
5 [inaudible]. Thank you.

6 THE COURT: All right. Thank you.

7 [WHEREUPON, the following
8 proceedings continued in Open
9 Court.]

10 THE COURT: All right. All rise for the jury.

11 [WHEREUPON, the jury retired from
12 the Courtroom, after which the
13 following proceedings were held
14 outside the presence of the jury.]

15 THE COURT: All right. The parties and counsel may
16 be seated. And Mr. Armstrong, you can go ahead and have a
17 seat at counsel's table.

18 Any matters we need to address before we take our
19 lunch break for the day?

20 MR. HUNT: No. I -- I mentioned this to Mr. Rimmer.
21 Things are going quickly -- even a little quicker than I
22 thought, which is not always the case, so we will finish
23 tomorrow, I think, and I wanted to mention that to the Court.
24 And I think we'll finish in enough time to close --

25 THE COURT: With jury instructions?

1 MR. HUNT: Right. So, that's why I wanted to mention
2 it. We may need to take that up tonight.

3 THE COURT: Jury instructions.

4 MR. HUNT: Right. I think they're really close. So,
5 I mean, it may not take a whole lot of time, but I anticipate
6 that we'll finish in the morning, and I think that means the
7 case will be closed in the morning. Right?

8 MR. RIMER: Yes, Judge. I -- and I assume we can do
9 closing and then get it to the jury.

10 THE COURT: Okay.

11 MR. RIMMER: And we'll have them done in the afternoon
12 sometime.

13 MR. HUNT: Yeah. Very well could. So, I just wanted
14 to mention that to the Court just so you can plan, and we can
15 do the same.

16 THE COURT: All right. So, let's plan for jury
17 instructions tonight then, after I release the jury.

18 THE HUNT: And we -- there are two witnesses, medical
19 folks, that could not be here until the morning. So, I
20 mention that just -- I don't know that we'll finish with only
21 them left, but there might be a chance for us to break a
22 little bit early today, given just how quickly things are
23 moving. But we'll take that up as it comes.

24 THE COURT: Okay. All right. Very good. So, I'll
25 see -- if you can be back in the Courtroom at one o'clock.

1 MR. HUNT: Thank you, Judge.

2 THE COURT: Thank you.

3 [WHEREUPON, a lunch recess was
4 taken.]

5 THE COURT: We're back on the record in the matter of
6 D-117-CV-2017-89. I note that counsel and the parties are in
7 the Courtroom.

8 Are there any matters we need to address before we
9 bring in the jury?

10 MR. RIMMER: Not from the Defendant, Judge.

11 MR. HUNT: No. The only -- Mr. Luke Armstrong's not
12 in the room. His wife is going to testify, and similarly,
13 just going to have -- when folks and family and friends
14 testify, usually don't have them [inaudible].

15 THE COURT: Okay.

16 MR. HUNT: Just with the Court's permission.

17 THE COURT: Sure. All right. Mr. Armstrong, why
18 don't you come back up to the witness stand? It's a bit of
19 a formality, but if you could have a seat in the witness stand
20 for me.

21 MR. ERIC ARMSTRONG: Yes, sir.

22 THE COURT: All rise for the jury.

23 [WHEREUPON, the jury entered the
24 Courtroom, and the following
25 proceedings were held in Open

1 Court.]

2 THE COURT: All right. Counsel and the parties may
3 be seated. Mr. Rimmer, do you have any cross-examination
4 questions for the witness?

5 MR. RIMMER: I don't, Judge. As far as I'm concerned,
6 he may be excused. Thank you.

7 THE COURT: All right. Mr. Armstrong, you can go
8 ahead and have a seat at counsel's table.

9 MR. ERIC ARMSTRONG: Thank you, your Honor.

10 THE COURT: And Mr. Hunt, if you'd could call your
11 next witness.

12 MR. HUNT: Sure. We call Rebecca Armstrong.

13 THE COURT: All right. Ms. Armstrong, why don't you
14 come across the courtroom. Watch your step going up to the
15 ramp to my right, and I'll go ahead and swear you in.

16 Raise your right hand. Do you swear or affirm that
17 the testimony you will give in this case will be the truth,
18 the whole truth and nothing but the truth under penalty of
19 law?

20 THE WITNESS: I do.

21 THE COURT: All right. You may be seated.

22 THE WITNESS: Thank you.

23 ---

24 ---

25 ---

1

REBECCA ARMSTRONG

2 The witness herein, having been first duly sworn upon oath, was
3 examined and testified follows:

4

DIRECT EXAMINATION5 **BY MR. HUNT:**

6 Q Good afternoon, Rebecca. Can you tell the jury, who's
7 your husband?

8 A My husband is Luke Armstrong.

9 Q And how long have you guys been married?

10 A Just short of thirty years.

11 Q And tell the jury a little bit -- if somebody asks you,
12 you know in a sentence or two, tell me about your
13 husband.

14 A I met my husband by being pulled over.

15 [Laughter in Courtroom.]

16 Q Did he pull you over?

17 A At the -- at gate at Fort Carson, and as I drove off, he
18 went "Whoo." (Laughs.)

19 And I said, you know, I think I'm going to go back
20 and find out about that guy, and I did. And we went on
21 a date the next morning after he was off, and we dated
22 until he went to Panama. And in Panama, they sponsored
23 an orphanage. And I got a card from him and he said,
24 "I'm going to bring a whole bunch of kids home."
25 (Laughs.) So, needless to say, it started early.

1 We had three biological children of our own. We've
2 adopted five. We've had thirty-nine foster children
3 now. That's why he's not here, because we had to bring
4 one of them with us, 'cuz she's in a body cast -- her
5 father hurt her very bad, and nobody would take her
6 except us, so --.

7 Q Let's -- and there's more than that, isn't there?

8 A Oh yeah. There's lots more.

9 Q All right.

10 A So --.

11 Q And Luke, he -- he works for the State Police?

12 A He's a Colorado State Trooper. He used to be the Driving
13 Instructor at the Academy. He no longer participates in
14 that. That's one of the things that he used to
15 participate in every year is doing that and doing the
16 Youth Academy.

17 Q We heard a -- sorry.

18 A No, go ahead.

19 Q That's fine.

20 A Oh good.

21 Q Yeah. And we heard a little bit about his involvement
22 in hunting. Has that been something he's participated
23 in at least as long as you've known him?

24 A My husband grew up hunting. I was always against hunting
25 'cuz I watched Bambi, and then I slowly but surely grew

1 into understanding more and more about hunting. And
2 now, with as many children as we have, we use the meat
3 quite well, so I understand hunting a little better.

4 Q Sure. And is it something he was involved in with the
5 kids, too?

6 A Yes. All of our children have been involved, in one
7 shape or another, whether they hunt or process the meat.
8 We always bring it home and everybody participates in
9 processing it, so --.

10 Q And I want -- and obviously the jury needs to know a
11 little bit about before this happened, but I want to
12 mainly focus on kind of the event itself.

13 But let's -- before the October 7th, 2014 incident,
14 to your memory, were migraine headaches, that kind of
15 thing, something that Luke had experienced?

16 A No, sir.

17 Q And did he have any other kind of issues that you were
18 aware of before this?

19 A My husband and I used to do coaching for the YMCA every
20 weekend with our children, and since this has happened,
21 there's been a lot of changes. He no longer coaches.
22 He does a lot of things that -- or doesn't do a lot of
23 things that we used to do, but he spends a lot of time
24 in bed when he gets off work, and calls in sick or has
25 to come home early.

1 Q What's --

2 A But, for Father's Day --

3 Q Let's back up for just a second.

4 A Oh okay.

5 Q Or you -- so, I think what you're talking about is --
6 and my question about migraines was whether he had had
7 any before this happened, and you said No, he --

8 A No, --

9 Q -- hadn't.

10 A -- he did not.

11 Q After this event happened, did migraine headaches become
12 something that he started having?

13 A Yes, sir.

14 Q And how frequently?

15 A I would say within the last month he's probably had a
16 migraine -- a severe migraine every other day, and
17 sometimes every day, 'cuz he's gone to work with them.
18 But if he has the day off, he usually spends it in bed,
19 'cuz that's what happened on Father's Day. He was with
20 a migraine and throwing up and everything else. And we
21 finally saw him at five o'clock for about five minutes
22 and he went back to bed. So, it -- it's changed a lot,
23 just with the migraines alone.

24 Q And so, let's -- after the -- the incident happened,
25 kind of in the short time period, let's just talk about

1 say the first six months or so after it. How was he
2 doing during those six months?

3 A I don't remember seeing the -- the headaches as
4 frequently. He was having surgery after surgery, and
5 the reconstruction of his lip.

6 Q Yeah, so let's talk about that part. Not --

7 A Okay.

8 Q -- necessarily just the headaches, but -- so, during the
9 six months after this happened, apart from the
10 headaches, but just talking about what all was he going
11 through, and you guys together as a family going
12 through?

13 A Well, right after it happened, he had, I believe, two
14 reconstructive procedures on his lip. And then, you
15 know, I just saw things kind of becoming more black-and-
16 white with Luke. Instead of being very willing to do
17 things, he was just kind of -- I don't want to say shied
18 away, but withdrawn I think would be the word.

19 Q Okay. And during the time that he was going through the
20 surgeries, what was going on with his mouth from what
21 you could tell? Meaning what was -- was it hurting him?
22 Was it --

23 A Oh, very much so.

24 Q How did you know that?

25 A Because my husband never takes sick leave, and he took

1 sick leave because he said if anything touches his
2 mouth, it's -- it's awful, awful feeling. And so, he
3 took sick leave and, you know, would stay and just let
4 it heal.

5 Q Okay.

6 A So -- and that's not normal for Luke at all.

7 Q And talk a little bit about the healing process. I mean,
8 how long -- do you remember -- and obviously you don't
9 need to be specific on dates or anything like that, but
10 the second surgery, about long after the incident was
11 that?

12 A Well, I believe he went back to work like about thirty
13 to forty days.

14 Q Okay.

15 A So, you know, I mean he took a lot of sick leave.

16 Q Okay.

17 A So, he usually donated to the pool for sick leave, and
18 he didn't have any to donate.

19 Q Understood.

20 A So --.

21 Q And you talked a little bit about, but during that time,
22 again just sort of the first six months, was -- you said
23 one, if anything hit him in the face, then it would just
24 kind of send him into shivers. I mean, it was just
25 really, really sensitive.

1 A It was very painful.

2 Q Okay. Did you ever see anything, like any incidents you
3 can remember where he got -- got hit and you could see
4 how much it bugged him?

5 A One of our granddaughters threw her head back into his
6 face. I remember that quite well.

7 Q Okay.

8 A So, I mean I know how that hurt.

9 Q A baby when they kind of arch their back?

10 A Yeah, it was a baby and she threw him -- threw herself
11 back into his lip. So, I know it was painful. And, you
12 know, I mean there's private things, too, that I
13 could tell you that they're painful, you know. So, I
14 wasn't -- I wasn't able to kiss him or anything, but
15 that, quite honestly, is something that has gone on
16 forever now. I no longer can kiss my husband. He --

17 Q Why not?

18 A It has a sensation in his mouth that he -- it's painful
19 or sends a zing, I guess you could say, when he does
20 kiss me. So, I get a kiss on the cheek, and it's taken
21 away my intimacy with my husband. And that upsets me a
22 lot. I mean, it's taken away a big part of my life.

23 Q Is that still going on now?

24 A It's worse now.

25 Q And from when -- I'm guessing, and I don't know if this

1 true or not, Rebecca, but have you guys talked about
2 that?

3 A Yeah.

4 Q And when -- when he explains it to you, how does he
5 explain it, as to the reason --

6 A He -- he talks about the pain. He talks about how it
7 zings, and he says he's sorry. But, you know, sorry
8 doesn't necessarily take away the thought of not being
9 able to kiss my husband for a long time, if ever
10 again.

11 Q And I mean obviously we're a whole bunch of years after
12 this, has any of the doctors or anything to you -- have
13 they talked about kind of the sensation and how
14 that's -- whether it's going to get better or
15 anything?

16 A Dr. Marin said to us that, you know, the nerve damage in
17 there is done. So -- and I understand that. I got bit
18 by a rattlesnake, so I understand when it zings and stuff
19 like that, you know, a wound. So, I understand. And
20 like I said, I'm not mad at him, but I mean -- I don't
21 know. I just -- I just get upset because that's kind of
22 how you live your life, is that you kiss your wife or
23 your husband goodbye, and it's -- that doesn't happen
24 for me.

25 Q Now, I want to talk about drinking. And by drinking, I

1 just mean, you know, out of a cup or anything. Now,
2 does Luke have any problems with that?

3 A We have been out to dinner twice since this has happened.
4 The first time we went out, food fell out of his mouth,
5 and he was so embarrassed, he said, "Not anymore for a
6 long time until this heals."

7 And he can only drink through a straw because when
8 he drinks, it just dribbles down his mouth. So, he
9 drinks from a straw, and he eats in public with the guys
10 at work sometimes, but he usually like makes it
11 where it's not so obvious. But at home, I see it. It's
12 very -- you know, it's very obvious.

13 Q Yeah.

14 A So, yeah, all the time he drinks from a straw and most
15 of the time food falls out of his mouth.

16 Q And that's limited what you guys do as far as socially
17 eating out and that kind of thing?

18 A Well yeah. I -- he's embarrassed to eat out with me,
19 and I can understand that -- not like with me, but he's
20 embarrassed.

21 Q Yeah.

22 A So --.

23 Q And the -- I asked this of Eric and kind of talked to
24 him about it and he kind of smiled. But is that area,
25 from what you understand, either more sensitive or

1 more -- and what I mean by sensitive, to sunlight, wind,
2 that kind of stuff?

3 A Yes. And there again, Dr. Marin told us that he has to
4 wear sunscreen, Chapstick and stuff like that, because
5 now it is more susceptible to skin cancer, because
6 it's -- of the skin there.

7 So, you know, it's not just his lip. We're going
8 to have teeth replaced because it fractured the front
9 four teeth -- hairline fractures. We have to have
10 either teeth removed and replaced, or else caps or
11 something -- I'm not sure, crowns or whatever.

12 But -- and it has made it where his jaw is such
13 that we go to the chiropractor, which you have to
14 understand, my husband does not believe in spending
15 money on himself, and to go the chiropractor was a huge
16 thing. So, he went to the chiropractor and the lady
17 said that his jaw was so out of alignment that that could
18 possibly be part of his headache, so she's been working
19 on that. And she said it was most likely from, you know,
20 being hit with that bullet that really smacked that jaw
21 out of alignment.

22 Q Sure. And on the -- the sensitive side of it, is
23 Chapstick, that kind of stuff, what's he -- is that you
24 try -- what he does to try --

25 A Yes.

1 Q -- to make up for it? Is that kind of a constant all-
2 day sort of thing?

3 A Yes.

4 Q And from what you've seen -- obviously you've spent more
5 time around him in the last few years than anybody
6 else -- is the affects that he's felt from being shot in
7 the lip, is it something that he kind of deals with from
8 first thing in the morning and all day?

9 A Yes. I mean, it's -- it's with him wherever he goes.
10 You know, I mean that is just going to be something that
11 he lives with the rest of his life.

12 Q Is -- is he much of a complainer?

13 A No.

14 Q Does he fuss about it?

15 A No. He tells me about it, but he doesn't fuss about it,
16 and he doesn't complain about it. He's a very humble
17 person in that sense. And that, honestly, is why we've
18 had as many children as we've had, is because he is very
19 laid back and doesn't get upset about much. And if he
20 tells me it hurts, then I know that something's really
21 wrong, because he never goes to the doctor or anything
22 unless it's something huge.

23 Q And you talked a little bit about this, Rebecca, but I
24 think it's important to help the jury understand.
25 Emotionally, has this been -- has it impacted your

1 husband?

2 A Well, like I said, Luke used to be like kind of a gray
3 area. He's very black-and-white now. And I know it
4 affected him to be shot. He's made a couple of comments
5 to me, but moreso with his job, he's tried to stay out
6 of the -- the road duty and do Hazmat, and I think a lot
7 of that is because he is concerned about being shot
8 again. We've talked about it. But I truly believe it
9 was the start of -- the onset of some PTSD. I really
10 believe that.

11 Q Well, and so, when you're talking about a little
12 more -- or not a little, but that you've seen how it's
13 affected him, give us an example, just in -- in some way
14 that you can kind of think of an instance of --.

15 A There's been a few instances that he's had to deal with
16 a situation that was gruesome or hard for others to deal
17 with, and he takes it on himself to handle it.

18 Q Okay.

19 A And he's a very good person in that sense, in the sense
20 that there was a murder of two small children and his
21 guys were called to it and he told them that they would
22 not be participating in the retrieval of the bodies. He
23 would handle it himself.

24 And at that point in time, I kind of knew that
25 Luke is just kind of trying to do the best he can at

1 keeping -- I -- I -- I don't know how to describe it. I
2 mean, it's just -- I don't know. He just -- he's just
3 different now. I -- I -- I don't even know how to
4 describe it, other than being --

5 Q It's okay.

6 A -- different.

7 Q No, that's okay. And -- and you being with him -- and
8 I mean, you know, folks change. I mean, some do -- folks
9 change even without any kind of trauma or anything like
10 that.

11 How is it, if you do, that in your -- in your view
12 as Luke's wife, that at least one part of the change has
13 been the trauma that he had to the mouth and the trauma
14 of getting shot? How do you think -- how are those
15 related?

16 A I think when you're shot that it changes your life in
17 the sense that you value things differently.

18 Q Okay.

19 A Very much differently. And I can see that in Luke, that
20 he has taken upon himself to do those things because he
21 knows how fragile life can be. A -- and the doctor in
22 Raton told him, you know, if that had been just a little
23 bit further, that could have blown your face off and
24 you'd be dead. You know, so when I got the phone call,
25 it was not a pleasant phone call to get.

1 Q Understood. And you've had a chance to tell this jury
2 a little bit, but from your side of it, what do you miss
3 the most about things that are different with Luke?

4 A Kissing my husband.

5 Q Thank you for testifying. Thank you for all that you do
6 with Luke.

7 A Thank you.

8 THE COURT: All right, Mr. Rimmer?

9 MR. RIMMER: I don't have any questions for this
10 witness.

11 THE COURT: Mr. Hunt, any reason to retain the
12 witness?

13 MR. HUNT: No. Thank you, Judge.

14 THE COURT: Any reason to retain the witness?

15 MR. RIMMER: No, Judge.

16 THE COURT: All right. Ms. Armstrong, I'm going to
17 go ahead and release you as a witness. You're free to go
18 about your business. Thank you.

19 THE WITNESS: Thank you. Thank you guys.

20 THE COURT: And Mr. Hunt, if you would call your next
21 witness, please.

22 MR. HUNT: Yes. Judge, we're going to call Chris
23 Espinoza.

24 THE COURT: All right.

25 MR. HUNT: I'm going to get him.

1 THE COURT: All right, sir. If I can have you come
2 across the courtroom, up the ramp to my right.

3 Watch your step going up the ramp. And I'm going to
4 swear you in.

5 If I can have you raise your right hand. Do you swear
6 or affirm that the testimony you will give in this case will
7 be the truth, the whole truth and nothing but the truth under
8 penalty of law?

9 THE WITNESS: Yes, your Honor.

10 THE COURT: All right. You may be seated, sir.

11 THE WITNESS: Okay.

12 THE COURT: And Mr. Hunt, you may proceed.

13 MR. HUNT: Thank you, Judge.

14

15 **CHRIS ESPINOZA**

16 The witness herein, having been first duly sworn upon oath, was
17 examined and testified follows:

18 **DIRECT EXAMINATION**

19 **BY MR. HUNT:**

20 Q Good afternoon, Mr. Espinoza.

21 A Good afternoon.

22 Q Can you please tell the jury your name?

23 A Chris Espinoza.

24 Q And tell the jury what you do during the day.

25 A I am a fire fighter for twenty-one-and-a-half years.

1 Q And where do you live?

2 A I live in Raton.

3 Q Are you in fact the Fire Chief in Raton?

4 A I am.

5 Q For about how long?

6 A For about two-and-a-half years.

7 Q And we're here to talk about primarily, but maybe a
8 little bit of both, but Eric Armstrong.

9 A Okay.

10 Q Do you know Eric?

11 A I do know Eric.

12 Q How long have you known him?

13 A I've known Eric for about twenty-some years, when I had
14 a knee injury, when I first started my career.

15 Q Okay. So, he treated you when he was doing physical
16 therapy?

17 A Yes.

18 Q Did you guys become friend?

19 A We did become friends.

20 Q Tell us a little bit about that. Just, I mean, how did
21 you become friends, when did you, you know --

22 A Just over the years, I've talked to him on several
23 occasions. And then lately, over the last five to six
24 years, I've really become to know him. We've done hunts
25 together, fishing trips together, bird hunting -- just

1 a lot of outdoor activities.

2 Q And tell the jury kind of a little bit about Eric. What
3 kind of guy is he?

4 A Eric's a real stand-up guy. He -- he's there whenever
5 you need him. Every time I've ever called, he's answered
6 the phone. If I needed help, he's been there to help
7 me. Just a real outgoing, stand-up guy.

8 Q And the main reason we're having you come testify -- and
9 we appreciate you coming all the way down from Raton --
10 is one of the things that this jury is going to have to
11 decide is how the events that happened back in 2014 have
12 affected Eric. And you've kind of had a -- a front row
13 seat to that.

14 A Yes, I have. Quite some time ago, we -- he would take
15 me out hunting with him on the property of Mr. Allen's,
16 and then I've got to where I was going every year hunting
17 with him. And then one day, he called me up and said
18 that he needed some help, if I could go out there and do
19 that or assist him with his hunters and stuff like that.
20 So, I did. I went out to the ranch and helped him out
21 with some of his hunters. And once I did that, I think
22 I then went with him on every trip that he went out
23 there.

24 Q And from your side, how is -- how have things been
25 different since -- since him getting shot? How has it

1 affected him, based on what you've seen?

2 A I think some of his affectedness is coming -- like he
3 doesn't know if he can twist his body in certain ways,
4 or take impacts if he jumps off a truck. He said on
5 several occasions to me that it could damage his kidney.
6 He doesn't -- there's no -- no telling what can happen
7 at any time.

8 Q And what kinds of things have you seen that he doesn't
9 do now that he used to do before?

10 A I knew that he used to go out every -- every Tuesday and
11 play Ultimate Frisbee. Golfing -- he would go out every
12 Thursday night and do golfing. Just real active. And
13 since the last five or six years, he -- I don't think
14 he's done any of that.

15 Q Okay. And just so that we're clear, and if it's -- but
16 that's -- the event happened about four-and-a-half years
17 ago.

18 A Right, about four years ago.

19 Q Okay.

20 A But he was really active beforehand, and then after that,
21 he was not active after that.

22 Q Okay. And from you being around him, on the hunts and
23 things like that, were there things that -- and -- well,
24 let me back up.

25 In -- in visiting with him and in watching him --

1 and okay, understanding there's stuff he doesn't do now
2 that he used to, why? Could you tell why?

3 A I just think he's afraid to move in any direction 'cuz
4 he doesn't know what's -- what can happen. I think
5 we've -- I've been in a profession to see people -- I
6 can be sitting here one minute and be gone the next, and
7 I think he thinks that way sometimes.

8 Q And just in being around him, has he talked to you about
9 that worry?

10 A He has talked to -- I've -- I've heard him talk -- tell
11 people around that he's been shot before, and sometimes
12 he -- I don't think he gets the full story out to
13 everybody that he tells it to.

14 Q Okay.

15 A 'Cuz I think it kind of chokes him up a little bit.

16 Q Okay. Is he one to complain and sort of talk about all
17 the issues he's dealing with?

18 A No.

19 Q Do you spill -- excuse me. Do you still spend time with
20 him now?

21 A I do. I do spend as much time as we can now. We haven't
22 done anything in quite some time.

23 Q And on the hunting side of it, he still hunts? Still
24 gets involved in the hunts?

25 A Yeah, he does. He's -- he's really reduced down in what

1 he's done. I think we're only doing like six hunts this
2 year compared to sixteen to twenty hunts before, in the
3 past.

4 Q Okay. And in the past, had you been involved with him?
5 He talked to the jury a little bit about kind of the
6 Hunts for Heroes and some of the -- those programs. Were
7 you involved with any of those hunts?

8 A No, I wasn't. His brothers were involved with
9 that.

10 Q And was that important to him, just in a
11 conversation --

12 A That was very important to him. That's -- I've heard
13 a lot of stories about him doing the Hunts for
14 Heroes.

15 Q And again, thank you for being here, and I don't want to
16 take any more of your or the jury's time. But kind of
17 the last question is just in summary. If you're helping
18 these folks understand my friend, Eric Armstrong, and
19 how the hunting incident has affected him, how do you
20 summarize that?

21 A It's hard to summarize. I think he's always got
22 something in the back of his mind that's not going to
23 let him be to his full capacity, 'cuz there's a piece of
24 fragment in him.

25 MR. HUNT: Mr. Espinoza, thank you for being here. I

1 don't have any other questions right now.

2 THE COURT: Mr. Rimmer?

3 MR. RIMMER: No questions for this witness. Thank
4 you.

5 THE COURT: All right. Any reason to retain the
6 witness?

7 MR. HUNT: No. Thank you.

8 MR. RIMMER: No, Judge.

9 THE COURT: All right. I'm going to release you as
10 a witness. You're free to go about your business. Thank you.

11 THE WITNESS: Thank you.

12 THE COURT: And Mr. Hunt, your next witness.

13 MR. HUNT: We're going to call Dr. Phillip Marin via
14 video deposition.

15 THE COURT: Okay.

16 MR. HUNT: So, we may need --. Thank you.

17 THE COURT: So, let me give some instructions to the
18 jury regarding the deposition. All right.

19 Ladies and Gentlemen, a deposition is testimony taken
20 under oath before trial and have been preserved in writing
21 and/or by video. The testimony is entitled to the same
22 consideration as any other testimony at this trial.

23 MR. HUNT: It's loading. Bear with us. Apologies.
24 We're about to get it on the drive, Judge.

25 THE COURT: All right.

1 MR. HUNT: Is it on for you? Okay. Judge, I
2 think we'll have to just make sure -- pretty sure we've
3 published.

4 THE COURT: All right. So, do you need Andrew's
5 assistance?

6 MR. HUNT: We switched.

7 THE COURT: Did you already send it?

8 MR. HUNT: Yes. What's that? Sorry. It's just
9 not -- it's not live on ours. The screens are different, so
10 the screen that it's showing here is not the same.

11 THE BAILIFF: Restart it.

12 MR. HUNT: No luck yet.

13 MR. COURT: All right. So, why don't I have the
14 attorneys approach for me.

15 [WHEREUPON, the following side bar
16 conference was held from the Bench.]

17 THE COURT: All right. So, I think the options are
18 call a different witness and then when we take a break, we can
19 bring I.T. down and we can get it fixed.

20 MR. HUNT: I think it will be the link video we
21 use.

22 THE COURT: Okay.

23 MR. HUNT: [Inaudible] but that's fine. I think
24 that's probably the best option.

25 MR. RIMMER: Works for me.

1 THE COURT: Okay. All right.

2 [WHEREUPON, the following
3 proceedings continued in Open
4 Court.]

5 THE COURT: All right. Mr. Hunt, if you would call
6 your next witness.

7 MR. HUNT: We're going to call Debbie Armstrong.

8 THE COURT: All right. If you can watch your step
9 going up the ramp for me, please. There's an incline.

10 And let me have you raise your right hand. Do you
11 swear or affirm that the testimony you will give in this case
12 will be the truth, the whole truth and nothing but the truth
13 under penalty of law?

14 THE WITNESS: Yes, sir.

15 THE COURT: All right. You may be seated. And Mr.
16 Hunt, you may proceed.

17

18 **DEBBIE ARMSTRONG**

19 The witness herein, having been first duly sworn upon oath, was
20 examined and testified follows:

21 **DIRECT EXAMINATION**

22 **BY MR. HUNT:**

23 Q Good afternoon, Debbie.

24 A Good afternoon.

25 Q Would you please tell the jury your name?

1 A I'm Debbie Armstrong.

2 Q Who is your husband?

3 A My husband is Eric Armstrong.

4 Q How long have you guys been married?

5 A It will be thirty years January 1st.

6 Q All right. And we asked Eric the same question, but how
7 long have you been in New Mexico?

8 A We moved here in 1995, so --. I'm not very good at math
9 under -- under normal circumstances, let alone pressure.

10 Q We won't -- we won't make you do a quiz.

11 A Thank you.

12 Q Tell us a little bit -- and I ask you kind of some of
13 the same questions, which is tell the jury a little bit,
14 so they have an understanding about who your husband is.
15 Tell us a little bit about Eric.

16 A Oh gosh. Eric and I moved here in 1995 to start a
17 physical therapy practice. We met in physical therapy
18 school thirty-two years ago, and we've worked together
19 in the same -- same business for those thirty years,
20 either, you know, in a -- in a hospital practice or in
21 our own practice.

22 Q Why did you choose Raton?

23 A (Laughs.) Eric has always loved the mountains, and we
24 both grew up in rural areas. I was in Iowa; Eric was in
25 Pennsylvania. We were at a -- at a hospital in northwest

1 Iowa -- northeast Iowa, I'm sorry, that was being taken
2 over by a big conglomerate. And we're kind of small-
3 town folk, and we got to looking at some opportunities.
4 There was an opportunity in Raton.

5 At that time, the company would fly you in to the
6 City. So, we flew into Denver, drove south on I-25,
7 came over the Pass and my husband said, "Oh yeah."

8 And I said, "Oh no." (Laughs.) 'Cuz my family is
9 still in Iowa.

10 And anyway, our kids were three and five and we
11 said, you know what, we've always wanted to live in the
12 West. You know, I'd really -- really enjoy being out
13 here.

14 And I'll admit, it took me some time to adjust
15 from the lush green of the Midwest to, you know, the --
16 the Desert Southwest, but I tell you what, it's -- you
17 can't beat the climate and -- and the opportunities with
18 wildlife and ranching. You -- you just can't beat it.
19 It's -- it's -- it's a culture that I absolutely dearly
20 love.

21 Q And at the time you moved to Raton, was there a physical
22 therapy practice up there at all?

23 A There was a struggling practice, yes. It -- long story
24 short, fell through and -- and we took the opportunity,
25 and, you know, wanted to -- to work in that area and

1 provide services for that area. We're the only physical
2 therapy class -- practice for nearly a hundred miles,
3 other than Trinidad, and if you've dealt with insurance,
4 you know crossing the state line for health insurance is
5 very difficult, so --.

6 Q Sure. And when you grew up, were -- were you involved
7 in hunting?

8 A My father and brother both hunted, and I always went out
9 with them whenever -- whenever I had the opportunity. I
10 love being outside, so being with dad was always a good
11 thing.

12 Q Sure. Have you guys continued it within your
13 family?

14 A Within Eric and I and the kids? Absolutely. I remember
15 when we first moved here, my son would have probably
16 been -- well, he was three when we moved here. That
17 next summer, he went -- he and his dad and a friend went
18 out hiking, and they -- they spent the night under the
19 stars, which many of you have. That's not my -- that's
20 not my goal, but they had a great time.

21 But anyway, when they woke up, there was a bear
22 off in the distance. And my son had a -- had a knife
23 and he was going to protect his daddy with the knife
24 because of the bear.

25 But anyway, yes, hunting has been a vital part of

1 our -- of our family life.

2 Q Sure. And -- and we've understood that, and the jury
3 has heard about that. And so, I want to talk about this
4 with you, Debbie. Give -- when did you get the phone
5 call about what had happened?

6 A I was there.

7 Q Oh, of course you were. I'm so sorry.

8 A That's all right. I was there.

9 Q So, let's back up to that. What were you doing on that
10 day?

11 A So, I -- I went out with the family because, like I say,
12 my daughter was there. And -- and I -- I enjoy -- elk
13 hunting is by far -- I enjoy bear hunting as well, but
14 elk hunting -- to be around the elk, watch the -- watch
15 the mamas talk to the babies, hear the elk, the bulls
16 bugle, there's -- there's just nothing like that. So,
17 I enjoy being out in that environment with my family
18 and -- and sharing that experience with them.

19 So, I was nearer to the truck. I tend to be the
20 truck driver at that point.

21 Q Okay.

22 A And so, I was nearer to the truck, but I was watching
23 the cows swimming in the lake. And -- and of course, if
24 you've been out around elk, the -- the babies have no
25 idea how to get through the fence. Mom just jumps over

1 and says, "Hey, come on." And so, I was watching the
2 calves trying to get through the fence, running back and
3 forth.

4 Decided that wasn't a situation that we, you know,
5 were looking for. The elk wasn't kind of what we were
6 looking for, so we wanted to go see the rest of the
7 ranch. So, they headed off back up around the corner
8 and down the hill, and I stayed with the truck to get it
9 turned around, because -- you can't tell from that
10 picture, but it's very difficult to turn a -- an F250
11 crew cab with an eight-foot-bed around in that area.

12 So, I was working on turning the truck around when
13 I heard the shot. And I stopped the truck, 'cuz I -- I
14 had no idea what had happened at that point. Got out of
15 the truck, went down the hill, and everybody is laying
16 on the ground. And then they start yelling at me to get
17 down. So --.

18 Q What did you think when you got there?

19 A It was all very confusing, honestly. I mean,
20 absolutely -- I mean it -- it -- it just never dawns on
21 you that someone has got shot -- you know, that they got
22 shot.

23 So, obviously when -- when I saw Luke for sure,
24 you know, the -- the first thing is we got to get to the
25 hospital, you know. I didn't know -- obviously, you

1 don't know at that point what damage has been done.

2 Q Yeah.

3 A But -- so, yeah, we loaded up and headed down the
4 hill.

5 Q Was that the road -- and we -- the jury has heard a bunch
6 about that road, but was that a road that you all used
7 frequently during --

8 A Absolutely.

9 Q -- hunting season?

10 A Absolutely. We use it constantly.

11 Q Go ahead. Sorry.

12 A I was just going to say, it's -- it's -- it's the -- the
13 best spot to be able to observe much of -- of the
14 ranch -- of the Ute Creek.

15 Q Okay. Had you had any thoughts when you were on that
16 road that you were in a dangerous position?

17 A No.

18 Q Did you ever think you were in the firing range of any
19 bullets?

20 A No. Absolutely not.

21 Q Had you been on any hunts where shots were fired the
22 other direction? Would you guys shoot at any elk going
23 that way, meaning headed down towards where the Atmore
24 Lodge was?

25 A No. No. I mean, that's not our property, so you

1 wouldn't shoot that way.

2 Q Okay. And was the truck running the whole time?

3 A No, the truck was off until I began to turn it
4 around.

5 Q Okay. And you -- did you begin to turn it around -- how
6 much before you heard the shot -- or did you hear the
7 shot?

8 A I did.

9 Q Okay.

10 A I was in the truck though.

11 Q Okay.

12 A That's a good question. I did not have the -- I know I
13 did not have it turned around, 'cuz it takes about
14 four -- you know, back up, pull forward, back up, pull
15 forward, and it still took me a bit to get the truck
16 turned around so I could go pick them up.

17 Q Gotcha.

18 A So --.

19 Q Okay. A couple of minutes.

20 A Yeah.

21 Q And so, then you took everybody to the hospital?

22 A Right. We obviously stopped at the camper to try and
23 get some bandages to -- at the -- at the bunkhouse to
24 try to get some bandages to help stem the flow of blood.
25 And I grabbed Eric and -- and Luke in the truck, and we

1 headed to the hospital. And I believe Eric and Mark --
2 or Casey and Mark came in a separate vehicle.

3 Q Okay. And how were Eric and Luke doing when you were
4 taking them to the hospital?

5 A Luke was in the back seat, and to be honest, I was
6 traveling pretty fast, and that's not a road that you
7 travel fast. I mean you all live in Rio Arriba County.
8 You don't -- you don't -- you don't drive fast on those
9 roads at night because you never know what's going to
10 step out in front of you.

11 So, I'm -- I'm pretty focused on the road, to be
12 honest with you. Eric is to my right, and obviously
13 my -- my greatest concern was for him. I knew Luke was
14 in trouble. I didn't know what internal injuries my
15 husband had. So yes, I was very concerned.

16 Tried to -- tried to make sure everybody was still
17 conscious, you know, as we're -- as we're flying along.
18 I was -- I was raised such that you -- you get a job --
19 you -- you -- if there's a job to do, you get it done,
20 and you worry about it later. So, you can fall apart
21 once you get to the hospital, but don't take the time to
22 do that on the way there.

23 Q You had a job to do. You had to get some folks to
24 medical care.

25 A That's right.

1 Q Okay. You said you can fall apart once you get there.
2 Did you?

3 A I did not.

4 Q Okay.

5 A For some reason my daughter called my son who was in the
6 military in Georgia, and he -- he was pretty shook up.
7 He was ready to get on a plane and had already talked to
8 his commandant about coming -- coming to -- you know,
9 jumping on a plane and coming to see his dad, 'cuz his
10 dad had been shot. And so, I had to be -- I had -- I
11 still had a job to do. I still had to make sure that
12 Jake was -- it's okay. We're going to get through this,
13 so --.

14 Q What do you remember about the hospital part of it?

15 A You know, obviously Luke was -- was on a -- on a
16 stretcher in the hospital room. I don't know. I mean
17 I remember the patrolman, the Game and Fish coming in
18 and asking questions, you know, giving whatever
19 statements we could there.

20 Q Sure. And so, back up for a second. Casey, your
21 daughter.

22 A Mm-hmm.

23 Q I think Eric said she was twenty-one at the time; is
24 that right?

25 A No. He can't --

1 Q Okay.

2 A -- do math on the stand either.

3 Q (Laughs.)

4 A She'd have been twenty-four.

5 Q Okay. Twenty-four at the time. And was she fairly
6 shaken up by this?

7 A She was. When -- she's one that when she gets nervous
8 or excited or anxious, she's going to be pretty bubbly,
9 and that's why she called her brother kind of thing. So
10 yeah, she was -- she was very concerned, but she also
11 wants to -- to be the support for others around her.

12 Q And the decision was made, obviously, not to remove the
13 bullet.

14 A Mm-hmm.

15 Q Not to have surgery, or anything like that. And you
16 were part of those conversations?

17 A Absolutely, yes.

18 Q And -- and why was that decision made?

19 A Well, it was my understanding that it was more dangerous
20 to take it out than to leave it in.

21 Q And bring us forward a little bit.

22 A Mm-hmm.

23 Q It's still there.

24 A Mm-hmm.

25 Q And let's talk first of all just not the physical side

1 of it, but the other side of it. Is it something that,
2 from your side of being there with Eric all the time, is
3 it something that causes -- it's on his mind?

4 A Mm-hmm.

5 Q Is that yes?

6 A Absolutely, yes.

7 Q Tell us about that.

8 A Well, you know, Eric and I -- obviously, like I said,
9 we've worked together and -- and been together for thirty
10 years -- thirty-two years.

11 Eric has always been one who -- who works out, who
12 exercises. He's always been, you know, very, very
13 active.

14 Speaking of a courtroom, you know, he -- when I
15 met him, he looked like Bull on Night Court, you know.
16 So, he's always been a big, big guy. And -- and since
17 this, you know, he has not been able to -- we used to
18 run. We've run marathons, done Tough Mudders, that
19 kind of thing, and since this, he has not done any of
20 that.

21 Q And from your side, why?

22 A Um --

23 Q Or from your view?

24 A I would say there's fear. You know, landing wrong. You
25 know, you go over a -- I don't know how -- if you're

1 familiar with Tough Mudders, but there's obstacles and
2 whatnot. You go over a -- an obstacle and you dislodge
3 that, you know. Having that shrapnel move, it -- it --
4 it can do nothing good, you know. There won't be
5 anything good come from the shrapnel moving, so we don't
6 want that to happen.

7 Q And Eric also talked to us a little bit about his
8 back.

9 A Mm-hmm.

10 Q And that he's had now kind of mid-back issues that
11 weren't there before.

12 A Right.

13 Q From your side, your view, tell us about that.

14 A Mm-hmm. You know, obviously he -- he gets chiropractic
15 treatments for those -- for that.

16 Q What -- how does it affect him?

17 A Mm-hmm.

18 Q Just from what you see.

19 A Yep.

20 Q What -- what kind of issues does it cause?

21 A Yeah. Like I said, he was a really big guy when I met
22 him, and I could always depend on him if I needed
23 something moved, to pick it up and move it. And I
24 have to do a lot more of that moving, to be honest with
25 you.

1 He did -- it scares me to have him engage in some
2 of that, you know. I don't -- I don't want him to
3 hurt.

4 Q Okay. And from -- I don't know that we've talked to
5 either him about this or anybody else, but on the kind
6 of psychological side, --

7 A Mm-hmm.

8 Q -- I think what you talked about a little bit was the
9 worry of --

10 A Mm-hmm.

11 Q -- of it moving, and just kind of what happens. Has it
12 changed anything for him, from what you've seen, as far
13 as hunting?

14 A I don't think so.

15 Q Good. No, and I'm -- I'm not -- I'm not looking for
16 anything. I was just curious if that was something --
17 he's still involved in it?

18 A Mm-hmm.

19 Q Something he still participates in every year?

20 A Yes.

21 Q He still guides hunts?

22 A Mmm.

23 Q Does he?

24 A Guides in the sense that he assists with the Ute Park,
25 Ute Creek Ranch.

1 Q Still takes people hunting --

2 A Takes people hunting.

3 Q -- on the Ute Creek.

4 A Yes.

5 Q Not for a pay kind of thing?

6 A Right.

7 Q Okay. And I guess within those hunting trips -- and we
8 just heard from Mr. Espinoza a minute ago, but I guess
9 he has other people that kind of help him now in ways
10 that --

11 A Mm-hmm.

12 Q -- maybe he didn't before.

13 A I do a lot of skinning and gutting.

14 Q Okay. Yeah. And here we are a whole bunch of years
15 later.

16 A Mm-hmm.

17 Q You've been by his side from the first minute that it
18 happened.

19 A Mm-hmm.

20 Q Has this been something that was kind of now a part of
21 your guys' life that wasn't before?

22 A Oh, absolutely. I mean, you can't change something like
23 that, so --.

24 MR. HUNT: I don't have any other questions, Debbie.

25 Thank you.

1 THE COURT: Mr. Rimmer, do you have any cross-
2 examination questions?

3 MR. RIMMER: It's no surprise, no, I don't, Judge.

4 THE COURT: Okay. Any reason to retain the witness?

5 MR. HUNT: No. Thank you, Judge.

6 MR. RIMMER: Not for me either.

7 THE COURT: All right. I'm going to go ahead and
8 release you as a witness. You're free to go about your
9 business. Thank you.

10 THE WITNESS: Thank you.

11 THE COURT: And if we can, I'd like you to call your
12 next witness, Mr. Hunt. Are you going to need the video
13 testimony or --

14 MR. HUNT: We are, Judge, and Dr. Marin will be the
15 next one. So maybe if -- and I know it might be a little
16 early for an afternoon break, but --

17 THE COURT: Okay.

18 MR. HUNT: -- it would probably be best to do
19 that.

20 THE COURT: All right. We'll go ahead and do that.

21 MR. HUNT: Thank you.

22 THE COURT: So, members of the jury, during recess,
23 do not discuss this case with anyone other than yourselves,
24 and then only in the jury room when all of you are present.
25 Do not attempt to decide the outcome of the case before you

1 begin the final deliberations.

2 Please continue to wear the juror badges while in
3 and around the Courthouse. If someone other than a fellow
4 juror happens to discuss this case in your presence,
5 please -- please report that fact at once to a member of the
6 staff.

7 All right. So, we're going to be in recess for about
8 fifteen minutes. All rise for the jury.

9 [WHEREUPON, the jury retired from
10 the Courtroom, after which the
11 following proceedings were held
12 outside the presence of the jury.]

13 THE COURT: All right. You all may be seated. At
14 this point, we're going to have to locate Dave with I.T.
15 again. What I'll do is I'll have my staff contact Dave and
16 have him head -- head down here, and then we'll reconvene at
17 about ten minutes after two.

18 MR. HUNT: Okay.

19 THE COURT: All right.

20 MR. HUNT: We'll just stay here.

21 [WHEREUPON, a short recess was
22 taken.]

23 THE COURT: You may be seated. We're back on the
24 record in the matter of D-117-CV-2017-89. I note that counsel
25 and the parties are present in the Courtroom. I understand

1 that the technical difficulties that we were having earlier
2 have been resolved.

3 MR. HUNT: Yes, sir.

4 THE COURT: All right. So, unless there's something
5 else we need to address, I am going to bring in the jury.

6 MR. HUNT: That's fine.

7 THE COURT: All right. All rise for the jury.

8 [WHEREUPON, the jury entered the
9 Courtroom, and the following
10 proceedings were held in Open
11 Court.]

12 THE COURT: All right. The attorneys and parties may
13 be seated. And Mr. Hunt, if you'd call your next witness.

14 MR. HUNT: All right, Judge. Take two, Dr. Marin via
15 video. I think we have it fixed now.

16 THE COURT: All right. Let's go ahead and play
17 that.

18 MR. HUNT: I think we just need to publish it from
19 your side.

20 THE COURT: Okay.

21

22 **PHILIP CHARLES MARIN**

23 The witness herein, having been first duly sworn upon oath,
24 was examined by way of video deposition on May 30, 2019, and
25 testified via video deposition as follows:

DIRECT EXAMINATION

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

BY MR. REED:

Q All right. Would you please state your full name, office address, and profession.

A Philip Charles Marin, 650 Dittmer Avenue, Pueblo, Colorado, 81005. And I'm a Board-certified plastic surgeon and I'm a Board-certified hand surgeon.

Q Would you state your educational background and training that prepared you for a medical practice, beginning with undergraduate education and taking it on through?

A I graduated from the University of Notre Dame in 1990, after -- I was there from 1986 to 1990, a four-year degree in pre-professional studies. I attended medical school at the University of North Dakota, 1990 to 1994. And then did my residency at Johns Hopkins and the University of Maryland from -- from 1994 to 2001. And then I did a one-year hand fellowship at Union Memorial Hospital from 2001 to 2002. And then I took a job here, joining Dr. Kessler in 2002, and I've been here for the last seventeen years.

Q You are licensed to practice medicine in Colorado?

A Yes.

Q And are you licensed in any other state?

A Currently, no. I was licensed in Maryland during my

1 *training, but I let that expire, 'cuz I have only*
2 *practiced in Colorado.*

3 Q *Since you have first been licensed, have you*
4 *continuously been licensed here in Colorado?*

5 A *Yes.*

6 Q *And do you specialize in any particular field of*
7 *medicine?*

8 A *Plastic surgery and hand surgery.*

9 Q *What does that specialty involve?*

10 A *In plastic surgery, I'm focusing on breast cancer*
11 *reconstruction, skin cancer, lumps and bumps, cosmetic*
12 *surgery -- that's about a third to half of my practice*
13 *I would say. And then I'm also board certified in hand*
14 *surgery, which is another subdivision of plastic*
15 *surgery where I do primarily hand trauma, carpal*
16 *tunnel, trigger fingers, ganglions, arthritis --*
17 *various conditions of the hand.*

18 Q *In this case, we don't have any complaints of hand*
19 *injury; is that correct?*

20 A *No.*

21 Q *So, we would be talking about your specialty in plastic*
22 *surgery.*

23 A *Plastic surgery, yes.*

24 Q *All right. And you said you were Board-certified*
25 *in -- in plastic surgery; is that correct?*

1 A Yes.

2 Q And can you explain what Board-certified means?

3 A It's a standard by all the medical professions in the
4 United States that -- that has certain things that need
5 to be accomplished, such as a Board-certified -- Board-
6 accredited residency program, and any of the -- you
7 have to pass both oral exams, as well as written exams
8 at a certain level in order to become Board-certified.
9 Then you have to maintain it with a certain number of
10 credits every year, and pass tests, and be recertified.
11 Plastic surgery had to be recertified at ten years, and
12 I passed that, so I am Board-certified through '24.

13 Q Have you -- have you received or done any fellowships
14 in your experience?

15 A Just the hand surgery was a fellowship, on top of
16 plastics. Plastic used to be a fellowship from general
17 surgery, but I was in one of the newer combined
18 residencies from '94 to '01, where they had a combined
19 general surgery and plastic surgery residency right out
20 of medical school, that seven-year program that I was
21 in. So --.

22 Q Have you authored any articles that have been published
23 in medical journals or treatises, magazines or other
24 publications?

25 A Yes.

1 Q And are they accurately reflected in your Curriculum
2 Vitae that has been provided to me?

3 A Yes.

4 Q Does your C.V., your Curriculum Vitae, does that
5 accurately list everything up to the present time?

6 A Yes.

7 MR. REED: I would like to mark and introduce
8 Plaintiff's Depo Exhibit A, the Curriculum Vitae of Philip C.
9 Marin, M.D.

10 Q (Mr. Reed continuing) In what city and hospital did
11 you do your residency in?

12 A I did my residency in Baltimore, Maryland, primarily
13 at Johns Hopkins, but they did have some rotations,
14 later in the residency, in shock trauma, in the
15 University of Maryland.

16 Q And do you belong to any professional or honorary
17 medical societies or organizations?

18 A The American Society of Plastic Surgeons is the primary
19 one that I'm -- that's the largest group of Board-
20 certified plastic surgeons in the country.

21 Q And can you state any positions or associations you
22 currently hold with hospital staffs or medical school
23 facilities?

24 A I'm currently operating both at Aberdeen Surgery
25 Center, and I'm on staff at Parkview Medical Center,

1 *Corwin Medical Center, Parkwest Medical Center, and the*
2 *new outpatient surgery center at Parkview that was just*
3 *constructed, I have privileges there as well.*

4 Q *All of those places are here in Pueblo, Colorado?*

5 A *Yes.*

6 Q *Do you practice in any other location across Colorado*
7 *or the country?*

8 A *No.*

9 Q *Okay.*

10 MR. REED: *I would like to offer Dr. Marin as an*
11 *expert in the -- in the field -- in the medical field of*
12 *plastic surgery.*

13 Q *(Mr. Reed continuing) Have you seen, treated or*
14 *examined the patient herein, Luke Sean Armstrong, and*
15 *if so, could you state the date of your initial*
16 *examination or treatment?*

17 A *Yes. I took care of Luke Armstrong. I initially saw*
18 *him on 10-13 of 2014.*

19 Q *Do you remember him, in a personal sense?*

20 A *Yes.*

21 Q *How do you remember him?*

22 A *I remember him as a very pleasant gentleman who came*
23 *in for his injuries to his lip and his left arm. He*
24 *was a very reasonable, mature person, and he had very*
25 *visible injuries that -- that were in proportion with*

1 his complaints.

2 Q And did you review your records for Mr. Armstrong
3 before this deposition today?

4 A Yes.

5 Q And in those records, do you remember taking a history
6 from the patient, Mr. Armstrong?

7 A Yes.

8 Q Do you remember what history the patient gave you?

9 A Yeah. He was -- excuse me. He was elk hunting on
10 two -- I'm sorry, on 10-7-14 in New Mexico, when --
11 with his brother, when a fragment of a -- of a bullet
12 from another hunter struck him in his lower lip, as
13 well as his left bicep region. He also had some
14 shrapnel hit him in the right shoulder.

15 He told me he went to the Raton E.R. at that point,
16 and he was followed up in my clinic in the following
17 week, on 10-13. So, he was about six days out when I
18 saw him at the first visit.

19 Q Was there anything that was said or stated to you by
20 Mr. Armstrong that would lead you to believe he was an
21 inaccurate or undependable historian?

22 A No. He was very clear on the history, appeared to be
23 very reliable. He is a Colorado State Patrol Officer,
24 and was very mature and appropriate for the situation.

25 Q After you obtained his history, did you examine the

1 *patient?*

2 A *Yes.*

3 Q *And what did you find?*

4 A *With his lip, he had a oblique laceration on the lower*
5 *lip that was higher on the right, lower on the left,*
6 *approximately three to -- three-and-a-half*
7 *centimeters, approximately, in a transverse fashion.*

8 *He also had a -- in the left arm, he had a injury*
9 *in the left lower bicep region. And he also had some*
10 *shrapnel injuries on his right shoulder, about four*
11 *millimeters, but I could not palpate any metal*
12 *fragments in there.*

13 Q *Can you, in laymen's terms, describe what the lip*
14 *looked like, just as he presented to you initially?*

15 A *Initially, it was sutured in an oblique fashion, with*
16 *some interrupted nylon-type sutures. There was some*
17 *maceration of the lip, and trauma from the blast injury*
18 *from the -- from the bullet. It appeared that the*
19 *tissue was viable. And it was very swollen at that*
20 *time. His lip was very large.*

21 Q *Like twice the size of a normal lip? Three times?*

22 A *Twice -- twice the size, approximately, you know, at*
23 *that -- at that point.*

24 Q *Any --*

25 A *But it was only six days out, so -- you know, so*

1 there's -- it was difficult to get a real good
2 assessment of it at that point.

3 Q And you could tell from looking at it, it was bruised
4 and -- and tender?

5 A Yes.

6 Q Did he complain of pain at that point in time?

7 A Yeah. He was still in a little bit of shock from this
8 whole incident, because it was only, you know -- it was
9 within a week out from injury. But yeah, it was sore
10 and -- and painful.

11 Q Did he also indicate that it had a particular feel to
12 it, or did he report that to you?

13 A Um, it was still a little numb, and it didn't have
14 normal sensation in there, but that's all to be
15 expected at that early phase, because it was so fresh
16 after the injury. It was difficult to get a good
17 sensory exam or anything at that point, because it was
18 too bruised up and swollen. I -- I prefer to wait
19 for -- for everything to settle out, let the swelling
20 go down, let everything mature, just before doing a
21 real good examination at that point.

22 Q Did you do any special testing on that initial date?

23 A I did not.

24 Q Did you recommend or send him for any testing?

25 A No.

1 Q Were Mr. Armstrong's symptoms consistent with the
2 history that he had given you?

3 A Yes.

4 Q Did you arrive at an opinion, based on your
5 observations and your -- whatever tests may have been
6 run, and your -- and your experience, as to a
7 diagnosis, based upon a reasonable degree of medical
8 probability?

9 A Yes. His physical findings were consistent with a lip
10 laceration-type injury from a blast -- from the bullet
11 fragments coming through. I felt he was very fortunate
12 it didn't hit his teeth or any -- any -- any bony
13 structures, but the lip had severe damage to it.

14 And, you know, my plan was just to let it heal.
15 The tissues appeared to be viable, and then we could
16 see how -- how -- how the scarring and -- and how the
17 nerve sensation and function of the lip would -- would
18 pan out as time went on.

19 Q Did you have a course of treatment that you planned at
20 that point in time?

21 A Yeah, just to let it heal, see if there's any necrotic
22 tissue that develops. I told him to avoid stretching
23 it, and eat with small bites, because the more movement
24 of the lip while it's healing would lead to worse scar
25 tissue. He understood all those concepts. Keep it out

1 of the sun for scarring, because the -- the sun will
2 darken scars. Protect that lip. And then that he
3 would likely have a -- have a chance for having to have
4 a revision due to the -- the high-speed trauma.

5 Q Now, when you say revision, what are we talking about
6 there?

7 A If he developed any form of hypertrophic scarring, or
8 any irregularity that -- that was painful or sensitive.
9 Many times, later -- it takes approximately a year to
10 heal fully on the human body. And at that point, if
11 there was something that appeared to be improved upon,
12 you can go in, excise the old scar tissue, and now that
13 the tissues aren't beat up and they're in good
14 condition, you can do a revision to improve the scar
15 tissue and appearance of the lip.

16 Q Okay.

17 A And hopefully function as well.

18 Q Did you prescribe any medications?

19 A At the initial period, I do not believe so. I don't
20 believe I did prescribe until the follow-up. But I
21 think he had some antibiotics and pain meds from the
22 Raton E.R., I believe.

23 Q Okay. So, you wouldn't be prescribing on top of the
24 Raton doctor's prescription; is that right?

25 A Yeah, not if he didn't need it, and he -- and he was

1 overall in pretty good control of his pain at that
2 point, --

3 Q Okay.

4 A -- initially.

5 Q The -- the fact that there were prescriptions for pain
6 medication indicates pain was present; correct?

7 A Correct.

8 Q And that -- that is consistent with what you witnessed
9 and diagnosed?

10 A Yes.

11 Q Based upon your diagnosis, I want to focus your
12 attention on Mr. Armstrong's continuing complaints, at
13 least to me, of physical pain, suffering, anxiety, loss
14 of enjoyment of life, scarring, deformity and permanent
15 disability.

16 And I want to ask you, in your expert opinion, as
17 his treating plastic surgeon, would the physical
18 injuries to Mr. Armstrong's lower lip and his shoulder
19 have caused him pain?

20 A Yes.

21 Q Did he report, in his history, such complaints?

22 A Yes.

23 Q Were his complaints of pain, in your experience and
24 opinion, consistent with the injuries you treated
25 for -- treated him for?

1 A Yes.

2 Q Is the location of his injury to his lower lip in a --
3 is that a particularly sensitive part of the human
4 body?

5 A Yes.

6 Q And can you explain that a little bit?

7 A It's sensitive in many -- many facets. First of all,
8 you have the appearance. Everybody sees one's face,
9 and he has disfigurement of the lower lip.

10 If also affects his speech, as the scar tissue
11 creates stiffness of the lower lip, which makes it
12 difficult to enunciate certain words.

13 He's had nerve issues, describing that it feels
14 like a nine-volt battery -- is the words he used with
15 me -- due to some of the cutaneous nerve injury, causing
16 difficulty with touching, eating, kissing, other
17 functions.

18 So, there's many facets to the -- you know, both
19 the physical appearance, the speech, and the
20 sensitivity issues that can persist.

21 Q So, if his complaints were that he had pain and
22 suffering from the -- from the injuries he sustained,
23 you -- you would support his -- those complaints as
24 being consistent with the injuries you treated for?

25 A Yes.

1 Q Did -- did his complaints of pain and suffering remain
2 constant, or did they subside somewhat over the period
3 of time you treated?

4 A They subsided somewhat, but he was still having all the
5 issues. But he still -- you know, he still -- he still
6 had visible scarring that I feel could be improved,
7 some volume asymmetry of the lips from some of the
8 tissue that was lost from the fragments. And he still
9 had stiffness of the lip, and -- and some nerve issues
10 with sensitivity -- hypersensitivity.

11 Q Did -- did you find or even suspect malingering in this
12 case?

13 A I did not.

14 Q In fact, was it just the opposite?

15 A Just the opposite. I mean, we waited over a year before
16 doing any revision even.

17 Q Do you think that there was exaggerated reports of pain
18 and suffering?

19 A No, 'cuz I -- once again, I did not write many -- I
20 believe I only wrote one prescription. I mean, he was
21 a very stoic-type of individual.

22 Q Can you, by looking at your notes, describe what
23 the -- the next visit was with you after the initial
24 visit?

25 A I then saw him in November, so approximately two to

1 *three weeks later. The lip was healing. He was*
2 *developing a firm ridge along the laceration site,*
3 *which is normal as it heals. He had numbness around*
4 *it. And everything looked, you know, like it was moving*
5 *in the correct direction. No infections, anything like*
6 *that.*

7 *Once again, it's very difficult to assess a final*
8 *result at that point. You're just getting through that*
9 *initial trauma, with all the bruising, swelling. But*
10 *it appeared to be on-track at the -- at the first visit*
11 *on 11-3.*

12 Q *And there was a doctor's order, I believe, concerning*
13 *him being off work. Were the doctor that -- that signed*
14 *that order?*

15 A *Yes.*

16 Q *Okay. And I know you probably don't -- out of all your*
17 *patients, you don't remember how long he was off work,*
18 *but can you estimate how long you had recommended him*
19 *not to work?*

20 A *The first one, I recommended -- I have two return-to-*
21 *work certificates that I filled out. The first one,*
22 *he wanted to go back to work right away. And then*
23 *after I did the revision surgery in -- in December of*
24 *'15, I recommended that he was off for the -- you know,*
25 *until January 11th of '16. So, he was wanting to work.*

1 I mean, he -- I mean, like I said, he was a stoic
2 individual. He wasn't malingering or trying to -- to
3 maximize his time off or anything.

4 Q Did he obey your orders on treatment?

5 A Yes.

6 Q Did he seem to try to recover, best he could?

7 A Yes.

8 Q Did -- do you know if he failed to do anything that you
9 may have ordered, that would have delayed a timely
10 recovery?

11 A I am not aware of any -- any -- any mal -- any bad
12 activities or anything that would have affected his
13 outcome.

14 Q And so as you -- as his treating plastic surgeon, in
15 any significant way, would you say that Mr. Armstrong
16 failed to mitigate his damages?

17 A No, I would not.

18 Q Now, after -- you said you did the revision surgery in
19 December of '15?

20 A Yeah -- let me find the date here. Yeah. 12-14-15 was
21 the date.

22 Q So, is there a reason why it took a -- a year or better
23 to -- to -- from date of injury to date of revision?

24 A Usual -- usually, full healing of the human body takes
25 approximately a year, with scar maturation. Months six

1 through twelve of wound healing is where the scar
2 matures, shrinks, and a lot of times, some of the
3 sensitivity dissipates. And so, it's generally a
4 moving target in that first year, so it's recommended
5 to wait approximately a year before considering
6 revision, unless something is grossly off.

7 So, we waited, you know, fourteen months, even on
8 his -- on his situation. So, I knew that we were at
9 the final outcome, and at that point, it definitely
10 warranted revision at that stage.

11 Q Now, during the year period between the incident and
12 the revision surgery, would you expect that pain and
13 suffering to continue?

14 A I would expect it to decrease, and in some situations,
15 you know, just depending on the injury, sometimes the
16 pain does go away and the sensation does come back, and
17 the patient is happy with how it all turned out, and
18 we don't do revisions. That's why I give it a year.

19 But sometimes it doesn't. You can get nerve
20 endings stuck in scar tissue. You can get hypertrophic
21 scarring and keloiding and various -- various other
22 outcomes. And you know, so everybody heals up a little
23 bit differently, and that's why you give it about a
24 year before considering revisions.

25 Q And if there were complaints of discomfort and pain and

1 *suffering, even after a revision surgery, is that to*
2 *be expected in certain cases?*

3 A *Yes.*

4 Q *And if he reported that to you, you would have made a*
5 *note of that?*

6 A *Yes.*

7 Q *And possibly given him -- give -- given him something*
8 *for the pain?*

9 A *Yeah, if he -- if he was -- you know, like I said, some*
10 *people are more -- can tolerate pain better than*
11 *others. He seemed to be on the more stoic end of the*
12 *spectrum. He wasn't begging for narcotics every week*
13 *or anything like -- like certain people do.*

14 Q *Yeah.*

15 A *But he was very stoic and he was -- he put up with the*
16 *pain. But he did mention that it was painful. I think*
17 *he took a lot of anti-inflammatories and Tylenol-type*
18 *products, non-narcotic, to -- to manage it.*

19 Q *In the category of loss of enjoyment of life, would you*
20 *expect, even after your revision surgery and where we*
21 *are now, several years post-incident, that Mr.*
22 *Armstrong would have heightened sensitivity with*
23 *certain situations, such as extreme heat and cold?*

24 A *Yes. Yeah, because the lip is a very sensitive part*
25 *of the human body.*

1 Q And in a situation where he might be drinking from a
2 glass or a cup and bump his lip and cause a problem?

3 A Yeah, especially with it being the lower lip. You
4 know, that -- that tends to get more -- more sensitivity
5 to eating and drinking.

6 Q And if he complained that he was unable to express his
7 affections for his wife and his children, in the way
8 of hugging and kissing like they once did before the
9 incident, does that make sense to you?

10 A Yes.

11 Q And did you tell him not to eat certain foods or
12 anything of that type?

13 A I mainly was recommending that he cut his foods up into
14 small bites, small portions, so that when he's eating
15 them, he puts the minimum amount of stress and stretch
16 on the wound, to help limit the scar tissue formation.
17 So, I didn't recommend, like, spiciness or anything
18 like that, but more the size, and to limit the
19 stretching and movement of the lower lip during the
20 healing process.

21 Q If Mr. Armstrong will testify that he has stopped doing
22 certain physical activities and -- and stays away from
23 certain sports, such as contact sports, boxing,
24 paintball, whatever that may be that involves a
25 potential trauma to the lip, does that make sense to

1 you?

2 A Yes.

3 Q And you would recommend that; would you not?

4 A Yes.

5 Q Are his injuries, in your professional opinion,
6 permanent?

7 A There will be some permanent scar tissue and damage
8 from them, yes.

9 Q Okay. Concerning Mr. Armstrong's complaints of
10 anxiety, would that be expected after such a traumatic
11 event, even after your treatment?

12 A Yeah, you could expect some PTSD-type symptoms after,
13 you know, being hit with a gunshot. That would be very
14 appropriate.

15 Q It wouldn't be unusual, would it?

16 A No.

17 Q Would you agree or disagree that the limitations on use
18 of Mr. Armstrong's lip, especially concerning
19 activities we've referenced, cause him to lose
20 enjoyment of life, if those complaints are expressed?

21 A Yeah. I definitely expect some compromise with the --
22 the functions I've mentioned previously.

23 Q And it would reasonable and anticipated as a result of
24 this type injury; is that right?

25 A Yeah, because it was a substantial injury of that lower

1 lip.

2 Q Is it possible that speech or enunciation of words
3 would be affected by the injuries that you treated to
4 Mr. Armstrong?

5 A Yes. He has some stiffness and some muscle damage to
6 the orbicularis that --

7 Q Can you explain what orbicularis is?

8 A Orbicularis is the sphincter -- the orbicularis oris
9 is a sphincter-like muscle that's around the mouth,
10 that controls the shape of it, which helps with the
11 enunciation of words.

12 Q Okay. And an injury to the lower lip particularly
13 affects that muscle?

14 A It can, yeah. It just goes around the entire mouth in
15 a sphincter-like fashion. So, even an upper lip injury
16 would also cause that as well. But, yeah, when you get
17 some scar tissue and -- and muscle and traumatic
18 injury, then the movement of the muscle is somewhat
19 altered.

20 Q Yes.

21 A And you get scar tissue, so that the contractile
22 properties are decreased.

23 Q And would reports of ordinary sensation being altered
24 or changed, would that be consistent with this injury,
25 even at this late stage?

1 A *Yeah, 'cuz there was some tissue loss from the injury.*
2 *Obviously, cutaneous nerve damage was done. There's*
3 *even -- when you cut scars out, that also freshens up*
4 *nerve endings in the skin. So, there's lot of -- lots*
5 *of variables with the healing process. But there's*
6 *definitely nerve healing secondary to the damage that*
7 *occurs, yes.*

8 Q *Would Mr. Luke Armstrong's complaints that his lip*
9 *injuries affect his own personal appearance and*
10 *resulting self-consciousness be anticipated as a result*
11 *of the injuries you treated?*

12 A *Yes. He has some disfigurement of his lower lip that's*
13 *clearly visible when you see him.*

14 Q *And that's consistent with the injuries that you*
15 *treated him for?*

16 A *Yes.*

17 Q *For cosmetic reasons, did you have to -- you only*
18 *performed one revision surgery; is that right?*

19 A *Yes.*

20 Q *And was that cosmetic only, or was that also for these*
21 *other functional issues?*

22 A *No, it was a reconstructive procedure. Cosmetic is*
23 *when you take normal and try to make it better. We're*
24 *not starting out with a normal starting point. I mean,*
25 *he had the traumatic injury of the lip, so the procedure*

1 performed of excising the scar tissue, and the cyst on
2 his left shoulder, with the closure, that was not
3 cosmetic. We're starting from a non-normal or abnormal
4 starting point and trying to make him back to normal.

5 Q So, I guess all surgeries, in a way, are elective. But
6 this is not what you would consider elective surgery
7 necessarily?

8 A Well, it's elective in terms of it's not a life-saving
9 emergent procedure. But it's not cosmetic either.
10 This is -- this is a reconstructive procedure. You
11 know, the only -- you know, it's not a life-saving
12 procedure, per se, but it's elective but it's
13 reconstructive.

14 Q I would guess that your efforts in this surgery did
15 improve his appearance to some degree?

16 A Yes. Yeah. He still has some asymmetry of the lower
17 lip that could be further improved upon, but it's
18 better than it was prior to the surgery.

19 Q Okay. Do you recommend further surgery?

20 A I definitely -- he has visible asymmetry of that lower
21 lip. So, I last saw him in -- almost a year ago, back
22 on July 26th of 2018. He had -- he had some more volume
23 on the right lower lip versus the left. He says it --
24 it had -- you know, currently he can live with that is
25 what he mentioned. But I -- you know, we -- I offered

1 some options of taking some volume out of the left
2 side, or you could augment it on the right side. You
3 know, whatever he wanted to do. I could try to further
4 balance it if the -- if the visual components bother
5 him at some time.

6 Q If the future surgery is done, you would expect also
7 that there would be possibly another missed work period
8 of time after that?

9 A Yes.

10 Q And there would be cost involved with either therapy
11 or some follow-up after surgery; would there not?

12 A Yes.

13 Q And what about rehabilitation? Anything like that?
14 Any rehab or recovery?

15 A The only thing is if he had some enunciation problems,
16 there is speech therapy, you know, to help people with
17 lip issues, such as -- you know, that's commonly used
18 in the cleft lip and pallet population. So, that --
19 that's always an option if he's having issues in that
20 department. Otherwise, it's more of just letting it
21 heal and -- and avoiding trauma to that trauma.

22 Q Even after a future surgery -- the surgery that you
23 recommend but may not happen, even if that were to
24 happen, would there still be scarring and disfigurement
25 to the lip?

1 A There always will be scarring and disfigurement. Yes.

2 Q Okay. Throughout all of your treatment of Mr.
3 Armstrong, did you determine whether there was any pre-
4 existing condition to the lip?

5 A I -- he -- he stated to me that there was no pre-
6 existing trauma to the lower lip.

7 Q And to the shoulder?

8 A And to the shoulder.

9 Q And you -- you take that history to be accurate?

10 A Yes.

11 Q And you saw nothing in your experience that would lead
12 you to believe otherwise?

13 A Correct.

14 Q As to the shoulder, did that heal appropriately?

15 A Yes. He is having no complaints about that, from that
16 cyst I removed.

17 Q Okay. And did that result in any kind of scar or
18 disfigurement?

19 A Yes. There will be some scar tissue there forever.

20 Q Okay. And you were fairly certain that that was a
21 result of the gunshot?

22 A Yes.

23 Q Do you have, in your possession, the medical records
24 concerning the treatment and examination, or history
25 of the patient, including written records, memoranda,

1 *photographs, x-rays, reports, notes, bills and other*
2 *writings?*

3 A *Yes.*

4 Q *I'm going to hand you Plaintiff's Exhibit B. Does that*
5 *look like your records?*

6 A *The top one is -- yes, it does. And it has the review*
7 *from the Raton E.R. as well.*

8 Q *And you got that by way of -- you sent off for that,*
9 *or somebody supplied that with the patient's*
10 *permission; is that right?*

11 A *Yes.*

12 Q *And that gave you an indication as to what you were*
13 *treating for, and how this whole thing began?*

14 A *Yes.*

15 Q *All right. So, other than that, the rest of those are*
16 *documents generated by you in your office?*

17 A *Yes.*

18 Q *Have they been in your possession since the -- since*
19 *they were all created?*

20 A *Yes.*

21 Q *And you are the guardian of those records and you keep*
22 *them?*

23 A *Yes.*

24 Q *And you maintain them under your direct supervision and*
25 *control?*

1 A Yes.

2 Q Are they maintained as part of the normal business
3 procedures and the normal course of business at your
4 office?

5 A Yes.

6 Q And was it in the regular course of business for you,
7 an employee or representative with personal knowledge,
8 or reflected in the record, to either make such a record
9 or transmit the information to be included in such
10 record?

11 A Um --

12 Q Was it in your regular course of business to -- to make
13 these records?

14 A Yes.

15 Q All right. It's a very stilted question. I
16 apologize.

17 Were the entries contained in the records that you
18 have handed to the court reporter, or that I've handed
19 to the court reporter, made at or about the time of the
20 act, event or condition reflected therein?

21 A Yes.

22 Q Are all of your answers to the questions given today
23 accurate, to a reasonable degree of medical
24 probability?

25 A Yes.

1 MR. HUNT: That concludes Dr. Marin, Judge. Thank
2 you.

3 THE COURT: All right. If you -- if I can have the
4 attorneys approach for me, please.

5 [WHEREUPON, the following side bar
6 conference was held from the Bench.]

7 THE COURT: So, real quick. This deposition is
8 obviously going to be -- need to be in a format if -- in the
9 event there is an appeal. So, I'm going to ask that you
10 introduce it, preferably as an exhibit, unless you have an
11 alternate proposal for that.

12 MR. HUNT: No.

13 MR. RIMMER: Do you have any [inaudible]?

14 MR. HUNT: Like the drive? [Inaudible] hard copy.

15 THE COURT: I was thinking of a -- I mean, I guess
16 either would work.

17 MR. HUNT: Okay.

18 THE COURT: And if the jury wants to see that, we'll
19 probably need to have it available for them --

20 MR. HUNT: Okay.

21 THE COURT: -- when they deliberate. So, why don't
22 you go ahead, unless there is an objection or an alternate
23 proposal, and move -- move it as an exhibit.

24 MR. HUNT: Okay.

25 THE COURT: And -- are you going to have an objection

1 to it?

2 MR. RIMMER: No, Judge.

3 THE COURT: Then I'll admit it. And then I intend to
4 give the medical instruction --

5 MR. HUNT: Mm-hmm.

6 THE COURT: -- 205.

7 MR. HUNT: Okay.

8 THE COURT: Any objection to that?

9 MR. RIMMER: No.

10 THE COURT: And then, I -- and I assume you have
11 another witness lined up.

12 MR. HUNT: We do. We have two more witnesses.

13 THE COURT: Okay, good.

14 MR. HUNT: [Inaudible] potentially [inaudible]. It
15 would just be a twenty-minute medical witness. So, we
16 could probably take up jury instructions in a couple of
17 [inaudible].

18 THE COURT: Okay. So, two more witnesses and
19 then -- or did you say three?

20 MR. HUNT: Two.

21 THE COURT: Two. Okay.

22 MR. HUNT: And then we could let the jury go. It
23 would be a little early, but it would probably still be close
24 to four. Because we'll tell them [inaudible].

25 THE COURT: That's fine. All right. Okay.

1 MR. HUNT: Thank you, Judge.

2 [WHEREUPON, the following
3 proceedings continued in Open
4 Court.]

5 THE COURT: All right. Mr. Hunt?

6 MR. HUNT: Thank you, Judge. For the record, we would
7 move the admission of Dr. Marin's deposition. I think what
8 we have in the binders, so it would be Exhibit Seven.

9 THE COURT: Any objection to Exhibit Seven coming into
10 evidence?

11 MR. RIMMER: No objection from the Defendant.

12 THE COURT: All right. I'm going to admit Exhibit
13 Seven into evidence, and I'm going to give the jury the
14 medical witness instruction.

15 [WHEREUPON, Plaintiffs' Exhibit
16 Seven was admitted into evidence.]

17 THE COURT: A medical witness may testify about
18 statements concerning a person's medical history and
19 condition that were made for purposes of diagnosis or
20 treatment. Such statements are not evidence of their own
21 truth, but they may be considered to show the information
22 upon which the witness' diagnosis or medical opinion was
23 based. To whatever extent the opinion of the witness is based
24 upon such statements, you may consider the trustworthiness of
25 the statements in determining the weight to be given to the

1 witness' opinion.

2 All right. Mr. Hunt, if you would call your next
3 witness.

4 MR. HUNT: Yes, your Honor. We'd like to call Paul
5 Demeusy, please.

6 THE COURT: All right. All right, sir. If you can
7 come up to my right, up the ramp. Watch your step going up
8 the ramp.

9 If I can have you raise your right hand.

10 Do you swear or affirm that the testimony you will
11 give in this case will be the truth, the whole truth and
12 nothing but the truth under penalty of law?

13 THE WITNESS: I do.

14 THE COURT: All right. You may be seated.

15

16

PAUL DEMEUSY

17 The witness herein, having been first duly sworn upon oath,
18 was examined and testified follows:

19

DIRECT EXAMINATION

20 **BY MR. HUNT:**

21 Q Good afternoon.

22 A Hey.

23 Q Can you tell the jury your name for us?

24 A Paul Demeusy.

25 Q All right. And Mr. Demeusy, it would only be fair --

1 we kind of pulled you out of a little bit of a holiday,
2 didn't we?

3 A On vacation with my grandkids, yeah.

4 Q All right. And do you do that every year?

5 A I try to.

6 Q Where do you go?

7 A We went to Buffalo Thunder this year.

8 Q All right.

9 A Yeah.

10 Q Is that --

11 A They love -- they love the pool.

12 Q Understood. There's other parts of it you love,
13 too?

14 A Yes.

15 Q Would that be part of the explanation for shorts
16 today?

17 A Yes, it would be.

18 Q Understood.

19 A And I apologize for that, but --

20 Q Not out of disrespect.

21 A No.

22 Q I should have done a better job telling you how to
23 pack.

24 A Thank you.

25 Q My -- my apologies. You know the Armstrongs, don't

1 you?

2 A Yes, I do.

3 Q Tell us how long you've known them.

4 A Um, probably eight or nine years now. I've known Luke
5 and Eric, yeah.

6 Q All right. And where do you live?

7 A I live in Fountain, Colorado.

8 Q So, you know Luke a little bit better than you know
9 Eric, up there?

10 A Yes, he's a lot closer. Yeah.

11 Q You guys interact with each other on a frequent
12 basis?

13 A All the time, yeah.

14 Q How often, in a given month?

15 A In a month? Oh, I don't know. Maybe twenty-five times
16 out of the month, you know, so -- yeah. He helps all
17 the time. We run a horse rescue in Fountain, Colorado,
18 and he has volunteered thousands of times to help at
19 the horse rescue.

20 Q All right.

21 A So --.

22 Q And you got to know Luke before this incident happened;
23 is that right?

24 A Yes.

25 Q Tell us what kind of guy he is.

1 A He's a great guy. I mean, anytime you ask for help
2 from him, he'll do it. I mean, he's -- I think the
3 first time he came up, he was actually looking for a
4 horse for one of his daughters. And that's how we met.
5 And just ever since then, it's been -- everything. I
6 mean, he's -- he's gone on road trips with me to
7 Nashville, Tennessee to deliver horses.

8 And Eric is the same way. I mean, we started doing
9 a -- Tough Mudders, which raised money for the Wounded
10 Warrior Project and stuff like that, so just anything.
11 Anything you need from them, they'll do.

12 Q All right. And now, what the jury understands is
13 probably they -- they could probably ask you the
14 question as well as I can, just based on talking to the
15 other witnesses now.

16 A Mm-hmm.

17 Q But, help us with this. I mean, here -- the reason it
18 brings us to Court is that there was an incident about
19 four-and-a-half years ago. And let's talk about Luke
20 first.

21 A Okay.

22 Q Were you around him, kind of near in time to when he
23 got shot in the lip?

24 A I was in Colorado. He was in New Mexico. But yeah,
25 he sent me pictures and -- and everything right away.

1 Yeah.

2 Q And did you -- when did you see him? How soon after
3 that?

4 A Probably within a week at the most.

5 Q And how was he doing at that time?

6 A Not very happy about it. It was bothering him. He was
7 really self-conscious about it and stuff like that.

8 Q How could you tell that?

9 A Just by his mannerisms and -- and even just little
10 things, like when he'd take a drink of water or
11 something, he was just really tentative about doing
12 things like that.

13 Q Okay. And you've kind of continued to be with him over
14 the last several years?

15 A Oh, yeah.

16 Q Same kind of thing. When he had the revision surgery,
17 we just heard the doctor testify, that was about a year
18 or fifteen months after the incident.

19 A Mm-hmm.

20 Q Did -- were you around him after the surgery?

21 A Yeah. We have lunch all the time and breakfast all the
22 time and stuff. And he just -- yeah. Yeah. He's
23 probably -- hate to call him a neat freak when he puts
24 on his uniform, but he gets really self-conscious about
25 dropping anything when he's eating on his uniform. I

1 actually made a joke a couple of times about him wearing
2 a bib, but he didn't like that very much, so I quit
3 doing that. (Laughs.)

4 Q He hasn't done that.

5 A No. (Laughs.)

6 Q At least not around you.

7 A No.

8 Q But have you been around him when stuff did drop?

9 A Yes.

10 Q Both food and drinks?

11 A Yes.

12 Q And -- and you say he's self-conscious about it. How
13 does it -- does it affect, from what you see, just sort
14 of how he --

15 A Yeah, it frustrates him. He gets a little angry, a
16 little agitated about it. It bothers him, 'cuz -- 'cuz
17 it -- he has no control over it.

18 Q Yeah.

19 A Yeah. Doesn't know when it's going to go, when it's
20 not, when it's going to happen. So, yeah, it -- it
21 gets him up to -- it gets him upset.

22 Q And from -- separate from the eating and the drinking
23 side of it, but just kind of from his personal effect,
24 kind of -- have you seen any changes in that? And I
25 know it's kind of -- kind of awkward. Obviously, he

1 is sitting here in this Courtroom.

2 A Oh, that doesn't bother me.

3 Q All right. Good.

4 A (Laughs.) Yeah.

5 Q But have you seen any changes in him, just in sort of
6 how he interacts with you or with other folks?

7 A How he interacts with me has not changed much. I mean,
8 it just seems like he's a little -- a little bit more
9 short-tempered about things. I mean, it's just -- it
10 just -- it just bothers him. You can just tell. But,
11 he and I are friends, so --

12 Q Right.

13 A Yeah.

14 Q You can be who you are with your friends.

15 A Yes. Yeah, exactly.

16 Q But you can tell it bugs him -- bothers him.

17 A Yeah. It does. It bothers him.

18 Q Do you guys talk about that at all?

19 A A little. A little. Not much, 'cuz I just don't think
20 he wants to talk about it.

21 Q Is he one to talk about stuff like that, quite
22 honestly?

23 A No.

24 Q Is he one to complain about himself?

25 A No. No, he does not. He is all about other people,

1 stuff like that, helping other people and things like
2 that. He does not complain that much about his own
3 personal problems.

4 Q Yeah. But as a friend that knows him every -- and sees
5 him all the time, you can just kind of see it.

6 A Yep. Yeah.

7 Q Do you ever talk to Rebecca about it?

8 A Um, not anywhere near as much. No, I have not
9 talked to Rebecca very much about it. No, not really.
10 No.

11 Q And just -- and maybe you've already described it, but
12 if -- you know, and the question to you is, okay,
13 helping this jury understand --

14 A Mm-hmm.

15 Q -- how things that -- how things are different.

16 A Yeah.

17 Q Let me ask you about the appearance side of it. For
18 somebody who has known him both before and after, can
19 you tell a difference in the way he looks?

20 A A little bit. Seems just to be generally more swollen,
21 you know, a little fuller down there. Yeah. I guess
22 it's just kind of like going to the dentist. You get
23 your -- your teeth numbed or something like that, and
24 it takes a while for it to wear off, so you -- you can
25 have the feeling in your lip. Just doesn't wear off

1 for him.

2 Q Yeah.

3 A Yeah.

4 Q And you said that you also know Eric, and have been
5 around him.

6 A Mm-hmm.

7 Q Same kinds of questions. And I don't know whether
8 you've been around him enough to know sort of, but have
9 you seen changes in -- in Eric and kind of the stuff
10 he does?

11 A I probably couldn't say. I haven't seen him that much.
12 We -- we see each other, kind of a lot less often
13 'cuz he's down here, and he's a pretty busy guy.
14 (Laughs.)

15 Q Sure. Understood. So, most of your interaction is
16 with Luke.

17 A Yes.

18 Q And from your side of it, as a good friend of his,
19 has -- although it healed, --

20 A Mm-hmm.

21 Q -- and he's had surgeries, from what you've seen, has
22 what happened to him had an impact on his life in kind
23 of, almost a daily way?

24 A Yes. Yeah. It bothers him. You can tell. Yeah.

25 Q And affects kind of how he interacts with other people,

1 doesn't it?

2 A Yes, it does. I think he is a little more self-
3 conscious about it, every day.

4 Q Has he ever talked to you about how it feels? Meaning,
5 whether it's either painful or just numb or any of that
6 kind of stuff?

7 A The -- the numbness is all he has really mentioned to
8 me. Just the -- just -- yeah, just the numbness of it
9 all, and how it just doesn't go away. And there's just
10 spots here and there that just -- just are numb, all
11 the time.

12 Q Okay. Okay.

13 MR. HUNT: Well, Paul, thank you for being here. We're
14 sorry to pull you away from the pool.

15 THE WITNESS: It's okay.

16 MR. HUNT: But there's plenty of daylight left.

17 THE WITNESS: My grandkids will forgive me, I'm
18 sure.

19 MR. HUNT: (Laughs.) Buy them ice cream.

20 THE WITNESS: (Laughs.)

21 MR. HUNT: Thank you. I don't have any other
22 questions.

23 THE WITNESS: You bet.

24 THE COURT: Mr. Rimmer?

25 MR. RIMMER: No questions.

1 THE COURT: All right. Any reason to retain the
2 witness?

3 MR. RIMMER: No, Judge. Not for me.

4 THE COURT: All right. You've been released as a
5 witness. You are free to go about your business.

6 THE WITNESS: Thank you.

7 THE COURT: All right. Thank you. All right. If
8 you'd call your next witness, Mr. Hunt.

9 MR. HUNT: We call Luke Armstrong, Judge.

10 THE COURT: All right. And Andrew, come up to the
11 Bench for me, please.

12 And watch your step, sir, coming up to the witness
13 stand.

14 All right, sir. If I can have you raise your right
15 hand.

16 Do you swear or affirm that the testimony you will
17 give in this case will be the truth, the whole truth and
18 nothing but the truth under penalty of law?

19 THE WITNESS: Yes, I do.

20 THE COURT: All right. You may be seated.

21 MR. HUNT: Judge, I --

22 THE COURT: You may proceed.

23 MR. HUNT: Thank you, Judge.

24 ---

25 ---

1

LUKE ARMSTRONG

2

3

The witness herein, having been first duly sworn upon oath,
was examined and testified follows:

4

DIRECT EXAMINATION

5

BY MR. HUNT:

6

Q Good afternoon, Luke.

7

A Good afternoon.

8

Q And I think you've already done this, but can you tell
the jury your name.

9

10

A I'm Luke Armstrong. Last name, A-r-m-s-t-r-o-n-g.

11

Q Luke, we're going to ask you some questions this
afternoon, and I want to first, just kind of talk a
little bit -- the jury has had a chance to hear kind
of what you do.

12

13

14

15

You work for the Colorado State Police; is that
right?

16

17

A I do.

18

Q And worked there for about how long?

19

A This is my twenty-second year with the Colorado State
Patrol, yes.

20

21

Q And we're going to talk about some stuff that may not
be your favorite thing to talk about in the world,
which is you. Do you agree with that?

22

23

24

A We've had this conver -- yes. (Laughs.)

25

Q Kind of hard to talk about yourself sometimes, isn't

1 it?

2 A You just want it fixed, right?

3 Q All right.

4 A Yeah.

5 Q Yeah. Well, let's -- here's what I want to start with.

6 I want to start with -- let's talk about the incident

7 itself. Okay?

8 A Okay.

9 Q So, tell us the reasons why you guys were hunting on
10 that day, and kind of what was going on.

11 A Okay. If I could back up.

12 Q Sure.

13 A I was part of -- what Eric did with the Hunts for
14 Heroes, I mean, we did more than just that ranch. I
15 kind of have -- obviously, you heard early, I was in
16 the -- in the military from '89 to '96, and then shortly
17 after that, I joined the Colorado State Patrol. It's
18 kind of what I have been doing all my life.

19 So, when I had an opportunity -- and it hasn't
20 just been Hunts for Heroes. I've done a handful -- my
21 neighbor next door is a hundred percent disabled
22 veteran, so I've taken him on a couple of hunts. It's
23 just something I do.

24 It kind of makes you sit back and appreciate what
25 you got in life compared to what those veterans. So,

1 I don't know if I expanded too much, but --

2 Q No.

3 A -- that's one thing I like to do.

4 And with the State Patrol, in 2000, I became an
5 instructor -- you know, beyond being a State Trooper,
6 I guess, how you would think somebody running up and
7 down your highways. So, I became an instructor and
8 I've been an active instructor throughout different
9 things.

10 Believe it or not, I was our Military Bearings
11 Instructor -- the haircut probably tells you that.
12 But -- so -- and I've continued to do that. I'm a
13 Certified National Instructor now, with cargo tanks and
14 whatnot. But that's beyond myself being a Colorado
15 State Trooper.

16 Q Yeah.

17 A And we specialize in hazardous material. With our
18 State, back in 1985, we kind of had an incident with a
19 torpedo up in Denver. Nobody knew what to do. So,
20 they made a group of us. I came in in 2012. So, I
21 also reach out to a lot of Fire Departments that in our
22 State, seventy-seven percent of the Fire Departments
23 are volunteer, so we do free training for them.

24 And we mitigate and clean up spills or supervise
25 clean-up of spills. So, I know that sounds different.

1 So, if a tanker rolls over in your community -- if you
2 heard, by the Air Force Academy, a couple of days ago,
3 we had one leaking. Had the Interstate shut down for
4 numerous hours. I -- that was a call that I was on.
5 And like I said, we try to mitigate it and then
6 follow up with the proper clean-up contractor beyond
7 that.

8 So, to say that I'm a Colorado State Trooper, yes,
9 I am, but I -- there's much more broad spectrum that I
10 do with the Colorado State Patrol.

11 Q Understood. You're not there just on the highway
12 giving tickets and that kind of thing.

13 A I hate to say this in Court, but I haven't [inaudible]
14 the quota. I -- I drive an F350 now, so to say I wrote
15 a speeding ticket, it's been a couple of years. So,
16 it's not my number one thing, compared to commercial
17 motor vehicles --

18 Q Sure.

19 A -- and hazardous materials.

20 Q Understand. And -- and the jury has heard a lot. I
21 mean, obviously within your family, hunting is a big
22 part of you guys, isn't it?

23 A Yes. We grew up in a farm in Western Pennsylvania,
24 and -- I mean, you walked out your back door and you're
25 in the woods.

1 Q Yeah. And for the ranch that you were on when this
2 happened, the Ute Creek Ranch, --

3 A Yes.

4 Q -- you had been on that ranch before, --

5 A Yes.

6 Q -- helping with other hunts.

7 A Yes. I -- I have never, you know, hunted elk in New
8 Mexico. That -- that was kind of my one and only
9 chance.

10 Q And every other time you had been to the ranch had just
11 been to help with --

12 A Yes.

13 Q -- the Hunts for Heroes and that kind of thing?

14 A Yes.

15 Q And on this day, I guess you weren't hunting on that
16 day, were you?

17 A Not on that day, I was not.

18 Q Mark was, your brother.

19 A Yes.

20 Q And walk us forward a little bit. So, let's talk about
21 the afternoon. Where were you in the afternoon?

22 A Okay. I -- I picked up my brother from the airport.
23 I think I actually worked that morning, but I picked
24 him up from the airport, drove down, obviously met at
25 the bunkhouse that is, I would say, south of the photos

1 that you see down that hay valley -- hayfield valley
2 has been described. So, you can see both bunkhouses,
3 if you want to say. You can see them. There's no
4 obstructions.

5 So, we met Eric and Debbie and Casey at the
6 bunkhouse that afternoon.

7 Q Okay. And then -- then what?

8 A We got into the -- the white pickup truck that they
9 described, you know, an F250 diesel, four-door, eight-
10 foot bed, probably about as big as you can get. And,
11 you know, we started to show Mark the ranch.

12 As -- you know, as a side note, I guess, you know,
13 he is an Iraq veteran, too. So, 'cuz we've talked
14 about this. He just walks slower than us, right? Why
15 wasn't he involved in this? He just -- you know, he
16 got to see some war time. You know, so anyways --.

17 So, we were showing him. And on that vantage
18 point, up on that curve and everything else, when --
19 and I say Eric -- Eric usually gets out first, because
20 as some of you as I heard yesterday, are hunters or
21 know of hunting. I mean, you just don't pull a pickup
22 truck out, you know, over something, and of course, the
23 elk are going to see it. And it's a good -- the picture
24 doesn't quite show it, but off to the right, you can
25 see basically the rest of the ranch -- the Ute Creek

1 Ranch.

2 Q Okay.

3 A So, it's a good vantage point --

4 Q And let's take a look, just --

5 A -- period.

6 Q Real quick. And maybe this isn't the best photo
7 actually. So --

8 MR. HUNT: And Judge, I think I -- I put it up to you.
9 But -- I think I published it to you.

10 THE COURT: Okay. Andrew, if you can help me out.

11 Q (Mr. Hunt continuing) Maybe that photo doesn't quite
12 show it, but -- so let's --

13 A And -- and --

14 Q We've looked at this one before.

15 THE WITNESS: I'm sorry, your Honor, could --

16 MR. HUNT: Were you talking about up here? Go
17 ahead.

18 THE COURT: Yeah, that's fine. Why don't you go ahead
19 and head down.

20 MR. HUNT: Thank you, Judge.

21 A (The witness continuing) As [inaudible] it's described
22 earlier, I mean, the dirt road -- the main dirt road
23 cuts through both ranches. So, it's kind of over here.
24 And kind of see how this is open? Well, it's open all
25 the way down to the bunkhouse, where the Ute Creek is

1 also just down that hayfield. There's not any trees
2 growing and anything else. There is a -- kind of a
3 small building for a water pump, but that's the only
4 thing that's in between those structures and the Ute
5 Creek structures.

6 Q (Mr. Hunt continuing) Okay.

7 A So, like you mentioned earlier, we basically came from
8 the bunkhouse and this is one of the main roads that
9 we can come up. And as you see, [inaudible] the other
10 illustrations, I mean, you could really see this Valley
11 quite well.

12 Q So, you're up in this general area, kind of, I think
13 you were talking about --

14 A When I was -- yes. The truck was -- 'cuz we don't want
15 to be -- you know, the elk, you don't want to drive the
16 truck right through the gate and there's the elk. So,
17 the truck is somewhere back here.

18 Q Gotcha.

19 A Eric and Mark walked to the gate. And then I think
20 gradually Debbie and Casey and I walked up there,
21 because it is kind of neat to see elk swim and see
22 calves and cows and -- you know, I don't get to see
23 that every day in Pueblo, Colorado.

24 Q Sure.

25 A So it's -- you know, it's one of those things that we'd

1 see.

2 Q And so, take us back to that. I mean, take us back to
3 that -- that moment where you're walking along the
4 road --

5 A Okay. So --

6 Q -- and then what?

7 A So, you know, Eric informed us that, you know, we can't
8 hunt around. And it's -- it's a real drop in elevation
9 down to that lake. And basically, he said that's, you
10 know, not an elk we want on Mark's first day.

11 And so, we just start walking. As far as I know,
12 Debbie and Casey -- 'cuz it is tight in there, so Casey
13 stayed back to probably direct her. It's such a big
14 vehicle.

15 Q Mm-hmm.

16 A And Eric and I, we were headed south. Eric would have
17 been to my right. And we're just walking along, because
18 we hear other elk bugling. I mean, it's a beautiful
19 ranch. I mean, it truly is. I mean, I don't know how
20 else to say it. But -- so, to just see elk and see
21 different elk. And like I said, I believe that it was
22 Mark's first elk hunt ever, so it was -- it was a fun
23 time to be able to just take my brother out.

24 Q Sure. So, you're walking along. Is -- are you in the
25 front?

1 A No. So, let's just say Eric and I are together.

2 Q Okay.

3 A And then Mark is -- I don't -- I can't tell you -- a
4 couple of steps behind --

5 Q Okay.

6 A -- for whatever reason.

7 Q All right. Then what?

8 A To be honest, I -- I don't even know if I heard
9 anything. I think in your mind you say, I -- 'cuz I've
10 heard shots. I've heard shots throughout my military
11 career, throughout my State Patrol career. I've
12 heard -- I've heard shots. I've been in public land
13 hunting, where I've laid down. I didn't lay down.

14 The only thing I remember -- when Eric tells that
15 story that he rubbed my chest, I'm like, I didn't even
16 know that. I mean, it -- it's like, crap. (Laughs.)
17 You know, 'cuz you think, oh, a piece of shrapnel
18 through a lip. That -- I mean, I'm not a small guy, I
19 don't consider my -- and I was on the ground and I woke
20 up, lying on the ground and looking at my brother's
21 pants and stomach.

22 Q Do you remember falling?

23 A No. No. I remember -- the only thing I remember is
24 looking at his pants, 'cuz I -- I -- I wasn't hit yet,
25 right? I don't know why I'm on the ground. I see my

1 brother, and there's blood rolling down my brother.

2 Q And what did you think?

3 A You don't want your brother bleeding. So, I don't
4 know. I -- it still didn't register, right? I mean,
5 your --

6 Q So, yeah.

7 A (Laughs.)

8 Q Didn't register and --

9 A You're just walking.

10 Q You're just walking and next thing you know, you're
11 face-first in the ground -- are you face-first or on
12 your back?

13 A I believe --

14 Q Or do you know?

15 A -- I -- 'cuz I just -- I -- literally, I see him right
16 there. I mean, he's right there. And I see his pants.
17 So, I didn't even know -- I -- I didn't even know I was
18 hit. I don't know why they were screaming over me. I
19 saw him.

20 I like how he described it, 'cuz I couldn't move
21 my jaw -- that he was hit, that he was hit. And when
22 I rolled on to my stomach, on all fours, I put my hand
23 up, just to feel, and I'm like holy. And then it
24 just -- it burned. I don't know how else to describe
25 it. It wasn't a temper change. It was -- it just

1 burned. Like something was just hot on your face.

2 Q And that's when you knew that you got hit?

3 A Well, I -- yeah, I mean, I just -- you know, and I'll
4 be honest, I -- you know. A lot of things went through
5 your mind in a real big hurry. So --

6 Q Like what?

7 A Huh? So, I seen the back of the truck and
8 everything else. I -- I don't know if it's been brought
9 up, but we have a large family. Did I do the right
10 things?

11 Q Those kind of thoughts went through your mind?

12 A (Laughs.) You're bleeding. I don't know where it was,
13 right? I don't -- I don't know what it looked like.
14 I don't -- you know.

15 Q Yeah.

16 A I just know it hurts. (Laughs.)

17 Q And yet, are you --

18 A And my jaw isn't working at that moment.

19 Q And you were scared of where you got hit.

20 A It was in the face somewhere.

21 Q And you talked about your family. How many -- how many
22 kids do you guys have?

23 A We have eight. We adopted our last five. And that's
24 what we do. We do foster care. So, we have our thirty-
25 fifth foster girl with us on this trip, and we couldn't

1 find another place for her. That's what we do.

2 Q And so take us back -- you're -- you're in the back of
3 the truck.

4 A I am in the back of the truck with my brother's shirt
5 on my face, and got two brothers on either side of me,
6 which in my opinion, with our family, it's probably the
7 two better guys to have around you. Right? I know.
8 (Laughs.)

9 Q Sure. And -- and you get to the hospital. And tell
10 us about that. So, what happens when you get to the
11 hospital?

12 A I am immediately put on my back, put on a -- you know,
13 a table. End up being Dr. Chao. Throws the sheet over
14 my face and he's pulling my lip every direction.

15 Q And, you know, we don't have to walk through every bit
16 of it. But so, you get -- basically you get kind of a
17 surgery that night, which is -- does he do surgery that
18 night or --

19 A No, well -- I -- I don't know what you want to call
20 it.

21 Q Yeah, what --

22 A I -- 'cuz I mean, I've had stitches before. My kids
23 have had stitches before. I mean, you get a cut, it's
24 a straight cut, and you know, they pull one side to the
25 other, right, and they close it.

1 But I remember this was just -- it was just -- it
2 was whatever he could grab. And I also remember -- I
3 don't remember the number of stitches. You know, I
4 know it was a lot, you know, for that area. But I
5 remember he had to re-numb me back us because it was
6 taking too long for the first, you know, shot to get
7 me through the whole thing.

8 Q And Luke, let me back up. And we -- we showed this
9 picture before, and I don't do it for any reason other
10 than I think it's just -- it's what happened that night.
11 So, when was that picture taken?

12 A When we got back to the bunkhouse. And to be honest,
13 it was -- I didn't know what everyone was screaming
14 about, so I wanted to -- I'm like, take a -- you know
15 what I mean? I didn't know what was going on.

16 Q You couldn't see it.

17 A And so, when they showed that to me, I was like, okay,
18 that kind of explains why things aren't working.

19 Q And did you have a second -- they -- they took care of
20 you that night in the E.R.

21 A Mm-hmm.

22 Q And, you know, you've talked about -- or you
23 haven't -- other people have talked about, and I think
24 what you said is you were in the military for a number
25 of years and then have been in the -- as a police

1 officer for over twenty years. So, you've been around
2 guns basically your entire adult life.

3 A Yes.

4 Q Had you ever been shot in any way before?

5 A Never been hit, no.

6 Q Knowing that you did get hit on this day, --

7 A Yes.

8 Q -- you talked a little bit about what went through your
9 mind, and I don't think we need you to talk about that
10 again.

11 But, once you got a little further away from it,
12 how did that -- how did that feel? How did that affect
13 you? And I don't know the right question to ask, but
14 you know what I'm saying. I mean, that --

15 A Well, it --

16 Q -- that affects people.

17 A You know, when you -- you see kids come up to you --
18 your grandkids come up to you, you know, they reached
19 out to the lip. They -- they saw the physical change.
20 That probably hits you the most, of just -- you know
21 (laughs) -- just -- and that's a lot of kids out there
22 that -- now what, right?

23 So, did I prepare my wife right? Did I -- I don't
24 know how to -- I don't know how to go further than
25 that. Just --.

1 Q No, and I'm not asking you for any -- there's no right
2 way. I just -- well, let's -- let's do this.

3 Let's -- so, at some point -- was there a surgery
4 like two days after?

5 A So --

6 Q The incident happens, and then --

7 A So, I -- I got my stitches. Obviously, I had to wait
8 some time to see Dr. Marin. I don't recall if that's
9 the appointment -- I don't think it was -- the
10 appointment to remove the stitches, 'cuz it had scabbed
11 up pretty good, so that was not a fun experience of
12 getting those stitches pulled and everything else. And
13 then I -- I -- I think just with his advice of just --
14 he said it would heal in a year, you know, or be
15 that -- to the point where he could work on it.

16 Q Okay.

17 A I don't know his exact words. So, I came back in a
18 little more than a year to see him.

19 Q Okay.

20 A Um --.

21 Q Tell us about during that year. How -- how were things
22 during that year with your face and your lip in terms
23 of just sort of what you were feeling?

24 A Well, you just stayed away from -- not everyone, 'cuz
25 my job is a public job, right? (Laughs.) So, you

1 know, you're just going to -- you didn't go out
2 unnecessarily to the public, I guess.

3 Q Why not?

4 A I didn't -- you know, I couldn't play basketball
5 anymore. I couldn't -- you know, I just -- I don't
6 know why. We just didn't.

7 Q Okay. And was it -- what was the sensation like?

8 A It's a -- I -- the best thing I can describe is
9 sometimes -- maybe it's just me -- how you test a nine-
10 volt battery on your tongue, you go, holy cow, it's
11 still got a lot of voltage in it. Or if it's, you
12 know, lower. And I -- I -- that is the closest thing
13 I can come to it is just that -- on your tongue, that
14 real low dead nine-volt battery, and that's what it
15 is.

16 Q Okay.

17 A It doesn't hurt, but it's there.

18 Q Yeah. And that was there during the first year. Is
19 that still there?

20 A Oh, yeah. It's still there.

21 Q It's kind of a companion you've got.

22 A Well, and you use it several times a day, so, it's
23 there.

24 Q That nine-volt kind of shocky sort of feeling. I don't
25 know if shock is the right word.

1 A I'd just say more -- I would say the lower, numb -- you
2 know, it's just -- [inaudible] it doesn't -- it doesn't
3 feel like the top one.

4 Q And so, you were saying a year after, you went back to
5 see Dr. Marin -- sometime around a year anyway -- and
6 did a second surgery.

7 A Yes.

8 Q What was the reason for that?

9 A Well, he was trying to straighten it out as much as he
10 could, is my understanding, and he wanted to remove
11 the scar tissue because it was even stiffer than it is
12 now.

13 Q Okay.

14 A So -- and I don't know what to compare. I mean, when
15 he pulled it out, you're like, that came out of my lip?
16 (Laughs.) So --.

17 Q Okay. And the second surgery, did it -- you said that
18 it improved some of the stiffness?

19 A Yeah. Just 'cuz there's not as much scar tissue in
20 there. Yes.

21 Q Talk about the stiffness for a minute. What -- I
22 know Dr. Marin kind of mentioned that. Describe that.
23 When -- when you say there's stiffness in your lip,
24 what's -- help us understand that.

25 A There's just a lot of aspects of -- I know one of them

1 was, you know, obviously, kissing my wife. We met as
2 teenagers and it -- it's just not -- I don't want to
3 say enjoyable because I love my wife, so I've got to
4 be careful how I say this. (Laughs.) It's just not
5 enjoyable to -- to kiss several times in a row. A peck
6 on the cheek, whatever it might be.

7 And then of course, food. I just -- you know,
8 to -- to do different things like that is -- you just
9 don't feel it. I mean, it's -- you've got to use it,
10 but it just -- it's not there, sensitive enough to be
11 able to do everything that I want it to do or what it's
12 done in the past. And talking to Marin, he could make
13 it straighter. He could make -- he could put things
14 in it. He could do this, but he -- he's going to have
15 to take out more of my lip to do it. And I'm like --
16 I'm a guy. You know, I -- I don't know how else to
17 answer that, of, I don't want to go through it again,
18 and if it's not going to make me a hundred percent,
19 then --. But --.

20 Q And has he ever told you there is anything he can do
21 to fix the sensation and how it -- how you --

22 A No. He said that was -- I mean, 'cuz there's always
23 going to be scar tissue with -- with however it
24 happened. He says it's really the nerve endings
25 that you're not feeling is what you're not feeling,

1 so --.

2 Q And in discussing with him, you understood the nerves
3 are what -- part of what got damaged.

4 A Yes. I mean, I -- I can't believe a piece of shrapnel
5 knocked me to the ground. I -- before this incident,
6 I just -- wow. It knocked me to the ground and in a
7 sense, knocked me out, if you want to say.

8 Q Well, not in a sense. It did, sounds like.

9 A And well, I can't confirm or deny it. I don't know
10 about -- or I -- you know.

11 Q Talking. Obviously, you're -- you're doing a good job
12 today. And does it -- from your perception, does it
13 affect your speech?

14 A Yes.

15 Q How?

16 A To articulate words, I slow down to say them. I heard
17 a reference to speech therapy. I guess to cheat a
18 little bit, some of the kids that we have go through
19 speech therapy, so obviously I know a couple of little
20 things that can help there, and -- but there are times
21 that just to be able to say one -- just a couple of
22 words, you know, -- you know, like one I had to practice
23 all over again because we have intrinsically safe
24 radios, and it took me a while to be able to say all
25 that. But I have to slow down to be able to --

1 Q Okay.

2 A -- say certain words. You know, so as an instructor,
3 it's like you just kind of pick and choose in front of
4 the class the things you say and how you say it.

5 Q And now you have to think about it in a way you didn't
6 have to. Is that -- is that kind of what you're --

7 A Right. Because if you're -- if you're up there --
8 sometimes I'll even whistle -- I don't know how to --
9 I -- it's like, whoa. You don't want to do that in
10 front of a class. I mean, you don't, because it's, you
11 know, in that structure that we have, I mean you just
12 want to be as professional as you can.

13 Q You say sometimes you whistle, just meaning by
14 accident? It just happens?

15 A It just -- you know, it just -- it doesn't get out of
16 the -- you know what I mean? I don't know how else to
17 say it other than, you know it's not getting out of
18 your way. I'm -- I know that's why I can't say that
19 word or I can't, you know, articulate it or say
20 different things or --.

21 Q One of the other things that got discussed, and I don't
22 know whether you were in here or not, and it
23 doesn't matter, but headaches, migraines. Have you had
24 those?

25 A They progressively got to -- to the point to where I'm

1 taking muscle relaxers, and I'm seeing a chiropractor
2 now.

3 The reason, you know, it -- is -- with Eric and
4 Debbie and the family, obviously, I kind of get
5 adjustments. And family members -- Paul is big
6 enough -- he's popping me all the time. But it's gotten
7 to the point to where my right eye was closed and I
8 threw up one day, and I said, "All right. I'm going
9 to the chiropractor."

10 So, I'm going to the chiropractor, and I'm on
11 muscle relaxants and --. 'Cuz it isn't a headache-
12 headache, so when I take Excedrin or I take -- doesn't
13 get rid of it. It's -- it's all muscle.

14 And part of her evaluation -- meaning the
15 chiropractor -- she says my jaw is out -- out of
16 alignment. And so, after you get your normal
17 adjustments, if you've ever had one, she lays me on my
18 back, gloves her hands, sticks them in my mouth,
19 and this muscle that runs back here, she tries to
20 rake it because it's so tight on this side compared
21 to the other side, for whatever reason. And
22 she's like, "Yeah, I would say that you have
23 headaches." So --.

24 Q And -- well, let's talk about -- since you mentioned
25 the chiropractor. This is from Krista Wilks, and it

1 was dated July 1, 2019. This is Exhibit -- it is part
2 of Exhibit Pack Four.

3 What she says in there was: After reviewing his
4 consultation history and exam, I came to the conclusion
5 that there is a large chance that Luke's migraines are
6 caused from the previous facial trauma he received. He
7 was shot in the face, that tore through his lip and
8 broke his teeth, that amount of force would have
9 impacted his jaw tremendously.

10 And she goes on to talk about spasms and the
11 muscles have been known to cause migraines, and that
12 she is working on treating you for those migraines.

13 Is that kind of the -- what you've just described
14 to the jury?

15 A Yes.

16 Q And the migraines, how often do they occur?

17 A Um, I would say headaches -- I mean, as mild as they
18 might be. I mean, I know my back is tight -- my back
19 is tight every day. So, if I am able to stay on the
20 muscle relaxers, they even work as -- I mean, I hate
21 medicine. There is a reason we adopted some of those
22 kids, and I won't go into that, but you know, medicine
23 turned into drugs, drugs turned into whatever.

24 I just -- you know, I just -- I am not -- and with
25 my job, I can't have any narcotics at work, and I have

1 to work. So, I mean, I just --.

2 So, we agreed on muscle relaxers and I take two a
3 day. And then depending on how long the day goes, it
4 could be more. But --.

5 Q Yeah.

6 A But I've -- I was --

7 THE COURT: I am going to interrupt you there. Mr.
8 Hunt?

9 MR. HUNT: Yes, sir.

10 THE COURT: I think we need to take a -- our last
11 break for the afternoon.

12 MR. HUNT: Sure.

13 THE COURT: So, I'm going to interrupt you. I'm going
14 to instruct the jury on what is called our recess instruction.

15 During the recess, do not discuss the case with anyone
16 other than yourselves, and then only in the jury room when
17 all of you are present. Do not attempt to decide the outcome
18 of the case before you begin final deliberations.

19 Please continue to wear the juror badges while in and
20 around the Courthouse. If someone other than a fellow juror
21 happens to discuss the case in your presence, report that
22 fact at once to a member of the staff.

23 And so, we're going to take our last break for the
24 afternoon. It's going to be about sixteen minutes.

25 All rise for the jury.

1 [WHEREUPON, the jury retired from
2 the Courtroom, after which the
3 following proceedings were held
4 outside the presence of the jury.]

5 THE COURT: All right. Mr. Armstrong, you can go
6 ahead and return to counsel's table. And you may be seated.
7 The reason I did that, it looked -- I was planning on going
8 until three-thirty, but I -- I just thought the jurors needed
9 a break.

10 MR. HUNT: Great. Thank you for paying attention to
11 them. I understand.

12 THE COURT: Is there anything else we need to address
13 before we go into recess?

14 MR. HUNT: No.

15 MR. RIMMER: No, Judge.

16 THE COURT: All right. We'll be in recess for --
17 about twenty-'til.

18 MR. HUNT: Great.

19 [WHEREUPON, a short recess was
20 taken.]

21 THE COURT: All right. We're back on the record in
22 the matter of D-117-CV-2017-89. The attorneys and parties
23 are present, and Mr. Armstrong has returned to the witness
24 stand. And you may be seated, sir.

25 Any matters we need to address before we bring in the

1 jury?

2 MR. HUNT: Thank you.

3 MR. RIMMER: No, Judge.

4 THE COURT: All right. Let's go ahead -- all rise
5 for the jury.

6 [WHEREUPON, the jury entered the
7 Courtroom, and the following
8 proceedings were held in Open
9 Court.]

10 All right. The attorneys and parties may be seated.
11 And Mr. Hunt you may continue with your Direct Examination of
12 Mr. Armstrong.

13 MR. HUNT: Thank you, Judge.

14 Q (Mr. Hunt continuing) So Eric [sic], we were talking a
15 little bit about, kind of broadly, effects of things.
16 And so, I want to talk about work for a minute.

17 A Okay.

18 Q Obviously, you've been involved -- and I don't know that
19 I asked you, but tell us how old you are today.

20 A I am forty-eight years old.

21 Q And what was your goal in terms of how long you would
22 work with the State Police?

23 A Thirty years total.

24 Q And why was that? Why is thirty years --?

25 A 'Cuz Rebecca and I -- I mean, this is kind of a one-

1 income family, and seventy-five percent is that thirty
2 year mark --

3 Q Okay.

4 A -- of the job that I do, and I don't want to do it when
5 I'm sixty-five. So, thirty -- thirty years was my -- is
6 my goal.

7 Q Okay. Do you enjoy being a State Police Officer?

8 A I do.

9 Q It's something you always looked for -- looked -- always
10 planned to do?

11 A As -- as a kid. I don't -- don't know why -- in western
12 Pennsylvania, some reason I woke up and said, "I want to
13 be a State Trooper somewhere." Thought it was going to
14 be Pennsylvania, that's where I lived. But Colorado
15 and New Mexico have -- it's nicer weather out here,
16 so --.

17 Q Okay. And when you turned eighteen, I think they've
18 already, said you joined the military.

19 A Two days after high school, I was in Fort McClellan in
20 Alabama, 'cuz I was the youngest of five on a farm, and
21 guess who was last to do the chores, right? So, sorry
22 to do that, but I have just -- (laughs) I was ready to
23 move on, and the military was a good option for me at
24 that time.

25 Q Do you still enjoy being a Police Officer?

1 A I do.

2 Q Has it changed at all after this?

3 A This discussion has come up a couple times actually.
4 How do you say it? I'm not the doorman anymore. No,
5 I'm not the first one in, in the sense of beating down
6 the door, probably a little more cautious, observe
7 things a little more. Not that I did it before, I --
8 I -- I don't -- it's just, yeah, it's a little different.

9 I -- okay, here's a terrible thing to say. If I
10 was going to be shot, I thought it was going to in the
11 line of duty. Not that we wanted it to happen that way,
12 but in your mind, you're like, that's kind of how it's
13 going to happen, right? So --.

14 Q You kind of know every day when you go to work, that's
15 a risk you take.

16 A It's a risk you take, and I raised my hand to do it.
17 And I -- I mean when this is over, guess what I'm going
18 to do? I'm going to go back to work.

19 Q Yeah. But do you think -- and just, does it feel
20 different after you did get hit?

21 A Do I evaluate things differently? Yeah. Oh yeah, sure.
22 'Cuz now I -- you know, I don't want to say I was in --
23 I mean it happened, right? We didn't just talk about
24 it.

25 Q Wasn't a training exercise.

1 A Wasn't a training -- I mean, yeah, I've been hit with
2 munitions I can't tell you how many times. Had paintball
3 stuff ourselves. I -- I don't know. It's kind of what
4 the jury selection said yesterday with all -- I mean, it
5 was amazing stories. The guy -- wow. (Laughs.)

6 Yeah, it just changes your life, but I don't know
7 how else to put it.

8 Q Yeah. Does it make you feel more vulnerable than you
9 did before?

10 A Well, it could happen to you. It could happen to -- you
11 know, it could happen to me again, right? So, more --
12 I -- I -- I just -- I don't know. I just -- yes, I'm
13 different. It's going to be very tough to do another
14 eight years to hit thirty years.

15 Q Is the enjoyment of work less than it was before?

16 A It's hard to answer that, because I have to go back to
17 work.

18 Q Well, I'm not asking you if you're doing the worst
19 job.

20 A (Laughs.)

21 Q You know, no, not at all.

22 A I mean --

23 Q And -- and however you choose to answer that, I don't
24 know the answer. I just -- I'm trying to understand it.

25 A Look, I enjoy -- I -- I enjoy what I do.

1 Q Yeah.

2 A I enjoy the public I see. Obviously, it's many, many
3 different things than on the side of the road writing a
4 ticket. I mean I'm teaching, I'm shaking hands, I'm
5 educating. You know, you're -- you're looked at
6 different in the specialized field that I'm in, within
7 the Patrol, so that I -- I love doing that. But like I
8 said, to go back to be the doorman -- 'cuz I've been the
9 doorman -- be back to the doorman, I -- okay, I -- I've
10 done it. I've -- I've put on that part of the
11 uniform.

12 Q Understood. I want to talk about the -- the dental side
13 of things.

14 A Okay.

15 Q What -- help the jury. Talk about that for just a
16 minute, as far as -- they heard a little bit, because I
17 think Dr. Marin mentioned it, and I think your wife also
18 mentioned it. But when this happened, did it also affect
19 your teeth?

20 A Yes.

21 Q How so?

22 A So, I've seen the same dentist. I mean we've lived in
23 Pueblo, Pueblo West since 2002, so I've basically
24 seen the same dentist. And it -- after this incident,
25 they've done x-rays. And so, it cracked four of my top

1 teeth.

2 I have my first crown now. I have a mouth guard
3 'cuz I just grind much more. He's scheduled for two
4 more crowns. And with the cracked ones being up
5 front -- you know, in the top up front, I -- I'm not for
6 sure if you can crown those or exactly what that
7 procedure is.

8 I'm not greatest fan of going in and seeing the
9 dentist, so it just -- it's not enjoyable, right? I --
10 I -- anyways, I -- just how I --.

11 Q So, let's take a look at the -- the bottom down here.
12 What the --

13 THE COURT: What exhibit are you referring to?

14 MR. HUNT: This is a demonstrative.

15 THE COURT: Okay.

16 MR. HUNT: So, it's in -- it's in Packet Six. This
17 is one of the demonstratives.

18 THE COURT: All right. Thank you.

19 MR. HUNT: Exhibit Six.

20 Q (Mr. Hunt continuing) And down there, if we also look
21 at -- this is, I guess, the letter from Dr. Liontis. Is
22 he your dentist?

23 A Yes.

24 Q Okay. And he says: "At the time there was a small chip
25 in tooth number nine, and a filling was placed. At a

1 cleaning, it was noted that number ten had multiple
2 fracture lines that would be consistent with the hunting
3 accident below. It was recommended placing a crown on
4 that tooth. Both seven and nine have evident cracks,
5 and no treatment is necessary on these teeth at this
6 time."

7 And so, that's the top -- the upper part of your
8 jaw, I guess, is nine. Do you understand that one --

9 A I've --

10 Q Forget the numbers.

11 A (Laughs.)

12 Q I don't know the numbers at all. Just trying to
13 reference it. Maybe just you help the jury understand,
14 where are they?

15 A I -- I believe it's --

16 Q Okay.

17 A -- it's these two, and then it's --

18 Q So the front?

19 A -- this one.

20 Q Kind of a front one and --

21 A Yeah.

22 Q -- the one --

23 A It's three out of four in the front.

24 Q Okay. All right. And do you get -- so, also in dealing
25 with the dentist, have there been issues with the

1 grinding?

2 A Yeah. He -- he says I do it a lot more, 'cuz it's --
3 it's not like a football mouth guard or sports -- I mean,
4 it's -- it's a dentist mouth guard where they form it.
5 And it's thicker and --.

6 Q Yeah.

7 A I mean, I know the nights -- when I fall asleep and I
8 don't have it, I wake up and I -- I mean it's -- it's
9 another one of those things that you know you don't have
10 it. And I also think that was leading to some of this
11 stress and the -- the tension and the headaches and
12 things like that.

13 Q Sure.

14 A That -- 'cuz I -- I had a daughter with migraines, so we
15 had an unfortunate horse accident when she was a kid so
16 I understood migraines from outside looking in, but now
17 believing that I've had some, migraines are not fun.

18 Q I want to talk about your family for just a
19 minute.

20 A Okay.

21 Q Has what happened to you had an effect on the
22 family?

23 A Well, we're a pretty active family. I mean, I have
24 teenage boys. I have a teenage daughter. Five of them
25 are out of the house now.

1 Q Let me --

2 A Oh --

3 Q Sorry. [Inaudible.] And just so that we're talking
4 about so --

5 MR. HUNT: May I approach the witness, Judge?

6 THE COURT: You may.

7 Q (Mr. Hunt continuing) This -- is this your kids?

8 A Yes, that was before my daughter went in the Navy.

9 Q Okay. And help us out just for a second.

10 A Oh.

11 Q Tell us names and who they are.

12 A So this is my oldest daughter, Anika; my second daughter,
13 Arianna; my son, Andrew; and Alex and Elora. He came
14 into our life at fifteen months old. We cut Elora's
15 cord -- they're brother and sister biologically. And
16 Aaron and Adam we adopted out of Pueblo. They were a
17 day respectively themselves, so they're brother --. And
18 then Allison came out of Colorado Springs at a month
19 old, and we've had them since that moment.

20 Q So when was this taken? How long ago? About.

21 A I -- I -- my daughter's been in three years now in the
22 Navy. (Laughs.)

23 Q Okay. All right.

24 A 'Cuz we knew it was going to be hard. She -- 'cuz she
25 went out to Virginia, so we knew it was going to be hard

1 to get back together, and --

2 Q Sure.

3 A -- to get another photo.

4 Q And so, you were saying -- and my question to you
5 was, I mean you're the eight kids and your family. Has
6 this -- has what happened to you had an effect on the
7 family?

8 A I am not outside or -- I mean, we played a lot of
9 basketball. We -- we have a corner lot -- it's an acre
10 lot. It's where additional kids come. I mean, you could
11 probably call my house right now, and I bet you there's
12 four or five extras. Anyways, just a ranch style home,
13 but we are an active household.

14 One of the mentions was the mud races we do. Paul
15 talked about just the activities at the -- at the horse
16 rescue that we do. And it's unbelievable that some of
17 those kids have never pounded a nail or a staple or
18 mended a fence or that they ask to come back.

19 So yeah, just going outside, just to play hoops
20 with the kids or play football. Luckily, the one road
21 that goes in front of us dead ends, so it's kind of a
22 cul de sac, so no -- not much traffic goes down it,
23 so --.

24 Q But help me understand this. I mean it -- I mean, I
25 understand it happened to your lip. How does that affect

1 you playing basketball?

2 A Well, I -- I'll be honest, I -- my back is just --
3 those -- I --

4 Q Okay.

5 A And my -- it's -- it's more than the lip. I mean, --

6 Q Okay.

7 A -- it's just --.

8 Q And as far as the lip goes, is there -- your wife talked
9 about it -- is it more sensitive if you got hit? Have
10 you been hit in the lip?

11 A No, thank goodness I have not been hit in the lip. And
12 we've -- you know, we've talked about that in the work,
13 but the type of work I do really lessens that rolling in
14 the ditch with somebody.

15 Q (Laughs.)

16 A But, you know, it's --.

17 Q I think she mentioned a foster kid maybe you guys had or
18 maybe it was a grandkid that arched their back and kind
19 of popped their head back and hit you.

20 A Yeah, I -- I'm -- yeah, I don't --. It -- there's a lot
21 of kids and a lot of wrestling, and a lot of things that,
22 yeah, I -- just say -- I -- I watch it in contact -- you
23 know, in activities.

24 Q Now, I want to understand this. I mean, I know you've
25 said this a few times today. You're a guy, and sitting

1 up here talking about yourself isn't something you're
2 very comfortable with, and I appreciate you doing that
3 for us.

4 But it's -- it's still something you've got to
5 look at every single day and in your face. When you
6 look in the mirror, is it different to you?

7 A Yeah, I -- everything you do. I mean, I have a tube of
8 ChapStick in my pocket right now that is SPF 15. I mean,
9 it's everywhere -- Chapstick is in my life. Obviously,
10 when you brush your teeth, when you eat, when you drink,
11 when you -- when you use your lip, it's there.

12 Q You brought a bottle -- that's your bottle of water;
13 right?

14 A Yeah, I --

15 Q Why do you use that kind of bottle?

16 A Well, I didn't want to embarrass myself with these little
17 Dixie cups.

18 Q Okay. But you can manage out of a bottle like that?

19 A Well, has a -- a top on it, yes.

20 Q And what do you do, even just when drinking out of one
21 of those cups, just to make sure you get it right? Kind
22 of lodge it against your teeth?

23 A Well, yeah, I was going to say I -- I had other people
24 describe that how the head goes back and it goes probably
25 a little further in your mouth instead of just putting

1 your lips on it and doing it, so --. And of course
2 these, you know, you can kind of squirt in your mouth,
3 too.

4 Q Before this happened, did you take your -- your lips and
5 your -- certainly your mouth kind of for granted?
6 Something you never had to think about.

7 A Pssh. I was a hundred miles per hour. I was -- you
8 know, five years ago, I said, you try to keep up with
9 some teenage kids anymore when you hit forty and
10 it's -- yeah, I did. To be honest, I -- I was in pretty
11 good shape. I was able to move around, lift some
12 things, and just have fun with the kids. I -- you know,
13 just --.

14 Q Is what happened to your face now something you deal
15 with, think about, on your mind basically every waking
16 hour?

17 A It's there.

18 Q It's there.

19 A But, I have to -- I mean this is what I got. Know --
20 you know what I mean?

21 Q Yep.

22 A I -- guess what? Tomorrow it's gonna be there. And
23 Friday it's gonna be -- I mean, yes, it's there.

24 Q And you haven't let it stop you, have you?

25 A Well, yeah, I can't.

1 Q Well maybe you could, but you haven't.

2 A Well, I -- okay, I choose not to stop, because --.

3 Q Kept going to work; right?

4 A Yeah.

5 Q Still -- still doing instructing; right?

6 A Yes.

7 Q Still are involved with all the volunteer activities you
8 were before, just it's different?

9 A Yeah.

10 MR. HUNT: I don't have any other questions right now,
11 Luke. Thank you for answering my questions.

12 THE WITNESS: Thank you.

13 THE COURT: Mr. Rimmer.

14 MR. RIMMER: One or two.

15 THE COURT: All right. You may proceed with your
16 cross-examination.

17

18

CROSS EXAMINATION

19 **BY MR. RIMMER:**

20 Q Afternoon, Luke. Just a couple questions for you.
21 Earlier in your testimony, you said, and this is
22 quote -- correct me if I get it wrong. Public land
23 hunt -- you were public land hunting when you laid down.
24 What did you mean?

25 A So, I -- I've had bullets going over my head, so I mean,

1 I know what it sounds like. So, I -- I mean, I've had
2 bullets around me, and at the time, I was with my two
3 daughters in La Jara, southern Colorado. So, the best
4 course of action -- 'cuz you don't know where it's coming
5 from -- is just lay down until it's over and --. So --

6 Q And that was one specific instance. Has there been any
7 other instances where you've had to do that?

8 A You know, in the military, obviously many shots. When
9 I was in Panama, I mean there was -- I -- I went down
10 right after Noriega was removed, so there was still a
11 lot of gunfire going on.

12 You know, nothing that really sticks out in a sense
13 of that. I mean, I think you think differently when
14 you're with your own kids, and you're like uh, I know
15 what that is, let's try to get out of there, so --.

16 Q Fair enough.

17 MR. RIMMER: Those are my questions.

18 THE WITNESS: Thank you.

19 MR. RIMMER: I appreciate it. Thank you.

20 THE WITNESS: All right.

21 THE COURT: Any redirect?

22 MR. HUNT: No. Thank you, Judge.

23 THE COURT: All right. Mr. Armstrong, you can go
24 ahead and return to --

25 THE WITNESS: Thank you.

1 THE COURT: -- counsel's table. Mr. Hunt, you have
2 no other witnesses for the evening; correct?

3 MR. HUNT: That's correct, Judge.

4 THE COURT: All right. So, members of the jury, we
5 are going to go ahead and break for the evening. You'll have
6 to return tomorrow morning at eight-forty-five. The same
7 location I asked you to be here -- at this morning, and
8 my bailiff will take you back into the jury deliberation
9 room.

10 And before we recess, I'm going to give you
11 instructions.

12 During recess, do not discuss this case with anyone
13 other than yourselves, and then only in the jury room when
14 all of you are present. Do not attempt to decide the outcome
15 of this case before you begin final deliberations.

16 Please continue to wear the juror badges while in and
17 around the Courthouse. If someone other than a fellow juror
18 happens to discuss this case in your presence, report that
19 fact at once to a member of the staff.

20 If you happen to see or hear any news accounts of this
21 trial, please report that fact to a member of the staff.

22 And then we will recess for the evening, and you'll
23 need to be back here at eight-forty-five in the morning.
24 We're in recess. All rise for the jury.

25 [WHEREUPON, the jury retired from

1 the Courtroom, after which the
2 following proceedings were held
3 outside the presence of the jury.]

4 THE COURT: All right, you may be seated. At this
5 point, you have time to go over the Jury Instructions or
6 Proposed Jury Instructions.

7 Let me ask the attorneys, do you want to take a recess
8 for a bit and then we can reconvene and get that squared away?

9 MR. HUNT: It would probably be best, 'cuz I'm not
10 finding my set.

11 THE COURT: Okay.

12 MR. HUNT: My paper set. I gave my other one to Nick.
13 (Laughs.)

14 THE COURT: All right.

15 MR. HUNT: He won't let me give it back. Yeah, if
16 we could --

17 MR. RIMMER: Yeah. Well, we can share it if it comes
18 down to it.

19 THE COURT: Well, I have an extra set here and --

20 MR. HUNT: Okay.

21 THE COURT: -- and I can print off an extra set that
22 was e-mailed to me last weekend. So, I'll go ahead and do
23 that.

24 MR. HUNT: Thank you. And also, maybe the parties,
25 can they be dismissed?

1 THE COURT: Absolutely. Yeah, we can dismiss the
2 parties. And let me ask the attorneys, did you need time to
3 confer with one another to go through them to see if you can
4 agree on these Jury Instructions, to expedite things?

5 MR. HUNT: Sure, we're happy to do that.

6 THE COURT: All right.

7 MR. HUNT: Probably worthwhile.

8 THE COURT: All right. Let me print off a copy
9 of --

10 MR. RIMMER: And again, Judge, maybe it would be of
11 assistance. I -- I think the same objections I had last time,
12 I still have. They're -- I would like to preserve my
13 objections for when they close Plaintiffs' case, and then
14 make a Motion to the Court, particularly regarding punitive
15 damages. I'm not sure -- I have, again, no problems with the
16 form of these Instructions as they're written.

17 THE COURT: Okay. So, what I'm going to ask you all
18 to do -- I'm going to print off an extra copy for you, Mr.
19 Hunt. I want to take about a -- how much time do you all
20 need? About fifteen, twenty minutes maybe?

21 MR. HUNT: That would be fine.

22 THE COURT: And then I'll recall the case and we'll
23 go through them. And then you can assert your opposition or
24 objections to any portion of those proposed Instructions.

25 [WHEREUPON, a short recess was

1 taken.]

2 THE COURT: All right. We're back on the record in
3 the matter of D-117-CV-2017-89. Counsel is present in the
4 Courtroom. And outside of the presence of the jury, we are
5 going to go ahead and go over Jury Instructions.

6 With regard to Chapter Two, do either of you want me
7 to repeat 13-201 through 13-214, in Final Instructions to the
8 jury?

9 MR. RIMMER: I don't think that is going to be
10 necessary.

11 THE COURT: Any of those, Mr. Hunt, you want me to
12 repeat before --

13 MR. HUNT: No, I sure don't think they're necessary
14 either, Judge.

15 THE COURT: Okay. All right. So, I'm not going to
16 include those Instructions in the Final Instructions.

17 All right. Moving on to Chapter Three. Starting with
18 301.

19 MR. HUNT: No objection.

20 MR. RIMMER: No objection, Judge, to any of the Three
21 Hundreds.

22 THE COURT: None to the Three Hundreds? All right.
23 So, I'm going to give 301. There is no requested changes to
24 302 from either of you? Well, 302(A) and (B)?

25 MR. HUNT: Yeah, let me look at it again. (Pause.)

1 No -- no changes from the Plaintiff.

2 THE COURT: All right.

3 MR. HUNT: And --. (Pause.)

4 THE COURT: Any changes, Mr. Rimmer?

5 MR. RIMMER: You know, I think the final sentence may
6 require something a little bit [inaudible]. I think it should
7 read: The Defendant denies any negligence. It says that is
8 was an unavoidable accident or the Defendant denies any
9 negligence would also be appropriate. It just seems like --
10 I'm not sure the Defendant denies what the Plaintiffs say
11 about the incident is -- I don't think there is

12 THE COURT: All right. So, you want it to read: The
13 Defendant denies any negligence and says that it was an
14 unavoidable accident.

15 MR. RIMMER: I think that's -- that's fair
16 [inaudible].

17 THE COURT: All right. Any objection, Mr. Hunt, to
18 that change?

19 MR. HUNT: No.

20 THE COURT: I'm going to make -- I'm going to require
21 that change, and I'm going to put that on you, Mr. Hunt.

22 MR. HUNT: Very good.

23 THE COURT: So, Defendant denies any negligence and
24 says that it was an unavoidable accident.

25 All right. Moving on to 304. I'm going to go ahead

1 and give that Instruction. Any suggested changes to that?

2 MR. HUNT: No, none from Plaintiff.

3 MR. RIMMER: Nothing from us either.

4 THE COURT: All right. I'm going to give 304 as
5 proposed.

6 I intend to give 305.

7 MR. HUNT: No objection.

8 MR. RIMMER: No objection, Judge.

9 THE COURT: All right. I'm going to go ahead and give
10 this as written.

11 I intend to give 307. Any suggested changes to
12 that?

13 MR. HUNT: You know, the only one, Judge, is I think
14 -- correct me if I'm wrong, but the -- the second paragraph
15 reads: The production of evidence in Court is governed by
16 rules of law, and it says from time to time it has been my
17 duty as a Judge to rule on the evidence. You must not concern
18 yourselves with these rulings. I guess that's okay. I mean,
19 I don't -- I think that's typically for things that have been
20 excluded or sustained or those things, and I don't know that
21 there's been much of that here, but I think it's probably
22 best to just give the stock Instruction. So, I -- I -- as I
23 talked my way through it, I think it's fine as is.

24 THE COURT: It's always better to -- on Jury
25 Instructions, to rule on the side of caution like that,

1 so --

2 MR. HUNT: Understood.

3 THE COURT: -- I'm going to give 307.

4 MR. RIMMER: [Inaudible.]

5 MR. HUNT: Very good.

6 THE COURT: All right. 308. I intend to give 308.

7 Any objection to 308?

8 MR. HUNT: No.

9 MR. RIMMER: No, Judge.

10 THE COURT: All right. Moving on to Chapter Four.

11 MR. HUNT: So, we have -- we proposed and sent it to
12 Mr. Rimmer, a modified 405, based on the Court's ruling.
13 There's essentially one more paragraph that says: James
14 Wilson and Michael D. Norman are also the agents of Express
15 Ranches. I don't know that I have the language right.

16 Ms. Bevan has gone to go get it, and so she'll be
17 coming back with it shortly.

18 THE COURT: Okay.

19 MR. HUNT: I know that we sent it via email, but I
20 don't think either one of us brought it, and we didn't send
21 it to you because I don't think we heard back whether it was
22 approved or not. We just didn't -- just kind of, you know,
23 late in the game. So, let's just put that one to the side
24 for a minute. I think it will be one that we agree on, but
25 I'd rather not have to re-work it because we have already

1 done that.

2 THE COURT: All right. So, I'll set this one aside.

3 All right. Moving on to Chapter Sixteen.

4 MR. HUNT: She's quick. So maybe not. (Laughs.) We
5 were just saying, why aren't you here. (Laughs.) Okay, maybe
6 that's not what we were saying. We were just saying thank
7 you. That's the one we need. Take a deep breath.

8 May I approach?

9 THE COURT: You may. All right. Give me a minute to
10 read it, please.

11 MR. HUNT: Sure.

12 THE COURT: (Pause.) All right. So, I'm assuming
13 I'm giving both -- both the old 405 and then the new 405 at
14 the same time.

15 MR. HUNT: Yes. Yes. And -- that's right. I think
16 the way that we've drafted is just two separate Instructions.
17 We could combine them if you would prefer.

18 THE COURT: No, that's fine. I don't mind --

19 MR. HUNT: Okay.

20 THE COURT: -- two different instruction numbers. All
21 right. So, I'm going to give both of these paragraphs under
22 13-405.

23 And I'm assuming, Mr. Rimmer, you don't have an
24 objection to the new paragraph -- the one that reads: James
25 D. Wilson and Michael D. Norman were guests of Express Ranches

1 for purposes of hunting on the property, at all times
2 following the instructions of James Rockenfield, the hunting
3 guide employed by Express Ranches, LLC, therefore, Express
4 Ranches, LLC is liable for the negligent acts or omissions of
5 James D. Wilson and Michael D. Norman committed during the
6 hunting trip on October 7th.

7 MR. RIMMER: That's fair.

8 THE COURT: All right. Let's go ahead and move to
9 Chapter Sixteen. I intend to give 1601. Any objection to
10 that, Mr. Rimmer?

11 MR. RIMMER: No objection.

12 THE COURT: All right.

13 MR. HUNT: No objection from us either.

14 THE COURT: All right. 1603. Any objection to that
15 from either counsel?

16 MR. HUNT: None.

17 MR. RIMMER: No, Judge.

18 THE COURT: All right. 1604. Any objection to 1604
19 as written?

20 MR. HUNT: No.

21 THE COURT: Mr. Rimmer?

22 MR. RIMMER: No objection, Judge.

23 THE COURT: Okay.

24 MR. RIMMER: Yeah, I just wanted to check on the
25 [inaudible].

1 THE COURT: I'm sorry?

2 MR. RIMMER: No objection.

3 MR. HUNT: We were just saying, it says Modified at
4 the bottom, but I don't -- I think that may have been a carry-
5 over from something else. It's actually not.

6 THE COURT: Okay. All right. Moving on to Chapter
7 Eighteen. I intend to give 18. I'm assuming there is no
8 objection

9 MR. HUNT: Correct. No objection.

10 THE COURT: All right. Moving on to 1802, 1806 and
11 1807 and 1807(A). Give me a minute to review that again.
12 (Pause.)

13 All right. All right. So, I've reviewed 1802, 1806,
14 1807 and 1807(A).

15 Are you proposing any changes to that or are you good
16 with that?

17 MR. HUNT: I'm good with it.

18 THE COURT: And are you okay? Any objection, Mr.
19 Rimmer?

20 MR. RIMMER: No objection.

21 THE COURT: All right. I'm going to give this
22 Instruction.

23 All right. 1821. (Pause.) All right. Any proposed
24 changes to that, Mr. Hunt?

25 MR. HUNT: No changes, Judge.

1 THE COURT: Any objection to 21 as written?

2 MR. RIMMER: No objection, Judge.

3 THE COURT: All right. I'll give 1821 as proposed.

4 (Pause.)

5 All right. 1831. Any proposed changes to 1831?

6 MR. HUNT: None from the Plaintiff.

7 MR. RIMMER: It seems to be different from the stock
8 Instruction, but I don't have -- some of the changes,
9 but [inaudible]. I think it does have the same substance.
10 Just --.

11 MR. HUNT: I think we used -- there was a -- we tried
12 a Federal case recently, so I think it was the Federal stock.
13 So that's probably why --

14 MR. RIMMER: Well, I -- I think it says [inaudible]
15 wanted to be sure.

16 MR. HUNT: Okay.

17 MR. RIMMER: I think it does.

18 THE COURT: Well, I would rather use the stock
19 Instruction.

20 MR. HUNT: It's no problem, Judge, I mean, from the
21 Plaintiffs' side of it. So, as long as -- so with the -- the
22 stock 1831, and I think that's -- yeah, like I said, I think
23 we pulled the Federal Instruction by accident. So, we'll
24 just fill in the blanks.

25 THE COURT: Okay.

1 MR. HUNT: And just use verbatim the words -- the
2 stock 1831. That's fine.

3 THE COURT: All right. We'll do that. I -- I do have
4 a question. I have a recollection that Eric Armstrong -- I
5 thought he said he was fifty-two. Am I wrong about that?

6 MR. HUNT: (Laughs.) I don't know.

7 MR. RIMMER: I was curious about their ages as well.

8 THE COURT: I know -- Luke did say forty-eight.

9 MR. HUNT: Uh-huh.

10 MR. RIMMER: He had his birthday.

11 THE COURT: So, we may need to -- we may need to
12 change that. I --

13 MR. HUNT: I'll make certain his age. I don't
14 know -- yes, so I -- I'm happy to do that.

15 THE COURT: Okay. Well, all right. I just sort of
16 have a recollection from the testimony that he said -- I
17 thought he said fifty-two, and I may be mistaken about that.

18 MR. HUNT: I -- I don't think you're mistaken. It
19 may have been that I said it --

20 THE COURT: Okay.

21 MR. HUNT: -- rather than him, but I could have been
22 wrong. But I'll double-check and we'll make sure his real
23 age -- and we get the -- two things. I can get it into
24 evidence if we haven't done that.

25 THE COURT: We'll -- we'll need to -- if we haven't

1 done that, let's do that.

2 MR. HUNT: Yep. And -- and there's two ways I can do
3 that. I -- I actually -- we can -- the medical provider who
4 is coming to testify is testifying on behalf of Eric, and so
5 I can simply ask, what's his date of birth? Does that make
6 him fifty-three today? So that's easy. I mean, we can clean
7 that up pretty good.

8 THE COURT: Okay.

9 MR. RIMMER: It is in the records as well.

10 MR. HUNT: Oh, okay. Yeah, that's true.

11 MR. RIMMER: I was going to ask them what ages they
12 were, but it's written in part of the --

13 THE COURT: Okay. Well, do you know where that is
14 exactly?

15 MR. RIMMER: No. Exhibit Four and Exhibit Five both
16 have both dates, right at the top of -- of [inaudible].

17 MR. HUNT: 8-53. 'Cuz he was born in '66. So,
18 the -- so the 4-29-66 would make him fifty-three.

19 THE COURT: All right. Thank you.

20 MR. HUNT: Sure. But I bet I -- I led you down the
21 wrong path. I'll bet I said fifty-two, if I was just
22 guessing.

23 THE COURT: All right. So, an amended 1831 will be
24 provided tomorrow morning.

25 MR. HUNT: Yes.

1 THE COURT: Moving on to 1827. All right. Punitive
2 damages. I'm going to go ahead and review that again.
3 (Pause.)

4 Okay. I understand that, Mr. Rimmer, you may move
5 for a Directed Verdict after the Plaintiffs' case-in-chief on
6 the issue of punitive damages. However, if I deny that
7 request, are you okay with Instruction 1827?

8 MR. RIMMER: Absolutely.

9 THE COURT: Okay. And do you have any changes to
10 1827?

11 MR. HUNT: The only change I would have is at the
12 beginning. In this case, the Plaintiffs -- I think I would
13 insert Eric and Luke Armstrong at the beginning. So, just
14 for that first -- I don't need -- we don't need to keep doing
15 it. But that would be the only change.

16 THE COURT: Okay.

17 MR. HUNT: I just prefer to put their names.

18 THE COURT: And you have no objection to that?

19 MR. RIMMER: (No audible response.)

20 THE COURT: All right. So, I'll go ahead and ask
21 that, you, Mr. Hunt, make that change on 1827 to include Eric
22 and Luke Armstrong in that first sentence.

23 MR. HUNT: Yes.

24 THE COURT: All right. So, moving on to Chapter
25 Twenty.

1 I intend to give 2001. Any objection?

2 MR. HUNT: No.

3 THE COURT: 2002. Any objection?

4 MR. HUNT: None.

5 MR. RIMMER: No, Judge.

6 THE COURT: 2003, I intend to give. Any objection
7 from either party?

8 MR. HUNT: No objection.

9 MR. RIMMER: No, Judge.

10 THE COURT: And then --. All right. I intend to give
11 2004. Any proposed changes to 2004?

12 MR. HUNT: No objection.

13 THE COURT: All right. Any objection?

14 MR. RIMMER: (No audible response.)

15 THE COURT: All right. I'm going to give 2004 as
16 submitted.

17 I intend to give 2005, assuming there is no objection.
18 Any objection?

19 MR. HUNT: No.

20 MR. RIMMER: No.

21 THE COURT: All right. I am going to give 2006. Any
22 objection to that?

23 MR. RIMMER: No objection.

24 MR. HUNT: No objection.

25 THE COURT: I'm going to give 2007. Any objection to

1 2007?

2 MR. HUNT: None.

3 MR. RIMMER: No, Judge.

4 THE COURT: And I intend to give 2009.

5 MR. RIMMER: No objection, Judge.

6 MR. HUNT: No objection.

7 THE COURT: Okay. So, I have the Special Verdict
8 Form. I've gone through that. Any proposed changes on that?

9 MR. HUNT: Judge, on Question Number One, given the
10 other Instruction, I think it would be appropriate to have:
11 Was Express Ranches-slash-James Rockenfield -- and then also
12 Michael Norman and James Wilson. It kind of -- it makes it
13 awkward a little, but I think for it to be proper, considering
14 we're telling the jury that Express is responsible for any
15 negligent acts, then they ought to be included in here, just
16 to make it clear.

17 MR. RIMMER: I agree if the other Instructions --

18 THE COURT: Okay.

19 MR. RIMMER: -- [inaudible].

20 THE COURT: All right. So, James Norman and Michael
21 Wilson, was it?

22 MR. HUNT: It's -- I think it's the opposite. It's
23 Michael Norman and James Wilson.

24 THE COURT: All right. Let's go ahead and make that
25 change. Any other changes?

1 MR. HUNT: On Question Two, I --

2 THE COURT: Same thing?

3 MR. HUNT: Well, it's the same thing.

4 THE COURT: Any objection to that?

5 MR. RIMMER: I --

6 MR. HUNT: Here's why I -- let me just hesitate
7 and --

8 THE COURT: All right.

9 MR. HUNT: -- we can visit about this and decide what
10 the best option is. It may be that given that we've set it
11 all out in Question One, Question Two simply read, was any
12 negligence of Express Ranches -- I don't know. I mean it's
13 probably best to include them. I -- so I would be comfortable
14 with: Was any negligence of Express Ranches a cause of
15 injuries, since we've already set forth above the full set,
16 but if we'd rather have all four of them in there, I'm okay
17 with that.

18 MR. RIMMER: It's probably -- might be best to
19 [inaudible] side of precision.

20 MR. HUNT: Put them in there?

21 MR. RIMMER: And name them.

22 THE COURT: All right. Let's go ahead and do that.
23 All right. We'll go ahead and do that.

24 And what about Number Four?

25 MR. HUNT: Four -- I guess Number Three as well.

1 THE COURT: Excuse me, that's my bad. Number Four.

2 MR. HUNT: I think Four is different. And -- and Four
3 is different because for punitive damages, I don't think we
4 could get punitive damages for the conduct of the hunters.
5 They don't have the same authority basis, and you know,
6 there's no vicarious liability for punitive damages.

7 So, I think as it's read, it's appropriate, because
8 punitive damages would have to be based on the conduct of
9 Express and their agent for these purposes, Mr. Rockenfield.
10 So, I think that one is a little different.

11 THE COURT: All right.

12 MR. RIMMER: I have no problem with leaving it.

13 THE COURT: As is?

14 MR. RIMMER: Yeah. That's fine.

15 THE COURT: Okay. We'll go ahead and leave Number
16 Four as is. Okay.

17 I don't intend to read the Special Verdict Form for
18 the jury unless you make a request that I do it.

19 MR. HUNT: No, I don't think so. I don't see any need
20 to.

21 THE COURT: Okay. All right.

22 MR. HUNT: Can I make one comment about the Special
23 Verdict Form?

24 THE COURT: Yes.

25 MR. HUNT: On -- I think that at the close of our

1 case -- or I'm sorry, the close of Mr. Rimmer's case, I think
2 we'll also make a Directed Verdict Motion on negligence, based
3 on the evidence that has come into the case. And I only
4 mention the Special Verdict Form because I don't -- I wouldn't
5 want to all of a sudden have to deal with that issue if we're
6 trying to do that.

7 My anticipation would be, if -- obviously not assuming
8 anything in the world -- but if the Court granted it, I think
9 it would only change Instruction Number One of the Special
10 Verdict Form.

11 THE COURT: Okay.

12 MR. HUNT: I would still anticipate that the jury
13 would get the full set of Instruction. It would simply state:
14 The Court has made a judicial determination that Express
15 Ranches is negligent, and then the jury would still answer
16 the rest of the questions. So, I just wanted to kind of let
17 the Court know what our thought process was on that and how
18 that would play out.

19 THE COURT: I appreciate that. I appreciate you
20 giving me a head's up on that.

21 Are there any other Instructions that either party is
22 asking the Court to include in this case?

23 MR. HUNT: None from the Plaintiff. We had -- we had
24 also -- I know that this came up with the Court at the previous
25 hearing, the inherently dangerous issue. There is a separate

1 instruction on inherently dangerous. We didn't include it in
2 this packet.

3 The more we looked at it, the more it is really a non-
4 delegable duty-type issue. It makes a party liable for the
5 actions of an independent contractor. So, we decided, based
6 on that fact, and that that's not an issue in the case, we
7 have not proffered inherently dangerous instruction for that
8 reason.

9 So, I just wanted to make sure the Court -- because I
10 think we talked about providing one.

11 THE COURT: You did.

12 MR. HUNT: And based on further analysis, I think
13 that's the reason we have not proffered one.

14 THE COURT: Okay. Thank you. Mr. Rimmer, any other
15 Instructions that you want to include in this matter?

16 MR. RIMMER: No, Judge.

17 THE COURT: Okay. All right. Before we go into
18 recess, is there anything else we need to deal with
19 tonight?

20 MR. HUNT: No. Nothing from the Plaintiffs, Judge.
21 I think we'll be prepared, as I mentioned -- I would -- I
22 failed when I -- with -- I think what we -- Dr. McGowen is
23 going to be here to testify in the morning. His testimony
24 will be brief.

25 I would like to recall Luke Armstrong on nothing that

1 he testified to this morning. I intended to ask him about
2 his brother, and I failed to do that, so I would call him
3 essentially as a separate witness. We're not going to cover
4 any of the same stuff. And so, I would probably start -- one
5 or the other, depending on that.

6 Those are the only two witnesses. I anticipate both
7 will be certainly under an hour, so we'll be done with our
8 case-in-chief by -- certainly by ten.

9 THE COURT: Oh, okay. All right. Anything else?

10 MR. RIMMER: No, Judge.

11 THE COURT: All right. Thank you, gentlemen.

12 MR. HUNT: Thank you.

13 THE COURT: We'll be in recess.

14

15 [WHEREUPON, the proceedings stood
16 in recess.]

17

18

19

20

21

22

23

24

25