

5-20-2015

## Stiles v. Amundson Clerk's Record Dckt. 43289

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IN THE SUPREME COURT OF THE STATE OF IDAHO

DAVID WAYNE STILES,  
Plaintiff-Appellant,  
vs.  
WALTER A. AMUNDSON,  
Defendant-Respondent.

Supreme Court Case No. 43289

CLERK'S RECORD ON APPEAL

Appeal from the District Court of the Fourth Judicial District, in and for the County of Ada.

HONORABLE RICHARD D. GREENWOOD

JASON R.N. MONTELEONE  
ATTORNEY FOR APPELLANT  
BOISE, IDAHO

MICHAEL P. STEFANIC  
CHIP D. GILES  
ATTORNEYS FOR RESPONDENT  
BOISE, IDAHO

David Wayne Stiles vs. Walter A Amundson

Date	Code	User		Judge
7/3/2013	NCPI	CCMARTJD	New Case Filed - Personal Injury	Richard D. Greenwood
	COMP	CCMARTJD	Complaint Filed	Richard D. Greenwood
7/8/2013	SMFI	MCBIEHKJ	Summons Filed	Richard D. Greenwood
10/4/2013	COMP	CCNELSRF	First Amended Complaint and Demand for Jury Trial	Richard D. Greenwood
	SMFI	CCNELSRF	Summons Filed	Richard D. Greenwood
10/24/2013	ANSW	CCVIDASL	Answer to First Amended Complaint and Demand for Jury Trial (Stefanic for Walter Amundson)	Richard D. Greenwood
	NOTS	CCVIDASL	Notice Of Service	Richard D. Greenwood
	AFOS	CCVIDASL	Affidavit Of Service 10.13.13	Richard D. Greenwood
12/17/2013	NOTC	CCMARTJD	Notice of Change of Address (Chip Giles)	Richard D. Greenwood
2/10/2014	NOTS	TCLAFFSD	Notice Of Service	Richard D. Greenwood
3/26/2014	NOTC	CCVIDASL	Notice of Deposition Duces Tecum of Walter A Amundson	Richard D. Greenwood
	NOTD	CCSWEECE	Notice Of Taking Deposition Duces Tecum of David Wayne Stiles	Richard D. Greenwood
5/9/2014	NOTS	TCLAFFSD	Notice Of Service Of Discovery	Richard D. Greenwood
	RQST	CCHEATJL	Request For Trial Setting	Richard D. Greenwood
5/12/2014	RSPS	TCLAFFSD	Response To Request For Trial Setting	Richard D. Greenwood
5/19/2014	HRSC	TCPATAKA	Hearing Scheduled (Scheduling Conference 07/02/2014 04:45 PM) plaintiff	Richard D. Greenwood
5/28/2014	ORDR	TCPATAKA	Order for Scheduling Conference and Order Re: Motion Practice	Richard D. Greenwood
5/30/2014	MEMO	CCHOLMEE	Memorandum in Support of Motion for Protective Order	Richard D. Greenwood
	AFFD	CCHOLMEE	Affidavit of Barry Trent in Support of Memorandum	Richard D. Greenwood
	NOSV	CCHOLMEE	Notice Of Service	Richard D. Greenwood
	MOTN	CCRADTER	Defendant's Motion for Protective Order	Richard D. Greenwood
6/26/2014	STIP	CCSCOTDL	Stipulation for Scheduling and Planning	Richard D. Greenwood
6/27/2014	HRVC	TCPATAKA	Hearing result for Scheduling Conference scheduled on 07/02/2014 04:45 PM: Hearing Vacated plaintiff	Richard D. Greenwood
7/15/2014	NOTD	CCTHIEKJ	Notice Of Taking Deposition Duces Tecum of Rodger Amundson	Richard D. Greenwood
	NOTD	CCTHIEKJ	Notice Of Taking Deposition Duces Tecum of Wayne Jenkins	Richard D. Greenwood
7/18/2014	STIP	CCTHIEKJ	Stipulation Regarding Protective Order	Richard D. Greenwood
7/30/2014	NOTC	CCMURPST	Amended Notice of Deposition Duces Tecum of Wayne Jenkins	Richard D. Greenwood
	NOTC	CCMURPST	Amended Notice of Deposition Duces Tecum of Roger Amundson	Richard D. Greenwood

David Wayne Stiles vs. Walter A Amundson

Date	Code	User		Judge
8/4/2014	HRSC	TCPATAKA	Hearing Scheduled (Pretrial Conference 04/13/2015 04:00 PM)	Richard D. Greenwood
	HRSC	TCPATAKA	Hearing Scheduled (Jury Trial 05/15/2015 09:00 AM) 4 days	Richard D. Greenwood
8/8/2014	OGPS	DCJOHNSI	Order Governing Proceedings and Setting Trial	Richard D. Greenwood
8/12/2014	AMEN	CCTHIEKJ	Second Amended Notice of Deposition Duces Tecum of Wayne Jenkins	Richard D. Greenwood
	AMEN	CCTHIEKJ	Second Amended Notice of Deposition Duces Tecum of Roger Amundson	Richard D. Greenwood
8/18/2014	MOTN	CCREIDMA	Motion to Disqualify Potential Alternate Judge	Richard D. Greenwood
9/3/2014	ORDR	DCJOHNSI	Order to Disqualify-McKee	Richard D. Greenwood
10/17/2014	ORDR	CCNELSRF	Order on Stipulation Regarding Protective Order	Richard D. Greenwood
11/6/2014	NOSV	CCMURPST	Notice Of Service	Richard D. Greenwood
11/7/2014	NOTS	CCSCOTDL	Notice Of Service	Richard D. Greenwood
11/10/2014	CONT	TCPATAKA	Continued (Jury Trial 05/18/2015 09:00 AM) 4 days	Richard D. Greenwood
12/23/2014	NOTS	TCMEREKV	Notice Of Service	Richard D. Greenwood
1/7/2015	MISC	CCTHIEKJ	Joint Status Report	Richard D. Greenwood
	MISC	TCLAFFSD	Defendant's Preliminary Expert Witness Disclosure	Richard D. Greenwood
1/12/2015	MISC	CCRADTER	Plaintiff's Expert Witness Disclosure	Richard D. Greenwood
1/20/2015	NOTD	CCLOWEAD	Notice Of Deposition Duces Tecum of Crystal Stiles	Richard D. Greenwood
	MOTN	TCMEREKV	Motion For Summary Judgment	Richard D. Greenwood
	MEMO	TCMEREKV	Memorandum In Support Of Motion For Summary Judgment	Richard D. Greenwood
	AFFD	TCMEREKV	Affidavit Of Walter Amundson In Support Of Motion For Summary Judgment	Richard D. Greenwood
	AFFD	TCMEREKV	Affidavit Of Michael P. Stefanic In Support OF Motion For Summary Judgment	Richard D. Greenwood
1/21/2015	NOHG	CCNELSRF	Notice Of Hearing 02/23/15 @ 4 pm	Richard D. Greenwood
1/22/2015	AMEN	CCRADTER	Amended Notice of Deposition Duces Tecum of Crystal Stiles	Richard D. Greenwood
2/4/2015	WITN	CCGARCOS	Defendant's First Amended Expert Witness Disclosure	Richard D. Greenwood
2/9/2015	AFFD	CCBARRSA	Affidavit of Chip Giles in Opposition to Defendant's Motion for Summary Judgment	Richard D. Greenwood
	AFFD	CCBARRSA	Affidavit of Dan Gearing	Richard D. Greenwood
	AFFD	CCBARRSA	Affidavit of Crystal Stiles	Richard D. Greenwood
	MEMO	CCBARRSA	Memorandum in Opposition to Defendant's Motion for Summary Judgment	Richard D. Greenwood
2/17/2015	REPL	TCLAFFSD	Reply Memorandum In Support of Defendant's Motion For Summary Judgment	Richard D. Greenwood

David Wayne Stiles vs. Walter A Amundson

Date	Code	User	Judge
2/18/2015	NOSV	CCBARRSA	Notice Of Service of Discovery Richard D. Greenwood
2/23/2015	HRSC	CCNELSRF	Hearing Scheduled (Motion 02/23/2015 04:00 PM) Richard D. Greenwood
	DCHH	CCNELSRF	Hearing result for Motion scheduled on 02/23/2015 04:00 PM: District Court Hearing Held Court Reporter: Fran Casey Number of Transcript Pages for this hearing estimated: less than 50 Richard D. Greenwood
	HRSC	CCNELSRF	Hearing Scheduled (Motion for Summary Judgment 03/09/2015 03:00 PM) Richard D. Greenwood
	NOHG	CCHEATJL	Amended Notice Of Hearing (March 09 2015@3pm) Richard D. Greenwood
3/9/2015	DCHH	CCNELSRF	Hearing result for Motion for Summary Judgment scheduled on 03/09/2015 03:00 PM: District Court Hearing Held Court Reporter: Casey Number of Transcript Pages for this hearing estimated: Less than 500 pages Richard D. Greenwood
3/16/2015	MOTN	TCHOLLJM	Defendant Walter A Amundson's Motion For Costs Richard D. Greenwood
	AFSM	TCHOLLJM	Affidavit Of Michael P Stefanic In Support Of Motion For Costs Richard D. Greenwood
	MEMO	TCHOLLJM	Memorandum Of Costs Richard D. Greenwood
3/30/2015	NOTH	CCSNELNJ	Notice Of Hearing (4-13-15 @3:30 Richard D. Greenwood
4/6/2015	OBJE	CCBOYIDR	Objection to Defendant's Memorandum of Costs and Motion to Disallow Discretionary Costs Richard D. Greenwood
4/13/2015	HRVC	TCPATAKA	Hearing result for Pretrial Conference scheduled on 04/13/2015 04:00 PM: Hearing Vacated Richard D. Greenwood
	HRVC	TCPATAKA	Hearing result for Jury Trial scheduled on 05/18/2015 09:00 AM: Hearing Vacated 4 days Richard D. Greenwood
	HRSC	TCPATAKA	Hearing Scheduled (Motion 04/13/2015 03:30 PM) motion for costs Richard D. Greenwood
	ORDR	TCPATAKA	Order on Defendant's Motion for Summary Judgment Richard D. Greenwood
	JDMT	TCPATAKA	Judgment Richard D. Greenwood
	CDIS	TCPATAKA	Civil Disposition entered for: Amundson, Walter A, Defendant; Stiles, David Wayne, Plaintiff. Filing date: 4/13/2015 Richard D. Greenwood
	DCHH	TCPATAKA	Hearing result for Motion scheduled on 04/13/2015 03:30 PM: District Court Hearing Held Court Reporter: Fran Casey Number of Transcript Pages for this hearing estimated: less than 50 pages Richard D. Greenwood
5/4/2015	JDMT	TCPATAKA	Amended Judgment Richard D. Greenwood
	STAT	TCPATAKA	STATUS CHANGED: closed Richard D. Greenwood
5/20/2015	NOTA	TCLAFFSD	NOTICE OF APPEAL Richard D. Greenwood

David Wayne Stiles vs. Walter A Amundson

Date	Code	User		Judge
5/20/2015	APSC	TCLAFFSD	Appealed To The Supreme Court	Richard D. Greenwood
6/10/2015	NOTC	CCGRANTR	Notice of Counsel's Change of Address	Richard D. Greenwood
7/30/2015	NOTC	TCWEGEKE	Notice of Transcript Lodged - Supreme Court No. 43289	Richard D. Greenwood



and belief, defendant owns and manages the property and improvements located at 756 W. 4<sup>th</sup> St. Kuna, ID 83634 ("Property").

3. The amount in controversy is greater than the sum of Ten Thousand Dollars (\$10,000), and this claim, therefore, exceeds the jurisdictional limits of the Magistrate's Division and thereby satisfies the jurisdictional threshold of the District Court. Based on the above-allegations, and pursuant to Idaho Code § 5-404, venue for this action is proper in Ada County, Idaho.
4. This Court has jurisdiction over the parties pursuant to Idaho Code § 5-541.

#### **I. FACTUAL ALLEGATIONS**

5. Plaintiff realleges the foregoing Paragraphs as though fully set forth herein.
6. On July 8, 2011, Plaintiff was a social guest on Defendant's property. The residents/tenants of the property including Plaintiff's cousin, Jon Sullivan and upon information and belief Defendant's son, Rodger Admunson were hosting a social gathering involving alcohol along with some other friends. The gathering was centered around a bonfire in the backyard of the residence.
7. On or about the same date, at approximately 1:00 a.m. Plaintiff entered Defendant's premises. Plaintiff left the premises shortly thereafter, in the dark before sunrise. Plaintiff exited through a gate into a walkway and fell on a tree limb approximately four inches in diameter and one and a half feet long. There were approximately seven jagged branches a few feet in length extending from the limb. The presence of the limb caused Mr. Stiles to fall onto an approximately five feet by four feet wooden-frame, glass window, which was standing in the walkway, and propped up by two



approximately two inch by two inch wooden slats. The large jagged limb was also left on the ground in the presence of the walkway.

8. Defendant had previously removed the window from the garage on the premises in order to install a garage door in place of the window. Tenants Jon Sullivan and Rodger Admundson assisted with this task.
9. Upon information and belief, Defendant placed the window in the walkway, and propped the window up with the two small wooden slats.
10. Defendant was on notice that tenants entertained at the property, and conducted social gatherings involving alcohol on the premises. Defendant was also on notice that entrants to the property entered through either the walkway, the garage or the house, and did so at night, in the dark.
11. Prior to the incident, Mr. Stiles had consumed one beer, and poured another beer out on the bonfire to extinguish the flames prior to exiting through the walkway.
12. Defendant and/or tenants failed to maintain their premises in a safe condition and they were aware that by hosting a social gathering, or allowing a social gathering to be held social guests would be on the premises in the nighttime.
13. Immediately after the accident, Plaintiff was transported to St. Alphonsus Boise Medical Center for medical treatment of his injuries from the fall.
14. Due to Defendant's and/or tenant's failure to maintain the premises in a safe condition, and the act of allowing a dangerous defect to exist on the property, and as a proximate cause thereof, Plaintiff tripped on the branch at the end of the walkway and fell onto the window suffering personal injuries, to wit, a severe laceration to his left

arm/left wrist which severed his ulnar nerve. This required surgical intervention to attempt to repair the severed ulnar nerve and convalescence. Due to the severed nerve Plaintiff additionally suffered damage to his left ring and small finger plexus digitorum superficialis tendon. The procedure to repair the ulnar nerve was not completely successful. As a result Plaintiff has suffered reduced use of his left hand and numbness in his fingers.

15. The above-described injuries will likely have permanent, residual effects, and Plaintiff will continue to experience pain, suffering, and will continue to be limited in his normal and daily activities, including work, as a result of the ongoing limited use of his left arm.

16. As a further result of the personal injuries he sustained due to the negligence of the Defendant, Plaintiff has incurred necessary and reasonable medical expenses.

## **II. FIRST CAUSE OF ACTION**

17. Plaintiff realleges the foregoing Paragraphs as though fully set forth herein.

18. Prior to, and at the time of the aforementioned incident, Defendant owed certain duties to Plaintiff, including but not limited to, a duty to share his knowledge of dangerous conditions or dangerous activities with the licensee, and to avoid willful and wanton injury to the licensee.

19. Defendant breached the duty of care owed to Plaintiff.

20. As a direct and proximate result of Defendant's breach of his duty of care and negligent, and or willful and wanton misconduct, and grossly negligent disregard for the safety of Plaintiff, and others similarly situated, Plaintiff has suffered direct and

consequential damages, both special and general in nature, in amounts to be proven at trial.

21. That as an actual and proximate cause of the negligence of the Defendant, Plaintiff suffered a loss of enjoyment of life, including an impairment of facilities and an inability to perform usual activities on account of his injuries.
22. That as an actual and proximate cause of the negligence of the Defendant, Plaintiff suffered permanent impairment and loss of function, loss of consortium, past and present pain and suffering, scarring, mental anguish, emotional distress, humiliation, permanent disability, bodily injuries, and additional injuries and damages yet to be discovered and proven at trial.

### **III. CLAIM FOR ATTORNEY FEES**

Plaintiff has been required to retain the services of YOST LAW, PLLC to prosecute this action and is, thus, entitled to recover reasonable attorney's fees in accordance with Idaho Code and/or other provisions of law or civil procedure.

### **PRAYER FOR RELIEF**

1. For Plaintiff's special and general damages in amounts which may be proven at trial;
2. For costs of suit incurred herein;
3. For reasonable attorney fees to be determined by the Court; and
4. For such and further relief as this Court deems just, equitable, and proper.

### **DEMAND FOR JURY TRIAL**

Pursuant to I.R.C.P. 38(b) Plaintiff hereby demands a jury trial of not less than twelve (12) persons on any and all matters triable by jury in this action.

Dated this 3<sup>rd</sup> day of July, 2013.

YOST LAW, PLLC



---

CHIP GILES, ISB 9135  
Attorney for Plaintiff

Jason R. N. Monteleone  
JOHNSON & MONTELEONE, L.L.P.  
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Facsimile: (208) 947-2424  
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Idaho State Bar No. 5441

NO. \_\_\_\_\_ FILED \_\_\_\_\_ 410  
A.M. \_\_\_\_\_ P.M. \_\_\_\_\_

OCT 04 2013

CHRISTOPHER D. RICH, Clerk  
By DAYSHA OSBORN  
DEPUTY

Chip Giles  
YOST LAW, P.L.L.C.  
4 Ogden Avenue  
P. O. Box 1275  
Nampa, Idaho 83653  
Telephone: (208) 466-9222  
Facsimile: (208) 466-1981  
[chip@wyostlaw.com](mailto:chip@wyostlaw.com)  
Idaho State Bar No. 9135

Attorneys for Plaintiff

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT FOR THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

DAVID WAYNE STILES,  Plaintiff  v.  WALTER A. AMUNDSON,  Defendant	Case No. CV PI 1311963  <b>PLAINTIFF'S FIRST AMENDED COMPLAINT AND DEMAND FOR JURY TRIAL</b>
--	--

COMES NOW, Plaintiff, DAVID WAYNE STILES, by and through his attorneys of record, JASON R. N. MONTELEONE OF JOHNSON & MONTELEONE, L.L.P. and CHIP

GILES, of YOST LAW, PLLC, and for cause(s) of action against the above-named defendant, hereby complains, pleads and alleges as follows:

1. Plaintiff DAVID WAYNE STILES was at all relevant times a resident of Ada County.

2. Defendant WALTER A. AMUNDSON upon information and belief, is an individual residing in either Ada or Boise County. Based upon further information and belief, Defendant owns and manages the property and improvements located at 756 West 4<sup>th</sup> Street, Kuna, ID 83634 ("Property").

3. The amount in controversy is greater than the sum of Ten Thousand Dollars (\$10,000), and this claim, therefore, exceeds the jurisdictional limits of the Magistrate's Division and thereby satisfies the jurisdictional threshold of the District Court. Based on the above-allegations, and pursuant to Idaho Code § 5-404, venue for this action is proper in Ada County, Idaho.

4. This Court has jurisdiction over the parties pursuant to Idaho Code § 5-514.

**FACTUAL ALLEGATIONS**

5. Plaintiff realleges the foregoing Paragraphs as though fully set forth herein.

6. On July 8, 2011, Plaintiff was a social guest on Defendant's property. The occupants of the property, including Plaintiff's cousin, Jon Sullivan, and upon information and belief, Defendant's son, Rodger Amundson, were hosting a social gathering involving alcohol along with some other friends. The gathering was centered around a bonfire in the backyard of the residence.

7. On or about the same date, at approximately 1:00 a.m. Plaintiff entered Defendant's premises. Later that morning, before sunrise, Plaintiff exited the premises through a walkway, tripped over a tree limb, and fell into a large window.

8. The limb was approximately four inches in diameter and one and a half feet long. There were approximately seven jagged branches a few feet in length extending from the limb. Upon information and belief Defendant and/or occupants left the limb lying between the walkway entrance and the window.



(This space intentionally left blank)

9. The window was approximately five feet by four feet. The window was left standing in the narrow walkway, propped up by two approximately two-inch-by-two-inch wooden slats. One of the window panes was shattered, exposing jagged, sharp glass. When Plaintiff tripped over the limb and fell into the window his left hand went through the shattered pane, resulting in severe laceration to his left arm/wrist.



10. Upon information and belief, Defendant had previously removed the window from the Property's garage in order to install a garage door. Upon further information and belief, occupants Jon Sullivan and Rodger Amundson assisted Defendant with removal of the window.

11. Upon information and belief, Defendant placed and/or instructed occupants Jon Sullivan and Rodger Amundson to place the window in the walkway, and prop up the window up with two small wooden slats.

12. Upon information and belief, Defendant was on notice that tenants entertained at the property, and conducted social gatherings involving alcohol on the premises. Defendant was



also on notice that entrants to the property entered and exited through the walkway, the garage, or the front door to the house, and did so at night.

13. Prior to the incident, Plaintiff had consumed a whiskey and coke at approximately 7:00 p.m. on the evening of July 7, 2011. Plaintiff consumed one beer upon arrival at Defendant's residence in the early morning hours of July 8, 2011. Immediately prior to leaving the premises, Plaintiff had opened a second beer and took a few drinks. When the gathering dispersed, he poured the rest of the beer on the bonfire to extinguish the flames prior to exiting through the walkway.

14. Defendant and/or occupants failed to maintain their premises in a safe condition, and they were aware that by hosting a social gathering, or permitting a social gathering to occur, social guests would be on the premises at night.

15. Immediately after the incident, Plaintiff was transported to St. Alphonsus Boise Medical Center for medical treatment of his injuries from the fall.

16. Due to Defendant's and/or occupant's failure to maintain the premises in a safe condition, the act of allowing a dangerous defect to exist on the property, and as a proximate cause thereof, Plaintiff tripped on the limb in the walkway and fell into the window suffering personal injuries, to wit: a severe laceration to his left arm/left wrist which severed his ulnar nerve and damaged his left ring and small finger plexus digitorum superficialis tendon. Surgical intervention and convalescence was required to attempt to repair the severed ulnar nerve. The procedure to repair the ulnar nerve was not completely successful. As a result of the injuries Plaintiff has suffered reduced use of his left hand and numbness in his fingers.

17. The above-described injuries will likely have permanent, residual effects, and Plaintiff will continue to experience pain and suffering, and will continue to be limited in his normal and daily activities, including work, as a result of the ongoing limited use of his left arm.

18. As a further result of the personal injuries he sustained due to the negligence of the Defendant, Plaintiff has incurred necessary and reasonable medical expenses.

### **DAMAGES ALLEGATIONS**

19. Plaintiff realleges the foregoing paragraphs as though fully set forth herein.

20. Prior to, and at the time of the aforementioned incident, Defendant owed certain duties to Plaintiff, including but not limited to, a duty to share his knowledge of dangerous conditions or dangerous activities with the licensee, and to avoid willful and wanton injury to the licensee.

21. Defendant breached the duty of care owed to Plaintiff.

22. As a direct and proximate result of Defendant's breach of his duty of care, negligent, and/or willful and wanton misconduct, and grossly negligent disregard for Plaintiff's safety, Plaintiff has suffered direct and consequential damages, both special and general in nature, in amounts to be proven at trial.

23. That as an actual and proximate cause of the negligence of the Defendant, Plaintiff suffered a loss of enjoyment of life, including an impairment of facilities and an inability to perform usual activities on account of his injuries.

24. That as an actual and proximate cause of the negligence of the Defendant, Plaintiff suffered permanent impairment and loss of function, loss of consortium, past and present pain and suffering, scarring, mental anguish, emotional distress, humiliation, permanent

disability, bodily injuries, and additional injuries and damages yet to be discovered and proven at trial.

**CLAIM FOR ATTORNEY FEES**

Plaintiff has been required to retain the services of JOHNSON & MONTELEONE, L.L.P. and YOST LAW, PLLC to prosecute this action and is, thus, entitled to recover reasonable attorney fees in accordance with Idaho Code and/or other provisions of law or civil procedure.

**PRAYER FOR RELIEF**

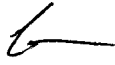
- A. For Plaintiff's special and general damages in amounts which may be proven at trial;
- B. For costs of suit incurred herein;
- C. For reasonable attorney fees to be determined by the Court; and
- D. For such and further relief as this Court deems just, equitable, and proper.

**DEMAND FOR JURY TRIAL**

Pursuant to I.R.C.P. 38(b), Plaintiff hereby demands a jury trial of not less than twelve (12) persons on any and all matters triable by jury in this action.

Dated this 4<sup>th</sup> day of October, 2013.

YOST LAW, PLLC

By:   
\_\_\_\_\_  
Chip Giles  
Attorney for Plaintiff

NO \_\_\_\_\_  
AM \_\_\_\_\_ FILED \_\_\_\_\_  
P.M. *4:16*

OCT 24 2013

CHRISTOPHER D. RICH, Clerk  
By STEPHANIE VIDAK  
DEPUTY

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Walter A. Amundson

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

DAVID WAYNE STILES,

Plaintiff,

vs.

WALTER A. AMUNDSON,

Defendant.

Case No. CV-PI 1311963

**ANSWER TO FIRST AMENDED  
COMPLAINT AND DEMAND FOR  
JURY TRIAL**

Fee Category: I-1  
Fee: \$66.00

COMES NOW the above-entitled Defendant, Walter A. Amundson, and answers Plaintiff's First Amended Complaint as follows:

FIRST DEFENSE

The Complaint fails to state a claim against this answering Defendant upon which relief can be granted.

**ANSWER TO FIRST AMENDED COMPLAINT AND DEMAND FOR JURY TRIAL - 1**

000019

*SV*

SECOND DEFENSE

1)

This answering Defendant denies each and every allegation of the Complaint not herein expressly and specifically admitted.

2)

With respect to the allegations contained in Paragraph 2 of Plaintiff's Complaint, Defendant Walter A. Amundson admits only that he lived in Boise County at the time of the incident referred to in the Complaint. Defendant further admits only that he owns the property located at 756 W. 4<sup>th</sup> Street, Kuna, Idaho 83634. Defendant denies the remaining allegations contained in this paragraph at this juncture.

3)

With respect to the allegations contained in Paragraph 9 of Plaintiff's Complaint, Defendant admits only that a bay window, approximately 4 x 6 foot, was being stored on the side of the home, leaning against the fence. Defendant denies the remaining allegations contained in this paragraph at this juncture.

4)

With respect to the allegations contained in Paragraph 10 of Plaintiff's Complaint, Defendant admits only that Defendant and his son Roger Amundson had previously removed the bay window from the property in order to install a garage door. Defendant denies the remaining allegations contained in this paragraph.

5)

With respect to the allegations contained in Paragraph 11 of Plaintiff's Complaint, Defendant and his son Roger Amundson stored the window on the side of the home and leaned the same up against a fence. Defendant denies the remaining allegations contained in this paragraph.

6)

With respect to the allegations contained in Paragraph 12 of Plaintiff's Complaint, Defendant admits only that he was aware that on occasion people were invited over to the property. Defendant denies the remaining allegations contained in this paragraph.

THIRD DEFENSE

Plaintiff was guilty of negligent and careless misconduct at the time of and in connection with the matters and damages alleged, which misconduct on his part proximately caused and contributed to said events and resultant damages, if any.

FOURTH DEFENSE

Plaintiff is not the real party in interest as respects all or a part of his claim, contrary to Rule 17, Idaho Rules of Civil Procedure.

FIFTH DEFENSE

Plaintiff's damages, if any, were proximately caused by the superseding, intervening negligence, and omissions or actions, of other third persons, and any negligence or breach of duty on the part of this Defendant, if any, was not a proximate cause of the alleged loss to Plaintiff. In asserting this defense, this Defendant does not admit to any negligence or blameworthy conduct.

SIXTH DEFENSE

Plaintiff has, and continues to have, the ability and opportunity to mitigate the damages alleged with respect to the subject matter of this action, and has failed to mitigate said damages, if any were in fact incurred.

SEVENTH DEFENSE

Plaintiff has waived, or by his conduct is estopped from asserting, the causes of action contained in his Complaint.

EIGHTH DEFENSE

Other third persons, not in this Defendant's control, were guilty of

negligent and careless misconduct at the time of and in connection with the matters and damages alleged, which misconduct on their part proximately caused and/or contributed to said events and Plaintiff's resultant damages, if any.

NINTH DEFENSE

Plaintiff has failed to join an indispensable party(s) to this action.

TENTH DEFENSE

Defendant reserves the right to assert any additional affirmative defenses and matters in avoidance that may be disclosed in the course of additional investigation and discovery, including without limitation, statute of limitations and setoff.

WHEREFORE, Defendant prays that Plaintiff take nothing by his Complaint, that the same be dismissed, and that Defendant be awarded his costs of suit and attorney fees, and such other and further relief as the Court deems just.

JURY DEMAND

DEFENDANT DEMANDS A TRIAL BY JURY.

DATED this 24<sup>th</sup> day of October, 2013.

ANDERSON, JULIAN & HULL LLP

By Michael P. Stefanic  
Michael P. Stefanic, Of the Firm  
Attorneys for Defendant, Walter A. Amundson

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 24<sup>th</sup> day of October, 2013, I served a true and correct copy of the foregoing **ANSWER TO FIRST AMENDED COMPLAINT AND DEMAND FOR JURY TRIAL** by delivering the same to each of the following attorneys of record, by the method indicated below, addressed as follows:

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Attorneys for Defendant,  
Walter A. Amundson

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

DAVID WAYNE STILES,  
Plaintiff,

vs.

WALTER A. AMUNDSON,  
Defendant.

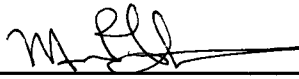
Case No. CV-PI 1311963

**DEFENDANT'S MOTION FOR  
SUMMARY JUDGMENT**

COMES NOW Defendant Walter A. Amundson, by and through his counsel of record, Anderson, Julian & Hull LLP, and, pursuant to I.R.C.P. 56, hereby moves this Court for an order of summary judgment dismissing the Plaintiff's claims in this matter. This Motion is support by a memorandum of law, Affidavit of Walter Amundson and Affidavit of counsel. Oral argument is hereby requested.

DATED this 20 day of January, 2015.

ANDERSON, JULIAN & HULL LLP

By   
Michael P. Stefanic, Of the Firm  
Attorneys for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 20 day of January, 2015, I served a true and correct copy of the foregoing **DEFENDANT'S MOTION FOR SUMMARY JUDGMENT** by delivering the same to each of the following attorneys of record, by the method indicated below, addressed as follows:

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Attorneys for Defendant,  
Walter A. Amundson

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

DAVID WAYNE STILES,

Plaintiff,

vs.

WALTER A. AMUNDSON,

Defendant.

Case No. CV-PI 1311963

**MEMORANDUM IN SUPPORT OF  
DEFENDANT'S MOTION FOR  
SUMMARY JUDGMENT**

COMES NOW Defendant, Walter Amundson, by and through its counsel of record, Anderson, Julian & Hull, LLP, and hereby submits its *Memorandum in Support of Motion for Summary Judgment* ("Motion") as follows:

**MEMORANDUM IN SUPPORT OF DEFENDANT'S MOTION FOR SUMMARY  
JUDGMENT - 1**

## I. INTRODUCTION

This case involves a claim for personal injury by the Plaintiff, David Stiles, who was a social guest of tenants occupying property located at 756 W. 4<sup>th</sup> Street, Kuna, Idaho 83634. According to the Complaint, at approximately 1:00 a.m. on July 8, 2011, Mr. Stiles entered the premises to attend a social gathering involving alcohol being held in the backyard organized and conducted by one of the tenants, John Sullivan. **Complaint**, ¶ 6. Mr. Stiles alleges that at some point during the night, he attempted to leave the property by exiting the backyard through a gate and onto a walkway located on the side of the house. **Id.**, ¶ 7. Mr. Stiles asserts that he fell on a tree limb approximately four inches in diameter and one and a half feet long that was located on the walkway. **Id.** Further, Mr. Stiles alleges that the presence of the tree limb caused him to fall onto a wooden-frame glass window, which was allegedly standing in the walkway and propped up against a fence. **Id.**

Plaintiff has asserted in the Complaint that Walter Amundson, as the owner of the property, owed him a duty as a licensee to share his knowledge of dangerous conditions or dangerous activities on the property and to avoid causing willful and wanton injury to the Plaintiff. **Complaint**, ¶ 18. Plaintiff claims that Mr. Amundson breached that duty. **Id.**, ¶ 19. Therefore, Plaintiff seeks both special and general damages against Defendant for the injuries allegedly suffered as a result of the incident.

## II. STATEMENT OF FACTS

It is undisputed that Defendant is the owner of the property located at 756 W. 4<sup>th</sup> Street, Kuna, Idaho 83634. Mr. Amundson purchased the real property at issue in this litigation sometime in 2007. *See Affidavit of Walter Amundson in Support of*

**Defendant's Motion for Summary Judgment** ("Amundson Affidavit"), ¶ 2. He has never personally resided in the residence and has always utilized the residence as a rental property. *Id.* He also personally manages the property and has never utilized the services of a property manager. *Id.*

In July 2011, there were three tenants renting the property at issue. **Amundson Affidavit**, ¶ 3. The tenants included John Sullivan, Wayne Jenkins and Walter's son, Roger Amundson. *Id.* The tenants were in charge of keeping the property in a well-kept and clean condition. *Id.* If there were any repairs or maintenance which was needed with respect to the property, Walter undertook the responsibility pursuant to the lease agreements with the tenants to conduct such repairs and maintenance. *Id.*, ¶ 4.

Walter Amundson generally visited the rental property twice per month. *Id.*, ¶ 5. The primary purpose of those visits was to collect rent from tenants and also to perform any repairs or maintenance work if notified by one of the tenants that there was an issue with the property to address. *Id.* Examples of some types of maintenance Walter has performed on the property prior to July 2011 included installing sprinklers, repairing the fence, replacing windows and fixing the roof. *Id.*, ¶ 6. However, when visiting the property to collect rent or perform any requested maintenance, Walter did not generally inspect the entire property, as he respected the privacy of the tenants and relied on their input as to any concerns they had or maintenance issues they believed needed to be addressed. *Id.*, ¶ 7.

Prior to July 2011, Walter did not have any significant problems with the three tenants. **Amundson Affidavit**, ¶ 8. All three tenants paid their rent and he had no complaints from neighbors regarding the tenants. *Id.* Walter was generally aware that

one of the tenants, John Sullivan, invited people over to the property for social gatherings in the backyard from time to time. *Id.* However, he never received noise or any other complaints from neighbors and he is not aware of any occasions where law enforcement made a visit to the property due to any complaints or problems involving Mr. Sullivan's gatherings. *Id.*

Sometime in mid-June 2011, Walter removed a bay window from the home in order to install a garage door for the property, which would allow the tenants to store items such a motorcycle inside the garage. *Amundson Affidavit*, ¶ 9. The window was approximately eight feet long and four feet high and weighed at least 200 pounds. *Id.* Walter's son Roger helped him remove the window. *Id.*

Once Walter removed the window from the residence, Roger helped him move it and it was temporarily placed against a white picket fence next to the driveway at the front of the property until I could sell the window on Craigslist. *Id.*, ¶ 10. At the time the window was placed against the white picket fence, the window was intact and there was no broken glass. *Id.*

Walter is now aware that an incident involving Mr. Stiles occurred on July 8, 2011, whereby the Plaintiff, David Stiles allegedly fell and injured himself on the bay window when visiting the property while attending one of Mr. Sullivan's social gatherings. *Id.*, ¶ 11. Walter has never met Mr. Stiles prior to this lawsuit. *Id.* He was not made aware of the alleged incident involving Mr. Stiles until a few days after it allegedly happened. *Id.*, ¶12. He came to the property in mid-July 2011 to collect rent and Wayne Jenkins generally explained that an incident occurred and Walter was shown the area where the incident allegedly occurred. *Id.*

Upon investigating the incident, Walter learned, for the first time, that the bay window was not in the location where he had placed it after removing it from the residence. **Amundson Affidavit**, ¶ 13. Instead of leaning up against the white picket fence at the front of the property, it was leaning up against the cedar fence further back on the side of the property. *Id.* He also noticed that the window was broken. *Id.* However, Walter was unable to determine whether it became broken as a result of the incident involving Mr. Stiles. *Id.*

After the subject lawsuit was filed, Walter came to learn that the window had become broken while stored at the front of the property along the white picket fence. *Id.*, ¶ 14. He also learned that at some point after the window became broken, it was moved and placed further back on the property and propped up against the cedar fence on the side of the residence. *Id.* Walter is also now aware of Mr. Stiles' allegations that, on or about July 8, 2011, he was attending a social gathering hosted by John Sullivan. *Id.*, ¶ 15. Mr. Stiles asserts that he was attempting to leave the gathering late at night and was walking from the backyard to the front of the property by utilizing a path located on the side of the house. *Id.* He is also now aware that Mr. Stiles alleges that the accident occurred when he tripped on a wooden stump which was resting on the pathway on the side of the yard and fell into the window that, unbeknownst to Walter, had been moved from the white picket fence to the cedar fence in this area. *Id.*

Prior to the accident, Walter Amundson was never made aware that the tenants had placed or were storing any items on the side of the yard. **Amundson Affidavit**, ¶ 16. He certainly was not aware of the existence of a wooden stump or the bay window being relocated in that area at the time of the alleged accident. *Id.*

### III. LEGAL STANDARD

A party is entitled to summary judgment "if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." **I.R.C.P. 56(c)**. "When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of that party's pleadings, but the party's response . . . must set forth specific facts showing that there is a genuine issue for trial." **I.R.C.P. 56(e)**. In doing so, "[t]he plaintiff must do more than present a scintilla of evidence, and merely raising the 'slightest doubt' as to the facts is not sufficient to create a genuine issue." *Jarman v. Hale*, 122 Idaho 952, 842 P.2d 288 (Ct. App. 1992); *Edwards v. Conchemco, Inc.*, 111 Idaho 851, 853 (Ct. App. 1986). Furthermore, "the party opposing the motion may not merely rest on the allegations contained in the pleadings; rather, evidence by way of affidavit or deposition must be produced to contradict the assertions of the moving party." *Ambrose v. Buhl Joint Sch. Dist. No. 412*, 126 Idaho 581, 584 (Ct. App. 1995) (quoting *Podolan v. Idaho Legal Aid Serv., Inc.*, 123 Idaho 937 (Ct. App. 1993)).

[A motion for summary judgment] should not be construed to mean that the burden is on the party moving for summary judgment to produce evidence showing the absence of a genuine issue of material fact, even with respect to an issue on which the non-moving party bears the burden of proof. Instead, as we have explained, the burden on the moving party may be discharged by "showing" - that is, point out the District Court - that there is an absence of evidence to support the non-moving party's case.

*Celotex v. Catrett*, 477 U.S. 317, 325 (1986).



The primary issue on summary judgment in this case is whether the Defendant owed Plaintiff a duty of care under the circumstances. The existence of a duty is a question of law over which this Court has the authority to determine on summary judgment. *Turpen v. Granieri*, 133 Idaho 244, 247, 985 P.2d 669, 672 (1999).

#### IV. ARGUMENT

Defendant asserts that he is entitled to summary judgment in this matter because, based upon the undisputed facts in this matter, the tenants of the property were the persons who owed any applicable duty of care to Mr. Stiles under the circumstances. The tenants had control of the property for the purposes of a premises liability analysis and also had the relevant duty to ensure that their licensees were made aware of any potential dangers to safety existing on the property. Defendant also asserts that he was not aware of any potential safety dangers existing on the property at the time of the accident and, certainly, was not aware of the existence of the tree stump or broken window. Finally, Defendant asserts that he is not legally liable for activities taking place on the property by tenants or their social guests.

The elements of a cause of action for negligence are: a duty, recognized by law, requiring the defendant to conform to a certain standard of conduct; a breach of the duty; a causal connection between the defendant's conduct and the plaintiff's injuries; and actual loss or damage flowing from those injuries. *Coghlan v. Beta Theta Pi Fraternity*, 133 Idaho 388, 398, 987 P.2d 300, 310 (1999). A landowner's duty to a person entering his or her land is dependent upon the status of that individual. See *Keller v. Holiday Inns, Inc.*, 107 Idaho 593, 595, 691 P.2d 1208, 1210 (1984). Additionally, the general rule of premises liability is that one having control of the

premises may be liable for failure to keep the premises in repair. See *Harrison v. Taylor*, 115 Idaho 588, 596, 768 P.2d 1321, 1329 (1989); *Heath v. Honker's Mini-Mart, Inc.*, 134 Idaho 711, 713, 8 P.3d 1254, 1256 (Ct. App. 2000).

The distinction between trespassers, licensees, and invitees is the controlling test in determining the scope and extent of the duty of care owed by landowners to entrants. *O'Guin v. Bingham County*, 139 Idaho 9, 14, 72 P.3d 849, 854 (2003). See also *Holzheimer v. Johannesen*, 125 Idaho 397, 399, 871 P.2d 814, 816 (1994). A licensee is a visitor who goes upon the premises of another with the consent of the landowner in pursuit of the visitor's purpose. *Id.* A social guest is a licensee and the duty owed to a licensee is narrow. *Id.* The occupier of land is only required to share with a licensee knowledge of dangerous conditions or activities on the land. *Id.* at 400, 871 P.2d at 817. It is undisputed between the parties that Mr. Stiles was a social guest to the property and, therefore, occupies the status of licensee. See *Complaint*, ¶ 18.

**A. The Tenants Were in Control of the Property for Purposes of Determining Which Parties Owed a Duty of Care to Plaintiff**

It is undisputed that while the Defendant owned the property at issue at the time of the accident, he was not occupying it at any time. Rather, the property was being leased to three tenants, who exercised possession and control of the property. A party, other than the owner, having control of the subject "premises is deemed, so far as third parties are concerned, to be the owner, and in case of injury to third parties occasioned by the condition or use of the premises, the general rule is that the [person in control of the subject premises] may be liable for failure to keep the premises in repair." See *Johnson v. K-Mart Corp.*, 126 Idaho 316, 317, 882 P.2d 971, 972 (Ct. App. 1994); see

also *Harrison v. Taylor*, 115 Idaho 588, 596, 768 P.2d 1321, 1329 (1989).

When the issue concerns the duty a landlord owes the social guests of a tenant, Idaho case law clearly demonstrates that it is the entity having control over the property that bears the burden of warning social guests of dangerous conditions on the property. In *Keller v. Holiday Inns., Inc.*, 105 Idaho 649, 671 P.2d 1112 (Ct. App. 1983), *vacated on other grounds*, 107 Idaho 593, 691 P.2d 1208 (1984), the Idaho Court of Appeals summarized the standard thusly:

A person who enters the property of another with passive permission or as a mere social guest traditionally has been held to understand that he must take the land as the possessor uses it. This entrant, classified by the law as a licensee, is expected to be alert and to protect himself from the risks he encounters. Accordingly, the duty owed to a licensee with respect to such risks is narrowly restricted. The possessor is required simply to share his knowledge of dangerous conditions or dangerous activities with the licensee. When such a warning has been given, the possessor's knowledge is no longer superior to that of the licensee, and the possessor's duty extends no farther. Of course, the possessor must avoid willful and wanton injury to the licensee. But ordinary negligence allowing an unsafe condition or activity on the property is insufficient, by itself, to impose liability to a licensee.

*Id.* at 652–53, 671 P.2d at 1115–16 (citation omitted) (emphasis added). See also *Harrison v. Taylor*, 115 Idaho 588, 595–96, 768 P.2d 1321, 1328–29 (1989).

Idaho appellate premises liability cases involving tenants have primarily involved duties owed by tenants to business invitees rather than social guests. However, those cases unquestionably stand for the proposition that a tenant leasing property is deemed to be the party “in control” of the premises for purposes of determining liability for injuries to a third party based on the condition of the land. See, e.g., *Johnson v. K-*

**Mart Corp.**, 126 Idaho 316, 882 P.2d 971 (Ct. App. 1994) (K-Mart, the tenant of a piece of commercial property, had an absolute duty to keep the parking lot safe for customers); **Heath v. Honker's Mini-Mart, Inc.**, 134 Idaho 711, 714-15, 8 P.3d 1254, 1257-58 (Ct.App.2000) (The tenant having control of the portion of the premises described in the lease agreement may be properly held liable for failure to keep the premises in repair); 52 C.J.S. **Landlord & Tenant** § 434, at 204-05 (1968); 49 AM.JUR.2D **Landlord and Tenant** § 981, at 952 (1970) (in case of injury to third parties occasioned by the condition or use of the premises, the general rule is that the tenant or lessee should be liable for failure to keep the premises in repair).

In this case, Walter Amundson did not occupy the property at issue. There were three tenants leasing the property. Those tenants had control over the property and any conditions which may present a danger of injury to social guests. However, the Plaintiff did not bring suit against the parties actually in control of the property who were both able and under a legal duty to provide warnings of any potentially dangerous conditions to social guests. The correct defendants in this matter should have also been the tenants since Walter Amundson did not break the window at issue, did not move it along a walkway and did not place a wooden stump obstacle on the side yard in a walkway.

**B. Defendant did not Owe the Plaintiff a Duty of Care Based Upon the Circumstances of the Accident**

It is anticipated that the Plaintiff may attempt to argue that, while the tenants of the Kuna property may have owed him a duty under Idaho's common law premises liability standards, Defendant Amundson owed him a general tort duty of care to act reasonably under the circumstances. This same argument was recently raised in

**Robinson v. Mueller**, 156 Idaho 237, 322 P.3d 319 (Ct. App. 2014). In the Robinson case, Marquardt (the landlord) owned a two-story home and rented the second level as an apartment to the tenant. *Id.* at 238. The apartment's bedroom contained access out onto the roof through a recessed dormer. *Id.* A door opened out onto the dormer and the dormer did not contain any railings. *Id.*

One night, the tenant brought a friend (Robinson) back to his apartment. Inside the bedroom, the tenant opened the door to the former to let in cool air and to enjoy the view. *Id.* While the tenant was outside, Robinson walked toward the recessed dormer. *Id.* As she went through the doorway, she tripped and fell, sustaining injury. *Id.* She sued the landlord for damages resulting from the fall on the basis of premises liability. *Id.*

The Court first analyzed the fact that the tenant owed Robinson a duty under premises liability standards to warn her that the dormer did not contain any railings. *Id.*, at 240. Turning next to the issue of a landlord's liability to the tenant's social guest, the Court of Appeals addressed Robinson's argument that the decision in **Harrison v. Taylor** (cited above) compelled a determination that the landlord also owed her a duty of care. *Id.* Harrison involved a factual scenario where a patron was injured in a fall on a private sidewalk in front of a business and sued both the landlord and tenant. The Court in **Robinson** agreed that the **Harrison** decision states that owners of land are under a duty of ordinary care under the circumstances toward invitees who come upon their premises. See Harrison, 115 Idaho at 596; Robinson, 156 Idaho at 240.

However, the Court in Robinson noted that the Harrison decision revealed two key points:

**MEMORANDUM IN SUPPORT OF DEFENDANT'S MOTION FOR SUMMARY JUDGMENT - 11**

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First, this expansion of a landlord's duty-to require reasonable care under the circumstances—was addressing only the duty owed to invitees. Second, tenants are held responsible as if they were the owner with respect to third parties....A landlord generally is not “responsible for injuries to third persons in privity with the tenant which are caused by failure to keep or put the demised premises in good repair.

**Robinson**, 156 Idaho at 240-241.<sup>1</sup> The Court in Robinson further found that although the landlord may have made general repairs to the premises, such acts did not equate to a duty to make the premises safe. *Id.*, at 241. Moreover, the injury sustained to the claimant was not specifically related to a negligent act of repair conducted by the landlord. *Id.*

The Court in Robinson also found that the landlord did not owe a duty to warn the claimant of the dangers of the dormer. *Id.* Rather, under existing case law, the landlord's duty to warn existed only with respect to its tenant, due to the tenant's status of an invitee. *Id.*<sup>2</sup> Ultimately, the Idaho Court of Appeals held that, as between a tenant's social guest and the landlord, the landlord owes a duty only to the extent that, if the landlord voluntarily undertakes repairs on the premises, the landlord must exercise reasonable care in performing such repairs. *Id.* The tenant occupies the position of landowner with respect to its guests because the tenant is the individual in control of the premises during the lease and has control over the guests hosted in the apartment. *Id.*

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<sup>1</sup> The Court in Robinson did write in a footnote to the decision that a landlord could potentially be liable in certain limited circumstances but that the duty of a landlord to third parties is not one of reasonable care under the circumstances. **Robinson**, 156 Idaho at 242. It appears from a full reading of the Robinson decision that such a limited situation would be, for example, if the landlord conducted a repair to the premises and the negligent performance of that repair work caused injury to a third party.

<sup>2</sup> In fact, such a duty was addressed in **Stephens v. Stearns**, 106 Idaho 249, 678 P.2d 41 (1984). That case specifically addressed the duty of a landlord towards its tenant and its holding was limited to that precise context.

Plaintiff has not asserted suit involving the type of limited circumstances where a landlord may be held liable to a social guest of his tenant. This is not a case involving a negligent repair conducted by the landlord which results in injury to a third party. This case also does not involve an injury to a third party occurring in a common area or space over which the tenants did not have custody or control. It was Amundson's tenants who had a duty to warn social guests that a broken window presented a safety risk or to tell guests not to access the front/back yard through the gate on the side of the property because they were storing wood or other objects in that location. Both the broken window and tree stump were objects over which the tenants had full control with respect to where to store them and how to warn social guests or ensure a safe environment.

Simply stated, there is a very small set of circumstances where a landlord can potentially be held liable to his tenants' social guest and each of those circumstances involve the landlord affirmatively doing something which creates an unreasonable risk of harm. Such circumstances do not exist in this case. Therefore, Defendant is entitled to judgment as a matter of law.

**C. Even if Defendant Were Found to Have a Duty of Care, He Did not Have Knowledge of a Dangerous Condition**

Defendant asserts that through the application of the case law set forth above, this Court has an adequate basis to grant Defendant summary judgment because there was no duty of care owed by Walter Amundson, as the landlord, to the tenants' social guest, David Stiles, under the circumstances. However, for the sake of argument only, even if such a duty of care existed to warn the Plaintiff of knowledge of dangerous

conditions or activities on the land or to avoid causing wanton injury to a social guest, there are no facts in the record which could support a liability claim against this defendant.

Where a premises liability claim is based on an alleged failure to warn the claimant of dangerous conditions on the land, the claimant must be able to establish that the owner or occupier knew, or by the exercise of reasonable care should have known, of the existence of the dangerous condition. *See Antim v. Fred Meyer Stores, Inc.*, 150 Idaho 774, 778 (Ct. App. 2011); *see also Tommerup v. Albertson's*, 101 Idaho 1, 3-4 (1980) (before an owner or possessor of land is liable for injury to a third party caused by a danger existing on the land, it must be shown that the owner or possessor had actual or constructive knowledge of the condition); *Hansen v. City of Pocatello*, 145 Idaho 700, 184 P.3d 206 (2008) (the claimant has the burden of proving, via depositions, discovery responses or affidavits that the defendant was or should have been aware of the unsafe condition).

As set forth above, Defendant had no knowledge prior to July 8, 2011, that the bay window at issue had been broken. *See Amundson Affidavit*, ¶¶ 13-14. As a result, he did not have any knowledge that it represented a hazard. He also had no knowledge that the window had been moved further back on the property against the cedar fence and on a pathway. *Id.* Finally, he had no knowledge of the existence of the tree stump lying on the side yard pathway. *Id.*, ¶¶ 15-16.

Defendant's testimony in this regard is also supported by the testimony of Roger Amundson, who was a tenant. Roger Amundson has testified that at some point after the bay window was placed against the white picket fence at the front of the property,



one of the panes of glass was broken by either another tenant (Wayne Jenkins) opening his vehicle door into the glass or by the wind knocking it over. See ***Affidavit of Michael P. Stefanic in Support of Motion for Summary Judgment***, Exhibit A, ***Deposition of Roger Amundson***, pp. 13, 17 and 26.

Roger testified that he did not report to his father that one of the window panes had broken. *Id.*, p. 34. Soon after the window pane broke, Roger moved it towards the back of the property by himself and propped it against a cedar fence. *Id.*, p. 23. He did not seek Walter's help to move the window and also did not inform his dad that he had moved it. *Id.*, p. 34. Roger testified that he primarily moved the window because he did not want it further damaged. *Id.*, pp. 21-22. Roger also testified that he placed the window along the cedar fence because it was out of the way of people. *Id.*, p. 42.

Roger testified as to his best assumption that his roommate, John Sullivan, may have placed the tree stump at issue on the side of the house at some point prior to July 8, 2011, because he would sometimes store wood for evening bonfires that occurred in the backyard in that location. *Id.*, p. 43. However, when Mr. Sullivan was asked what, if anything, was stored on the side of the house in the area where the window was resting along the cedar fence, he testified as follows:

Q: What, if anything, after that window was placed there was stored in this area alongside the garage?

A: Nothing that I recall, until the night of the accident there was some sort of a chunk of a root or a tree stump or—

See ***Stefanic Affidavit***, Exhibit B, ***Deposition of John Sullivan***, p. 46. Mr. Sullivan testified that prior to July 8, 2011, nothing was stored in that area other than the bay window and that there was only well maintained gravel on that side of the property. *Id.*,

pp. 46-48. He did not know how the tree stump ended up on the side of the property.  
*Id.*, p. 48.

There is no evidence in the record creating an issue of material fact that Walter Amundson had actual or constructive knowledge that the bay window had broken or that it had been placed on the side of the house in an area that could potentially be described as an access walkway between the front and back yard. Moreover, there is a complete lack of evidence that Walter Amundson had actual or constructive knowledge that a tree stump had been placed in the same area as the window along the side of the property in such a manner that it could have represented a tripping hazard.

It must be noted that certainly Walter Amundson had no opportunity to provide any type of warning to the Plaintiff. He was not aware of the potential hazards and, as merely the landlord of the property, was not in the position to communicate with the social guests of his tenants who were coming and going on a daily basis. In fact, it is improbable that any landlord is in any type of a reasonable position to issue warnings to social guests of their tenants regarding objects that may be stored on the property in a manner creating a potential trip/fall hazard. This is likely why an Idaho appellate court has never found that a duty of care exists between a landlord and a tenant's social guest. It would be impractical to fashion a workable rule, especially where the landlord does not create the potentially hazardous condition and is not residing on the property to monitor social guests or issue warnings.

**D. Defendant is Not Liable to Activities Taking Place on the Property**

As a final basis for the award of summary judgment in his favor, Defendant notes that Idaho appellate case law clearly holds that a landlord can never be held personally

liable for activities. In *Turpen v. Granieri*, 133 Idaho 244, 985 P.2d 669 (1999), the family of a decedent sued a landlord, contending that the landlord was negligent with respect to known partying activities of his renters and their guests. The decedent was a college student who died of alcohol poisoning while a social guest at a home the landlord had leased to two other college students. The landlord had been told of some parties held at the house by past tenants who had been students at the college. The landlord, however, had received no complaints about the existing lessees or their guests. Referring to premises liability, the Idaho Supreme Court held that the landlord could not be found liable, stating:

While we have previously recognized that a landlord may have responsibilities for assuring that the rented premises are safe [for the tenant], we have imposed that duty only as to the physical premises. Here, we are asked to impose a responsibility for activities taking place on the rented property which in no way implicates the physical condition of the house or surrounding property.

*Turpen*, 133 Idaho at 248, 985 P.2d at 673.

In general, the only type of premises liability upon which a landlord's duty might potentially attach depending on the circumstances applies only to a "condition of the land," as opposed to activity taking place on the land. See, *Restatement (Second) Torts* §§ 355-362; *Pietila v. Congden*, 362 N.W. 2d 328, 333 (Minn. 1985). *Turpen v. Granieri*, 133 Idaho 244, 985 P.2d 669 (1999). Further, the Idaho Supreme Court has said:

A landlord is not deemed the principal of his tenant nor responsible for his torts, active or negligent or for his failure to keep the premises in repair, and on the same principle he is not liable to a person who as servant, licensee, or guest of the tenant is lawfully on the premises, and injured by a

source of danger created or maintained by the tenant without the license or consent of the landlord.

*Olin v. Honstead*, 60 Idaho 211, 91 P.2d 380, 383 (1939).

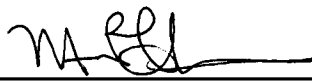
Here, Mr. Amundson's tenants created the source of danger by placing a broken window in an area in which it could potentially become a danger to persons visiting the property and placing and/or storing wood representing a trip/fall hazard in a walkway. Also, it was the tenants' responsibility to keep the property in a kept, organized and clean condition. Thus, the window and tree stump were items that the tenants were responsible for ensuring were not a danger to others. Finally, the tree stump was an item of the kind and nature that was collected and stored by tenant John Sullivan for use with his social gatherings. Thus, the danger involved with the storage of the tree stump was directly related to activities taking place on the land, rather than a permanent-type condition existing on the land. As a result, Plaintiff is seeking liability against Defendant under a legal theory not supportable under Idaho law.

#### IV. CONCLUSION

For the foregoing reasons, Defendant respectfully requests that the Court grant its motion for summary judgment.

DATED this 20 day of January, 2015.

ANDERSON, JULIAN & HULL LLP

By   
Michael P. Stefanic, Of the Firm  
Attorneys for Defendant, Walter A. Amundson

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 20 day of January, 2015, I served a true and correct copy of the foregoing **MEMORANDUM IN SUPPORT OF DEFENDANT'S MOTION FOR SUMMARY JUDGMENT** by delivering the same to each of the following attorneys of record, by the method indicated below, addressed as follows:

Jason R.N. Monteleone	<input checked="" type="checkbox"/>	U.S. Mail, postage prepaid
Johnson & Monteleone, LLP	<input type="checkbox"/>	Hand-Delivered
405 South Eighth Street, Ste. 250	<input type="checkbox"/>	Overnight Mail
Boise, ID 83702	<input type="checkbox"/>	Facsimile
Ph: 208-331-2100		
Fax: 208-947-2424		
<u>Jason@treasurevalleylawyers.com</u>		
<i>Attorneys for Plaintiff</i>		

Chip Giles	<input checked="" type="checkbox"/>	U.S. Mail, postage prepaid
Brady Law, Chtd	<input type="checkbox"/>	Hand-Delivered
St. Mary's Crossing	<input type="checkbox"/>	Overnight Mail
2537 W. State Street, Ste. 200	<input type="checkbox"/>	Facsimile
Boise, ID 83702		
<b>Ph: 208-345-8400</b>		
Fax: 208-322-4486		
<i>Attorneys for Plaintiff</i>		



---

Michael P. Stefanic

**JAN 20 2015**

**CHRISTOPHER D. RICH, Clerk**  
By **KATRINA HOLDEN**  
DEPUTY

Michael P. Stefanic, ISB No. 4029  
ANDERSON, JULIAN & HULL LLP  
C. W. Moore Plaza  
250 South Fifth Street, Suite 700  
P. O. Box 7426  
Boise, ID 83707-7426  
Telephone: (208) 344-5800  
Facsimile: (208) 344-5510  
E-mail: mstefanic@ajhlaw.com

Attorneys for Defendant,  
Walter A. Amundson

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

DAVID WAYNE STILES,

Plaintiff,

vs.

WALTER A. AMUNDSON,

Defendant.

Case No. CV-PI 1311963

**AFFIDAVIT OF WALTER  
AMUNDSON IN SUPPORT OF  
DEFENDANT'S MOTION FOR  
SUMMARY JUDGMENT**

**AFFIDAVIT OF WALTER AMUNDSON IN SUPPORT OF DEFENDANT'S MOTION  
FOR SUMMARY JUDGMENT - 1**

000045



or maintenance work if notified by one of the tenants that there was an issue with the property to address.

6. Examples of some types of maintenance I have performed on the property prior to July 2011 included installing sprinklers, repairing the fence, replacing windows and fixing the roof.

7. When visiting the property to collect rent or perform any requested maintenance, I did not generally inspect the entire property, as I respected the privacy of the tenants and relied on their input as to any concerns they had or maintenance issues they believed needed to be addressed.

8. Prior to July 2011, I did not have any significant problems with the three tenants. All three tenants paid their rent and I had no complaints from neighbors regarding the tenants. I was generally aware that one of the tenants, John Sullivan, invited people over to the property for social gatherings in the backyard from time to time. However, I never received noise or any other complaints from neighbors and I am not aware of any occasions where law enforcement made a visit to the property due to any complaints or problems involving Mr. Sullivan's gatherings.

9. Sometime in mid-June 2011, I removed a bay window from the home in order to install a garage door for the property, which would allow the tenants to store items such a motorcycle inside the garage. The window was approximately eight feet long and four feet high and weighed at least 200 pounds. My son Roger helped me remove the window.



10. Once I removed the window from the residence, Roger helped me move it and it was temporarily placed against a white picket fence next to the driveway at the front of the property until I could sell the window on Craigslist. At the time the window was placed against the white picket fence, the window was intact and there was no broken glass.

11. I am now aware that an incident involving Mr. Stiles occurred on July 8, 2011, whereby the Plaintiff, David Stiles allegedly fell and injured himself on the bay window when visiting the property while attending one of Mr. Sullivan's gatherings. I did not know Mr. Stiles prior to this lawsuit.

12. I was not made aware of the alleged incident involving Mr. Stiles until a few days after it allegedly happened. I came to the property in mid-July 2011 to collect rent and tenant Wayne Jenkins generally explained that an incident occurred and I was shown the area where the incident allegedly occurred.

13. Upon investigating the incident, I learned, for the first time, that the bay window was not in the location where I had placed it after removing it from the residence. Instead of leaning up against the white picket fence at the front of the property, it was leaning up against the cedar fence further back on the side of the property. I also noticed that the window was broken. However, I was unable to determine whether it became broken as a result of the incident involving Mr. Stiles.

14. After this lawsuit was filed, I came to learn that the window had become broken while stored in the location I originally placed it at the front of the property along the white picket fence. I also learned that at some point after the window became

broken, it was moved and placed further back on the property and propped up against the cedar fence on the side of the residence.

15. I am also now aware of Mr. Stiles' allegations that, on or about July 8, 2011, he was attending a social gathering hosted by John Sullivan. Mr. Stiles asserts that he was attempting to leave the gathering late at night and was walking from the backyard to the front of the property by utilizing a path located on the side of the house. I am also now aware that Mr. Stiles alleges that the accident occurred when he tripped on a wooden stump which was resting on the pathway on the side of the yard and fell into the window that, unbeknownst to me, had been moved from the white picket fence to the cedar fence in this area.

16. Prior to the accident, I was never made aware that the tenants had placed or were storing any items on the side of the yard. I certainly was not aware of the existence of a wooden stump or the bay window being relocated in that area at the time of the alleged accident.

FURTHER your Affiant saith not.

Walter Amundson  
Walter Amundson

SUBSCRIBED AND SWORN to before me this 14 day of January, 2015.

(SEAL)



Cheryl Long  
Notary Public for Idaho  
Residing at Coole, Idaho  
My Commission Expires 2/27/2014

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 29 day of January, 2015, I served a true and correct copy of the foregoing **AFFIDAVIT OF WALTER AMUNDSON IN SUPPORT OF DEFENDANT'S MOTION FOR SUMMARY JUDGMENT** by delivering the same to each of the following attorneys of record, by the method indicated below, addressed as follows:

Jason R.N. Monteleone  
Johnson & Monteleone, LLP  
405 South Eighth Street, Ste. 250  
Boise, ID 83702  
Ph: 208-331-2100  
Fax: 208-947-2424  
Jason@treasurevalleylawyers.com  
*Attorneys for Plaintiff*

U.S. Mail, postage prepaid  
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 Facsimile

Chip Giles  
Brady Law, Chtd  
St. Mary's Crossing  
2537 W. State Street, Ste. 200  
Boise, ID 83702  
**Ph: 208-345-8400**  
Fax: 208-322-4486  
*Attorneys for Plaintiff*

U.S. Mail, postage prepaid  
 Hand-Delivered  
 Overnight Mail  
 Facsimile



---

Michael P. Stefanic




1. I am counsel for Defendant, Walter A. Amundson. The information contained herein is of my own personal knowledge.

2. Attached hereto as **Exhibit A** is a true and correct copy of the Deposition of Roger Amundson, taken August 14, 2014.

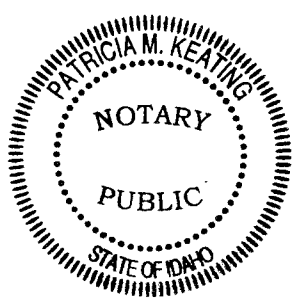
3. Attached hereto as **Exhibit B** is a true and correct copy of the Deposition of John Sullivan, taken May 6, 2014.

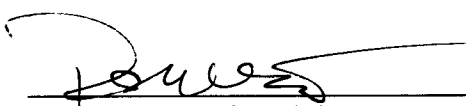
FURTHER your Affiant saith not.

  
\_\_\_\_\_  
Michael P. Stefanic

SUBSCRIBED AND SWORN to before me this 20 day of January, 2015.

(SEAL)



  
\_\_\_\_\_  
Notary Public for Idaho  
Residing at Bowse, Idaho  
My Commission Expires 7.20.17

CERTIFICATE OF SERVICE

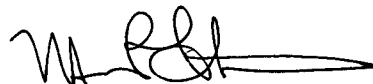
I HEREBY CERTIFY that on this 20 day of January, 2015, I served a true and correct copy of the foregoing **AFFIDAVIT OF MICHAEL P. STEFANIC IN SUPPORT OF DEFENDANT'S MOTION FOR SUMMARY JUDGMENT** by delivering the same to each of the following attorneys of record, by the method indicated below, addressed as follows:

Jason R.N. Monteleone  
Johnson & Monteleone, LLP  
405 South Eighth Street, Ste. 250  
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*Attorneys for Plaintiff*

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Chip Giles  
Brady Law, Chtd  
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Boise, ID 83702  
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Fax: 208-322-4486  
*Attorneys for Plaintiff*

- U.S. Mail, postage prepaid
- Hand-Delivered
- Overnight Mail
- Facsimile



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Michael P. Stefanic

DEPOSITION OF ROGER AMUNDSON - AUGUST 14, 2014

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

DAVID WAYNE STILES, )  
 )  
 Plaintiff, ) CASE NO. CV PI 1311963  
 vs. )  
 )  
 WALTER A. AMUNDSON, )  
 )  
 Defendants. )

INDEX  
WITNESS EXAMINATION BY PAGE  
ROGER AMUNDSON MR. MONTELEONE 4

EXHIBITS  
DESCRIPTION PAGE  
8 - Photo 104

August 14, 2014  
3:25 p.m.  
250 S. 5th St.  
Boise, Idaho

DEPOSITION OF ROGER AMUNDSON

Reported by: M.D. WILLIS, INC.  
M. DEAN WILLIS Certified Shorthand Reporters  
CSR NO. 95 P.O. Box 1241  
Prepared for: Eagle, Idaho 83616  
FOURTH JUDICIAL DISTRICT (208) 855-9151  
(ORIGINAL)

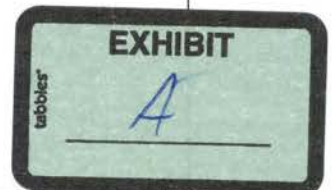
DEPOSITION OF ROGER AMUNDSON taken at the instance of the plaintiff at 250 S. 5th St., Suite 700, in the city of Boise, State of Idaho, commencing at 3:25 p.m., Thursday, August 14, 2014, before M. DEAN WILLIS, Certified Shorthand Reporter and Notary public in and for the State of Idaho, pursuant to notice, and in accordance with the Idaho Rules of Civil Procedure.

APPEARANCES

For the Plaintiff: Jason R.N. Monteleone, Esq.  
JOHNSON & MONTELEONE  
405 S. Eighth St., Ste 240  
Boise, Idaho 83702

For the Defendants: Michael Stefanic, Esq.  
ANDERSON, JULIAN & HULL  
250 S. 5th St., Ste. 700  
Boise, Idaho 83701

Also Present: Chip Giles  
Walter Amundson





DEPOSITION OF ROGER AMUNDSON - AUGUST 14, 2014

1 THURSDAY, AUGUST 14, 2014, 3:25 P.M., BOISE, IDAHO.

2  
3  
4  
5

6 ROGER AMUNDSON,  
7 called as a witness herein, having been first duly sworn,  
8 was examined and testified as follows:

9

10 EXAMINATION

11 BY MR. MONTELEONE:

12 Q. Let the record reflect that this is the time  
13 and the place for the taking of the deposition of Roger  
14 Amundson. This deposition is being taken pursuant to  
15 notice and the Idaho Rules of Civil Procedure. This  
16 deposition will be used for all purposes allowed under  
17 those rules.

18 If you would, please, state your name and spell  
19 your last name for the record.

20 A. Roger Amundson. A-m-u-n-d-s-o-n.

21 Q. And, Mr. Amundson, is it your understanding we  
22 are here over the accident that happened July 8th, 2011,  
23 at the premises located at 756 West 4th Street in Kuna?

24 A. Yes.

25 Q. Now, there was a notice of deposition that went

4

1 out in your case. Have you ever seen -- in this case.

2 Have you ever seen that notice of deposition before?

3 A. I have not.

4 Q. Okay. It asks you to bring certain documents  
5 with you today. Since you have never seen the notice we  
6 are going to go over it together. Had you received the  
7 notice it would have asked you to provide all photos,  
8 documents, or other tangible items which depict the bay  
9 window at issue in this case, whether installed or  
10 uninstalled or any documents or other tangible items  
11 which relate in any way to the incident, which is the  
12 basis for this litigation. The incident, of course,  
13 being what I have mentioned before, the accident on July  
14 8th, 2011. Do you have any photos, documents, or other  
15 items that depict the window that's at issue in this  
16 case?

17 A. I do not.

18 Q. Okay. Do you have any document or other  
19 tangible items that involved the incident that is the  
20 current --

21 A. I don't.

22 Q. Okay.

23 A. I do not.

24 Q. So, you wouldn't have any documents responsive  
25 to that notice anyway; correct?

5

1 A. That is correct.

2 Q. Okay. Have you ever given a deposition before?

3 A. No, I have not.

4 Q. Have you ever given testimony in a court of law  
5 or administrative proceeding?

6 A. No, I have not.

7 Q. Okay. That's a good thing. A couple of ground  
8 rules today that will make things move along a little  
9 more smoothly is can you answer audibly and verbally?

10 You have to give me yeses and no's versus shakes of the  
11 head or uh-huhs or huh-uhs, because Mr. Willis, our court  
12 reporter, won't be able to pick up --

13 A. Right.

14 Q. -- uh-huhs and huh-uhs and shakes of the head.  
15 So, can you answer audibly and verbally for me today?

16 A. Yes.

17 Q. And, then, could you wait for me to finish my  
18 question and, then, I will extend you the same courtesy  
19 and wait for you to finish your answer before I ask my  
20 next question, that way we won't be talking over one  
21 another. Can you do that for me today?

22 A. Yes.

23 Q. Okay. And, then, finally, you understand you  
24 have taken an oath to give true testimony. Your  
25 testimony today is just as it would be in a court of law,

6

1 subject to pain of perjury for falsehood. Do you  
2 understand that?

3 A. Yes.

4 Q. Okay. We are here over a window that was  
5 located on those premises in Kuna I just mentioned  
6 moments ago and in front of you are a number of  
7 photographs that are exhibits and I will have you look at  
8 first Exhibit 5, which is a collection of photographs and  
9 if you would, please, Mr. Amundson, look through each of  
10 the different pages of Exhibit 5 and, then, I'm going to  
11 ask you a few questions.

12 A. All right.

13 Q. Okay. Have you seen those photos that are in  
14 Exhibit 5 before today?

15 A. No, I have not.

16 Q. Okay. Do you recognize what's depicted in  
17 Exhibit 5?

18 A. Yes.

19 Q. Okay. What's depicted in Exhibit 5?

20 A. There is blood on the window and a broken panel  
21 of glass.

22 Q. Okay. Now, that broken panel of glass, when  
23 did it break?

24 A. That I am not sure of.

25 Q. Okay. Do you recall an instance where this

7

DEPOSITION OF ROGER AMUNDSON - AUGUST 14, 2014

1 window had actually been stored after its removal from  
2 the house closer to the front of the property near the  
3 white vinyl fence?

4 A. I have no idea.

5 Q. Okay. Was this window removed from the  
6 structure at 756 West 4th Street?

7 A. Yes.

8 Q. Who removed it?

9 A. Me and my father.

10 Q. Okay. And your father being Walter Amundson;  
11 correct?

12 A. Correct.

13 Q. After you removed it where did you place it?

14 A. Along that fence. The white picket fence.

15 Q. Okay. And I understand there is a white vinyl  
16 fence and, then, going towards the back of the property  
17 it becomes a wooden cedar fence; is that correct?

18 A. No. They are both wood. There is no vinyl.

19 Q. Okay. I have not been to the premises, so I  
20 don't --

21 A. The white picket fence is a wooden fence.

22 Q. Okay. Thank you for the clarification. So,  
23 there was a white fence line and, then, a cedar fence  
24 line?

25 A. Correct.

8

1 Q. Okay. And what side of the property did that  
2 run on, the north, south, east or west?

3 A. Our side is on the west side. So, I placed the  
4 window on the west side of the fence.

5 Q. Okay. But with respect to the house, which is  
6 Exhibit 2 -- do you see Exhibit 2, Mr. Amundson?

7 A. Yes, I do.

8 Q. Okay. And is that the premises located at 756  
9 West 4th Street in Kuna?

10 A. Yes, it is.

11 Q. Okay. And how was oriented? That is where the  
12 porch is, is that the north, south, east or west side of  
13 the house?

14 A. I am looking west in the picture.

15 Q. Okay. So, that white Toyota pickup truck would  
16 be on the east side of the property?

17 A. Correct.

18 Q. And, therefore, the white wooden fence would be  
19 on the east side of the property?

20 A. Correct.

21 Q. Okay. When that window, which is depicted in  
22 Exhibit 5, was removed from the structure it was  
23 initially placed near the white wooden fence; is that  
24 correct?

25 A. It was placed on the white wooden fence.

9

1 Q. Okay. If you look at Exhibit 4, have you seen  
2 exhibit -- that photograph which is Exhibit 4 previously?

3 A. Yes, I have.

4 Q. Okay. When did you see that exhibit?

5 A. By Mike -- he showed it to me in a previous --  
6 previous time. I don't remember exactly when I saw that,  
7 but I have seen it before.

8 Q. Okay. In Exhibit 4 is the same window we have  
9 been discussing depicted?

10 A. Correct.

11 Q. And you see the white slats that are supporting  
12 it?

13 A. Yes.

14 Q. Okay. Are those white slats piece of scrap?

15 A. Yes.

16 Q. And was that scrap taken from when the house  
17 was renovated and a garage door was put in?

18 A. That is correct.

19 Q. When that window that's shown in Exhibits 4 and  
20 5 was placed on the white wooden fence line, were those  
21 slats that are in Exhibit 4 attached to the window?

22 A. Yes.

23 Q. Okay. So, when you said earlier that the  
24 window was actually leaning up against the white wooden  
25 fence --

10

1 A. It kind of is, but it's got these slats on it.

2 Q. Okay. So --

3 A. So, there is a definite structure so it won't  
4 fall into the fence.

5 Q. Okay. And that's what I'm getting at, because  
6 -- and I apologize if my questions seem obvious, but I  
7 have got to understand how this was set up after you guys  
8 removed it from the house. You brought it over to the  
9 white wooden fence and, then, did you use the slats that  
10 are shown in Exhibit 4 to butt up against the white  
11 wooden fence for support?

12 A. That's correct.

13 Q. Okay. Did you have anything over on the other  
14 side of the window holding it in place? That is there  
15 was a side of the window that had slats that butted up  
16 against the white wooden fence. Did the other side have  
17 concrete block or any other device to hold that window in  
18 place?

19 A. No.

20 Q. Okay.

21 A. Just what you're seeing there in that picture.

22 Q. Okay. But that picture shows --

23 A. That window pretty much moved from up here to  
24 here.

25 Q. Okay. How far would that be distance wise?

11

DEPOSITION OF ROGER AMUNDSON - AUGUST 14, 2014

1 MR. STEFANIC: If you know.  
2 THE WITNESS: Twenty feet.  
3 BY MR. MONTELEONE:  
4 Q. Okay. And when you say from here to there,  
5 you're saying from where it was originally placed along  
6 the white wooden fence to where it is actually shown  
7 against the cedar fence in Exhibit 4?  
8 A. That is correct.  
9 Q. Okay. Now, when that window was placed along  
10 the white wooden fence who placed it there?  
11 A. That would be me.  
12 Q. Okay.  
13 A. That was after the fact. Wayne broke a panel  
14 with his car.  
15 Q. Okay. And we are going to talk about that.  
16 What I'm asking first -- when the window was removed from  
17 the house I assume shortly after its removal it was  
18 placed along the white wooden fence; is that correct?  
19 A. Say that exactly again.  
20 Q. Sure. After the window was removed from the  
21 house in order to do the renovation, I assume shortly  
22 after the window's removal from the house, it was placed  
23 up against the white wooden fence with the support slats?  
24 A. That is correct.  
25 Q. Is that correct? So, in other words, was it

12

1 removed and, then, kept in one piece and placed over  
2 where the white wooden fence was?  
3 A. That's correct.  
4 Q. Okay.  
5 A. And the whole thing was to sell it was that was  
6 -- to put it out in front so people can see it.  
7 Q. Okay. And who moved it from next to the house  
8 over to the white wooden fence?  
9 A. Me and my father.  
10 Q. Okay. And is that because your father and you  
11 were the ones primarily doing the renovation on the  
12 property?  
13 A. That's correct.  
14 Q. And the purpose of the renovation was to put in  
15 a garage door where that white -- where that window  
16 that's at issue in this case is located on Exhibit 2?  
17 A. That is correct.  
18 Q. Now, prior to the window being moved from the  
19 white wooden fence to the cedar fencing, one of the panes  
20 of glass was broken; is that correct?  
21 A. That is correct.  
22 Q. How was it broken?  
23 A. Wayne had opened his door into it with his  
24 vehicle.  
25 Q. Now, I got to speak with Wayne earlier this

13

1 afternoon and at the time he had a GMC Sonoma pickup.  
2 A. That is correct.  
3 Q. So, what color was that truck?  
4 A. White.  
5 Q. But that's not the white --  
6 A. That's not --  
7 Q. -- pickup truck shown in Exhibit 2?  
8 A. No. That's dad's tan pickup.  
9 Q. Okay.  
10 A. And this is my buddy Chris' Ford pickup.  
11 Q. Okay. And when you just said this is your  
12 buddy Chris' Ford pickup, you're pointing to the vehicle  
13 in the upper right of Exhibit 4?  
14 A. That is correct.  
15 Q. All right. The pane of glass that was broken  
16 is located on what part of the window?  
17 A. That's what I'm unsure of. It's been too long  
18 ago.  
19 Q. Okay. Sure. If you look at Exhibit 4, from  
20 the ground up you can see three --  
21 A. Okay.  
22 Q. You can see three panes of glass vertically.  
23 Is there a fourth one?  
24 A. No. There was only the three panes.  
25 Q. So, if we look --

14

1 A. Three. Six. Nine.  
2 Q. Okay.  
3 A. Just like you see in Exhibit 2.  
4 Q. Well, in Exhibit 2 it looks like there is 12  
5 panes of glass. Three vertically and four horizontally.  
6 A. I would agree with that, too.  
7 Q. Okay. But if you look at Exhibit 4, it only  
8 looks like there are two horizontally, as opposed to four  
9 horizontally.  
10 A. Right.  
11 Q. So, my question is this, Mr. Amundson. Was  
12 that window that's shown in Exhibit 2 actually two  
13 separate window structures?  
14 A. No. It's all one piece.  
15 Q. Where did the other six panes of glass go that  
16 are shown on Exhibit 2?  
17 A. They are just kind of around the corner. The  
18 glass had a weird round concave to it.  
19 Q. Kind of like a bay window?  
20 A. Yes.  
21 Q. So, are you telling me in Exhibit 4 --  
22 A. They are hiding behind in the picture, because  
23 you're at a weird angle here.  
24 Q. Okay. So, the pane of glass that Wayne broke,  
25 if you look at Exhibit 2, would be the pane of glass in

15

DEPOSITION OF ROGER AMUNDSON - AUGUST 14, 2014

1 the upper left of those 12 panes of glass shown in  
2 Exhibit 2; is that true?  
3 A. I don't remember.  
4 Q. Okay.  
5 A. I really don't remember.  
6 Q. Based on the photographic evidence, if you look  
7 at Exhibit 4, we have the window with -- you see three  
8 vertical panes; correct?  
9 A. Correct.  
10 Q. And you just testified earlier that while you  
11 see two horizontal panes of glass, there are actually two  
12 more that you just can't see because of the angles of the  
13 photograph. Do you recall that testimony?  
14 A. Yes.  
15 Q. So, if we compare Exhibit 4 to Exhibit 2 and we  
16 know the broken pane of glass is the upper right one --  
17 excuse me -- the upper left one in Exhibit 4, doesn't it  
18 follow that that would have been the same one on Exhibit  
19 2 that is the upper left pane out of the 12 panes of  
20 glass?  
21 A. That would be correct.  
22 Q. Okay. Now, that pane of glass was broken by  
23 Wayne's truck door.  
24 MR. STEFANIC: Object to form.  
25 BY MR. MONTELEONE:

16

1 Q. Was that your testimony earlier?  
2 A. You know, I'm really not sure of that. I  
3 really don't remember exactly where Wayne broke the  
4 glass, but there was only one panel of glass broken in  
5 that whole thing.  
6 Q. Correct. Do you recall anything about the wind  
7 blowing down the window onto Wayne's truck?  
8 A. I don't remember any of that, no.  
9 Q. How did you come to learn how that pane of  
10 glass broke?  
11 A. With Wayne's vehicle? He told me that he broke  
12 the window with his truck and it got bent, because I was  
13 wanting to sell the window and that just took value out  
14 of the window.  
15 Q. Okay. And you wanted to sell that window,  
16 because that's something your dad wanted to do?  
17 A. That was something I wanted to do.  
18 Q. Okay. Were you -- if the window had been sold  
19 would you have gotten the money from the sale of the  
20 window?  
21 A. Possibly, yes.  
22 Q. Okay.  
23 A. Yes.  
24 Q. Who else would have gotten it?  
25 A. I -- if dad wanted a part of that he could have

17

1 had a part of that.  
2 Q. Sure. And that's because --  
3 A. That was just between me and my dad.  
4 Q. And you two were jointly working on this  
5 project together?  
6 A. That's correct.  
7 Q. Were your father and you the two that were  
8 primarily handling the renovation of that structure?  
9 A. Yes.  
10 Q. Now, at some point you did get help from John  
11 Sullivan who was a tenant at the time; is that correct?  
12 A. No. That is not correct.  
13 Q. Okay. Did John --  
14 A. He did not help at all in that.  
15 Q. Okay. He didn't do any of the framing?  
16 A. Nothing.  
17 Q. Okay. So, was all of the work done on that  
18 structure to renovate it and put in a garage door where  
19 the bay window had been?  
20 A. That was all prior to John even moving into the  
21 house.  
22 Q. Okay. Let's make a little timeline. When did  
23 you first move into the property?  
24 A. Like '010. Maybe '09.  
25 Q. Okay. Do you remember what season of the year

18

1 it was?  
2 A. I don't. It was summer. I don't remember  
3 exactly the month.  
4 MR. STEFANIC: Can we pause just --  
5 MR. MONTELEONE: Sure. Let's go off the record for  
6 a second.  
7 (An off-the-record discussion ensued.)  
8 (A recess was had.)  
9 BY MR. MONTELEONE:  
10 Q. Back on the record. Mr. Amundson, when we left  
11 off we were talking about when you moved into this  
12 property on 4th Street in Kuna and you thought it was  
13 2009 or 2010 and you thought it was the summertime; is  
14 that correct?  
15 A. That's correct.  
16 Q. Do you remember which month of summer by  
17 chance?  
18 A. I haven't got a clue.  
19 Q. Okay. This accident happened in July of 2011.  
20 So, it would be the summer of 2011. That may help orient  
21 you -- orient us a little bit. Had you been in the house  
22 for a full year or a full two years before the accident?  
23 A. A good two years. Possibly almost three,  
24 because I had my sister there for a whole year, maybe a  
25 year and a half.

19

DEPOSITION OF ROGER AMUNDSON - AUGUST 14, 2014

1 Q. Okay.  
2 A. And she moved down to Cali and, then, I had all  
3 these roommates start moving in.  
4 Q. Okay. And those roommates would include Wayne  
5 Jenkins --  
6 A. And --  
7 Q. -- and John Sullivan.  
8 A. And after they are gone some more, you know,  
9 which just got worse and worse, you know. I'm pretty  
10 much done with roommates.  
11 Q. Okay. Are you still living at that property?  
12 A. Yes, I am.  
13 Q. If you believe you have been in there for three  
14 years before Mr. Stiles' accident, is it possible that  
15 you moved into these premises in the summer of 2008?  
16 A. Possibly. I don't really remember when I moved  
17 in. I don't know exact date.  
18 Q. The window was broken you believe by Wayne's  
19 truck door; is that correct?  
20 A. That is correct.  
21 Q. The door on the passenger side of the truck or  
22 the driver's side?  
23 A. Passenger side.  
24 Q. So, is it fair for me to infer that Wayne had  
25 someone in the passenger side that opened it up and it

20

1 hit the window or had he backed into the driveway?  
2 A. I don't really remember exactly the incident.  
3 MR. STEFANIC: Object to the form. Speculation.  
4 THE WITNESS: But I remember that he just opened the  
5 door into it and broke it.  
6 BY MR. MONTELEONE:  
7 Q. Okay. If you looked at Exhibit 4, how high up  
8 is that pane of glass that's broke, if you can  
9 approximate for me, from the ground to where the pane of  
10 glass is?  
11 A. Like four feet.  
12 Q. Okay. And do you believe that that is  
13 consistent with the car door of a GMC Sonoma pickup  
14 opening up into that window where it was situated on the  
15 white fence?  
16 A. Well, the angle it is now is a bit steeper of  
17 an angle than it was up against the white.  
18 Q. Okay.  
19 A. So, the white was more of a vertical, so --  
20 Q. So --  
21 A. So, there was a difference in height here,  
22 because I structured it out --  
23 Q. Okay.  
24 A. -- further with the slats, so it wasn't falling  
25 into the cedar fence at all.

21

1 Q. But so I'm clear, when the window was first  
2 placed next to the white fence it was more vertical and  
3 steeper than the way it's depicted in Exhibit 4 against  
4 the cedar fence?  
5 A. That is correct.  
6 Q. Why did you make it less vertical when you  
7 moved it to the cedar fence?  
8 A. So it wouldn't fall on the fence. I didn't  
9 want to lean it on the fence like it was with the white  
10 fence.  
11 Q. When it was leaning against the white fence  
12 were the support slats on the side of the fence opposite  
13 the window?  
14 A. No. They were like it is, they were just not  
15 as steep.  
16 Q. Okay. I thought it was steeper when it was  
17 against the white fence compared to the cedar fence?  
18 A. These were more vertical. The slats here were  
19 more vertical. Like -- about like that on the white  
20 fence and I just took them and moved them back.  
21 Q. Correct. And, then, that also made the window  
22 be less vertical.  
23 A. That's correct.  
24 Q. And why did you do that?  
25 A. So it wasn't leaning on this fence.

22

1 Q. Did it make the window more stable?  
2 A. It did a bit, yes. It wasn't so in the wind  
3 either.  
4 Q. Because the cedar fence is taller than the  
5 white fence?  
6 A. That's correct.  
7 Q. And when the window was initially placed  
8 against the white fence that it was more vertical and  
9 more exposed to wind because the white fence was shorter  
10 than the cedar fence; is that correct?  
11 A. That's correct.  
12 Q. Who moved it from where it was located after  
13 the pane of glass was broken to where it's located in  
14 Exhibit 4?  
15 A. That would be me.  
16 Q. Okay. Did anyone help you?  
17 A. No.  
18 Q. So, that's a window, even though it's got all  
19 12 panes, that one person could move?  
20 A. Not lift, but I -- I kind of drug it over  
21 there. You know, balanced and drug it.  
22 Q. Okay. And you dragged it about 20 feet?  
23 A. That's about right. I didn't move it very far,  
24 because it was heavy.  
25 Q. I bet it was really heavy.

23

DEPOSITION OF ROGER AMUNDSON - AUGUST 14, 2014

1 A. Yeah.  
2 Q. How many pounds would you estimate that window  
3 to be?  
4 A. A good five.  
5 Q. Five hundred?  
6 A. Yeah. At least.  
7 Q. Five hundred pounds?  
8 A. Maybe not that much. Maybe like 250, maybe  
9 300, but it -- it was heavy.  
10 Q. But 250 to 300 pounds?  
11 A. Yeah.  
12 Q. Is there any reason that you didn't knock out  
13 the rest of the glass from the pane that had been broken?  
14 A. I had done that. Just not prior to the  
15 accident.  
16 Q. Okay. You did it after the accident?  
17 A. That's correct. So it wouldn't get damaged  
18 anymore.  
19 Q. But can we agree, sir, that the pane of glass  
20 that's broken and shown on Exhibit 5-A was not broken by  
21 Mr. Stiles putting his hand through it?  
22 MR. STEFANIC: Object to form. Calls for  
23 speculation.  
24 THE WITNESS: No, it was not. Stiles did not break  
25 any part of glass period.

24

1 BY MR. MONTELEONE:  
2 Q. So, when Mr. Stiles injured himself --  
3 A. That was a jagged ledge.  
4 Q. Okay.  
5 A. Just like you're seeing in this pic.  
6 Q. So, what broke the glass was something to do  
7 with Mr. Jenkins' vehicle --  
8 A. That's correct.  
9 Q. -- correct? And what Mr. Stiles cut himself on  
10 would have been a piece of jagged glass left after it had  
11 previously been broken by Mr. Jenkins' vehicle?  
12 A. That is correct.  
13 Q. And, then, following Mr. Stiles' accident you  
14 broke out the rest of the glass in that broken pane; is  
15 that correct?  
16 A. That is correct.  
17 Q. Why did you do that?  
18 A. So nobody else would hurt themselves.  
19 Q. Okay.  
20 A. It was a hazard.  
21 Q. Okay.  
22 A. So, I eliminated the hazard. And, then, that  
23 just got -- you know, just sat there for a bit and I just  
24 decided to destroy the whole thing.  
25 Q. And we are going to get to that. The one thing

25

1 I have a question in my mind for a long time is where did  
2 the window go. So, we are going to get into that. But  
3 here the -- talking about -- and just focusing on that  
4 period of time when you moved it from the white wooden  
5 fence to the cedar fence, how long had this window been  
6 up against the white wooden fence prior to the pane of  
7 glass being broken?  
8 A. Probably a month it sat there with a broken  
9 pane on the concrete in front of the white fence there.  
10 Q. Okay. So, let me start at the beginning. I  
11 think I asked a horrible question. The window is removed  
12 from the structure and fairly immediately placed over by  
13 the white wooden fence; is that correct?  
14 A. That's correct.  
15 Q. And your father and you placed it there?  
16 A. That's correct.  
17 Q. And, then, it sat there next to the white  
18 wooden fence for approximately a month before it was  
19 broken?  
20 MR. STEFANIC: Misstates his testimony.  
21 THE WITNESS: At least.  
22 BY MR. MONTELEONE:  
23 Q. Okay. Let me just ask you then. How long did  
24 the window sit along that white wooden fence until it was  
25 -- before it was broken?

26

1 A. That I am unsure of the exact time and length.  
2 Q. Was it greater than a month, though?  
3 MR. STEFANIC: Object to form. Speculation.  
4 THE WITNESS: I wouldn't say greater. I would say  
5 just about a month.  
6 BY MR. MONTELEONE:  
7 Q. Okay. Do you recall when this renovation on  
8 the structure was being done by your dad and you?  
9 A. Say again.  
10 Q. When were your dad and you doing this  
11 renovation on the structure?  
12 A. When was I?  
13 Q. Yes.  
14 A. I have got no idea what date that was either.  
15 Q. Okay. How much before Mr. Stiles' accident,  
16 which is in July of 2011, was the renovation done?  
17 A. Say that again.  
18 Q. Sure. If we used as a point of reference July  
19 of 2011, which is when Mr. Stiles had his accident, if we  
20 use that as our frame of reference, our point of  
21 reference, how much before that was the renovation being  
22 done installing the garage door?  
23 A. It was all done.  
24 Q. Okay.  
25 A. We ripped it all out and had it done before

27

DEPOSITION OF ROGER AMUNDSON - AUGUST 14, 2014

1 Sullivan even moved in there.  
2 Q. Okay. And how much time between the renovation  
3 being completed and Mr. Stiles having his accident?  
4 A. All of it. It was completed completely.  
5 Q. Right. But I -- and I'm sorry to interrupt  
6 you, but I'm wondering what is the period of time from  
7 when you completed the renovation to when the accident  
8 happened? Was it weeks? Months? Years?  
9 A. A few months.  
10 Q. So, does that make the renovation being done in  
11 April of 2011, which would be about three months before  
12 this accident?  
13 MR. STEFANIC: Objection. Speculation.  
14 THE WITNESS: I don't remember really.  
15 BY MR. MONTELEONE:  
16 Q. Okay. You didn't know I was going to be  
17 jogging your memory so much this afternoon.  
18 A. Right.  
19 Q. Is the -- can you quantify for me at all in any  
20 regard the amount of time from when the renovation began  
21 to when it was completed? How long did it take your dad  
22 and you to complete that renovation?  
23 A. Not very long. Maybe two weeks at the most.  
24 Q. And I assume you probably weren't doing it in  
25 the middle of winter?

28

1 A. No. It was -- this is summer.  
2 Q. Okay.  
3 A. About this time of year.  
4 Q. So, you --  
5 A. It was hot. It was warm.  
6 Q. So, that would more than likely make it late  
7 May, June, July time frame. Can we agree on that?  
8 MR. STEFANIC: As to when the renovations were --  
9 BY MR. MONTELEONE:  
10 Q. As to when the renovation was done. Thank you.  
11 And it took about two weeks to complete it; is that  
12 correct?  
13 A. That's correct.  
14 Q. So, the renovation was completed -- if we are  
15 using a loose time frame -- sometime early to mid June.  
16 Does that sound approximately correct?  
17 A. Sure. I mean I really don't remember exactly  
18 the month or what month it was in.  
19 Q. Okay. Well -- and, again, using this as a  
20 point of reference that date of the accident, which is  
21 the end of the first week of July --  
22 MR. STEFANIC: July 8th.  
23 BY MR. MONTELEONE:  
24 Q. Yes. Can you tell me in any estimation how  
25 much time between the completion of the two week

29

1 renovation and that accident happening? A week? A  
2 month? Two months? Can you give me any reasonable  
3 estimate for that?  
4 A. I don't know. I really don't know.  
5 Q. Okay. But are you still relatively confident  
6 that the window had been placed along the white wooden  
7 fence for about a month?  
8 A. Yes. I'm pretty sure of that. At least a  
9 month.  
10 Q. At least a month before the pane was broken  
11 by --  
12 A. Wayne Jenkins.  
13 Q. Okay. His vehicle?  
14 A. That is correct.  
15 Q. And your understanding is that Mr. Jenkins  
16 opened the car door and that broke the pane of glass?  
17 A. That was my understanding. Yes.  
18 Q. What's that understanding based on? Is that  
19 something Wayne told you?  
20 A. That's what Wayne told me. Yes.  
21 Q. Okay. Did Wayne ever mention to you that the  
22 wind had knocked it onto his truck?  
23 A. No. He never mentioned anything. He just  
24 mentioned that he broke the glass window with his door.  
25 Q. And, then, after he mentioned that -- strike

30

1 that. When he mentioned that to you were you inside the  
2 house?  
3 A. Yes, I was.  
4 Q. Okay. Did you, then, go outside to look at  
5 window?  
6 A. I don't remember. I don't know if I did or  
7 not.  
8 Q. Okay. Do you recall how much time between Mr.  
9 Jenkins telling you the pane of glass had been broken and  
10 Mr. Stiles being injured?  
11 A. I'm not following you on that one.  
12 Q. Just wondering if you can tell me the amount of  
13 time between when Wayne tells you, hey, a pane of glass  
14 has been broken in the window and, then, Mr. Stiles being  
15 injured? Was there two weeks between that? Four weeks?  
16 A. There was a lot of time in between that,  
17 because that window sat broken for a while before his  
18 friend got hurt on it.  
19 Q. Okay. And when you say it had sat for a while  
20 before his friend had been hurt on it, did the broken  
21 window sit along the white wooden fence for a while?  
22 A. That's cedar.  
23 Q. Okay.  
24 A. Because I moved it right after Wayne broke it.  
25 Q. That's what I was getting at. So, Wayne comes

31

DEPOSITION OF ROGER AMUNDSON - AUGUST 14, 2014

1 into the house and tells you a pane of glass has been  
2 broken in the window and he tell you that inside the  
3 house; correct?  
4 A. That's correct.  
5 Q. And, then, do you promptly go outside to look  
6 at the window to see how damaged it is?  
7 A. I don't remember exactly if I did or not.  
8 Q. Well, at some point in time you go out and look  
9 at it.  
10 A. At some point, yeah.  
11 Q. Okay.  
12 A. It might have been the next day even.  
13 Q. But it was probably within 48 hours of Mr.  
14 Jenkins telling you?  
15 A. That's correct.  
16 Q. Can we agree on that? And probably in all  
17 likelihood within 24 hours of Mr. Jenkins telling you?  
18 A. I would assume so.  
19 Q. Did you ever have a for sale sign on the  
20 window?  
21 A. I did at one point, yes.  
22 Q. Okay. And which pane of glass did you have it  
23 on?  
24 A. I didn't. I just had it on a -- like a piece  
25 of tape stuck to a panel.

32

1 Q. Okay. Do you remember which panel you had it  
2 stuck to?  
3 A. Like that middle one. Right in the middle.  
4 Q. Okay.  
5 A. Right on that X. It was up high. People can  
6 see it.  
7 Q. And you're looking at Exhibit 2.  
8 A. It was just about right -- right in the middle  
9 of that.  
10 Q. Okay. So, it would be on the second of the  
11 three rows, either two or three columns in. It would be  
12 one of those two middle windows; is that correct?  
13 A. That's correct.  
14 Q. Okay.  
15 A. I would say right in the middle of four.  
16 Q. You had a for sale sign on there or a little  
17 piece of tape that said for sale; is that correct?  
18 A. I had a piece of paper like so --  
19 Q. Okay.  
20 A. -- that said for sale on it that I taped on it.  
21 Q. Did you write that up?  
22 A. Yes, I did.  
23 Q. Okay.  
24 A. I made the for sale sign.  
25 Q. Sure. Did your dad tell you to do it?

33

1 A. Yes. Well, he didn't tell me to do it, but I  
2 asked him if I could sell it.  
3 Q. Uh-huh. And he said that would be fine?  
4 A. That would be fine.  
5 Q. So, Wayne tells you the pane of glass is  
6 broken. At some point shortly after he tells you that  
7 you go out and look at the window and as soon as you look  
8 at it do you drag it back to along the cedar fence?  
9 A. I don't remember any of that. It's been a  
10 couple years, so -- I don't remember.  
11 Q. Okay. Did the window with the broken pane of  
12 glass remain along the white wooden fence after the glass  
13 had broken or did you immediately pull it back to the  
14 cedar fence?  
15 A. I don't remember.  
16 Q. When did you tell your dad that the pane of  
17 glass had been broken?  
18 MR. STEFANIC: Object to form. Assumes facts not in  
19 evidence.  
20 THE WITNESS: I don't think I ever did. It was  
21 after the fact when this accident --  
22 BY MR. MONTELEONE:  
23 Q. Okay. So, prior to the accident involving Mr.  
24 Stiles, you had not told your father that the pane of  
25 glass had been broken?

34

1 A. That is correct.  
2 Q. Had your father been to the premises after the  
3 pane of glass had been broken, but prior to the accident?  
4 MR. STEFANIC: Objection. Calls for speculation.  
5 THE WITNESS: I don't know.  
6 BY MR. MONTELEONE:  
7 Q. Okay. Now, my understanding is your father  
8 would come to the premises to pick up rent each month; is  
9 that true?  
10 A. That is true. So, I'm sure he, you know, had  
11 been there and -- it never got mentioned.  
12 Q. Okay. Well, what day of the month would your  
13 father typically pick up the rent?  
14 A. It was usually about the 15th, because Wayne  
15 got paid every 15th.  
16 Q. Okay.  
17 A. So, I would wait until the 15th and --  
18 Q. So, rent wasn't due the first of the month, it  
19 was typically due the 15th of the month?  
20 A. That is correct. Wayne only got paid every two  
21 weeks and it landed on the 15th and the 28th.  
22 Q. But at this time -- in this time frame around  
23 when this accident happened your dad would pick up the  
24 rent the middle of the month?  
25 A. Close to, but not -- you know, the 15th -- a

35



DEPOSITION OF ROGER AMUNDSON - AUGUST 14, 2014

1 quarter of a month. Yeah. Just about.  
2 Q. Okay. If it was paid on the 15th your dad  
3 might come the 16th or 17th, you know, when ever it  
4 worked out for his schedule, but it was sometime --  
5 several days following the 15th of each month?  
6 A. Correct.  
7 Q. What time of the month was it when Wayne told  
8 you that he had broken the pane of glass?  
9 A. Say again.  
10 Q. What time of the month was it when Wayne told  
11 you he had broken the pane of glass?  
12 A. I have no idea. I have no idea.  
13 Q. How much time past between you first seeing  
14 that pane of glass broken and you dragging the window  
15 back to the cedar line -- cedar fence line?  
16 A. I'm unsure --  
17 MR. STEFANIC: Object to form. Speculation.  
18 THE WITNESS: I have no idea. It's speculation on  
19 the time there.  
20 BY MR. MONTELEONE:  
21 Q. Sure. Let's think about it this way then.  
22 A. I have no idea.  
23 Q. Can you give me an estimate as to how long  
24 after you learned of the pane of glass being broken that  
25 the window with the broken pane of glass stayed along the

36

1 white wooden fence line?  
2 MR. STEFANIC: I'm going to object to the form and I  
3 would just say he can give an estimate if he has facts or  
4 a knowledge to base that on, but I would caution --  
5 nobody wants you to speculate. So, you can answer his  
6 question if you can.  
7 THE WITNESS: I'm sorry. What was your question  
8 again?  
9 BY MR. MONTELEONE:  
10 Q. Of course. How much time past between you  
11 learning of the pane being broken and, then, you moving  
12 the window back along cedar fence line?  
13 A. That I'm not sure of. I really don't know how  
14 long that took.  
15 Q. Can you quantify it in -- was it weeks?  
16 Months?  
17 MR. STEFANIC: Objection. Speculation.  
18 THE WITNESS: I don't know. I really don't know. I  
19 don't remember how long it sat there before I moved it.  
20 BY MR. MONTELEONE:  
21 Q. Were you concerned about having that large  
22 window with the broken pane of glass out on the front  
23 part of the property near the white wooden fence?  
24 A. I was concerned about the broken panel and it  
25 being in the driveway where he can break it more.

37

1 Q. Why did you move the window from where it was  
2 next to the white wooden fence to where it's depicted  
3 along the cedar fence in Exhibit 4?  
4 A. So it wasn't getting damaged.  
5 Q. You weren't concerned about anyone being  
6 injured?  
7 A. No, because this area is a blocked off area and  
8 nobody really goes through this area and the fence here,  
9 gate, you seriously have to lift on it to get it even  
10 open. Like there is a good four inches of lift and the  
11 thing is heavy, so --  
12 Q. When you say the thing, you mean the gate or  
13 the window?  
14 A. The gate.  
15 Q. Okay. The gate that --  
16 A. Nobody is really going through that area.  
17 Q. Okay. Well, there would be these bonfire  
18 parties.  
19 A. And they were going right through the garage.  
20 Garage door open. Back door of the garage open. Right  
21 straight to the pit.  
22 Q. But these bonfires -- get together were  
23 occurring before the renovation was even done, weren't  
24 they?  
25 A. No.

38

1 Q. Okay. We will come back --  
2 A. The renovation happened before Sullivan moved  
3 in.  
4 Q. And is it your testimony there were no bonfire  
5 get together prior to Mr. Sullivan moving in?  
6 A. No.  
7 Q. No, that's not your testimony, or, no, there  
8 weren't any of those bonfire get together?  
9 A. There was no bonfires prior to Sullivan.  
10 Q. Moving in?  
11 A. Correct.  
12 Q. Okay. How long had that window been dragged  
13 back along the cedar fence line where it's depicted in  
14 Exhibit 4 and the accident happening?  
15 MR. STEFANIC: Object to form. Speculation.  
16 THE WITNESS: I have no idea.  
17 BY MR. MONTELEONE:  
18 Q. You don't know how long it was back there  
19 before the accident occurred?  
20 A. I don't. I have no idea.  
21 Q. After the accident happened what became of the  
22 window?  
23 A. Nothing. It sat there.  
24 Q. For how long?  
25 A. For a few weeks after the accident, because

39

DEPOSITION OF ROGER AMUNDSON - AUGUST 14, 2014

1 Sullivan was wanting to do these pictures and stuff.  
2 Q. When did you break the glass out of the pane?  
3 MR. STEFANIC: In relationship to the -- just  
4 anytime?  
5 MR. MONTELEONE: The accident --  
6 THE WITNESS: I don't remember exactly how long.  
7 Like several days later.  
8 BY MR. MONTELEONE:  
9 Q. Okay. Well, at the time these photos were  
10 taken, obviously, the glass had not been broken out of  
11 the busted pane; correct?  
12 A. Correct. And I left that for Sullivan's  
13 picture taking, you know, and, then, I cleaned it out,  
14 you know, like prior -- or after that, you know. Not  
15 sure the time --  
16 Q. I'm just trying to understand the sequence of  
17 events. Because before you said Sullivan wanted to take  
18 photos, so it was there for a few weeks. So, that means  
19 that busted glass was in there for a few weeks. Do you  
20 follow me?  
21 A. Yeah.  
22 Q. Now, the sequence of events is something you  
23 would know about, because I, obviously, wasn't there  
24 during this time frame, nor have I ever been. So, the  
25 accident happens July 8th, 2011. How much time passes

40

1 before you knock that glass out?  
2 A. I have no idea. At least a month. Maybe three  
3 weeks.  
4 Q. Okay. And during that period of time was Mr.  
5 Sullivan asking you to leave that window right where it  
6 is?  
7 A. No. Told him I didn't leave anything. I could  
8 have destroyed that at anytime.  
9 Q. Okay. Well, I thought you said that Mr.  
10 Sullivan --  
11 A. He was wanting to take pictures of it and I  
12 just left it so he could do that. It wasn't a request of  
13 Sullivan's.  
14 Q. Okay.  
15 A. I don't know if that was a good idea to do  
16 that, but I should have just destroyed it as soon as  
17 Wayne broke a panel in it.  
18 MR. STEFANIC: Listen to his questions.  
19 BY MR. MONTELEONE:  
20 Q. Why should you have just destroyed it after  
21 Wayne broke the panel?  
22 A. Because none of this would have occurred.  
23 Q. And, then, there wouldn't have been this --  
24 A. Hazard.  
25 Q. This hazard on your premises?

41

1 A. Right. But, you know, there was not anybody  
2 supposed to even be going through that area to begin  
3 with. That's why I set it in that area, so it was out of  
4 the way of people.  
5 Q. Was there any signage that said no entry on  
6 this area that's depicted with gravel in Exhibit 4?  
7 A. No.  
8 Q. Was there any type of warning?  
9 A. No. There was no warning. I wasn't even at  
10 the house at the time of the accident, so I could have  
11 set up something if I knew.  
12 Q. Okay. But at any rate, in this gravel walkway  
13 area that's in Exhibit 4 where the gate is there is a  
14 latched gate that goes into the back yard; correct?  
15 A. That's correct.  
16 Q. And so that is an area that can be used for  
17 ingress and egress out of the backyard to that property?  
18 A. Not very easily.  
19 Q. And that's because you have to --  
20 A. That's because the gate is so heavy.  
21 Q. But there is still -- it's a hatch gate. It's  
22 not a solid fence line at the end of that --  
23 A. That's correct.  
24 Q. -- walkway that's shown in Exhibit 4?  
25 A. Right. It is a latched gate and it can be

42

1 swung open.  
2 Q. And it clearly was on the date of this  
3 accident?  
4 A. No. He had opened it in the middle of the  
5 night when he going through this area to the accident and  
6 tripped on that.  
7 Q. Tripped on -- what did you just point out?  
8 A. This big stump looking thing that Sullivan has  
9 priorly been burning a bunch of tree limbs and stuff for  
10 the bonfire.  
11 Q. Did you know that that stump that's shown in  
12 Exhibit 4 was the type of wood that Sullivan had been  
13 burning prior to the accident having occurred?  
14 A. Yes. This, plus a bunch of panels from the  
15 neighbors. A big pile of like -- what are those --  
16 pallets. A bunch of pallets and stuff. Bunch of old  
17 Christmas trees and -- he was just acquiring wood at  
18 random all over the place.  
19 Q. Okay. The tree stump that's in Exhibit 4,  
20 looks to me like the bottom part of a Christmas tree.  
21 A. That is correct.  
22 Q. You would agree with that?  
23 A. Yes. And he had priorly burnt part of that and  
24 pulled it back out, so he can dig the pit back out and it  
25 sat there.

43

DEPOSITION OF ROGER AMUNDSON - AUGUST 14, 2014

1 Q. How long was it there in that gravel walkway  
2 that's depicted in Exhibit 4 prior to the accident?  
3 A. That is the same duration of time as the window  
4 sitting on the side of the fence here.  
5 Q. So, that tree stump that's in Exhibit 4 and the  
6 window that's in Exhibit 4 had both been out there in  
7 that walkway area for a period of time before the  
8 accident?  
9 A. That's correct.  
10 Q. And that period of time was at least several  
11 weeks?  
12 A. I would assume. At least.  
13 MR. STEFANIC: Objection. Speculation.  
14 MR. MONTELEONE: Or perhaps a month or more?  
15 MR. STEFANIC: Speculation. Objection.  
16 THE WITNESS: I don't know exactly. I have no idea  
17 of the duration of time.  
18 BY MR. MONTELEONE:  
19 Q. Okay. I'm just following up with what our  
20 prior testimony was, Mr. Amundson, and you said that that  
21 stump and that window had both been out there for a  
22 period of time together in that gravel walkway area.  
23 A. That's correct.  
24 Q. And that period of time existed for a while  
25 before Mr. Stiles had his accident.

44

1 A. That's correct.  
2 Q. Had you ever known anyone at any period of  
3 time that you lived at these premises to walk back  
4 through here?  
5 A. No. He was the first.  
6 Q. Was he the last?  
7 A. At the time, yeah. Nobody had gone through  
8 that.  
9 Q. Up until now has anyone walked through that  
10 gravel walkway area shown in the exhibit since the  
11 accident?  
12 A. No. Other than me, no.  
13 Q. Why have you walked through there?  
14 A. Right now I have got a bunch of boards up here  
15 and that's about the only reason I'm going back there is  
16 to get all of the like posts and stuff that I have placed  
17 there so I can rebuild the fence in the yard. That's  
18 just like random posts that are just sitting there. But  
19 I can acquire them from the front of the house. I don't  
20 need to go through the gate.  
21 Q. Did you ever share with your father that the  
22 window had been damaged before Stiles hurt himself?  
23 MR. STEFANIC: Object to form. Asked and answered.  
24 THE WITNESS: I don't know. Say that again.  
25 BY MR. MONTELEONE:

45

1 Q. Did you ever advise your father of the damage  
2 to the window -- the broken pane of glass prior to Mr.  
3 Stiles having an accident?  
4 MR. STEFANIC: Objection. Asked and answered.  
5 THE WITNESS: I don't know. I don't remember if I  
6 did or not.  
7 BY MR. MONTELEONE:  
8 Q. Did you tell your father about the accident  
9 after Mr. Stiles had it?  
10 A. Yes, I did.  
11 Q. When did you do that?  
12 A. This is after he done the suing and he --  
13 Sullivan was talking to me about it.  
14 Q. Okay. Well, let's go at it from this  
15 direction. How did you find out about the accident?  
16 A. Pretty much Sullivan.  
17 Q. Okay. Did he tell you the day it happened?  
18 A. No. This is a couple days later after the  
19 accident.  
20 Q. Had you been out of town?  
21 A. I was at a buddy's house.  
22 Q. The night of the accident you were at a buddy's  
23 house?  
24 A. The night of the -- I was at a buddy's house  
25 and I came home to that accident.

46

1 Q. What do you mean you came home to the accident?  
2 A. Like I came home and the accident had already  
3 occurred.  
4 Q. Okay. But it was in the morning hours after  
5 the accident, is that correct, or are we talking several  
6 days later?  
7 A. No. This is probably a day later. I would say  
8 a day later.  
9 Q. Okay. Who was the buddy with whom you had been  
10 staying?  
11 A. That would be the Chris here in the pictures.  
12 Q. And what's Chris' last name?  
13 A. Bowler.  
14 Q. Okay. And where does he live?  
15 A. He lives in Nampa.  
16 Q. Okay. Do you happen to know what street?  
17 A. Not exactly, no.  
18 Q. Okay. How do you spell Bowler?  
19 A. B-o-w-l-e-r.  
20 Q. And if Mr. Bowler is here depicted in Exhibit  
21 4 --  
22 A. This is Sullivan you're seeing.  
23 Q. Okay. But that's Mr. Bowler's vehicle --  
24 A. That's correct.  
25 Q. -- depicted in the upper right corner of

47

DEPOSITION OF ROGER AMUNDSON - AUGUST 14, 2014

1 Exhibit 4; correct?  
2 A. Correct.  
3 Q. So, if Mr. Sullivan is there and Mr. Bowler's  
4 vehicle is there, does that help orient you as to when  
5 this photograph was taken?  
6 A. Not at all.  
7 Q. Okay. When you returned to your house after  
8 the accident after being at Mr. Bowler's residence, did  
9 Mr. Bowler drive you home or were you in your own  
10 vehicle?  
11 A. Yes. At the time I did not have a vehicle.  
12 Q. Okay. So, does that help orient you as to when  
13 this photograph would have been taken?  
14 A. Not really.  
15 Q. Okay. Well, we have Mr. Bowler's vehicle. Was  
16 that regularly in the driveway at your house back in July  
17 of 2011?  
18 A. No. He only dropped me off and, then, took  
19 off.  
20 Q. So, this would have been shortly after the  
21 accident; is that correct? This being Exhibit 4.  
22 A. I would say a couple days, yeah.  
23 Q. Now --  
24 A. Possibly that's -- no, that's the broken panel.  
25 Q. Well, it was broken when it got moved back to

48

1 the cedar fence line, so it would have to be broken;  
2 correct?  
3 A. Yeah.  
4 Q. Okay.  
5 A. Yeah.  
6 Q. So, what's depicted in Exhibit 4, that has to  
7 be a broken pane of glass, because that window was never  
8 along the cedar fence line until after the glass had been  
9 broken.  
10 A. That's correct.  
11 Q. Correct? I'm sorry?  
12 A. That is correct.  
13 Q. Okay. Now, we have got Mr. Bowler -- stay with  
14 me here on Exhibit 4, Mr. Amundson. Thank you. We have  
15 got Mr. Bowler's vehicle. We have got John Sullivan  
16 standing there. We have got the window located along the  
17 cedar fence line. All of that told, is it more likely  
18 than not this photo was taken shortly after the accident  
19 happened?  
20 A. I would assume so. I would agree with that.  
21 Q. Would it have been taken near in time to Mr.  
22 Sullivan describing the accident to you?  
23 A. I think this is about the same time that he was  
24 telling me of the accident, then, he went around and took  
25 all these pictures.

49

1 Q. And that would have been within 24 hours or so  
2 after the accident, wouldn't it have?  
3 MR. STEFANIC: Objection. Speculation.  
4 THE WITNESS: I have no idea.  
5 BY MR. MONTELEONE:  
6 Q. I mean this was a big event. Was Mr. Sullivan  
7 shook up?  
8 MR. STEFANIC: Objection.  
9 THE WITNESS: I don't remember that either.  
10 BY MR. MONTELEONE:  
11 Q. What did Mr. Sullivan tell you about the  
12 accident?  
13 A. I don't really remember that either. I don't  
14 remember what his details were.  
15 Q. Can you recount anything that Mr. Sullivan told  
16 you about how the accident happened?  
17 A. I don't.  
18 Q. Did you review the scene of the accident with  
19 Mr. Sullivan at all?  
20 A. No.  
21 Q. Did you discuss with Mr. Sullivan whether Mr.  
22 Stiles had tripped on that wooden stump?  
23 A. Yes. Sullivan has -- is the one who told me  
24 about this stump.  
25 Q. Okay.

50

1 A. That he had tripped on it.  
2 Q. All right. Does that jog your memory as to  
3 anything else Mr. Sullivan told you about the accident?  
4 We know that Mr. Sullivan told you that Mr. Stiles  
5 tripped on the stump. Anything else you can recall Mr.  
6 Sullivan told you about the accident?  
7 A. I don't. I don't remember anything about that.  
8 Q. Do you recall if Mr. Sullivan told you that Mr.  
9 Stiles' put -- cut his arm on the glass --  
10 A. Yes. I --  
11 Q. -- the broken pane of glass?  
12 A. -- can recall that, yes.  
13 Q. Okay. Anything else you can recall that Mr.  
14 Sullivan told you about the accident?  
15 A. No. I don't remember anything he said about  
16 this accident.  
17 Q. After Mr. Sullivan shared with you that the  
18 stump was tripped on by Mr. Stiles and he cut his arm on  
19 a pane of broken glass in the window, what did you think  
20 about the situation?  
21 MR. STEFANIC: Object to form.  
22 THE WITNESS: I have no idea at the time.  
23 BY MR. MONTELEONE:  
24 Q. Well, I'm asking you to recall now what you  
25 thought then. I mean did you think, "Oh, shit, we

51

DEPOSITION OF ROGER AMUNDSON - AUGUST 14, 2014

1 shouldn't have had that stump there?"  
2 MR. STEFANIC: Objection. He didn't have the stump  
3 there.  
4 MR. MONTELEONE: Speaking objections are not  
5 tolerated. You can make your objection to the form.  
6 MR. STEFANIC: Object to the form.  
7 MR. MONTELEONE: You may answer.  
8 THE WITNESS: I'm sorry, rephrase your question.  
9 BY MR. MONTELEONE:  
10 Q. Sure. My question is after Mr. Sullivan --  
11 MR. STEFANIC: Object to the form as well, Jason,  
12 since you're at it. You have represented to him I think  
13 that that stump is where it was at the time of the  
14 accident and you know well from the other testimony that  
15 that's not true.  
16 MR. MONTELEONE: First of all, one witness'  
17 testimony doesn't control, counsel. Just because there  
18 is adverse testimony --  
19 MR. STEFANIC: Be fair to this witness, then.  
20 MR. MONTELEONE: I'm being absolutely fair. He's  
21 the one that resided there. He's the one that knows the  
22 details of this. You and I don't. Neither of us were  
23 there at the time of the accident, counsel. That's why  
24 I'm examining this witness.  
25 MR. STEFANIC: Go ahead.

52

1 BY MR. MONTELEONE:  
2 Q. Mr. Amundson, after it had been recounted to  
3 you by Mr. Sullivan that Mr. Stiles tripped on that  
4 wooden stump and cut his arm on a piece of -- a shard of  
5 glass from the broken pane, did you think, oh, God,  
6 that's a problem?  
7 A. I didn't think of that, no.  
8 Q. What did you think?  
9 A. I didn't at the time.  
10 Q. You didn't think anything about it?  
11 A. No.  
12 Q. Did you think that maybe you needed --  
13 A. I thought it was just another belligerent  
14 accident, you know.  
15 Q. What do you mean another belligerent accident?  
16 Had there been other accidents on the premises?  
17 A. Not as severe as this, no.  
18 Q. Okay. Well, what were the other accidents?  
19 A. Like there was some fighting going on.  
20 Q. Okay. And where did that occur?  
21 A. In the house.  
22 Q. And was that drunken fights?  
23 A. Belligerent fights. Yes.  
24 Q. And --  
25 A. And, you know, things get broken and stuff, but

53

1 nothing really major accident that people got hurt like  
2 this.  
3 Q. Okay. Well, I'm just following up with your  
4 testimony, Mr. Amundson. You said there were other  
5 belligerent accidents.  
6 A. I may have said that wrong.  
7 Q. Okay.  
8 A. I wouldn't say other accidents, but there was  
9 belligerent accidents happening, like as such is what I  
10 just assumed that that's what happened, just, you know, a  
11 belligerent accident.  
12 Q. What do you mean --  
13 A. Everybody is always every day totally slammed  
14 where they can't even walk.  
15 Q. Drunk.  
16 A. Drunk. So, I assumed that's what happened  
17 here.  
18 Q. Right. But do you have any evidence or  
19 information to support that?  
20 A. I don't.  
21 Q. Okay.  
22 A. I really don't have any evidence to back that  
23 up.  
24 Q. Were you at the house at the time of the  
25 accident?

54

1 A. No.  
2 Q. You were over at Mr. Bowler's; correct?  
3 A. That is correct.  
4 Q. And do you have any idea whether Mr. Stiles had  
5 consumed any alcohol or drugs prior to this accident?  
6 A. I do not. I assumed he was drunk with  
7 everybody there.  
8 Q. Do you know that he passed the gaze and the  
9 nystagmus test administered to him by law enforcement  
10 officers following this accident?  
11 MR. STEFANIC: Object to form. Assumes facts not in  
12 evidence.  
13 THE WITNESS: I did not know that.  
14 BY MR. MONTELEONE:  
15 Q. Do you have any reason -- do you have any  
16 information whatsoever that Mr. Stiles was intoxicated at  
17 the time of this accident?  
18 A. I have no evidence of that.  
19 Q. Getting back to these fights. Did the fights  
20 always occur inside the house?  
21 A. No.  
22 Q. Did they occur on --  
23 A. Out on the lawn here.  
24 Q. The front lawn? Did they ever spill back into  
25 this walkway graveled area on Exhibit 4?

55

DEPOSITION OF ROGER AMUNDSON - AUGUST 14, 2014

1 A. No.  
2 Q. Did the fighting ever happen in the backyard?  
3 A. No. No.  
4 Q. So, it was always either in the house or in the  
5 front yard?  
6 A. That's correct.  
7 Q. Okay. Did anyone ever receive significant  
8 injuries in these fights?  
9 A. No.  
10 Q. Who was involved in the fights?  
11 A. That I don't really recall. Sullivan maybe.  
12 MR. STEFANIC: He's asking you if you know who it  
13 was. If so tell him. If not don't guess. Geez.  
14 THE WITNESS: I really don't.  
15 MR. STEFANIC: Do you want to say somebody else was  
16 there and -- just tell us who it is if you know. If you  
17 don't, say you don't.  
18 THE WITNESS: I don't -- I don't remember who  
19 exactly -- you know, there was just fighting going on.  
20 BY MR. MONTELEONE:  
21 Q. Let's go at it from this angle. You moved into  
22 the house --  
23 A. There was always fighting going on in the  
24 house, so that's nothing new.  
25 Q. Okay. You moved into the house in the summer

56

1 of 2008, 2009, or 2010. With reference to when you moved  
2 into the house, when did the fighting begin?  
3 A. That I don't remember. I don't know exactly.  
4 My sister.  
5 Q. Okay. Why did the fighting begin when your  
6 sister was in there?  
7 A. Because she's crazy.  
8 Q. I have got one of those, too. Crazy sister.  
9 But was there -- when did the partying begin or had it  
10 always just --  
11 A. When Sullivan moved in.  
12 Q. Okay. So, it's your testimony prior to  
13 Sullivan moving in there had not been as much drinking  
14 alcohol and partying on that --  
15 A. That is correct.  
16 Q. Had it occurred at all?  
17 A. Not at all.  
18 Q. Not at all?  
19 A. Maybe a little bit with my sister, but not like  
20 what Sullivan and Wayne were doing.  
21 Q. Okay. Well --  
22 A. Like from a scale of ten to -- you know, she  
23 was a two.  
24 Q. Okay.  
25 A. And they were a ten.

57

1 Q. Okay. Now, when did Mr. Sullivan move into the  
2 premises?  
3 A. That I don't really remember exactly the date  
4 and time and --  
5 Q. Okay. How much time between Mr. Sullivan  
6 moving into the premises and Mr. Stiles' accident  
7 occurring?  
8 A. Half a year at least.  
9 Q. At least a half a year?  
10 A. Yes.  
11 Q. So, he --  
12 A. Six months.  
13 Q. Okay.  
14 A. So, he was living there for a good six months  
15 and, then, Stiles' accident.  
16 Q. Okay. So, we have got a six month period where  
17 Sullivan's moved in before the accident that brings us  
18 here today. During that six month period was there a lot  
19 of partying at this house?  
20 A. Prior to Sullivan?  
21 Q. No. During the six months after Mr. Sullivan  
22 moves in up to the point where the accident happened --  
23 so, that's about a six month period.  
24 A. There had been a lot of partying going on.  
25 Q. Okay. And it's your testimony --

58

1 A. A lot of partying.  
2 Q. Okay. And your testimony is that the partying  
3 did not begin until Mr. Sullivan moved in?  
4 A. That's correct. I don't party like he does.  
5 Q. Okay.  
6 A. And, you know, he gets all drunk -- goes to the  
7 bars and, then, he brings the bar home.  
8 Q. Okay. Now, we are getting to the topic I'd  
9 like to discuss. So, during the six months that Mr.  
10 Sullivan was living in the house and prior to Mr. Stiles'  
11 accident he was bringing a lot of people over to the  
12 house to party?  
13 A. It was miserable.  
14 Q. Okay.  
15 A. For me and Wayne to even try to even get some  
16 sleep to go to work.  
17 Q. Did you ever complain about that to your dad?  
18 A. No, I did not.  
19 Q. Why not?  
20 A. Because I thought I could handle it.  
21 Q. Were you able to handle it?  
22 A. Yes, actually. I just ended up kicking him  
23 out.  
24 Q. But that was after the accident.  
25 A. This was after the accident. Yes.

59

DEPOSITION OF ROGER AMUNDSON - AUGUST 14, 2014

1 Q. I'm talking about the six month period after  
2 Mr. Sullivan moves in and the accident happens. I need  
3 you to focus on that six month period with me. Can you  
4 do that --  
5 A. Okay.  
6 Q. -- Mr. Amundson?  
7 A. Okay.  
8 Q. You didn't tell your dad about all this  
9 partying that was occurring at the house; correct?  
10 A. That's correct.  
11 Q. And the reason you didn't is because you  
12 thought you could handle it; correct?  
13 A. That's correct.  
14 Q. It turns out you weren't able to handle it.  
15 A. No.  
16 Q. Okay. And the partying continued?  
17 A. That's correct.  
18 Q. And was there illegal drug use at the premises?  
19 A. No. Just alcohol.  
20 Q. Okay.  
21 A. High alcohol.  
22 Q. And you never smelled any pot being smoked in  
23 the backyard?  
24 A. No.  
25 Q. Never saw anyone using drugs inside the house

60

1 that they were inhaling?  
2 A. No.  
3 Q. And in that six month period between Mr.  
4 Sullivan moving in and the accident happening, there was  
5 a large number of people that would come over to the  
6 house all ready intoxicated or becoming intoxicated?  
7 MR. STEFANIC: Object to form.  
8 MR. MONTELEONE: Correct?  
9 THE WITNESS: That is correct.  
10 MR. STEFANIC: What does a large amount of people  
11 mean?  
12 MR. MONTELEONE: And --  
13 THE WITNESS: Just the bar.  
14 BY MR. MONTELEONE:  
15 Q. We are talking a lot of people?  
16 A. We are talking the whole bar. Because the bar  
17 closes at 2:00 and, then, they all come to our house from  
18 2:00 to 7:00.  
19 Q. And the partying would continue.  
20 A. Completely.  
21 Q. And people would become more intoxicated?  
22 A. Loud. Him banging his music. Bumping.  
23 Because he was into the base.  
24 Q. And most of these nights you were there?  
25 A. Most of them, yes. And it was just a headache.

61

1 Q. Would you party with them, too?  
2 A. No. I was not partying with them. Because I  
3 was trying to get some sleep so I can go to work.  
4 Q. Okay.  
5 A. And I constantly was telling John to turn his  
6 music down, so -- you know, he could do his party thing  
7 in the backyard, just keep it down. It wasn't that big  
8 of a deal.  
9 Q. So, he was -- you were fine with him partying  
10 there in the backyard; correct?  
11 A. Right. But it just got way out of control with  
12 that -- too many people over, so that just had to stop?  
13 Q. Too many people being too drunk?  
14 A. That, too.  
15 Q. And did you ever enlist your father's  
16 assistance to deal with this problem prior to the  
17 accident?  
18 A. No, I did not.  
19 Q. And is that because you thought you could  
20 handle it?  
21 A. That is correct.  
22 Q. Did you believe at the time that it was your  
23 responsibility on your father's behalf to take care of  
24 what was occurring on the premises?  
25 MR. STEFANIC: Objection. Calls for a legal

62

1 conclusion.  
2 THE WITNESS: I would say no on that.  
3 BY MR. MONTELEONE:  
4 Q. Well, your father owned the premises; correct?  
5 A. That's correct.  
6 Q. And you were charged with the safekeeping and  
7 maintenance of the premises; correct?  
8 MR. STEFANIC: Objection. That's not -- assumes  
9 facts not in evidence.  
10 THE WITNESS: No.  
11 BY MR. MONTELEONE:  
12 Q. Well, who was responsible for the maintenance,  
13 safekeeping, and upkeep of the premises?  
14 A. Well, me and -- me and dad.  
15 Q. Okay. You two were jointly responsible for the  
16 maintenance, upkeep, and safety of these premises located  
17 at 756 West 4th Street in Kuna; correct?  
18 MR. STEFANIC: Object to form.  
19 THE WITNESS: Yes.  
20 BY MR. MONTELEONE:  
21 Q. And, in fact, whenever you did anything to  
22 upkeep or maintain the premises you were doing it on  
23 behalf of your father, because he was the property owner?  
24 A. That's correct.  
25 Q. And some examples of that would be you mowed

63

DEPOSITION OF ROGER AMUNDSON - AUGUST 14, 2014

1 the lawn; is that correct?  
2 A. That's correct.  
3 Q. And you would store the equipment behind the  
4 garage door that was installed after the renovation;  
5 correct?  
6 A. No. I stored the equipment in the garage.  
7 Q. Okay. But the garage would be behind the  
8 garage door; correct? Garage door. Behind the garage  
9 door you have the garage.  
10 A. Correct.  
11 Q. And that's where you kept the lawn equipment?  
12 A. Correct.  
13 Q. And did you keep an air compressor back there,  
14 too?  
15 A. No. I did not have a compressor at the time.  
16 Q. Okay. Was it automatic sprinklers on the  
17 premises?  
18 A. Yes, there is.  
19 Q. And those automatic sprinklers had to get blown  
20 out when winter was coming; correct?  
21 A. That is correct.  
22 Q. Who blew out the sprinklers?  
23 A. My father.  
24 Q. And if there were any issues with the house  
25 relative to its maintenance and upkeep, who was

64

1 responsible for tackling those issues?  
2 A. That would be me.  
3 Q. Okay. And why would it be you?  
4 A. Because I was living there and he lives in  
5 Garden Valley and he lives a hundred miles away and so it  
6 would be more convenient for me just to handle it.  
7 Q. So, the arrangement was for you to take care of  
8 it, because your father lived at a distance, so you would  
9 do those things for and on behalf of your father, because  
10 you were living at the premises?  
11 A. That's correct.  
12 Q. During the time from when you moved into the  
13 premises did your father ever have to come down and do  
14 any repair or maintenance on the premises, other than  
15 this garage door renovation?  
16 A. Yes.  
17 Q. What types of things did he do?  
18 A. We have actually replaced a few doors to the  
19 house. We have sided the little shed in the back of the  
20 house. Painted the whole thing. I have done a little  
21 repairs with the roofing. Just like in maintenance  
22 inside with like the electrical -- just, you know, some  
23 stuff to keep up on.  
24 Q. Sure. The normal maintenance and care one has  
25 to give to their home. Now, insofar as that maintenance

65

1 and care, the electrical, the replacement of doors, the  
2 roofing, the siding repair that was done, all of those  
3 things -- you did those jointly with your father; is that  
4 correct?  
5 A. That's correct.  
6 Q. And you two were jointly responsible for the  
7 upkeep and maintenance of the property.  
8 MR. STEFANIC: Objection.  
9 MR. MONTELEONE: Would you agree with that? I'm  
10 sorry?  
11 THE WITNESS: I agree with that.  
12 BY MR. MONTELEONE:  
13 Q. Did the leaves ever have to get pulled out of  
14 the gutters?  
15 A. No.  
16 Q. All right.  
17 A. I have never had an issue with that.  
18 Q. Not many trees around?  
19 A. I don't have any gutters.  
20 Q. That would also be a good reason you wouldn't  
21 need to clean out the gutters. Are there many trees in  
22 the yard where leaves fall on the lawn in the fall?  
23 A. Yes. The neighbor's.  
24 Q. Who raked up the leaves?  
25 A. That would be me.

66

1 Q. And that was true of when Mr. Sullivan was  
2 there?  
3 A. Yeah. Then, too. Yeah. I mean it's bad.  
4 Those trees don't -- the neighbor's trees all come to me.  
5 Mine go to the neighbor.  
6 Q. I have got the same problem. I live in the  
7 north end of Boise. It's a similar issue. Now --  
8 A. I just get so many leaves there it's  
9 ridiculous. So, I'm always cleaning leaves.  
10 Q. Okay. The electrical you mentioned, was there  
11 ever a renovation of the electrical -- a change in the  
12 amperage in the home or swapping out light fixtures or  
13 outlets, anything like that?  
14 A. No.  
15 Q. Is it gas heat or electric heat?  
16 A. It's gas heat.  
17 Q. Okay. Water heater. Is it gas or electric?  
18 A. It's gas.  
19 Q. Have you had problems with the heating or water  
20 heater in the home since you moved in?  
21 A. Not at all.  
22 Q. Okay. Other than the garage door renovation  
23 had there been any other large scale maintenance or  
24 improvement projects on the property since you moved in?  
25 A. No.

67



DEPOSITION OF ROGER AMUNDSON - AUGUST 14, 2014

1 Q. Would you say that the door renovation was the  
2 largest project undertaking since you moved into the  
3 property?  
4 A. That is correct.  
5 Q. Did you move into the property shortly after  
6 your father had acquired it or did he have it for some  
7 period of time before you moved it?  
8 A. We moved in just shortly after we acquired it.  
9 Q. Okay. Was it intended to be a home that your  
10 father purchased and that you and your sister were going  
11 to move into and take care of on his behalf?  
12 A. That's correct.  
13 Q. Tell me, if you would, please, Mr. Amundson,  
14 about how you advised your father of the accident  
15 occurring.  
16 A. How would I have advised?  
17 Q. Yeah. How did you do that? Did you -- had he  
18 come by to collect rent that was due that month?  
19 A. No. I had called him and told him.  
20 Q. How much time past between you finding out  
21 about the accident and you giving him a call?  
22 A. Not very much time. It was in the same day.  
23 Q. Were you sheepish about giving him a call?  
24 A. No.  
25 Q. Okay. When you called him up what did you tell

68

1 him?  
2 A. I told him that one of his -- Sullivan's  
3 friends went through that panel that we -- you know, the  
4 bay window.  
5 Q. Did you tell him --  
6 A. And cut his arm on it.  
7 Q. Did you tell him that the pane of glass had  
8 already been broken before Stiles was injured on it?  
9 A. I don't think so, but I really don't remember.  
10 MR. STEFANIC: After he --  
11 THE WITNESS: You know.  
12 MR. STEFANIC: I need to say something. I just was  
13 clarifying the question and the question was -- whatever  
14 you said and I said after he was talking to his father  
15 after the accident? Is that where you're going?  
16 MR. MONTELEONE: Correct. We are just talking about  
17 the initial time Roger tells Walter the accident  
18 happened.  
19 MR. STEFANIC: Okay. Go ahead.  
20 BY MR. MONTELEONE:  
21 Q. Okay. So, with that clarification in mind,  
22 when you first called up your father on the phone to tell  
23 him about Mr. Stiles' accident, did you advise your  
24 father that the pane of glass and the window had already  
25 been broken prior Mr. Stiles' accident?

69

1 A. I don't remember really.  
2 Q. What did you tell your father about the  
3 accident occurring during this first phone call?  
4 A. I don't remember the details either of that. I  
5 mean it's so long ago.  
6 Q. What was your father's response?  
7 A. I can't recall that either, you know. I don't  
8 really remember.  
9 Q. Had you ever seen Mr. Stiles at your house  
10 before the accident?  
11 A. No, I had not.  
12 Q. Do you know --  
13 A. I just assumed that he was just another drunk  
14 from across the street.  
15 Q. Okay. But you know what happens when you  
16 assume, don't you?  
17 A. Right.  
18 Q. So, do you have any reason -- any evidence to  
19 say that he was another drunk from across the street?  
20 A. I don't. I have no evidence of that.  
21 Q. Do you recall your father being irate at all  
22 about this accident having occurred when you first  
23 notified him of it?  
24 A. No.  
25 Q. You seem to take it in stride.

70

1 A. I don't really remember if he did or not.  
2 Q. All right. Getting back to this idea of  
3 another drunk from across the street. What's across  
4 the street from the house where you live?  
5 A. The Creekside Bar.  
6 Q. All right.  
7 A. And on the other corner over here is Cowgirls  
8 Bar.  
9 Q. So, you have got two --  
10 A. I have got nine. There is nine bars in Kuna.  
11 Q. Okay. But at least in the immediate proximity  
12 of your home there are two.  
13 A. There is two.  
14 Q. Okay.  
15 A. Right across the street.  
16 Q. So, that made your house the party house?  
17 A. That's correct. Because of Sullivan.  
18 Q. And Sullivan had been in that house six months  
19 before Mr. Stiles' accident?  
20 A. That's about correct.  
21 Q. Okay. And this partying was occurring on a  
22 nightly basis; is that correct?  
23 A. That's correct.  
24 Q. And you knew that there would be intoxicated  
25 people on the premises during these parties; is that

71

DEPOSITION OF ROGER AMUNDSON - AUGUST 14, 2014

1 correct?  
2 A. That's correct.  
3 Q. Did you tell Mr. Sullivan, hey, just cut it  
4 out?  
5 A. I have.  
6 Q. Well, before we are both going to guess --  
7 A. Before the accident. I have asked him to cut  
8 it down.  
9 Q. Did he?  
10 A. And he didn't.  
11 Q. How many times did you ask him to cut it down?  
12 A. A number. A good number.  
13 Q. Did you ask --  
14 A. Because I was just complaining about his music  
15 pounding all the time.  
16 Q. Was that the big issue, the loudness of the  
17 music?  
18 A. The loudness of the music and all of the people  
19 constantly.  
20 Q. Did you ever ask Mr. Sullivan to just  
21 completely stopped it?  
22 A. Yes, I have.  
23 Q. How many times?  
24 A. I can't remember exactly how many times.  
25 A number.

72

1 Q. Would you more often tell him to keep the music  
2 turned down or would you tell him to quit the partying  
3 altogether?  
4 A. I probably told him to probably keep it down a  
5 few times. There has been some fights with that  
6 incident, too. You know, some verbal --  
7 Q. Tell me about those, Mr. Amundson. You mean  
8 fights between Mr. Sullivan and yourself?  
9 A. Right.  
10 Q. Did they ever become physical?  
11 A. Not physical, no. It was all verbal.  
12 Q. And verbally what would be said between the two  
13 of you?  
14 A. You know, that you're partying too much and  
15 you need to quit it, you know. I don't remember exactly  
16 the fights, but there was some fights over the  
17 belligerent and the loud music. I couldn't handle it  
18 anymore.  
19 Q. Why didn't you ask him to move out prior to the  
20 accident?  
21 A. You know, I don't know. That is a very good  
22 question. I don't have an answer for that one.  
23 Q. Did you ever seek your dad's counsel or  
24 guidance on to how to handle the issue?  
25 A. No.

73

1 Q. Would you have had the authority to evict Mr.  
2 Sullivan?  
3 MR. STEFANIC: Object to form. That's a legal  
4 conclusion.  
5 THE WITNESS: Yes and no.  
6 BY MR. MONTELEONE:  
7 Q. Why do you qualify it, sir?  
8 A. I would have to contact my dad and, then, I  
9 would go about it that way.  
10 Q. Is that because relative to matters insofar as  
11 the premises, your dad made the decision, but you would  
12 carry them out for him?  
13 MR. STEFANIC: Object to form.  
14 THE WITNESS: No. I would make some of the  
15 decisions and he would carry them out.  
16 MR. MONTELEONE: Okay.  
17 THE WITNESS: Like I'm requesting to move him out  
18 and, then, he would take and move him out.  
19 BY MR. MONTELEONE:  
20 Q. Okay. Well, let's go from your testimony that  
21 said, yes and no, you could evict Mr. Sullivan. You,  
22 then, said that you would have to contact your dad and  
23 your dad would make that decision; is that correct?  
24 A. That's correct.  
25 Q. And, then, would it be within your purview,

74

1 once your dad said evict Mr. Sullivan, would it have been  
2 in your purview, then, to effectuate that eviction of Mr.  
3 Sullivan?  
4 MR. STEFANIC: Objection.  
5 THE WITNESS: Can you rephrase that?  
6 MR. MONTELEONE: You bet.  
7 THE WITNESS: I'm not sure what you're saying.  
8 BY MR. MONTELEONE:  
9 Q. Had it risen to the point where Mr. Sullivan  
10 needed to be evicted? I understood your testimony to be  
11 that your father would make that decision; is that  
12 correct?  
13 A. That's correct.  
14 Q. But, then, after your father would have made  
15 that decision, then, would you have been the one to make  
16 the eviction happen?  
17 MR. STEFANIC: Objection.  
18 THE WITNESS: No. That would be all dad.  
19 BY MR. MONTELEONE:  
20 Q. All right. So, when you said before that -- or  
21 when I asked you could you evict Mr. Sullivan --  
22 A. Me personally? No. But I could help to get it  
23 evicted.  
24 Q. Okay. And what do you mean by that, sir?  
25 A. Like I would contact dad and, then, I would set

75

DEPOSITION OF ROGER AMUNDSON - AUGUST 14, 2014

1 it up to get it evicted.  
2 Q. So, you and your father would be working in  
3 tandem to handle any eviction of a tenant?  
4 MR. STEFANIC: Object --  
5 THE WITNESS: That's correct.  
6 MR. MONTELEONE: Let's take a break.  
7 (A recess was had.)  
8 BY MR. MONTELEONE:  
9 Q. Okay. Let's go back on the record. Mr.  
10 Amundson, before we took that short break we were  
11 chatting about all of the partying that was occurring in  
12 the six months between Mr. Sullivan moving in and Mr.  
13 Stiles' accident happening. After Mr. Stiles' accident  
14 did the partying stop?  
15 A. No.  
16 Q. For how long did it continue?  
17 A. Up until he moved out.  
18 Q. And when did Mr. Sullivan move out?  
19 A. I haven't got the time of that. I have no  
20 idea. A couple months. A month.  
21 Q. A month or --  
22 A. I think we gave him a full 30 days.  
23 Q. Well, following the accident did your father  
24 have John and Wayne sign a document saying that there  
25 wouldn't be any alcohol consumed on the premises?

76

1 A. That is correct.  
2 Q. Okay. What else did that --  
3 MR. STEFANIC: Is that both? Did you say both Wayne  
4 and him?  
5 MR. MONTELEONE: Right.  
6 MR. STEFANIC: Okay. And if you know that to be  
7 true, tell him.  
8 THE WITNESS: Yeah.  
9 MR. STEFANIC: I only have one with John, but --  
10 THE WITNESS: They both signed one.  
11 BY MR. MONTELEONE:  
12 Q. And what was the purpose of that?  
13 A. Probably to prevent this.  
14 Q. What do you mean when you say prevent this?  
15 A. Like all the belligerent happening or accidents  
16 or any kind of an occurrence happening to the property.  
17 Which should have took place, but Sullivan kind of broke  
18 all those rules like right away.  
19 Q. Okay. Let's see if we can unpack that. So,  
20 following this accident --  
21 MR. STEFANIC: I have to object to that prior  
22 question on the grounds that it does go to remedial  
23 measures, but you can go ahead.  
24 BY MR. MONTELEONE:  
25 Q. After Mr. Stiles' accident and your father had

77

1 Wayne Jenkins and John Sullivan sign a document that said  
2 they would not consume alcohol on the premises, did that  
3 document say anything else that you recall?  
4 A. No.  
5 Q. Okay.  
6 A. I don't really remember the document exactly.  
7 Q. But it did say no consumption of alcohol on the  
8 premises; correct?  
9 A. That was for sure. Yes.  
10 Q. And what was the purpose of that document?  
11 MR. STEFANIC: If you know. Object to form.  
12 THE WITNESS: I don't. I have no idea of the  
13 purpose of the document.  
14 BY MR. MONTELEONE:  
15 Q. Did you sign the same document?  
16 A. Yes, I did.  
17 Q. Did you abide by the document?  
18 A. I -- yes. I did.  
19 Q. Did you have any involvement in obtaining Wayne  
20 Jenkins' signature on the document?  
21 A. That I am not sure of.  
22 Q. Did you have any involvement in obtaining John  
23 Sullivan's signature on the document?  
24 A. No. I didn't have involvement in any of them.  
25 Q. Well -- but my question is this, sir: Did your

78

1 father personally obtain Wayne's and John's signatures or  
2 did he give the paper to you for you to give to them?  
3 A. He personally did it.  
4 Q. Mr. Sullivan remained on the premises for you  
5 think a month or two following the accident; is that your  
6 understanding?  
7 A. That would be my understanding.  
8 Q. And, then, he moved out. Were you guys on good  
9 terms when he moved out?  
10 A. Yes. Me and John were.  
11 Q. Okay. Have you talked to John recently?  
12 A. No, not really.  
13 Q. Have you talked to him since he moved out?  
14 A. No.  
15 Q. But, at any rate, things ended on good terms?  
16 A. Yes. I try to make it that way, so I don't  
17 have any conflicting coming back to attack, you know what  
18 I mean?  
19 Q. Sure.  
20 A. A lot of roommates will do that. They got --  
21 you know, turn into an enemy and, then, they come back  
22 and just rob the -- rob you blind.  
23 Q. Okay.  
24 A. And either mess something up or just -- you  
25 know. I didn't want any of that occurring, so I tried to

79

DEPOSITION OF ROGER AMUNDSON - AUGUST 14, 2014

1 make good terms with Sullivan.  
2 Q. Okay. But for the period of time after Mr.  
3 Stiles' accident until Mr. Sullivan moving out the  
4 partying continued?  
5 A. That would be correct.  
6 Q. Did Mr. Jenkins ever engage in these partyings?  
7 A. Once or twice, but the majority of the time he  
8 was to himself in his own room.  
9 Q. Playing videogames?  
10 A. Or trying to sleep.  
11 Q. Okay.  
12 A. Because he had to get up early. He was a --  
13 like a 2:00 o'clock in the morning. He was a night shift  
14 worker, so --  
15 Q. When he was working for the Boise police as a  
16 janitor?  
17 A. Yeah.  
18 Q. He had the night shift?  
19 A. He had night shift.  
20 Q. Okay.  
21 A. It was either that one or another janitorial  
22 job. One of his jobs. He's gone through about three or  
23 four janitorial jobs --  
24 Q. When did he --  
25 A. -- when he was living there.

80

1 Q. When did he move out of the premises at 756  
2 West 4th Street?  
3 A. I don't remember exactly the date, but that was  
4 after Mr. Sullivan. Like quite a while. Like I had  
5 Wayne still living with me for -- I have no idea on the  
6 time of that.  
7 Q. Okay. Did you have anymore roommates after  
8 Wayne moved out?  
9 A. Yes.  
10 Q. Who were those people?  
11 A. That I had -- who was it? It was a Tonya and  
12 Carl. Some friends of Mark's. My brother.  
13 Q. Okay. How did they work out as roommates?  
14 A. They worked out all right, but in the end they  
15 didn't turn out all that good.  
16 Q. Why is that?  
17 A. They just robbed me blind. Took everything of  
18 mine. Took a bunch of tools. A bunch of my silverware.  
19 Dishes. Everything.  
20 Q. Did they have parties at the house?  
21 A. Not like Sullivan, no.  
22 Q. Any other roommates besides that couple you  
23 just mentioned?  
24 A. Yes. Yes. Who was it just recently? That I  
25 got rid of? Oh. That was Abe. Abe.

81

1 Q. Okay. What's Abe's last name?  
2 A. Hailey. Abe Hailey. And Wayne were both  
3 living together and I moved them both out.  
4 Q. So, you asked Wayne Jenkins to leave?  
5 A. Yes. And he did -- actually, no. Wayne  
6 Jenkins actually ended up moving out on a DUI being in  
7 jail. So, it was kind of a forced deal.  
8 Q. Well, how was that forced? Who made that  
9 decision?  
10 A. That would have been his parents and dad.  
11 Q. Okay. And did you have any involvement in  
12 moving his stuff out?  
13 A. No. His dad came over and cleared his room  
14 out.  
15 Q. Did you ever see Wayne Jenkins intoxicated  
16 around the premises?  
17 A. Yes.  
18 Q. He drank Steel Reserve?  
19 A. Like always.  
20 Q. Okay.  
21 A. I would say Wayne is a bigger drinker than  
22 Sullivan when it comes to intake.  
23 Q. Got you. Would Wayne come out of his room  
24 drunk and naked and offend people?  
25 A. I wouldn't say offend, but I seen him once or

82

1 twice that way.  
2 Q. Coming out of his room --  
3 A. All drunk.  
4 Q. -- and naked.  
5 A. Stumbling down the hall, trying to make it to  
6 the bathroom.  
7 Q. Without any clothes on?  
8 A. Yeah.  
9 Q. Okay. The couple that you mentioned, the ones  
10 that robbed you blind, do you remember their last names?  
11 A. Carl and Tonya -- what was their last name? I  
12 don't recall it. I don't remember their last name. I  
13 really don't remember.  
14 Q. Okay. Were they a married couple?  
15 A. Yes.  
16 Q. So, other than that married couple, the  
17 gentleman named Abe Hailey, have you had --  
18 A. Worst guy ever.  
19 Q. And why do you say that?  
20 A. He did worse than Carl and Tonya by far.  
21 Q. As far as robbing you blind?  
22 A. Completely. He took all kinds of stuff.  
23 Q. Other than Carl and Tonya and Abe Hailey, have  
24 you had any other roommates since Mr. Sullivan moved out?  
25 A. No.

83

DEPOSITION OF ROGER AMUNDSON - AUGUST 14, 2014

1 Q. Who lives in the premises currently?  
2 A. Me and buddy Mike.  
3 Q. And I hear -- I would presume that it's a more  
4 copacetic --  
5 A. Way better friend.  
6 Q. Okay.  
7 A. I have been with this friend -- I have had --  
8 have known this friend for a while, so I'm sticking with  
9 friends that I know, not no random people anymore.  
10 Q. Okay. So, other than your current roommate  
11 Mike -- which, by the way, what's his last name?  
12 A. His name is Post. P-o-s-t.  
13 Q. And other than Mike Post, Abe Hailey, the  
14 couple Cari and Tonya, have there been any other  
15 roommates in the premises since Mr. Sullivan moved out?  
16 A. No.  
17 Q. Now, when these new roommates have moved in has  
18 your father had to okay their moving in?  
19 A. Yes.  
20 Q. And do they sign a lease?  
21 A. Yes, they do.  
22 Q. And do they sign a statement similar to the one  
23 that Wayne and John said about no consumption of alcohol  
24 on the premises?  
25 A. That I'm unsure of.

84

1 Q. In order to get the lease signed, does your  
2 father do that himself or does he get the lease to you  
3 and you get the signatures?  
4 A. He does all of that himself.  
5 Q. Okay.  
6 A. So, I'm really unsure of a lot of that, because  
7 he's the one that does it all.  
8 Q. What about the lease that was signed by John  
9 Sullivan, did you obtain Mr. Sullivan's signature on that  
10 lease or did your father do it directly?  
11 A. My father did that directly, too.  
12 Q. And, then, with respect to Wayne Jenkins, any  
13 lease that Mr. Jenkins signed --  
14 A. With my father. I had no part in that.  
15 Q. Okay. Now, turning back to the period of time  
16 following the accident, what became of that window?  
17 A. I destroyed it.  
18 Q. How did you destroy it?  
19 A. I took a sledge hammer to it and broke it all  
20 up in tiny, tiny pieces and stuff it all in the can.  
21 Q. Garbage can?  
22 A. Garbage can.  
23 Q. Why did you do that?  
24 A. Because it's not salable anymore. It's broken.  
25 Q. Why wasn't it salable anymore?

85

1 A. Oh, I'm sure I could have replaced that glass,  
2 but it would have been, you know, me putting money in to  
3 try to get money, which was not going to happen, so I  
4 just decided to get rid of it.  
5 Q. How much time past after the accident until you  
6 took the sledge hammer to it?  
7 A. I have no idea.  
8 Q. Months? Weeks? Days? Any estimate?  
9 A. I really don't remember how long it sat there  
10 before I destroyed it.  
11 Q. Did you leave the window and the piece of wood  
12 in the exact same locations where they were at the time  
13 you understood the accident to have occurred?  
14 MR. STEFANIC: Can you restate that or read it back?  
15 BY MR. MONTELEONE:  
16 Q. Sure. Did you leave the window and the wooden  
17 stump in the same locations as you understood they were  
18 at the time of Mr. Stiles' accident?  
19 MR. STEFANIC: Objection. Calls for speculation.  
20 He wasn't there.  
21 THE WITNESS: I don't have an answer for that.  
22 BY MR. MONTELEONE:  
23 Q. Okay. Let me lay -- let me ask a foundational  
24 question. Exhibit 4, do you see where the wooden stump's  
25 located?

86

1 A. That's correct.  
2 Q. Do you see where the window is located?  
3 A. That's correct.  
4 Q. Is it your understanding that generally those  
5 are the same locations those two items were at the time  
6 of Mr. Stiles' accident?  
7 A. No.  
8 Q. Okay. What's your understanding of where the  
9 items were located?  
10 A. That stump was out in the middle here. Like  
11 right in front of the gate.  
12 Q. Right on the side of the gate --  
13 A. Right there.  
14 Q. -- that Mr. Stiles walked through?  
15 A. Correct. So, he had to trip over it and, then,  
16 fell into the window.  
17 Q. And it was right next to that gate; correct?  
18 A. Like right -- pretty much, you know, in the  
19 middle of the gate and the window, like this way.  
20 Q. So, in order to walk through this gravel  
21 walkway depicted in Exhibit 4, that stump was between  
22 where Mr. Stiles was and where the window was, but it was  
23 much closer to the gate?  
24 A. That would be correct.  
25 Q. Okay. When you are standing in the backyard to

87

DEPOSITION OF ROGER AMUNDSON - AUGUST 14, 2014

1 open that gate -- and I understand it's heavy and it may  
2 not be square and it's difficult to open, but when you  
3 open that gate and you're standing in the backyard does  
4 the gate open in or out?  
5 A. Yeah. You pull the gate.  
6 Q. Okay.  
7 A. You have to lift and, then, drag it on the  
8 ground a little bit.  
9 Q. And you pull it in?  
10 A. Pull it in, yes.  
11 Q. Okay.  
12 A. So, it's --  
13 Q. And, then, shortly on the other side --  
14 A. You get a good gap.  
15 Q. Okay. And, then, shortly on the other side of  
16 that gate was where that stump was located; correct?  
17 MR. STEFANIC: Object to form.  
18 THE WITNESS: (No oral response.)  
19 MR. MONTELEONE: Is that a yes?  
20 THE WITNESS: Yes.  
21 BY MR. MONTELEONE:  
22 Q. Okay. Had you seen that stump there before the  
23 accident happened?  
24 A. Yes.  
25 Q. And was it located right by the gate?

88

1 A. Yes. And John had put it there.  
2 Q. Okay.  
3 A. Prior to a bunch of other limbs that were  
4 sitting right there that he already had burned.  
5 Q. But you saw that stump right by the gate prior  
6 to the accident having happened; correct?  
7 A. No.  
8 Q. Well, I just --  
9 A. I don't remember exactly, you know. This stump  
10 has been moved around and I don't know if it was sitting  
11 there prior to the accident, but I know that it was there  
12 during the accident.  
13 Q. Okay. Well, your testimony not even two  
14 minutes ago was the stump was close to the gate, a gate  
15 that opened in, and was between Mr. Stiles and that  
16 window at the time of the accident; is that correct?  
17 A. Mr. --  
18 Q. Mr. Stiles was the one that had the accident.  
19 A. Say that again -- all that --  
20 Q. I will. The gate opens in --  
21 A. Okay.  
22 Q. -- on the side of the house by where the gravel  
23 covered walkway is; correct?  
24 A. No. It opened into the backyard.  
25 Q. Right. As you're standing in the backyard, as

89

1 Mr. Stiles was prior to this accident, you would pull the  
2 gate into the backyard; correct?  
3 A. Correct.  
4 Q. And, then, is there a threshold where that gate  
5 sits?  
6 A. No.  
7 Q. Okay. Is it just grass covered?  
8 A. Just gravel that's hard.  
9 Q. Okay. What abuts the gravel, grass, or is  
10 there a border?  
11 A. Nothing. Gravel. Gravel.  
12 Q. Gravel into the backyard?  
13 A. Gravel into the backyard.  
14 Q. And so that it's set up like a walkway?  
15 A. Correct.  
16 Q. And if you're in the backyard and you walk up  
17 to that gate from the backyard it looks like a walkway;  
18 correct?  
19 A. Not necessarily.  
20 MR. STEFANIC: Object to the form.  
21 THE WITNESS: It's just an area there that I have in  
22 the backyard squared off with some gravel. It doesn't go  
23 very far. About as wide as the width here and it just  
24 goes beyond the fence.  
25 BY MR. MONTELEONE:

90

1 Q. How far beyond the gate does it go? The gate  
2 and the fence?  
3 A. A good five feet.  
4 Q. And it looks like a walkway?  
5 MR. STEFANIC: Object to form.  
6 MR. MONTELEONE: Does it not?  
7 MR. STEFANIC: Argumentative.  
8 THE WITNESS: I would say no.  
9 BY MR. MONTELEONE:  
10 Q. And why not?  
11 A. Because there is just too much stuff there to  
12 be a walkway.  
13 Q. What do you mean too much stuff?  
14 A. I have got like a barbecue here and over here I  
15 got a camper shell. And there is just objects in the way  
16 that it can't be a walkway.  
17 Q. Was that the way it was on the date of the  
18 accident?  
19 A. That's correct. I had my camper shell still  
20 sitting there.  
21 Q. Did it block the gate?  
22 A. Kind of.  
23 Q. Well, when you swung the gate into the backyard  
24 could the gate swing all the way open flush with the  
25 fence?

91

DEPOSITION OF ROGER AMUNDSON - AUGUST 14, 2014

1 A. No. The ground would prevent that.  
2 Q. Okay.  
3 A. And the weight of the door, the way it's  
4 wanting to fall to the ground anyway, it was not  
5 happening.  
6 Q. Okay. Would the camper shell where it was  
7 located have prevented the swing of the gate to run flush  
8 with the fence?  
9 A. At the time, yes.  
10 Q. Have you moved the camper shell since the time  
11 of the accident?  
12 A. After the accident? Yes.  
13 Q. Why did you move it?  
14 A. Because I didn't want it in that area anymore.  
15 I wanted more access to that area and I was cleaning up  
16 the backyard.  
17 Q. All right. Now, turning back to where the  
18 stump's located, I need to clarify this. Can we agree  
19 that that stump is a tripping hazard?  
20 MR. STEFANIC: Object to form.  
21 THE WITNESS: I would agree.  
22 BY MR. MONTELEONE:  
23 Q. And was that stump close to the gate on the  
24 side away from the backyard at the time of this accident?  
25 A. Pretty much right there.

92

1 Q. Dead center of where people would walk?  
2 A. Dead center right in between this and the gate.  
3 Q. Okay. The court reporter --  
4 A. It's pretty much standing at the gate taking a  
5 picture. So, you're looking at the area right here where  
6 it was.  
7 Q. Okay. The court reporter can't pick up when  
8 you point at the photo and say this.  
9 A. I --  
10 Q. So, we left off -- and we can agree that the  
11 stump presents a tripping hazard; correct?  
12 A. That's correct.  
13 Q. And that stump at the time of Mr. Stiles'  
14 accident was right in the middle of the gravel walkway  
15 and close to the gate; correct?  
16 A. I wouldn't say close to the gate, but it was  
17 definitely in the middle of the walkway.  
18 Q. Okay. How far from the gate to where the stump  
19 was located?  
20 A. Two to three feet.  
21 Q. Okay. I consider it two to three feet in a  
22 walkway to be pretty close. Would you agree with that?  
23 A. Yeah. I guess.  
24 Q. Okay.  
25 A. But this whole stand is probably, you know, 20

93

1 feet total.  
2 Q. And when you say the whole span, are you  
3 talking about the gravel --  
4 A. Just gravel that --  
5 Q. Got to let me finish my question, Mr. Amundson.  
6 When you say the whole span, are you talking about this  
7 gravel walkway that's shown in Exhibit 4?  
8 A. That's correct.  
9 Q. Okay. And that gravel walkway you believe is  
10 about 20 feet long; is that correct?  
11 A. That's correct.  
12 Q. And how wide do you believe it is from the side  
13 of the house to the cedar fence?  
14 A. A good ten feet.  
15 Q. Okay.  
16 A. Maybe less.  
17 Q. And at the time of Mr. Stiles' accident that  
18 stump was right in the middle of the walkway, so it would  
19 be about five foot or so in the width of the walkway;  
20 correct?  
21 A. That would be correct.  
22 Q. And it was about two to three feet from the  
23 gate that opened into the backyard as Mr. Stiles was  
24 walking out of the backyard?  
25 A. Correct.

94

1 Q. Correct? Is there any lighting on that side of  
2 the house?  
3 A. No.  
4 Q. Where is the closest light --  
5 A. The neighbor has a big giant pole on their barn  
6 just over here that illuminates the whole area and there  
7 is a pole out here on the street that has another orange  
8 light, too.  
9 Q. So, when this accident happened in July of  
10 2011 --  
11 A. There in -- definite light.  
12 Q. There was definite light?  
13 A. Like at night even.  
14 Q. And you believe that light came from the  
15 neighbor's barn pole in part; correct?  
16 A. And the telephone pole out in front of the  
17 house.  
18 Q. Okay. Do you know if either of those lights  
19 were operational on the date of the accident?  
20 A. I'm pretty sure of it.  
21 Q. And why do you say that?  
22 A. Because they are on, you know, a light timer  
23 type of thing. They come on at night automatically.  
24 Q. How high is the pole that the neighbors' light  
25 is attached to the barn pole?

95

DEPOSITION OF ROGER AMUNDSON - AUGUST 14, 2014

1 A. It sits up on top of the eave, so it was -- I  
2 have no idea the height of that barn. It's a pretty good  
3 size barn.  
4 Q. So, it's your testimony that on the date of  
5 this accident in the early morning hours on July 8th,  
6 2011, the area where Mr. Stiles fell would have been well  
7 lit?  
8 A. Well lit. Yes.  
9 Q. Do you base that on anything other than the  
10 existence of the barn pole light on the neighbor's  
11 property and the streetlight at the front of your  
12 property?  
13 A. They would both pretty much light up that whole  
14 area there.  
15 Q. Well, I'm asking you do you believe it was lit  
16 at the time, other than those two lights you have  
17 identified --  
18 A. I believe so.  
19 Q. -- any -- anything else that would have lit  
20 that area with ambient light?  
21 A. I believe so. I believe those were both on at  
22 the time of the accident.  
23 Q. Okay. But anything else that would have lit  
24 that area, other than those two lights you have  
25 identified?

96

1 There is no flood light on the side of the house, is  
2 there?  
3 A. No.  
4 Q. Okay. There is no exterior nightlight in an  
5 exterior outlet on that side of the house, is there?  
6 A. Correct.  
7 Q. So, other than the two lights you have  
8 identified, those two lights being the streetlight on the  
9 front of your property and the barn pole light on the  
10 neighbor's adjoining property -- anything else that could  
11 have lit that area?  
12 A. No.  
13 Q. All right. So, you believe that it was well  
14 lit at the time of the accident. You recognize that that  
15 stump is a tripping hazard. That stump was directly two  
16 to three feet from the gate in the middle of that  
17 walkway. Can you see how that presented a significant  
18 hazard for Mr. Stiles on the date of the accident?  
19 MR. STEFANIC: Objection to form and it's an  
20 incomplete hypothetical.  
21 THE WITNESS: That was placed there by Sullivan.  
22 BY MR. MONTELEONE:  
23 Q. Okay. That wasn't my question, sir.  
24 A. But yes.  
25 Q. My question is: The way we have just --

97

1 A. Yes, it is a hazard.  
2 Q. Okay. A signature tripping hazard; correct?  
3 MR. STEFANIC: Objection. Legal conclusion.  
4 Argumentative.  
5 THE WITNESS: That's correct.  
6 BY MR. MONTELEONE:  
7 Q. And a significant tripping hazard with a large  
8 pane of busted out glass with shards on the other side of  
9 where he would trip; correct?  
10 MR. STEFANIC: Objection. Speculation.  
11 THE WITNESS: That I wasn't aware of that hazard at  
12 the time, but that's how it occurred.  
13 BY MR. MONTELEONE:  
14 Q. Now that we have had an opportunity to talk at  
15 length about this event, can you recall how much time  
16 past between you placing that window along the cedar  
17 fence and this accident occurring?  
18 A. I have no idea of the time of that.  
19 Q. And can you tell me how much time past between  
20 when you first noticed the wooden stump in the center of  
21 the gravel walkway in Exhibit 4 and the accident  
22 occurring?  
23 A. That was after the accident.  
24 Q. Okay.  
25 A. And I was wondering why the stump was still

98

1 sitting there, because that stump had been sitting there  
2 prior to the accident for quite a long time.  
3 Q. That stump over which Mr. Stiles tripped was in  
4 the middle of that walkway for a lengthy period of time  
5 before the accident; correct?  
6 A. That is correct.  
7 MR. STEFANIC: Object to form.  
8 THE WITNESS: Even before the window moved to there.  
9 BY MR. MONTELEONE:  
10 Q. Okay. So, when you moved that window with the  
11 broken pane of glass into the gravel walkway next to the  
12 cedar fence that wooden stump was already in the middle  
13 of that gravel walkway; is that correct?  
14 A. That's -- at the time that I placed this window  
15 here this was a tree. Okay? He had burnt it down to  
16 this stump and placed it here to -- for I have no idea  
17 what reasons and was acquiring more wood and I guess he  
18 had just forgot about his half a tree that he burnt.  
19 Q. Okay.  
20 A. And if just sat there and sat there and sat  
21 there.  
22 Q. Mr. Amundson, I appreciate the information, but  
23 if I could just get a couple more questions answered, I  
24 think we will be able to finish up. Going back to this  
25 wooden -- what we have been calling the wooden stump.

99



DEPOSITION OF ROGER AMUNDSON - AUGUST 14, 2014

1 It's right here in Exhibit 4. Do you see what I'm  
2 looking at?  
3 A. I do.  
4 Q. Okay. It was -- that wooden stump was in that  
5 condition in the middle of the gravel walkway in Exhibit  
6 4 two to three feet from the gate for a significant  
7 period of time before the accident happened; is that  
8 correct?  
9 MR. STEFANIC: Object to from. What is a  
10 significant amount of time?  
11 MR. MONTELEONE: Do you understand what the word  
12 significant means, sir?  
13 THE WITNESS: Yes, I do.  
14 BY MR. MONTELEONE:  
15 Q. Okay. Well, that was his objection. So, my  
16 question, again, is: Was the wooden stump in the middle  
17 of the gravel walkway two to three feet from the gate on  
18 the outside of the backyard for a significant period of  
19 time before Mr. Stiles' accident?  
20 MR. STEFANIC: Same objection.  
21 THE WITNESS: I would say yes.  
22 BY MR. MONTELEONE:  
23 Q. And was that stump in that same location when  
24 you moved the window -- the bay window with a broken pane  
25 of glass into the gravel walkway area --

100

1 A. Yes.  
2 Q. -- against the cedar fence?  
3 A. It was.  
4 Q. To prepare for your deposition today, did you  
5 do anything in particular to help get ready for today?  
6 A. No, I did not. I really hate to say that,  
7 but --  
8 Q. No. That's all right. Did you have to take  
9 time away from work?  
10 A. No. I was actually helping a buddy do some  
11 yard work and I got kind of tied up with that.  
12 Q. Okay.  
13 A. That's why it was kind of late.  
14 Q. Well, that's not what I asked. I just felt so  
15 bad that you had to take time away from your job in  
16 particular this afternoon. Did you talk to Mr. Stefanic  
17 prior to today about this deposition? Mr. Stefanic being  
18 Mike here to your right?  
19 A. Yes.  
20 Q. Okay. Did you talk with him in person or on  
21 the phone?  
22 A. On the phone.  
23 Q. And how many times did you speak with Mr.  
24 Stefanic?  
25 A. That I'm unsure of.

101

1 Q. Was it more than once?  
2 A. A couple times. I would say a couple times.  
3 Q. And what did you two discuss?  
4 A. Just what we were going to be going over here  
5 today.  
6 Q. Did you ever share with Mr. Stefanic that you  
7 believed the accident could have been avoided?  
8 MR. STEFANIC: Objection to form. Legal conclusion.  
9 THE WITNESS: Say that again. Rephrase that.  
10 BY MR. MONTELEONE:  
11 Q. Did you ever share with Mr. Stefanic, the  
12 gentleman immediately to your right, that this accident  
13 could have been avoided?  
14 A. No, I didn't.  
15 Q. Have you ever shared that with anyone?  
16 A. No, I have not.  
17 Q. Now, that we have had a chance to talk about  
18 this accident in detail today, are you of the opinion  
19 that this accident could have been avoided?  
20 MR. STEFANIC: Objection to form.  
21 THE WITNESS: Possibly. It is impossible to answer  
22 that yes.  
23 BY MR. MONTELEONE:  
24 Q. I mean the tripping hazard could have been  
25 removed; correct?

102

1 A. That's correct.  
2 Q. The shards of glass and the busted pane could  
3 have been knocked out; correct?  
4 A. That's correct.  
5 Q. The window could have been placed somewhere  
6 else altogether, other than along the cedar fence in the  
7 middle of the gravel walkway; correct?  
8 A. No, not necessarily. I really don't have any  
9 other place to put that window and that was -- looked  
10 about the safest place, because it's on the side of the  
11 house and out of the way.  
12 Q. Okay. Couldn't have been laid down flat in the  
13 garage?  
14 A. No. Not at the time. Because we still had the  
15 flooring in there.  
16 Q. How about --  
17 A. We have taken the door out and this window and  
18 still had part of the flooring in here, because there was  
19 -- raised it up for a dining area I think they had there.  
20 I'm not sure what it was along with that, but other than  
21 that --  
22 Q. What do you mean the dining area they had  
23 there?  
24 A. The people prior to owning the house before we  
25 owned the house, they did some renovating and sealed off

103

DEPOSITION OF ROGER AMUNDSON - AUGUST 14, 2014

1 the garage and turned the garage into a dining room and  
2 we renovated and turned it back to the garage.  
3 Q. I need to run you through what's been marked as  
4 Exhibit 8.  
5 (Deposition Exhibit 8 marked.)  
6 Thank you. Mr. Amundson, placed before you is  
7 a document marked Exhibit 8 to your deposition -- or to  
8 the depositions that have previously been taken in this  
9 case and we have --  
10 MR. STEFANIC: Are those the same photographs?  
11 MR. MONTELEONE: That's what I'm not sure of,  
12 because --  
13 MR. STEFANIC: Five --  
14 MR. MONTELEONE: -- if you look at --  
15 THE WITNESS: They are not the same.  
16 MR. MONTELEONE: They are not the same.  
17 THE WITNESS: This one is not.  
18 MR. MONTELEONE: Okay. Let's go off the record for  
19 a second.  
20 (An off-the-record discussion ensued.)  
21 BY MR. MONTELEONE:  
22 Q. Okay. Let's go back on the record. Placed  
23 before you, Mr. Amundson, is Exhibit 8 to your deposition  
24 and in that exhibit -- on the first page of Exhibit 8 do  
25 those appear to be blood stains?

104

1 A. Yes.  
2 Q. And those would be from Mr. Stiles during his  
3 accident; correct?  
4 A. That I'm not sure of.  
5 Q. Are you aware of anyone else bleeding to that  
6 extent on the window that --  
7 A. No. So, let's go with the assumption of it  
8 being Stiles'.  
9 Q. Okay. Go to the second page of Exhibit 8.  
10 Same question. Does that appear to be Mr. Stiles' blood?  
11 A. I would assume so. Yeah. Nobody else bled on  
12 that.  
13 Q. Third photograph in Exhibit 8, is that Mr.  
14 Sullivan standing behind a window?  
15 A. Yes.  
16 Q. Okay. And is that Mr. Stiles' blood on the  
17 window?  
18 A. Yes.  
19 Q. Do you know why Mr. Sullivan was standing  
20 behind there at the time this photo was taken?  
21 A. I have no idea why. Other than him taking a  
22 picture.  
23 Q. Well, it looks like he has his back to the  
24 window. Can we agree on that? Look at his feet.  
25 A. Right. So, I don't even know why he's -- he

105

1 was behind the window, like in this area.  
2 Q. Do you know who took that photo that is the  
3 third sheet of Exhibit 8?  
4 A. I don't. No. All of these, I'm assuming are  
5 the Sullivan's phone.  
6 Q. Did you take any photographs of the broken  
7 window, either before or after the accident?  
8 A. No. I really should have, though.  
9 Q. If you would turn to the fourth page of Exhibit  
10 8. Is that Mr. Sullivan behind the window again?  
11 A. Yes.  
12 Q. I believe that --  
13 A. That is Sullivan still. The same personal  
14 that --  
15 Q. Okay. How can you identify that as Mr.  
16 Sullivan?  
17 A. His baggy, weird, almost coming off him pants,  
18 you know. He always -- it's the style of the way he wore  
19 his clothes.  
20 Q. He's a sagging jeans guy?  
21 A. Yes.  
22 Q. Okay. Go to the fifth page of Exhibit 8 and,  
23 again, is that Mr. Stiles' blood on the window?  
24 A. I would assume so.  
25 Q. Okay. And the shards of glass that are in the

106

1 broken pane in the upper left, was that the condition of  
2 that pane of glass after it had been damaged by Mr.  
3 Jenkins' truck?  
4 A. No.  
5 Q. Okay.  
6 A. Stiles had broken it way more.  
7 Q. Okay. But there were already -- it was already  
8 broken prior to Mr. Stiles' accident; correct?  
9 A. That's correct.  
10 Q. And there were sharp shards of glass that were  
11 in that window pane that Mr. Stiles fell into on this  
12 accident; correct?  
13 A. That is correct.  
14 Q. But you think he broke out even more shards of  
15 glass?  
16 A. That's because it was -- there was just like a  
17 little hole in the pane and he -- he has taken out the  
18 whole pane -- like all of that was pretty much him.  
19 Stiles.  
20 Q. Okay. But prior to the accident somehow,  
21 whether by wind or Mr. Jenkins' door, something on Mr.  
22 Jenkins' vehicle came in contact with that pane of glass;  
23 correct?  
24 A. That's correct.  
25 Q. Describe the damage to that pane of glass after

107

DEPOSITION OF ROGER AMUNDSON - AUGUST 14, 2014

1 Mr. Jenkins' vehicle damaged it and prior to Mr. Stiles'  
2 accident?  
3 A. Just a little hole the size of the mirror.  
4 Q. So, do you believe it was Mr. Jenkins' rearview  
5 mirror from his Sonoma truck that broke the pane of  
6 glass?  
7 A. That is correct.  
8 Q. And a rearview mirror, can we agree, would put  
9 a hole in a pane of glass that size -- the hole would be,  
10 oh, say maybe six to eight inches in diameter.  
11 MR. STEFANIC: Objection. Speculation.  
12 THE WITNESS: No. It was just a little side mirror.  
13 BY MR. MONTELEONE:  
14 Q. All right. So, how big was the diameter of the  
15 hole in the pane of glass caused by --  
16 A. I would say a four by four hole.  
17 Q. Okay.  
18 A. Maybe a little bigger. Like a five inch by  
19 five inch. A little -- it was just a -- a puncture  
20 through, you know.  
21 Q. But clearly broken before Mr. Stiles was on  
22 that property?  
23 A. Clearly.  
24 Q. I forgot to ask you. When you took the sledge  
25 hammer to this window was any --

108

1 A. I cleared out all the glass before I took the  
2 sledge.  
3 Q. You know how to do construction.  
4 A. Yes. I didn't want a big old glass mess, so --  
5 Q. Okay. When you did that -- when you took the  
6 sledge hammer to it, did you do it even in part because  
7 of this accident?  
8 MR. STEFANIC: Object to form.  
9 THE WITNESS: No.  
10 MR. MONTELEONE: You just didn't think --  
11 THE WITNESS: The accident was completely irrelevant  
12 to me getting it trashed and demolished.  
13 BY MR. MONTELEONE:  
14 Q. Your motivation was you didn't think you could  
15 sell it?  
16 A. That's correct.  
17 Q. Did you try to market this window in any way?  
18 Did you put in on craigslist?  
19 A. Yes.  
20 Q. Okay. How much were you trying to sell it for?  
21 A. I was trying to get a hundred bucks out of it.  
22 Q. Okay. That was your original post to  
23 craigslist?  
24 A. That's correct.  
25 Q. Have you kept a copy of that post?

109

1 A. No.  
2 Q. Did you try to list it on any other internet  
3 site?  
4 A. No. Just craigslist.  
5 Q. Okay. So, other than craigslist and the little  
6 for sale sign you placed on it, did you try to market it  
7 in any other way?  
8 A. Not at all.  
9 Q. And --  
10 A. I didn't get that far with it.  
11 Q. And on the for sale sign you made did you have  
12 a dollar amount on it?  
13 A. No.  
14 Q. It just said for sale?  
15 A. Just said for sale.  
16 Q. Did you spell f-o-r? Did you use the number  
17 four like a lot of --  
18 A. F-o-r. I spelled it out.  
19 MR. MONTELEONE: Okay. Let's take a quick break and  
20 we are just about done.  
21 (A recess was had.)  
22 BY MR. MONTELEONE:  
23 Q. Let's go back on the record here. Mr.  
24 Amundson, when your father gave his deposition in this  
25 case he was clear that he believed the window pane was

110

1 broken when Mr. Stiles put his hand through it.  
2 MR. STEFANIC: Are you saying that's what Walter  
3 said?  
4 MR. MONTELEONE: It's in his deposition.  
5 MR. STEFANIC: That one hundred percent misstates  
6 his testimony.  
7 MR. MONTELEONE: It's in his deposition clear as a  
8 bell and under Rule 30 a deposition can be used for any  
9 purpose.  
10 MR. STEFANIC: Let's find the page then and show it  
11 to him.  
12 MR. MONTELEONE: You bet.  
13 MR. STEFANIC: You bet.  
14 MR. MONTELEONE: Let's go off the record.  
15 (An off-the-record discussion ensued.)  
16 BY MR. MONTELEONE:  
17 Q. Let's go back on the record. When your father  
18 testified in his deposition, Mr. Amundson, he had  
19 testified that Mr. Stiles had broken the window when he  
20 fell through it and that prior to Mr. Stiles' fall the  
21 window had not been broken. Is that testimony  
22 erroneous?  
23 A. I'm not too familiar with erroneous. What does  
24 that mean?  
25 Q. Was he wrong? Was your father wrong in his

111

DEPOSITION OF ROGER AMUNDSON - AUGUST 14, 2014

1 belief that the window pane had not been broken prior to  
2 Mr. Stiles' accident?  
3 A. That is correct. He was not aware.  
4 Q. Okay. Did you undertake any efforts to conceal  
5 the broken window from him?  
6 A. No. I just was not mentioning it -- I wasn't  
7 hiding it or anything.  
8 Q. When I say broken, I mean broken by Mr.  
9 Jenkins' vehicle?  
10 A. Correct.  
11 Q. So, after the window pane had been broken by  
12 Mr. Jenkins' vehicle, you didn't undertake any efforts to  
13 keep that fact from your father?  
14 A. No.  
15 Q. Did you ask either of your roommates to keep  
16 that fact from your father?  
17 A. No.  
18 Q. Now, in his deposition your father mentions  
19 that it was -- the window was listed for 200 dollars.  
20 Can you help reconcile why your father said 200 dollars  
21 to list the window for sale and you said a hundred  
22 dollars?  
23 A. I have no -- nothing to say on that. I  
24 don't know. Maybe he misunderstood the cost. I have no  
25 idea.

112

1 Q. Okay. But the price you wanted to put on the  
2 window was a hundred dollars?  
3 A. That's correct. That's what I listed it for.  
4 Q. Okay. And when you say listed, you put it on  
5 craigslist for a hundred dollars?  
6 A. That's correct.  
7 Q. Did you ever discuss with your father the  
8 amount of purchase price for that window?  
9 A. No.  
10 Q. Where did you attend school?  
11 A. Meridian.  
12 Q. What -- did you graduate from there?  
13 A. No.  
14 Q. Okay. What year were you scheduled to  
15 graduate? Or, in other words, did you start at Meridian  
16 High?  
17 A. I don't -- I have no idea. I don't really  
18 remember. I would have to look.  
19 Q. What's your date of -- what's your date of  
20 birth?  
21 A. 1/4/78.  
22 Q. Okay. So, you probably would have started high  
23 school around '92. Does that sound about right?  
24 [REDACTED]  
25 A. Yeah. That sounds about right.

113

1 Q. So, you would have graduated then -- scheduled  
2 to graduate in 1996; does that sound about right?  
3 A. That sounds about right.  
4 Q. The reason I ask all that is I think you  
5 overlapped with my co-counsel Chip Giles at Meridian  
6 High. I think you guys were both there at the same  
7 time.  
8 MR. STEFANIC: Did you guys know each other?  
9 THE WITNESS: Possibly. I don't know him, no.  
10 MR. MONTELEONE: You guys didn't eat lunch  
11 together.  
12 THE WITNESS: No.  
13 MR. STEFANIC: Had calculus together I'm sure.  
14 BY MR. MONTELEONE:  
15 Q. Have you ever been convicted of a felony?  
16 A. No.  
17 Q. All right. Are you under the influence of any  
18 medications or alcohol that would affect your ability to  
19 understand my questions today?  
20 A. No. Not at all.  
21 Q. Are you under the influence of any alcohol or  
22 medication or drugs, legal or illegal, that would affect  
23 your ability to tell the truth today?  
24 A. No. Not at all.  
25 MR. MONTELEONE: I thank you for your time. I don't

114

1 have any further questions, Mr. Amundson.  
2 MR. STEFANIC: I will reserve my questions for the  
3 time of trial. Thank you.

4  
5 (Whereupon the deposition ended at 5:54 p.m.)

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115

**DEPOSITION OF ROGER AMUNDSON - AUGUST 14, 2014**

**VERIFICATION**

STATE OF IDAHO )  
                          ) ss.  
County of \_\_\_\_\_ )

I, ROGER AMUNDSON, being first duly sworn on my oath, depose and say:

That I am the witness named in the foregoing deposition, consisting of pages numbered 1 through 115, inclusive; that I have read the said deposition and know the contents thereof; that the questions contained herein were propounded to me; that the answers to said questions were given by me, and that the answer as contained there (or as corrected by me therein) are true and correct.

\_\_\_\_\_  
**ROGER AMUNDSON**

Subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_, Idaho.

\_\_\_\_\_  
Notary Public for Idaho Residing  
At \_\_\_\_\_, Idaho  
My commission expires: \_\_\_\_\_

**REPORTER'S CERTIFICATE**

STATE OF IDAHO )  
                          ) ss.  
County of Ada         )

I, M. DEAN WILLIS, Certified Shorthand Reporter and Notary Public in and for the state of Idaho, DO HEREBY CERTIFY:

That prior to being examined, the witness named in the foregoing deposition was by me duly sworn to testify the truth, the whole truth and nothing but the truth;

That said deposition was taken down by me in shorthand at the time and place therein named and thereafter reduced to typewriting by myself, and that the foregoing transcript contains a full, true and verbatim record of said deposition.

I further certify that I have no interest in the event of this action.

WITNESS my hand and seal this \_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
M. DEAN WILLIS, CSR NO. 95 and  
Notary Public, State of Idaho.  
My Commission expires: 9-15-16

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

DAVID WAYNE STILES, )  
 )  
 Plaintiff, )  
 )  
 vs. ) Case No. CV-PI 1311963  
 )  
 WALTER A. AMUNDSON, )  
 )  
 Defendant. )  
 )  
 \_\_\_\_\_ )

DEPOSITION OF JONATHAN N. SULLIVAN

MAY 6, 2014

REPORTED BY:

BEVERLY A. BENJAMIN, CSR No. 710, RPR

Notary Public



1 THE DEPOSITION OF JONATHAN N. SULLIVAN was  
 2 taken on behalf of the Defendant at the offices of  
 3 Anderson Julian & Hull, 250 South Fifth Street, Boise,  
 4 Idaho, commencing at 1:46 p.m. on May 6, 2014, before  
 5 Beverly A. Benjamin, Certified Shorthand Reporter and  
 6 Notary Public within and for the State of Idaho, in the  
 7 above-entitled matter.

8 APPEARANCES:

9 For Plaintiff:

10 Brady Law Office  
 11 BY MR. CHIP GILES  
 12 2537 West State Street, Suite 200  
 13 Boise, Idaho 83701-1398  
 14 -and-  
 15 Johnson & Monteleone, LLP  
 16 BY MR. JASON R.N. MONTELEONE  
 17 405 South Eighth Street, Suite 250  
 18 Boise, Idaho 83702

19 For Defendant:

20 Anderson Julian & Hull, LLP  
 21 BY MR. MICHAEL P. STEFANIC  
 22 250 South Fifth Street, Suite 700  
 23 P.O. Box 7426  
 24 Boise, Idaho 83707  
 25

1 ALSO PRESENT: Barry Trent, State Farm  
 2 David Wayne Stiles  
 3 Walter Amundson  
 4 Glenda Amundson  
 5  
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1 I N D E X

2 TESTIMONY OF JONATHAN N. SULLIVAN PAGE

3 Examination by Mr. Stefanic 5

4 Examination by Mr. Giles 78

5 Further Examination by Mr. Stefanic 82

6

7 E X H I B I T S

8 NO. DESCRIPTION PAGE

9 1 - Notice of Deposition Duces Tecum of Jon Sullivan 7

10

11 2 - Photograph of home 18

12 3 - Photograph of side of home 26

13 4 - Photograph of side of home 49

14 5 - Photographs 5-A through F of window 71

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1 JONATHAN N. SULLIVAN,  
 2 first duly sworn to tell the truth relating to said  
 3 cause, testified as follows:  
 4

5 MR. STEFANIC: Let the record reflect this is  
 6 the time and place of the deposition of Jon Sullivan.  
 7 The deposition has been noticed and will be taken  
 8 pursuant to the Idaho Rules of Civil Procedure.  
 9

10 EXAMINATION

11 QUESTIONS BY MR. STEFANIC:

12 Q. Mr. Sullivan, could you please state your full  
 13 name for the record, spelling your last.  
 14 A. Jonathan Noah Sullivan, S-u-l-l-i-v-a-n.  
 15 Q. How old are you?  
 16 A. I'm 31.  
 17 Q. Your social security number, please.  
 18 A. [REDACTED]  
 19 Q. Have you ever had your deposition taken  
 20 before?  
 21 A. No.  
 22 Q. It's kind of an odd situation with all these  
 23 people in this room, but I will be asking -- I should  
 24 introduce myself. My name is Mike Stefanic and I  
 25 represent Walter Amundson in this case. You know

1 Walter, he was your landlord; correct?  
 2 A. Yes.  
 3 Q. I'll be taking your deposition. There is some  
 4 basic rules of a deposition that I would like to cover  
 5 with you, one of which is you understand that you are  
 6 under oath and your testimony here today is the same as  
 7 it would be over in the courthouse in front of a judge.  
 8 You understand that?  
 9 A. Yes.  
 10 Q. Probably the most important rule that we have  
 11 is to make sure that you understand the question before  
 12 you answer. Okay?  
 13 A. Okay.  
 14 Q. If for whatever reason I ask a goofy question,  
 15 will you let me know and I will rephrase it?  
 16 A. Yes.  
 17 Q. The bottom line is, I don't want you to answer  
 18 a question today that you don't understand; is that  
 19 fair?  
 20 A. That's fair.  
 21 Q. It's important to answer verbally instead of  
 22 "uh-huhs" or "huh-uhs." The court reporter can't take  
 23 that down, and I will remind you from time to time. We  
 24 all do it.  
 25 A. Okay.

1 Q. Any reason you need a break, we can certainly  
 2 take a break. I would just ask that you answer the  
 3 question pending before you take a break. Okay?  
 4 A. Okay.  
 5 Q. Last thing is, is that I'm going to try not to  
 6 talk when you are talking. If you could extend to me  
 7 the same courtesy, I would appreciate it.  
 8 A. Okay.  
 9 Q. Do you mind if I call you "Jon"?  
 10 A. That's fine.  
 11 Q. Good. Are you under any medication today that  
 12 would affect your ability to understand the questions?  
 13 A. No.  
 14 (Exhibit 1 marked.)  
 15 Q. (BY MR. STEFANIC) Handing you what has been  
 16 marked as Exhibit No. 1. This is the notice of  
 17 deposition asking you to show up here, and thank you for  
 18 coming. It asks for you to bring copies of any and all  
 19 documents that pertain to the lease of the premises at  
 20 issue or pertaining to Mr. Stiles' claims in this  
 21 matter. Have you brought any documents with you today?  
 22 A. No.  
 23 Q. Are you aware of -- did you have a lease  
 24 agreement?  
 25 A. Yes.

1 Q. Do you still have a copy of that lease  
 2 agreement?  
 3 A. I do not.  
 4 Q. Are you related to Mr. Stiles?  
 5 A. Yes.  
 6 Q. In what way?  
 7 A. My cousin.  
 8 Q. Explain, is it your mom or your dad that is  
 9 related?  
 10 A. My dad.  
 11 Q. Your dad has either a brother or a sister to  
 12 his what?  
 13 A. Yes, my father is related to his mother.  
 14 Q. Brother and sister?  
 15 A. Yes.  
 16 Q. Do you have a recollection -- how old are you  
 17 today?  
 18 A. 31.  
 19 Q. Okay. Were you a close family, grew up  
 20 together, played with each other growing up or --  
 21 A. No.  
 22 Q. Can you describe in the last five years  
 23 generally what your relationship has been with  
 24 Mr. Stiles.  
 25 A. We have grown closer when I got older. We

1 have grown closer and talk regularly and drink coffee,  
 2 work on stuff.  
 3 Q. What types of things do you work on?  
 4 A. The last project we did was a dirt bike, built  
 5 a dirt bike.  
 6 Q. What did you do with the dirt bike?  
 7 A. Put it all together, put new parts in it, got  
 8 it all put together and running.  
 9 Q. Whose dirt bike was it?  
 10 A. It was my cousin's.  
 11 Q. David's?  
 12 A. Yes.  
 13 Q. When did you work on this dirt bike?  
 14 A. We finished it up during this winter.  
 15 Q. What types of things did you do with respect  
 16 to putting this bike together versus what he did?  
 17 MR. GILES: Object to the form of the  
 18 question.  
 19 THE WITNESS: Can you repeat that, please.  
 20 Q. (BY MR. STEFANIC) Yes. You obviously had to  
 21 use tools to put this thing together; correct?  
 22 A. Yes.  
 23 Q. I was wondering about the division of labor  
 24 between you and Mr. Stiles regarding putting this bike  
 25 together.



1 MR. GILES: I'd restate my objection.  
 2 Q. (BY MR. STEFANIC) Go ahead.  
 3 A. He did most of the mechanical work. He has a  
 4 lot more knowledge mechanically than I do. So I would  
 5 help when I could and learn as I went.  
 6 Q. What type of mechanical work are you referring  
 7 to that Mr. Stiles did?  
 8 A. Putting the carburetor together, taking it  
 9 apart, removing, replacing gaskets, piston.  
 10 Q. What else?  
 11 A. Just the basic assembly and disassembly of the  
 12 entire bike.  
 13 Q. So would it be fair to say that Mr. Stiles has  
 14 the knowledge of putting a bike together such as this  
 15 and that you are in the position of learning from him?  
 16 A. Yes.  
 17 MR. GILES: Object to the form of the  
 18 question.  
 19 MR. STEFANIC: What is wrong with the  
 20 question?  
 21 MR. GILES: I don't see that it's relevant.  
 22 MR. STEFANIC: Objection to relevancy. Fair  
 23 enough.  
 24 Q. (BY MR. STEFANIC) What tools did you observe  
 25 Mr. Stiles using when he put together a carburetor,

1 Q. Would that have been something that was before  
 2 this accident?  
 3 A. Oh, yeah.  
 4 Q. Since this accident, other than putting  
 5 together a dirt bike, have you done anything with him  
 6 such as putting together a dirt bike, tinkering on  
 7 motors, that sort of thing?  
 8 A. No.  
 9 Q. What did you do to prepare for this deposition  
 10 today?  
 11 A. Can you rephrase that.  
 12 Q. Yeah. Did you meet with anybody in  
 13 preparation for this deposition today?  
 14 A. I just met with these gentlemen.  
 15 Q. Was that today or before the deposition or at  
 16 another date?  
 17 A. Today before the deposition.  
 18 Q. All right. They essentially explained to you  
 19 the process of a deposition?  
 20 A. Yes.  
 21 Q. Did you review any documents with -- these  
 22 gentlemen are the counsel for Mr. Stiles; right?  
 23 A. Yes.  
 24 Q. Did you review any documents?  
 25 A. No.

1 removed gaskets and pistons, et cetera?  
 2 A. Sockets, screwdrivers, wrenches.  
 3 Q. Do you know whether Mr. Stiles is right- or  
 4 left-hand dominant?  
 5 A. Well, I don't know honestly, due to the fact  
 6 of his accident.  
 7 Q. You don't know?  
 8 A. I do not know.  
 9 Q. Did you observe him having any difficulties  
 10 using these tools while he was putting together this  
 11 dirt bike?  
 12 A. Yes.  
 13 Q. What did you observe?  
 14 A. There was a strength factor there, grip. It  
 15 wasn't an easy thing by any means.  
 16 Q. With some effort was he able to do what he  
 17 needed to do to put together the things you've  
 18 identified?  
 19 A. Yes.  
 20 Q. Do you recall him using the wrenches with his  
 21 right or left hand?  
 22 A. I do not remember.  
 23 Q. Have you worked with him on other projects  
 24 such as this dirt bike?  
 25 A. A long time ago.

1 Q. Did you review any pictures?  
 2 A. No.  
 3 Q. Where do you currently reside?  
 4 A. Would you like the address?  
 5 Q. Yes, please.  
 6 A. 6310 Kirkwood Road, Boise, Idaho 83709.  
 7 Q. Other than putting together this dirt bike,  
 8 what other things have you done with your cousin in the  
 9 last -- since this accident that occurred in July of  
 10 2011? You mentioned coffee, I get that.  
 11 A. Just hanging out, talking, nothing much other  
 12 than that really.  
 13 Q. Are you aware of any other hobbies your cousin  
 14 has other than putting together a dirt bike or working  
 15 with tools, that sort of thing?  
 16 A. He's good at racing, likes to race.  
 17 Q. Race what?  
 18 A. Just about anything he can get in. He's good.  
 19 He's got a lot of good achievements from that, a lot of  
 20 trophies.  
 21 Q. Racing, you could be on a motorcycle or a dirt  
 22 bike or on your feet running. What kind of racing does  
 23 he do?  
 24 A. Sorry. Cars, go-carts.  
 25 Q. Have you been with him when he's worked on

1 cars or go-carts since this accident?  
 2 A. No.  
 3 Q. From your understanding has Mr. Stiles raced a  
 4 go-cart or car since this accident in July '11?  
 5 A. No.  
 6 Q. He has not?  
 7 A. Not to my knowledge, no.  
 8 Q. So the last time you saw him race anything was  
 9 before this accident?  
 10 A. Yes.  
 11 Q. Do you have an understanding of whether he  
 12 continues to race or not since this accident?  
 13 A. No.  
 14 Q. You don't know or he does not?  
 15 A. To my knowledge, no, he does not.  
 16 Q. How often do you see Mr. Stiles, say, in a  
 17 month's time?  
 18 A. In a month, a couple times a month usually.  
 19 I've been busy these last couple months, both of us.  
 20 Q. Are you currently employed?  
 21 A. Yes.  
 22 Q. What do you do?  
 23 A. I'm an operator, distributor/operator, truck  
 24 driver, do ground layout, map of the road, excavation.  
 25 Q. Who do you work for?

1 A. Yes.  
 2 Q. I'm going to move on, but what are their  
 3 names?  
 4 A. Brittany Jenkins and Cassandra Grow.  
 5 Q. Are they in the Boise area?  
 6 A. One of them is.  
 7 Q. Which one?  
 8 A. Cassandra.  
 9 Q. Where is Brittany?  
 10 A. She is in North Dakota.  
 11 Q. How old are your kids?  
 12 A. My youngest son is 2, my oldest son is 6.  
 13 Q. High school degree?  
 14 A. GED.  
 15 Q. What year?  
 16 A. I want to say 2005.  
 17 Q. Do you have any other education beyond that?  
 18 A. Yes. BSU, got my CDL and endorsements.  
 19 Q. CDL?  
 20 A. Yes.  
 21 Q. When did you finish that?  
 22 A. 2007.  
 23 Q. Have you ever been in the military?  
 24 A. No.  
 25 Q. Have you been involved in previous lawsuits at

1 A. C&A Paving.  
 2 Q. Do you have a supervisor?  
 3 A. Yes, I do.  
 4 Q. Who is that?  
 5 A. John Mindeola.  
 6 Q. Is that here in town?  
 7 A. Yes, it is.  
 8 Q. Are you married?  
 9 A. Yes, I am.  
 10 Q. Who are you married to?  
 11 A. Sandra Dee Sullivan.  
 12 Q. How long have you been married?  
 13 A. About a year.  
 14 Q. Any previous marriages?  
 15 A. No.  
 16 Q. Any kids?  
 17 A. Yes.  
 18 Q. How many kids do you have?  
 19 A. I have two and she has two.  
 20 Q. So you have two kids from a previous  
 21 relationship?  
 22 A. Yes.  
 23 Q. Same mother?  
 24 A. No.  
 25 Q. Do you keep in touch with these mothers?

1 all?  
 2 A. No.  
 3 Q. One of the questions that drives everybody  
 4 crazy in asking, and I apologize for having to do this,  
 5 it's a standard question. Have you ever been convicted  
 6 of a felony?  
 7 A. Yes.  
 8 Q. When was that and what was it?  
 9 A. 2004, aggravated assault with a deadly weapon.  
 10 Q. And was that in Ada County?  
 11 A. Yes.  
 12 Q. Any other felonies?  
 13 A. No.  
 14 Q. Let's talk about your lease of the place, the  
 15 place we are here for. I understand that you leased or  
 16 you were a tenant in some property owned by Mr.  
 17 Amundson; is that correct?  
 18 A. Yes.  
 19 Q. Do you recall where that property was located?  
 20 A. I don't remember the physical address, but I  
 21 do know where it is.  
 22 Q. In Kuna?  
 23 A. Yes.  
 24 Q. Is it in close proximity to any businesses  
 25 that you are aware of that could guide me there?

1 A. Yes.  
 2 Q. Which ones?  
 3 A. Directly across the street from Creekside and  
 4 Cowgirls.  
 5 Q. I know the general location.  
 6 Let's mark this as the next exhibit.  
 7 (Exhibit 2 marked.)  
 8 MR. STEFANIC: So I don't have copies of  
 9 these, but you have them in your discovery.  
 10 MR. GILES: Yes, we have those. Thanks.  
 11 MR. STEFANIC: Sure.  
 12 Q. (BY MR. STEFANIC) Handing you what has been  
 13 marked as Exhibit No. 2. Does this look like the  
 14 property that you leased from Mr. Amundson?  
 15 A. Yes.  
 16 Q. And that photograph shows a bay window in it,  
 17 right here (indicating).  
 18 A. Yes.  
 19 Q. I understand that that was taken out at some  
 20 point; is that correct?  
 21 A. Yes.  
 22 Q. What was that area turned into after that  
 23 window was taken out?  
 24 A. A garage.  
 25 Q. Were you a tenant at that premises when that

1 A. Yes.  
 2 Q. Do you recall about when you rented a room at  
 3 this residence?  
 4 A. No, I don't. I don't remember. It's been  
 5 quite some time.  
 6 Q. Sure. This accident happened in July of 2011.  
 7 Does that date give you any time frame about how long  
 8 before that you began as a tenant there; in other words,  
 9 was it a year before, two years, was it a few months?  
 10 A. I would say a few months.  
 11 Q. Were there already tenants in the residence at  
 12 the time you moved in?  
 13 A. Roger and then myself and shortly after that  
 14 another tenant, Wayne, moved in.  
 15 Q. Do you remember Wayne's last name?  
 16 A. Jenkins.  
 17 Q. Do you know where Wayne is located currently?  
 18 A. I think he lives with his parents.  
 19 Q. Do you know where?  
 20 A. I want to say Amity and Five Mile.  
 21 Q. Do you know where Roger is?  
 22 A. No.  
 23 Q. When you lived with these two other people,  
 24 did you consider them friends or were you just -- that  
 25 is the question.

1 took place?  
 2 A. Yes.  
 3 Q. Does that photograph show generally how that  
 4 property was maintained at the time you leased it in  
 5 terms of it looks like it's trimmed, it's well kept,  
 6 that sort of thing?  
 7 A. Yes.  
 8 Q. Is that how it was kept at the time you leased  
 9 the premises?  
 10 A. Yes.  
 11 Q. How many bedrooms and baths did it have?  
 12 A. Three bedrooms, two bathrooms, or one and a  
 13 half you would call it.  
 14 Q. And you had a kitchen to share?  
 15 A. Yes.  
 16 Q. How did it come about that you came to be a  
 17 tenant at that location?  
 18 A. Through Roger. I had a friend that got ahold  
 19 of him and letting me know about him having a room  
 20 possibly for rent.  
 21 Q. Did you go look at the place before you signed  
 22 up on the lease?  
 23 A. Yes.  
 24 Q. Was your viewing favorable? I'm taking --  
 25 since you went ahead and rented a room.

1 A. Yes.  
 2 Q. Did you get along with them?  
 3 A. Yes.  
 4 Q. Was there times during your tenancy that you  
 5 didn't get along with them?  
 6 A. Yes.  
 7 Q. With respect to -- let's take first Wayne.  
 8 Did you have any issues one way or the other, negative  
 9 with Wayne while you were living there?  
 10 A. Yes.  
 11 Q. What type of problems did you have with Wayne?  
 12 A. The fact that he would just blast music in his  
 13 room, drinking, and he would sometimes stumble out of  
 14 his room naked when I had company over and making a fool  
 15 of himself.  
 16 Q. I can see how that might be bothersome.  
 17 A. Yes.  
 18 Q. How many occasions did that happen?  
 19 A. He drank every night, still [ph] reserve  
 20 stuff, nasty crap, every night.  
 21 Q. Was the comment "nasty crap"?  
 22 A. Yes.  
 23 Q. I thought that may be another flavor of beer.  
 24 So he drank most every day is what you say?  
 25 A. Yes.

1 Q. Any other problems with Wayne other than what  
2 you've described?  
3 A. He just wasn't my type of character, so I  
4 didn't spend a lot of time with him.  
5 Q. Were you cordial with each other?  
6 A. Yes.  
7 Q. Tried to get along together?  
8 A. Yes.  
9 Q. Any altercations with him, for example?  
10 A. No.  
11 Q. What problems, if any, did you have with  
12 Roger?  
13 A. None.  
14 Q. How did you know Roger before this?  
15 A. I can't remember who exactly re-introduced him  
16 to me, but I had met him years and years ago. We have  
17 mutual friends that we grew up together with. I want to  
18 say Mike Tromberg.  
19 Q. Did you and Roger hang out together before you  
20 became a tenant at that place?  
21 A. No, not recently. Like I said, when we  
22 crossed paths it was years and years ago.  
23 Q. Did you have any discussions with -- well, you  
24 found out about the room through Roger; is that right?  
25 A. Yes.

1 Q. And then did you at some time talk to Walter  
2 about renting the place?  
3 A. Yes. I believe -- I think it was a  
4 month-to-month, some sort of a basic, a real basic lease  
5 deal.  
6 Q. As best as you can recall, do you recall other  
7 than a month-to-month what the terms were, for example,  
8 the amount of money you had to pay, whether utilities  
9 were involved?  
10 A. I honestly don't even remember what I was  
11 paying there.  
12 Q. As a tenant did you have any responsibilities  
13 with respect to the upkeep of the premises?  
14 A. Well, just a mutual respect type of deal, try  
15 to clean up after yourself.  
16 Q. The landlord here that you dealt with was  
17 Walter Amundson; is that right?  
18 A. Yes.  
19 Q. And did you pay your rent to Walter?  
20 A. No.  
21 Q. Who did you pay it to?  
22 A. Roger.  
23 Q. And then Roger gave it to him?  
24 A. Yes.  
25 Q. Was there ever a time when Walter had to come

1 and collect it from you one way or the other?  
2 A. I honestly don't remember.  
3 Q. What dealings do you -- let's talk about  
4 before this accident. So if you had rented it for a few  
5 months before this accident, what dealings, if any, did  
6 you have with Walter?  
7 A. Nothing really. I helped him frame in the  
8 garage when they took out the window.  
9 Q. Did you pay your rent in cash?  
10 A. Yes.  
11 Q. Did you ever write a check?  
12 A. No.  
13 Q. Other than helping frame in the garage, do you  
14 recall having other conversations with Walter about the  
15 leased premises?  
16 A. No.  
17 Q. Did you know what terms between Walter and the  
18 other two tenants -- bad question, sorry.  
19 I'm curious as to whether you knew what the  
20 terms of the lease was between, for example, Wayne and  
21 Walter.  
22 A. I don't know. I would assume it was the same,  
23 but I don't know.  
24 Q. What about the terms of the tenancy between  
25 Roger and Walter?

1 A. Don't know.  
2 Q. Do you know what duties with respect to the  
3 upkeep of the premises Roger or Walter had -- or Roger  
4 or Wayne had, if any?  
5 A. Roger, he was very into maintaining the yard  
6 and flowers. He's a very clean person. He took really  
7 good care of everything. He was always doing something.  
8 Q. Did you help out with that?  
9 A. Yeah, occasionally.  
10 Q. What kind of things did you do?  
11 A. Mowing, working on weeders and mowers, helped  
12 dig out a fire pit in the backyard.  
13 Q. Did you help dig that fire pit?  
14 A. Yes.  
15 Q. Did you talk to anybody about whether it was  
16 okay to dig a fire pit?  
17 A. Yes.  
18 Q. Who did you talk with?  
19 A. Roger. It was already existing. It just had  
20 rocks, big rocks in the middle of it, so pretty much we  
21 just pulled the rocks out.  
22 Q. Did you have any understanding as to whether  
23 Roger talked with Walter about the fire pit?  
24 A. No.  
25 Q. Did you have any issue come up before this

Page 26

1 accident where there was a problem that needed to be  
2 repaired on the premises that you recall?  
3 A. Not that I recall, no.  
4 Q. How about after this accident, was there ever  
5 a time when you felt like something needed to be  
6 repaired?  
7 A. Not at all.  
8 Q. If there was a something that you thought  
9 needed to be repaired, would your procedure have been to  
10 contact Walter and tell him about it?  
11 MR. GILES: Object to the question as  
12 speculative.  
13 THE WITNESS: No. If I would have seen  
14 something that caught my attention, I would have just  
15 told Roger.  
16 Q. (BY MR. STEFANIC) Is that because Roger was  
17 his son?  
18 A. Yes.  
19 Q. And you assumed that Roger speaks with his  
20 dad.  
21 A. Yes.  
22 Q. Was Walter involved in taking out the bay  
23 window?  
24 A. Yes.  
25 (Exhibit 3 marked.)

Page 27

1 Q. (BY MR. STEFANIC) Handing you what has been  
2 marked as Exhibit No. 3. As you are facing this  
3 property that is depicted in Exhibit No. 2, do you  
4 recognize this as being the right side of the property?  
5 A. Yes.  
6 Q. I cannot represent to you when this picture  
7 was taken. I don't even know who took this picture.  
8 But is that the basic area on the right-hand side of  
9 this property leading to the, I suppose to the backyard?  
10 A. Yes.  
11 Q. There is a wood structure of something laying  
12 there in that area. Do you know what that is?  
13 A. No.  
14 Q. Have you ever seen that before?  
15 A. No.  
16 Q. I'll represent to you that I don't think it  
17 has anything to do with this accident, and I'm sure it  
18 wasn't even there at the time. It was just in this  
19 picture when the picture was taken. Okay?  
20 A. Okay.  
21 Q. So without that piece of wood being there, is  
22 that generally how that side of the house looked during  
23 your tenancy?  
24 A. Yes.  
25 Q. And that is the area that we are talking about

Page 28

1 where the window was placed after it was taken out; is  
2 that fair?  
3 A. Yes.  
4 Q. While you were a tenant there did you have the  
5 occasion to access the backyard?  
6 A. Yes.  
7 Q. Generally how would you access the backyard?  
8 A. Personally, if I was in the house I would go  
9 through the garage and out the backdoor.  
10 Q. So there is a door that goes from the back of  
11 the garage to the backyard?  
12 A. Yes.  
13 Q. From time to time when you had people come  
14 over for a fire or whatever, what was generally the way  
15 that they came in to access the backyard?  
16 A. Through the garage or through the side.  
17 Q. This side of the thing has a gate back here as  
18 I understand it?  
19 A. Yes.  
20 Q. Was there any problems with the gate?  
21 A. Not that I recall.  
22 Q. Was there any problems with, for example, the  
23 latch on the gate or it being difficult to open,  
24 anything like that to your recollection while you were a  
25 tenant there?

Page 29

1 A. Not to my recollection.  
2 Q. How did it come about that the bay window was  
3 taken out? I guess what I'm driving at is, do you know  
4 why that was done?  
5 A. I assume so they could return it back into a  
6 garage and have access to use it as such, work on cars  
7 or whatever needed to be done, park vehicles in there.  
8 Q. Did making that into a garage have anything to  
9 do with storing any of your stuff, for example?  
10 A. No.  
11 Q. Any of the other tenant's stuff, to your  
12 knowledge?  
13 A. Roger just had basic lawn stuff in there and  
14 his dirt bike, and I would park my motorcycle in there  
15 too sometimes, actually all the time.  
16 Q. What kind of a motorcycle do you have?  
17 A. The one that I had during that time was a  
18 Harley-Davidson.  
19 Q. Are you a typical Harley owner where you are  
20 proud of your Harley?  
21 A. Yes.  
22 Q. Where did you park it before that was a  
23 garage?  
24 A. I believe I had it at a friend's around the  
25 corner in their garage. I wasn't big on leaving it out

1 overnight.  
 2 Q. Did you help remove the window at all?  
 3 A. No.  
 4 Q. Who helped, if you know?  
 5 A. Roger and Walter.  
 6 Q. Do you know approximately when they removed  
 7 this window?  
 8 A. No. If I remember it was in the morning.  
 9 Q. What I was getting at is that if this accident  
 10 occurred July 8, 2011, do you know whether the window  
 11 was removed sometime in June, sometime in May, sometime  
 12 in July? That is what I was getting at.  
 13 A. I honestly don't remember. I would have to  
 14 give you a guesstimation. It wasn't out too awful long.  
 15 Q. Do you think that the window was out a couple  
 16 weeks before the accident, more or less?  
 17 A. Somewhere around there. Like I said, I mean,  
 18 it's a guesstimation.  
 19 Q. Understood. Did you observe Roger and Walter  
 20 taking out this window at all?  
 21 A. After the aftermath, more or less.  
 22 Q. What do you recall about the aftermath?  
 23 A. Coming out, and that is when I began to help  
 24 with the wood and the framing, getting it ready for a  
 25 garage door.

1 what you just said.  
 2 So on Exhibit No. 3 there is two fences that  
 3 are shown there. One is sort of a white picket fence  
 4 for a length of time that goes alongside of the  
 5 driveway; correct?  
 6 A. Yes.  
 7 Q. And then behind that as you go further from  
 8 the street to the back of the property, there is a cedar  
 9 fence.  
 10 A. Yes.  
 11 Q. Is that right?  
 12 A. Yes.  
 13 Q. And your testimony is that when they initially  
 14 took the window out that is depicted in 2, where the  
 15 garage is going to be, they set it up against which  
 16 fence?  
 17 A. The white picket fence.  
 18 Q. And how was the window -- I'm sure it came out  
 19 framed; right?  
 20 A. Yes.  
 21 Q. In one piece.  
 22 A. Yes.  
 23 Q. So they leaned it up against the white picket  
 24 fence. Did they just lean it up against or did they use  
 25 anything to prop it up at that point?

1 Q. Do you have some background in that, like  
 2 framing?  
 3 A. Construction, yes.  
 4 Q. When you say what you just said, I almost  
 5 think that you woke up one morning, came out and the  
 6 window has been taken out, Let me help. Did you know  
 7 that this was going to happen?  
 8 A. No. I remember him talking about it, but I  
 9 didn't know it was going to happen when it happened.  
 10 Q. So the first that you knew it was actually  
 11 happening was when you probably got out of bed and heard  
 12 some banging or something?  
 13 A. Yes.  
 14 Q. You came out, and at that point was the window  
 15 out when you came out?  
 16 A. Yes.  
 17 Q. Do you have any recollection as to where  
 18 the -- after the window was taken out where it was set?  
 19 A. Yes.  
 20 Q. Where would that be?  
 21 A. Right here is the driveway and this fence runs  
 22 all the way along the driveway out to the end of the  
 23 property, and it was on the driveway against this fence.  
 24 Q. Okay. So it's difficult when we don't have --  
 25 when we are reading this later, trying to figure out

1 A. It just leaned up. It was a pretty big sturdy  
 2 window. But it was kind of leaned on the window -- or  
 3 excuse me, on the fence.  
 4 Q. Okay. Is that where you found it when you  
 5 came out to help them frame the garage?  
 6 A. Yes.  
 7 Q. Tell me about what transpired after you saw  
 8 that window where you have indicated, and what did you  
 9 do to help them frame the garage?  
 10 A. We ripped some existing wood out and put new  
 11 wood in to get ready for the garage door to be  
 12 installed.  
 13 Q. Did that all transpire on the same day?  
 14 A. Yes.  
 15 Q. Did you complete the task of framing in the  
 16 garage that day?  
 17 A. Yes.  
 18 Q. The next step in the process I'm assuming was  
 19 to install the garage door?  
 20 A. Yes.  
 21 Q. Did that happen on that day?  
 22 A. No.  
 23 Q. That happened when?  
 24 A. I don't recall for sure.  
 25 Q. Did you help in that at all?

1 A. No, I did not.  
2 Q. Is there a way that you can show me generally,  
3 using Exhibit No. 3, where the window was -- you can use  
4 an X on this diagram -- generally where the window was  
5 when it was leaned up against the white picket fence?  
6 A. It's hard to do such because, like you said,  
7 we don't have the whole entire picture, so it makes it  
8 difficult.  
9 But this white picket fence obviously runs  
10 from where you can see it starting out to the end of the  
11 property.  
12 Q. Would it be helpful for you to draw a diagram  
13 to help better understand?  
14 A. Yeah. Like this driveway here, it goes out;  
15 right? Here's the street and the picket fence comes  
16 along here. And it was leaned up right about here,  
17 right in the middle of this driveway, right there  
18 originally (indicating).  
19 Q. You've drawn on Exhibit No. 2, which is okay.  
20 I should have told you not to, but that's okay.  
21 Can you label that window where you've drawn  
22 that scratch.  
23 A. (Complies.)  
24 Q. From the time of the original positioning of  
25 that window to the time of this accident, when it

1 Q. Do you know in relationship to when the window  
2 was originally placed against the picket fence, how much  
3 time had elapsed from the placement of the window to the  
4 time it fell against the vehicle?  
5 A. Right after that happened it wasn't very long  
6 before it was moved out of the way.  
7 Q. What I'm saying is, is that the window was  
8 originally placed up against the white picket fence;  
9 correct?  
10 A. Yes.  
11 Q. How long from that point until it blew over  
12 and hit Wayne's truck; a week, two weeks, more or less?  
13 A. I would guess a week, about a week, something  
14 like that.  
15 Q. Did you observe the window leaning up against  
16 Wayne's truck?  
17 A. Yes.  
18 Q. And did you observe when the glass was --  
19 A. Excuse me. No, I did not see it leaning up  
20 against Wayne's truck. I heard what happened and seen  
21 some glass laying on the ground after it happened. But  
22 it was still in the position, just not leaning on his  
23 truck.  
24 Q. It was back up against the fence.  
25 A. Yes.

1 occurred, did that window move?  
2 A. Yes.  
3 Q. I want to talk about that a little bit more.  
4 What do you know about the window moving from when it  
5 was leaning up against the white picket fence as you  
6 observed when you framed the garage? I want to know  
7 about every move it made up until the time of this  
8 accident.  
9 A. Okay. It was originally right there  
10 (indicating).  
11 Q. That is on Exhibit 2 where you've written  
12 "window"?  
13 A. Yes. And Wayne, the other tenant at that  
14 time, his truck was parked right there (indicating).  
15 Q. Right where?  
16 A. In this driveway right along, right next to  
17 where the window was on the driveway.  
18 Q. On Exhibit No. 2.  
19 A. Yes. And I believe it was wind that blew and  
20 caused the window to fall over, and his mirror on his  
21 truck door broke out one of the panel windows.  
22 Q. On Wayne's truck.  
23 A. Yes.  
24 Q. Did it damage Wayne's truck?  
25 A. I don't recall. I don't think it did.

1 Q. Who did you hear from that it had fallen  
2 against his truck; was that Wayne or --  
3 A. Roger.  
4 Q. What do you know about the window being moved  
5 from that position to a different position?  
6 A. Not much at all.  
7 Q. Was the window moved from leaning up against  
8 the white picket fence somewhere else at some point?  
9 A. Yes. It was moved from where it was leaning  
10 on the white picket fence back to the side of the house  
11 on the walkway up against the wood cedar fence.  
12 Q. And would you be able to -- understanding that  
13 we can't really tell the depth here. Is there a way  
14 that you could on Exhibit 3 at least point to where the  
15 window was moved to?  
16 A. (Indicating.) About right in here.  
17 Approximately like 6 feet from the edge of the concrete  
18 back along the -- up against the wood fence.  
19 Q. When you say "6 feet" -- and you seem to have  
20 a recollection about that and I appreciate that. Do you  
21 know why you have that recollection?  
22 A. Well, it stuck in my head when it's covered  
23 with blood.  
24 Q. So if I were to go out there, if I took a  
25 measurer from the edge of this pavement and went back

1 along this fence about 6 feet, that's about where it  
2 was.  
3 A. Yes.  
4 Q. Was that the center of the window at the 6  
5 foot mark or would that have been the edge of it?  
6 A. I honestly couldn't tell you.  
7 Q. Somewhere in there. That's fair.  
8 Now, how long after -- you heard about the  
9 glass breaking and you saw glass on the ground, so you  
10 knew something happened with the truck; right?  
11 A. Yes.  
12 Q. How long from that point until it was moved to  
13 the position where you indicate 6 feet?  
14 A. Again, I can't give you an exact time frame,  
15 but not long.  
16 Q. Who moved it?  
17 A. I want to say Roger, but I didn't see it.  
18 Q. Do you have any knowledge that Walter moved  
19 the window from the point on the white picket fence back  
20 to the cedar fence?  
21 A. No.  
22 Q. Do you know how long -- was that the final  
23 position of that window?  
24 A. Yes.  
25 Q. So just for purposes of our record here, if

1 A. No.  
2 Q. Did you observe it at that location 6 feet  
3 from the cement?  
4 A. Yes.  
5 Q. How was it -- I guess the best way I can ask  
6 you: Was it also leaning up against the fence at that  
7 point?  
8 A. Yes.  
9 Q. Were there any props used to lean the window  
10 or to set the window on prior to this accident, to your  
11 recollection?  
12 A. I want to say I remember something, but I  
13 honestly can't. I remember it up against the fence. I  
14 don't know if it was propped there or leaned there. I  
15 don't remember that part. I just remember it being up  
16 against that fence.  
17 Q. So what you are saying is whether it was  
18 propped or not, the window was physically laying up  
19 against the fence.  
20 A. It was on the wood fence.  
21 Q. How long was the -- I will ask you in terms of  
22 a week, or days, more or less. How long was that window  
23 in that position leaning up against the fence from the  
24 point where it was set there to the time of this  
25 accident, July 8, 2011?

1 you -- and I'll do this for you maybe. I hate to draw  
2 on it. But I'm going to draw -- from this edge of here  
3 I'm going to draw an arrow back and say "6 feet," and  
4 then you can put an X there as the position where you  
5 think that the window was; is that fair?  
6 A. Okay.  
7 MR. STEFANIC: Is that okay with you guys?  
8 MR. MONTELEONE: That's fine.  
9 THE WITNESS: When I say "6 feet," it's  
10 approximately, not exact obviously.  
11 Q. (BY MR. STEFANIC) Sure. So I've drawn an  
12 arrow from the edge of the concrete on Exhibit 3, "6  
13 feet," and I'm going to put an X there. And that is  
14 approximately the area where that window was laying up  
15 against the cedar fence; is that right?  
16 A. Yes. But in this picture it's a little  
17 farther back there.  
18 Q. Sure.  
19 A. It looks long in the picture.  
20 Q. So whatever 6 feet is. It's just for  
21 illustrative purposes.  
22 A. Approximately.  
23 Q. Once it was moved from the white picket fence  
24 to the 6 feet from the cement, was it moved after that  
25 before this incident?

1 A. I would want to say a couple weeks.  
2 Q. And every day when you came home did you  
3 observe that window there for two weeks before this  
4 accident?  
5 A. Yes.  
6 Q. And do you have a sense on how far -- do you  
7 know the distance between, in this walkway on the side  
8 of the house on Exhibit 3, what the distance is from the  
9 house to the cedar fence?  
10 A. No.  
11 Q. Do you have any sense on how far the window  
12 was, when it was leaning at that approximate 6 foot  
13 mark, encroached into the walkway?  
14 A. It was a big -- it's a big window, so I want  
15 to say it probably left a small walk path between the  
16 edge of the window and the house, very small, maybe a  
17 couple feet.  
18 Q. Did you ever measure it?  
19 A. No.  
20 Q. You could walk through there without a  
21 problem?  
22 A. On the pathway, yes.  
23 Q. While the window was there.  
24 A. You would have to walk around it.  
25 Q. I may have asked you this. I get confused.



1 Do you know who moved the window from the  
 2 picket fence to the cedar fence?  
 3 A. No.  
 4 Q. How often did Walter come by this property in  
 5 a month's time, if you know?  
 6 A. I don't know. I don't remember seeing him  
 7 very often at all.  
 8 Q. Do you know why the window was being kept on  
 9 the side of the house there?  
 10 A. No.  
 11 Q. Let's talk about before this accident. Did  
 12 you see any problems with storing that window where it  
 13 was stored, ultimately stored on Exhibit 3 prior to the  
 14 accident?  
 15 A. I didn't think it a very good place to put the  
 16 window, but --  
 17 Q. Why not?  
 18 A. Just because it's a walkway and it's a big  
 19 window and you have to walk around it, and it was broke.  
 20 Q. It was broke.  
 21 A. Uh-huh.  
 22 Q. Did you feel it was a hazard before this  
 23 accident?  
 24 A. I never really thought of it.  
 25 Q. Sure.

1 window?  
 2 A. No.  
 3 Q. So it was gravel just like it was here on  
 4 Exhibit 3?  
 5 A. Yes.  
 6 Q. Of course that wooden structure, whatever that  
 7 is, was not there; is that correct?  
 8 A. Yes.  
 9 Q. You said approximately two weeks before this  
 10 accident the window was leaning up against this fence.  
 11 During that two-week period that the window was in that  
 12 location, are you aware of any problems there being with  
 13 respect to that window?  
 14 A. I don't understand your question.  
 15 Q. That's fair.  
 16 For example, are you aware of whether the  
 17 window blew over at any time during that two weeks it  
 18 was there, 6 feet back, where the X is on Exhibit 3?  
 19 A. No.  
 20 Q. Are you aware of anybody tripping on the  
 21 window during that time frame?  
 22 A. No.  
 23 Q. Are you aware of problems whatsoever relating  
 24 to the window during that two-week time frame?  
 25 A. Other than it was taking up the walkway, space

1 A. But it's obviously a hazard if you are to sit  
 2 down and actually think about it, but it didn't cross my  
 3 mind.  
 4 Q. My question is: Did you contact -- did you  
 5 tell Roger, for example, or your other roommates that  
 6 you had any problem with the window sitting out here as  
 7 it stood up against the cedar fence?  
 8 A. I don't -- I don't really remember.  
 9 Q. Do you recall calling Walter and indicating  
 10 that that was a problem to have that window there?  
 11 A. No. I'm sure I said something to Roger or  
 12 Wayne when it broke initially. But other than that I  
 13 didn't say anything.  
 14 Q. Do you recall what you said to them when it  
 15 broke up against his window, or up against his mirror?  
 16 A. Not exactly. Probably something along the  
 17 lines of "dumb-ass."  
 18 Q. Anything else?  
 19 A. Not that I can remember.  
 20 Q. Other than the window being stored up against  
 21 this fence as depicted in Exhibit 3, at the time you  
 22 initially saw -- I want you to think back. At the time  
 23 you initially saw that window moved from the white  
 24 picket fence to approximately 6 feet back, do you recall  
 25 anything else being in this walkway other than that

1 of the walkway, and it had a pane broke out of it.  
 2 Q. You mentioned that when the window was back at  
 3 the picket fence and it fell over and broke a window out  
 4 on Wayne's car, you may have said something to your  
 5 roommates like "dumb-ass," something like that; correct?  
 6 A. Yes.  
 7 Q. When it was moved to the X here, did you have  
 8 any discussions with your roommates about whether that  
 9 was a problem or not?  
 10 A. I'm sure, knowing myself, I said something,  
 11 but I honestly can't recall exactly what I said, if  
 12 anything. I'm sure I did.  
 13 Q. None of us want speculation here. We don't  
 14 want you to guess. We want to know what you did. My  
 15 question to you is: Do you recall saying anything to  
 16 your roommates or to anybody about the location of that  
 17 window at the X on Exhibit 3?  
 18 A. No.  
 19 MR. STEFANIC: Why don't we take a little  
 20 break, five-minutes.  
 21 (Recess taken.)  
 22 (Glenda Amundson left the proceedings.)  
 23 Q. (BY MR. STEFANIC) Going back on the record.  
 24 I want you to focus now from the time frame of when the  
 25 window was placed on Exhibit 3 at about 6 foot in on the

1 cedar fence, you say there was about two weeks between  
 2 then and the time of the accident. That is what I want  
 3 you to focus on right now. Okay?  
 4 A. Okay.  
 5 Q. What, if anything, after that window was  
 6 placed there was stored in this area alongside the  
 7 garage?  
 8 A. Nothing that I recall, until the night of the  
 9 accident there was some sort of a chunk of a root or a  
 10 tree stump or --  
 11 Q. So if I understand your testimony, the only  
 12 thing that was in this walkway up until the night of  
 13 this accident was the window?  
 14 A. Yes.  
 15 Q. It was well maintained gravel in there?  
 16 A. Yes.  
 17 Q. And then you say nothing was in there until  
 18 the night of the incident; correct? The incident  
 19 happened in the wee hours of the morning, right, after  
 20 midnight?  
 21 A. Yes.  
 22 Q. Was it a party or was it a social gathering?  
 23 A. Whatever way you want to call it, having  
 24 people over, having a fire, drinking beers, talking and  
 25 enjoying the fire.

1 learned that there was something other than the window  
 2 in that area alongside the garage. When would you have  
 3 first known that?  
 4 A. When the accident happened.  
 5 Q. The morning of July 8?  
 6 A. Yes.  
 7 Q. And what were you able to observe in that area  
 8 other than the window at that time?  
 9 A. There was some sort of a root or tree stump  
 10 or -- I don't know which one it was.  
 11 Q. Do you know how it got there?  
 12 A. No.  
 13 Q. Do you know who brought it?  
 14 A. No.  
 15 Q. Did you check with your roommates, did you  
 16 talk with your roommates about this root?  
 17 A. No.  
 18 Q. Ask them if they brought it?  
 19 A. No.  
 20 Q. Again, I make no representation about these  
 21 photographs, but I will -- I'm not going to mark this  
 22 yet until I show you.  
 23 This is a photograph, I do not know when it  
 24 was taken. I'm cautioning you that the way this window  
 25 is set up doesn't mean anything. It could have been

1 Q. That's cool. So you were having a fire and  
 2 you had people over.  
 3 A. Yes.  
 4 Q. So when you actually had people over, am I  
 5 getting this right, that that would have actually been  
 6 on July 7, 2011 and that the accident didn't occur until  
 7 after midnight, which would have been July 8?  
 8 A. Yes.  
 9 Q. So what you are telling me is on July 7 when  
 10 you were having this fire and people get together,  
 11 before that night there was nothing in this area, and  
 12 then that night there was some sort of a root or  
 13 something placed there?  
 14 A. I didn't notice anything until the accident.  
 15 Q. Let me see how I'll go about this. Let's do  
 16 it this way: When you had people over, before the first  
 17 person arrived on July 7, the only thing that was in  
 18 this area was the window, nothing else; fair?  
 19 A. That I noticed, I didn't notice anything other  
 20 than the window there.  
 21 Q. And then after people came over you came to  
 22 understand that there was something placed there by  
 23 somebody.  
 24 A. I didn't know of it until that happened.  
 25 Q. So let's kind of fast forward to when you

1 staged by somebody that was trying to photograph this.  
 2 I don't know.  
 3 But my question is: As you see next to it,  
 4 there is some sort of a piece of wood or something. My  
 5 question is simply: Is that what you were referring to  
 6 as the root?  
 7 A. Yes.  
 8 Q. Do you know if that is the exact thing that  
 9 you saw after this accident or --  
 10 A. That looks exactly like what it was.  
 11 MR. STEFANIC: Let's mark this as the next  
 12 exhibit then.  
 13 (Exhibit 4 marked.)  
 14 Q. (BY MR. STEFANIC) So I'm handing you what has  
 15 been marked as Exhibit No. 4. And in that photograph  
 16 the piece of wood, or whatever you would call that, that  
 17 is the piece of wood or the root that you were referring  
 18 to that you saw that night after the accident; correct?  
 19 A. Yes.  
 20 Q. You had not noticed that before this accident?  
 21 A. No.  
 22 Q. The window that is in this photograph, do you  
 23 see how it's being supported by some white slats?  
 24 A. Yes.  
 25 Q. You've testified earlier, and really I just

Page 50

1 want to know, I want to clarify this. You testified  
2 earlier that the window was actually leaning up against  
3 the wood when you last saw it before this accident; is  
4 that correct?  
5 A. Yes.  
6 Q. So this is a different configuration than what  
7 you recall immediately before this accident with respect  
8 to this window; is that fair?  
9 A. Yes.  
10 Q. Do you know who put these wood supports on  
11 there?  
12 A. No.  
13 Q. Do you know from this photograph, do you see  
14 where the bottom of the window is in the walkway,  
15 whether that is where the bottom of the window was the  
16 night in question or could it have been closer to the  
17 fence?  
18 A. I don't recall that.  
19 Q. Where did you keep the wood for this bonfire  
20 that you were having?  
21 A. In the back.  
22 Q. So if you brought wood for the fire, it would  
23 be stored in the back?  
24 A. Yes. We got the wood from a neighbor across  
25 the back fence, so we would just go and throw it over

Page 51

1 the fence to the fire pit.  
2 Q. Has anybody told you after this accident where  
3 this piece of wood in Exhibit 4 came from?  
4 A. No.  
5 Q. Now, when was the last time before this  
6 accident happened that you would have walked through  
7 this walkway and opened this gate, either coming or  
8 going from the backyard?  
9 A. I don't recall. I usually just go right  
10 through the garage.  
11 Q. Could it have been days that you or --  
12 A. I don't remember honestly.  
13 Q. Do you have a recollection of the day when  
14 your bonfire party started on July 7 utilizing the gate  
15 to get to the backyard for anything?  
16 A. No. The garage door was open.  
17 Q. What time did your party start?  
18 A. I don't remember exactly what time it started,  
19 but it ended up going late.  
20 Q. We know that Mr. Stiles exited the backyard  
21 through the gate and was walking out to the street at  
22 the time this thing happened; is that right?  
23 A. Yes.  
24 Q. Do you know of anybody other than Mr. Stiles,  
25 either the night of the party or the morning of the

Page 52

1 accident, utilizing this area by this window to come  
2 into the backyard or go out of the backyard other than  
3 Mr. Stiles?  
4 A. No.  
5 Q. In other words, you are not aware of anybody;  
6 correct?  
7 A. Correct.  
8 Q. We know that this window was placed in this  
9 area at least two weeks before this incident happened.  
10 Do you have a recollection of walking past that window,  
11 either coming from the backyard to the street or the  
12 street to the backyard, while that window was in place?  
13 A. Not that I remember.  
14 Q. Do you remember anybody doing that in that  
15 two-week frame before this accident happened, of people  
16 coming in through that gate to the backyard or exiting  
17 from the gate to the street?  
18 A. Not that I know of.  
19 Q. So I take it you are not aware of any problems  
20 anybody had with this window prior to the accident?  
21 A. No.  
22 Q. Is that correct?  
23 A. Yes.  
24 Q. You have a recollection of seeing this piece  
25 of wood that is depicted in Exhibit 4 the night or the

Page 53

1 wee morning when this thing happened; correct?  
2 A. Yes.  
3 Q. About what time was that?  
4 A. I'm not sure. It was early morning hours,  
5 3:00, somewhere around in there. It was early.  
6 Q. And do you have a recollection -- you see  
7 where this is located on this picture.  
8 A. Uh-huh.  
9 Q. And we don't know, because it's taken from --  
10 this picture is taken from roughly where the gate is. I  
11 don't know where it was taken.  
12 Do you know if that wood is generally in the  
13 area that you observed it that night or whether it was  
14 in a different place?  
15 A. A different place.  
16 Q. Is there somewhere on this diagram, Exhibit  
17 No. 4 or Exhibit No. 3, that you could point to where it  
18 would have been?  
19 A. Yes.  
20 Q. Which one?  
21 A. So you are saying this is taken approximately  
22 at the gate?  
23 Q. I can't represent that. I'm just saying it's  
24 from that direction.  
25 A. Well, on Exhibit 3 it was right, kind of in

1 front of this gate that you open.  
 2 Q. So can you put an X in the general location  
 3 where you believe that piece of wood that is depicted in  
 4 Exhibit 4 was the night or the early morning when this  
 5 accident happened?  
 6 A. Yes.  
 7 Q. And you've done that; right?  
 8 A. Yes.  
 9 Q. Would you say this is a root, is that how you  
 10 would prefer to say it, or a stump?  
 11 A. Yeah, I don't know which one it is. It's one  
 12 of the two. I can't really tell.  
 13 Q. Why don't you just write "root" by that.  
 14 A. (Complies.)  
 15 Q. Does the gate as depicted in Exhibit 3 open  
 16 towards the back of the backyard or does it open towards  
 17 the walkway?  
 18 A. I don't remember that.  
 19 Q. While you lived at this premises, did you have  
 20 any problems with Walter Amundson at all?  
 21 A. No.  
 22 Q. Did you get along with him?  
 23 A. Yes. He never really came around.  
 24 Q. Did you ever have a discussion with him about  
 25 parties that you were hosting at the place?

1 A. Yes.  
 2 Q. Was there any hard feelings with Walter at  
 3 all?  
 4 A. Not that I recall.  
 5 Q. You respect his ability to limit what goes on  
 6 on his property, I suppose?  
 7 A. Yes, that is his property.  
 8 Q. Of course you have the same right to do what  
 9 you want to do as well.  
 10 A. Yes.  
 11 Q. Was this the first bonfire that you had had  
 12 here?  
 13 A. No.  
 14 Q. How frequent were your bonfires?  
 15 A. Every weekend.  
 16 Q. How did it come about every weekend that you  
 17 would have a bonfire? Was it planned? Was it  
 18 spontaneous?  
 19 A. It was just usually what we did. We would  
 20 have the owners of the two bars across, when they would  
 21 get done closing down their facilities they would come  
 22 over and have some drinks and sit around the fire and  
 23 chitchat.  
 24 Q. It's your testimony that you did not store any  
 25 wood in this area?

1 A. Yes, after the accident.  
 2 Q. Tell me about that.  
 3 A. He came up with a new rental agreement; no  
 4 drinking or alcohol on the premises.  
 5 Q. Why was that?  
 6 A. I would imagine due to the accident, partying.  
 7 Q. If this accident happened July of 2011, how  
 8 long did you live there after that?  
 9 A. I don't remember exactly, but not long.  
 10 Q. A month, two, three?  
 11 A. Not even that, maybe a month.  
 12 Q. Why did you leave?  
 13 A. That is not, at that time of my life,  
 14 something I wanted to live by. I wanted to feel  
 15 comfortable wherever I lived to do as I choose.  
 16 Q. I see. So he wanted you to sign something  
 17 that said you would not drink alcohol on the premises?  
 18 A. Yes.  
 19 Q. And did you sign that?  
 20 A. I think -- I do believe so.  
 21 Q. But, again, that was something that you didn't  
 22 want that limitation on your -- you wanted to have  
 23 people over to have a beer or two or whatever.  
 24 A. Yes.  
 25 Q. And so you left the lease because of that.

1 A. No.  
 2 Q. Is that correct?  
 3 A. Yes.  
 4 Q. At any time?  
 5 A. No. I believe Roger, when I first moved in  
 6 there, he had some old boards up against the house. But  
 7 those got burned in the fire pit.  
 8 Q. Do you recall any of the people there that  
 9 were at your bonfire the night in question?  
 10 A. One I remember. There was a lot of people  
 11 there.  
 12 Q. I can only imagine. There is Creekside, there  
 13 is Cowgirls, those things go, what, until 2:00 in the  
 14 morning, something like that?  
 15 A. Yes.  
 16 Q. Was it a sort of an open invitation, after  
 17 those closed down if people wanted to come over to come  
 18 hang out, have a fire type of thing?  
 19 A. Yeah, people we knew.  
 20 Q. It wasn't open to everybody, just people you  
 21 knew.  
 22 A. Yes.  
 23 Q. Do you know about how many bonfires you had  
 24 before this incident; was it five, ten?  
 25 A. Several. I don't know exactly, but several.

1 Q. During any of those gatherings where you had a  
2 bonfire was there ever any neighbor complaints, to  
3 your knowledge?  
4 A. No, the neighbors actually came over.  
5 Q. Good. Was there ever any police involvement?  
6 A. No.  
7 Q. Was there ever any property destruction?  
8 A. No.  
9 Q. Was the bonfire, you said you had them every  
10 weekend, so I kind of get the idea it was just kind of  
11 common knowledge after the bar closed on a -- did you  
12 have them on a Friday or a Saturday night?  
13 A. Usually Friday and Saturday.  
14 Q. Both?  
15 A. Sometimes.  
16 Q. What I'm getting at is, was this a planned one  
17 where you had invited people and you knew people were  
18 going to come over that evening on the 7th, or is it  
19 something that just kind of evolves from the bar?  
20 A. No, nobody would just come over and start a  
21 fire.  
22 Q. Of course. What I'm getting at is: Did you  
23 call people up and say, Hey, are you going to come over  
24 for a bonfire after Cowgirls? Or is it something you  
25 were at the bar and just kind of word of mouth and you

1 still friends?  
2 A. Yeah.  
3 Q. How did Dave come about being at this party?  
4 A. He cruised over after he got done playing  
5 cards, poker or something.  
6 Q. I will have a chance to talk with Dave  
7 tomorrow. I don't know anything about him. Is he  
8 married and have kids?  
9 A. Yes.  
10 Q. Both?  
11 A. Both.  
12 Q. How did he know about this bonfire that you  
13 were having?  
14 A. I called him.  
15 Q. Do you know what time he showed up?  
16 A. Not exactly; it was late.  
17 Q. What is late?  
18 A. Midnight, 1:00, somewhere in that area.  
19 Q. The first time that you saw him you believe at  
20 that gathering was sometime around midnight or  
21 thereafter?  
22 A. Yes.  
23 Q. Was it a nice evening?  
24 A. Yes.  
25 Q. No storms, no rain?

1 said, I'll be over at my house?  
2 A. It's happened both ways. But usually you  
3 would be talking on the phone with somebody, What are we  
4 doing tonight? Let's have a fire. Okay. Come over.  
5 Q. Is that how you recall it on this night  
6 happening?  
7 A. Yes.  
8 Q. Do you recall who you were talking with to  
9 plan the bonfire?  
10 A. No.  
11 Q. When you say you recall, my question is: Do  
12 you know who was there that night?  
13 A. There was a lot of people there. The only one  
14 that I know, other than Dave and myself, was my  
15 girlfriend at the time.  
16 Q. Who was that?  
17 A. Dee Dee.  
18 Q. What is her last name?  
19 A. White.  
20 Q. Do you know where Dee Dee White is?  
21 A. Yes, she's in Kuna.  
22 Q. Is she married or still have that name?  
23 A. She is married. So I don't know if she still  
24 has that name or not.  
25 Q. Do you know how to get ahold of her? Are you

1 A. No.  
2 Q. When did you start your fire?  
3 A. I couldn't tell you. Probably, usually around  
4 10:00.  
5 Q. So you would be there and people would come  
6 over from the bar; is that right?  
7 A. Yes.  
8 Q. Did you provide alcohol?  
9 A. Yes, sometimes I would buy, and a lot of times  
10 people would bring.  
11 Q. Do you recall what you provided this evening?  
12 A. I don't remember.  
13 Q. Was it just beer; was it hard alcohol?  
14 A. It was beer.  
15 Q. Other than the people you've described, can  
16 you remember anybody else that was there?  
17 A. No.  
18 Q. And that night where did you get the wood,  
19 where was the wood that you were using for the fire  
20 located?  
21 A. In the neighbor's backyard.  
22 Q. Which neighbor?  
23 A. It was the one directly behind us if you were  
24 to go straight out the backyard over that fence.  
25 Q. Do you remember their names?

1 A. No.  
2 Q. So you were looking at Exhibit 3. And if we  
3 were to go out the backyard, straight back, there was a  
4 neighbor there that had wood.  
5 A. Yes.  
6 Q. Just construction-type wood or was it actually  
7 logs?  
8 A. A bunch of old wood laying around they were  
9 more than happy for us to burn, because it got rid of  
10 their junk pile.  
11 Q. Was your party in the house at all?  
12 A. No. Sometimes yeah, we would drink beers in  
13 the living room and whatnot.  
14 Q. Let's talk about this evening that this  
15 happened. Was the party in the house at all?  
16 A. No.  
17 Q. You allowed people to go into the bathroom,  
18 I'm assuming.  
19 A. Yes.  
20 Q. Access to the backyard that evening, and when  
21 I'm talking about that I'm talking about the 7th from  
22 10:00 to whenever and then after midnight on the 8th.  
23 How did people get into your backyard?  
24 A. Through the garage door.  
25 Q. Any other way?

1 Q. But you had several beers and you felt  
2 intoxicated?  
3 A. Yes.  
4 Q. Who do you recall being at the party when your  
5 cousin showed up at about 1:00?  
6 A. Like I said, I don't recall. It's been a long  
7 time. I just remember my girlfriend at the time and my  
8 cousin.  
9 Q. Do you recall having conversations with your  
10 cousin?  
11 A. Yes.  
12 Q. What do you recall?  
13 A. I don't recall the actual conversations, just  
14 chitchat.  
15 Q. Sure. Did you have some music playing?  
16 A. Probably. I can't give an honest yes or no  
17 because I don't remember, but usually we would have a  
18 little boom box out there playing the radio station.  
19 Q. What alcohol, if any, did you observe David  
20 Stiles consuming?  
21 A. I don't recall him drinking anything. If  
22 anything, it would have been beer; it was pretty late.  
23 Q. Where was he coming from again?  
24 A. Playing cards or poker or something.  
25 Q. Do you know where?

1 A. Not that I know of.  
2 Q. I think your testimony was is that nobody came  
3 into -- you did not see anybody go in the gate to the  
4 side of the house or out of the gate to the side of the  
5 house before this actual incident happened.  
6 A. No.  
7 Q. Is that correct?  
8 A. That's correct.  
9 Q. Did you actually see your cousin go out that  
10 gate?  
11 A. No.  
12 Q. Tell me about what you recall about -- well,  
13 let me ask you. When did you first see your cousin?  
14 A. That night when he arrived real late, around  
15 1:00.  
16 Q. Up until that time how much had you had to  
17 drink?  
18 A. I don't know. Several beers.  
19 Q. Not that there is anything wrong with it, were  
20 you intoxicated?  
21 A. Yes.  
22 Q. Had you had any shots?  
23 A. No.  
24 Q. Any drugs going on at your party?  
25 A. Not that I know of.

1 A. No.  
2 Q. Would it be fair to say that you were the host  
3 of the party?  
4 A. Yes.  
5 Q. Your roommates, did they attend the party that  
6 night?  
7 A. I don't remember if they came out that night  
8 or not, but they come out every once in a while and hang  
9 out by the fire.  
10 Q. You can't recall this time though.  
11 A. No.  
12 Q. The people that came to the party were your  
13 guests?  
14 A. Yes.  
15 Q. I take it, you have testified you did not know  
16 that David had gone out the gate alongside the house  
17 that night.  
18 A. No, I didn't.  
19 Q. When did you first find out about the  
20 accident?  
21 A. Right after it happened he came banging on the  
22 door, and I was laying down. He was out there putting  
23 out the fire and cleaning everything up, and he went to  
24 leave and that is when the accident happened. He came  
25 around to the front door, banging on it, got me up, not

1 knowing what it was, and then he came in through the  
2 garage entrance and into the house.  
3 Q. Did you expect your guests to go out that gate  
4 when they were leaving the party?  
5 A. No.  
6 Q. I'm assuming David did not ask you if he could  
7 go out that gate when he was leaving the party?  
8 A. No.  
9 Q. You said you were laying down.  
10 A. Yes.  
11 Q. About what time was this?  
12 A. I can't recall an exact time. It was late  
13 though, 3:00, 4:00 in the morning, something like that.  
14 Q. You were laying down because of why?  
15 A. Ready to go to bed.  
16 Q. Was the party kind of over at that point?  
17 A. Oh, yeah.  
18 Q. So tell me as best you recall, it sounds like  
19 you went in and laid down. Was it in your bed or on the  
20 couch or what?  
21 A. My bed.  
22 Q. Were you with your girlfriend?  
23 A. Yes.  
24 Q. Who was left in the backyard when you went and  
25 did that?

1 previous fires before this incident happened?  
2 A. Yes.  
3 Q. Do you recall how many?  
4 A. No.  
5 Q. During those previous fires that you would  
6 have, do you recall anybody accessing the backyard  
7 through the gate?  
8 A. I don't remember. They would either use the  
9 gate or go right through the garage.  
10 Q. So that's what I'm asking. Do you have a  
11 recollection of people using the gate area to go out to  
12 the street or into the backyard using the gate?  
13 A. Roger would always use the gate, but I don't  
14 remember specifically.  
15 Q. I want you to think back. That night, do you  
16 think that -- at 3:00 in the morning is when this  
17 happened you think?  
18 A. Somewhere around there.  
19 Q. -- that it was safe for David to go out the  
20 back gate and walk alongside the house to get out of the  
21 backyard?  
22 MR. GILES: Object to the form of the  
23 question.  
24 THE WITNESS: Can you redo it, please.  
25 Q. (BY MR. STEFANIC) Do you think it was safe

1 A. Just Dave.  
2 Q. Did you have a conversation with David as to  
3 what -- Dude, I'm going to bed, see you later? How did  
4 you just leave your cousin in the backyard?  
5 A. I'm sure I said goodnight.  
6 Q. So he was just by himself back there?  
7 A. Yes.  
8 Q. Do you know if the fire was still going?  
9 A. Yeah, he was putting it out.  
10 Q. Did you have a conversation with him asking  
11 him to do that?  
12 A. No.  
13 Q. How did you know he was putting it out?  
14 A. He always would. If he stopped by, he would  
15 usually be the responsible one at the end of the night.  
16 Q. Did this happen on a Friday or a Saturday  
17 night, do you recall?  
18 A. I don't recall.  
19 Q. Do you remember having a fire the night  
20 before?  
21 A. I don't remember.  
22 Q. Do you recall having a fire the week before?  
23 A. Not that I remember. It was relatively every  
24 weekend that we would try to get a fire.  
25 Q. Do you recall your cousin coming to any of the

1 for David to leave the backyard through that gate  
2 leaving the premises to the street?  
3 A. As far as I knew, yes.  
4 Q. Did you ever find out -- did he tell you what  
5 happened?  
6 A. Yes.  
7 Q. What did he tell you happened?  
8 A. He told me that he was coming -- leaving and  
9 tripped over something and went through the window, and  
10 it was bad. I called an ambulance and his wife.  
11 Q. He banged on the front door to get your  
12 attention that he was in trouble?  
13 A. Yes.  
14 Q. Did you answer it?  
15 A. By the time I got up to investigate what the  
16 noise was he had come around the back into the garage  
17 into the house.  
18 Q. He had gone through the garage --  
19 A. And then into the house that way.  
20 Q. So there is no direct access from the garage  
21 into the house; you have to go into the backyard and  
22 then take another door?  
23 A. No, there is.  
24 Q. There is. Okay.  
25 So he had gone into the garage and into house

Page 70

1 that way.  
2 A. Yes.  
3 Q. Did you go out and see what had caused him to  
4 trip?  
5 A. Yes.  
6 Q. Did he show you?  
7 A. I don't remember if he showed me or not, but  
8 it was obvious what he tripped over.  
9 Q. When it was obvious, was it the root that you  
10 are depicting in Exhibit 4?  
11 A. Yes.  
12 Q. And that is where you've located it on  
13 Exhibit 3 where the X is.  
14 A. Yes.  
15 Q. What do you recall happened after he showed  
16 you what he had tripped on?  
17 A. I called the ambulance, called his wife. The  
18 police were there. They did some investigating, because  
19 I don't think they were sold on the fact that it was an  
20 accident. So the officer followed the blood trail, and  
21 I told him, explained what happened and he investigated  
22 it and found it to be obvious.  
23 Q. It was obvious that he had gone into the  
24 window?  
25 A. Yes.

Page 71

1 Q. I have some other photographs here. They are  
2 not nearly as nice as Mr. Monteleone's. I was curious,  
3 these windows show, they obviously show some blood on  
4 the window. I'm going to hand you this as a group.  
5 Do you know -- and there is some broken glass.  
6 Do you know what window was broken as a result of the  
7 window falling over onto the mirror?  
8 A. It was one window broken. Everything else was  
9 not broken.  
10 Q. Here, why don't you -- I want you to look  
11 through these, and we'll go off the record for just a  
12 quick second. But what I would like you to think about  
13 when you go through those, is I want you to distinguish  
14 as to what you would identify as Mr. Stiles doing with  
15 his, I guess, his hand or his arm breaking a window  
16 versus what was broken by the mirror on the car.  
17 A. Well --  
18 MR. STEFANIC: Let's go off the record for a  
19 second.  
20 (Off the record.)  
21 MR. STEFANIC: Let's mark this.  
22 (Exhibit 5 marked.)  
23 Q. (BY MR. STEFANIC) Handing you what has been  
24 marked collectively as Exhibit No. 5. And I'm going to  
25 just show you on -- I'm going to give you 5-A, and my

Page 72

1 question is simply: There is a broken window in there.  
2 Do you know whether that was caused by the accident or  
3 whether that was caused by the mirror?  
4 A. The mirror.  
5 Q. And B?  
6 A. It's the same window.  
7 Q. So the mirror, that would be the upper left  
8 one?  
9 A. Yes.  
10 Q. 5-C, that is the upper left one again; is that  
11 the mirror?  
12 A. Yes. That one window broke, and that's  
13 what -- a jagged piece of that glass is obviously what  
14 got his arm.  
15 Q. I see. Well, that answers all the questions.  
16 What you are saying is that the window that  
17 had been broken out by the mirror was already broken  
18 that way. And what you understood was, is that he,  
19 somehow when he tripped, got his arm in that broken pane  
20 and one of the jagged edges cut him.  
21 A. Yeah, it was surrounded with jagged glass and  
22 his arm went through it.  
23 Q. I'm sorry. I get it. Thank you.  
24 Did you take any photographs?  
25 A. I did not.

Page 73

1 Q. Do you know who took these photographs, by any  
2 chance?  
3 A. No, I don't.  
4 Q. Did you look at it in the morning?  
5 A. Well, technically it was the morning, and then  
6 again when I got up I did as well.  
7 Q. When you went out that night to see what he  
8 had tripped on, did your girlfriend go with you?  
9 A. I don't remember.  
10 Q. You went by yourself?  
11 A. Yeah.  
12 Q. You were intoxicated?  
13 A. Not the next day, but that night.  
14 Q. I'm talking about that night when you --  
15 A. Early in the morning, yeah.  
16 Q. Early in the morning you said you got up and  
17 you went out and saw what he had tripped on; is that  
18 right?  
19 A. Yes, and showed the officer.  
20 Q. It was still dark; right?  
21 A. Yes.  
22 Q. I was not aware that the police had  
23 investigated this. Do you remember who the officer was?  
24 A. I don't know.  
25 Q. Did you observe, did you go out and



1 investigate what he had tripped on before the police had  
 2 arrived?  
 3 A. I don't think so, no. The cops were there --  
 4 I called the ambulance and his wife and the police got  
 5 there before the ambulance did.  
 6 Q. Were you able to see the root there?  
 7 A. Yes.  
 8 Q. I think there is a streetlight there. Do you  
 9 know if there is any streetlight?  
 10 A. No, not that I recall.  
 11 Q. Do you know if there is any light around this  
 12 area?  
 13 A. No.  
 14 Q. Were you able to see the root without any  
 15 lighting?  
 16 A. Yes.  
 17 Q. That was in the wee morning?  
 18 A. You know what, because the officer had a  
 19 flashlight out and he was looking at the glass, so that  
 20 might have been how I seen it that night, early in the  
 21 morning.  
 22 Q. In the morning when you saw it in the  
 23 daylight, the only things that were there was the root  
 24 where you've depicted in Exhibit 3 and the window.  
 25 A. Yes.

1 Q. I take it his wife came and picked him up or  
 2 did he go in the ambulance?  
 3 A. He left in the ambulance. I called his wife  
 4 after I called the paramedics.  
 5 Q. Did you go to the hospital at all?  
 6 A. No.  
 7 Q. So at the time of this accident everybody had  
 8 left, you and your girlfriend were in your bedroom, and  
 9 he was out putting out the fire.  
 10 A. Yes.  
 11 Q. Do you know what problems, if any, your cousin  
 12 is still having with his injuries?  
 13 A. He doesn't have strength.  
 14 Q. It was his left --  
 15 A. Yeah, it's right here on his -- there's tendon  
 16 and nerve damage. I know he complains not only of the  
 17 strength, but numbness. And he showed me how much  
 18 strength he had in it a while ago by squeezing me, and  
 19 it was not a very good grip at all.  
 20 Q. Other than the strength -- and you saw him  
 21 complete the task with the wrenches, but you observed  
 22 less strength than you would think there would be; is  
 23 that right?  
 24 A. Yes.  
 25 Q. Are you aware of other things that he can't do

1 Q. Other than what you've told me that your  
 2 cousin told you of how this thing happened -- did he  
 3 tell you he tripped on something and he fell into the  
 4 window?  
 5 A. Yes.  
 6 Q. Did he tell you anything else?  
 7 A. No, other than it was really bad and to get  
 8 help.  
 9 Q. Was there any delay in calling the ambulance?  
 10 A. No.  
 11 Q. Once you found out you called the ambulance?  
 12 A. Yes.  
 13 Q. How did the police come into play?  
 14 A. I don't know. They just showed up and  
 15 investigated it. I don't know if they thought it might  
 16 have been an act of violence or -- who knows. But he  
 17 took a flashlight and walked around after I explained to  
 18 him what happened, I guess to make sure the story was  
 19 straight.  
 20 Q. Have you told me everything you can remember  
 21 about that night with respect to how the accident  
 22 occurred and your discussions with your cousin?  
 23 A. Yes.  
 24 Q. Did you go with him to get medical treatment?  
 25 A. No.

1 because of this injury or not do as well?  
 2 A. Anything you do with your hands.  
 3 MR. STEFANIC: Let's take a quick break. I'm  
 4 about wrapped up.  
 5 (Recess taken.)  
 6 Q. (BY MR. STEFANIC) I was curious about when  
 7 you went to bed that night, or the early morning when  
 8 this thing happened. Was your garage door left open?  
 9 A. No.  
 10 Q. I was confused when you said that he  
 11 ultimately came through the garage and into the house.  
 12 How did he do that?  
 13 A. After the accident?  
 14 Q. Yes.  
 15 A. He went back around the side of the house and  
 16 in the back door into the garage.  
 17 Q. Okay. I see. So you had closed the garage at  
 18 that time.  
 19 A. Yes.  
 20 Q. Did you do that when you went to bed?  
 21 A. Yes.  
 22 Q. Do you think that you did anything wrong in  
 23 causing this accident?  
 24 A. No.  
 25 Q. Do you think that Walter Amundson did anything

1 wrong in causing this accident?  
 2 A. No.  
 3 Q. Are you planning on -- your employment is  
 4 solid with where you are going, with where you are  
 5 working right now?  
 6 A. Yes.  
 7 Q. Do you plan on being in the Boise area for --  
 8 I mean, do you have any plans of leaving at all?  
 9 A. I don't know. Me and my wife have been  
 10 discussing Dallas, Texas, so she can finish her degree.  
 11 She needs a specialized school, but that's just talks  
 12 right now, thoughts.  
 13 MR. STEFANIC: I appreciate your time. Thank  
 14 you very much.  
 15 THE WITNESS: No problem.  
 16 MR. GILES: Just a few questions, Jon.

EXAMINATION

QUESTIONS BY MR. GILES:

19 Q. I would like to talk about that piece of wood  
 20 that was in the alley, Exhibit 4. You recall testifying  
 21 about that piece of wood we referred to as a root; is  
 22 that correct?  
 23 A. Yes.  
 24 Q. You testified earlier about getting some wood

1 personally. That would be my guess.  
 2 Q. While you were a resident there you testified  
 3 about Mr. Amundson coming to help with the removal of  
 4 the window; correct?  
 5 A. Yes.  
 6 Q. Was there any other remodeling or maintenance  
 7 that Mr. Amundson assisted with?  
 8 A. No, not that I remember.  
 9 Q. Was that the only big project that occurred  
 10 there at the residence while you lived there?  
 11 A. Yes.  
 12 Q. Mr. Amundson was present for the removal of  
 13 the window?  
 14 A. Yes.  
 15 Q. The night of the accident can you tell us why  
 16 David exited through the walkway?  
 17 A. Probably not to disturb me.  
 18 MR. STEFANIC: Object to form; speculation.  
 19 Q. (BY MR. GILES) Was there any other way for  
 20 David to exit that night?  
 21 A. Yes, he could have came in through the  
 22 backdoor and through the house or open up the garage and  
 23 go out that way.  
 24 Q. When he exited through the walkway, was the  
 25 garage door closed?

1 from the neighbor for the bonfire; is that correct?  
 2 A. Yes.  
 3 Q. What type of wood was used for the bonfire?  
 4 A. Chunks of old fence and just different random  
 5 pieces of wood.  
 6 Q. Did any of them resemble the root in this  
 7 picture?  
 8 A. No.  
 9 Q. They were more like old scrap lumber that had  
 10 been processed at some point?  
 11 A. Yes.  
 12 Q. And when you moved into the residence, what  
 13 was your understanding of who you went to when you had  
 14 issues with the house?  
 15 A. Roger. I never had any issues that I recall.  
 16 Q. If you wanted to clear something to occur at  
 17 the house, would you just talk to Roger?  
 18 A. Yes.  
 19 Q. Were you ever told to do anything differently?  
 20 A. No.  
 21 Q. Do you know why the window was saved; why it  
 22 wasn't scrapped?  
 23 A. I don't know, other than those are probably  
 24 worth a good penny, they are big windows. If it was  
 25 mine I would try to sell it instead of throw it,


1 A. Yes.  
 2 Q. If I could have you take a look at Exhibit 2.  
 3 Now, that is a photo of what is now the garage; correct?  
 4 A. Yes.  
 5 Q. And you testified the garage door was down  
 6 when David left the premises.  
 7 A. Yes.  
 8 Q. So in order to exit the backyard, his option  
 9 was to cut through the area in what has been marked as  
 10 Exhibit 3?  
 11 A. Yes.  
 12 Q. Or cut through the house.  
 13 A. Yes.  
 14 Q. And he chose to cut through the alleyway  
 15 obviously.  
 16 A. Yes.  
 17 Q. You had mentioned earlier that when the window  
 18 fell on your roommate's pickup, that you may have made a  
 19 comment, you may have called him a "dumb-ass"?  
 20 A. Yes.  
 21 Q. Can you explain what you would have meant by  
 22 that comment?  
 23 A. For putting it there, unstable.  
 24 Q. Did you mean by that comment that maybe that  
 25 was a dangerous situation he created?

1 MR. STEFANIC: Object to the form.  
 2 THE WITNESS: Yes.  
 3 Q. (BY MR. GILES) Now, we talked a little bit  
 4 earlier about the window and where it was stored. And  
 5 it was initially stored against the vinyl fence; is that  
 6 correct?  
 7 A. Yes.  
 8 Q. And do you recall what you testified to as to  
 9 who had placed it there?  
 10 A. Yes, I believe it was Roger and his father.  
 11 Q. And then you testified earlier at some point  
 12 the window was moved to a location on the cedar fence?  
 13 A. Yes.  
 14 Q. Do you know who moved it?  
 15 A. I believe Roger.  
 16 MR. GILES: I don't have any further  
 17 questions. Thank you.  
 18 MR. STEFANIC: I have one.

19  
 20 FURTHER EXAMINATION  
 21 QUESTIONS BY MR. STEFANIC:  
 22 Q. You testified that if anything was wrong you  
 23 would check with Roger, through counsel's questioning.  
 24 Did Walter specifically say that if you had a  
 25 problem you were to deal with Roger?


1 A. No.  
 2 MR. STEFANIC: That is all I have.  
 3 (Deposition concluded at 4:04 p.m.)  
 4 (Signature waived.)  
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1 REPORTER'S CERTIFICATE  
 2 I, BEVERLY BENJAMIN CSR No. 710, Certified Shorthand  
 3 Reporter, certify: That the foregoing proceedings were  
 4 taken before me at the time and place therein set forth,  
 5 at which time the witness was put under oath by me;  
 6 That the testimony and all objections made were  
 7 recorded stenographically by me and transcribed by me or  
 8 under my direction;  
 9 That the foregoing is a true and correct record  
 10 of all testimony given, to the best of my ability;  
 11 I further certify that I am not a relative or  
 12 employee of any attorney or party, nor am I financially  
 13 interested in the action.  
 14 IN WITNESS WHEREOF, I set my hand and seal this  
 15 14th day of May 2014.

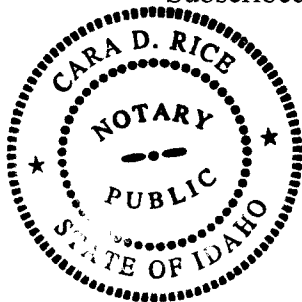
16  
 17  
 18  
 19  
 20   
 21 BEVERLY A. BENJAMIN, CSR No. 710  
 22 Notary Public  
 23 P.O. Box 2636  
 24 Boise, Idaho 83701-2636  
 25 My commission expires May 28, 2019

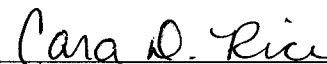


1. I am over the age of eighteen years, am one of the attorneys for Plaintiff in the above-referenced matter, and make this affidavit upon my own personal knowledge and belief;
2. Attached hereto as Exhibit 1 is a true and correct copy of the *Deposition of Walter Amundson*, taken in these proceedings on May 7, 2014;
3. Attached hereto as Exhibit 2 is a true and correct copy of the *Deposition of Roger Amundson*, taken in these proceedings on August 14, 2014;
4. Attached hereto as Exhibit 3 is a true and correct copy of the *Deposition of Jonathan N. Sullivan*, taken in these proceedings on May 6, 2014;
5. Attached hereto as Exhibit 4, is a true and correct copy of the *Deposition of David Wayne Stiles*, taken in these proceedings on May 7, 2014;
6. Attached hereto as Exhibit 5, is a true and correct copy of the *Deposition of Wayne Jenkins*, taken in these proceedings on August 14, 2014; and
7. Further, your affiant sayeth naught.

  
\_\_\_\_\_  
Chip Giles

Subscribed and sworn to before me, this 9<sup>th</sup> day of February, 2015.



  
\_\_\_\_\_  
Notary Public for Idaho  
Residing at Boise, Idaho  
My Commission Expires: 4/6/2017

**CERTIFICATE OF MAILING, DELIVERY, OR FACSIMILE TRANSMISSION**

I CERTIFY that on February 9, 2015, I caused a true and correct copy of the foregoing document to be:

<input checked="" type="checkbox"/> Mailed <input type="checkbox"/> Hand Delivered <input type="checkbox"/> CM/ECF Electronic Filing <input type="checkbox"/> Transmitted Fax Machine to: (208) 344-5510 <input type="checkbox"/> Transmitted Via E-Mail to: mstefanic@ajhlaw.com	Michael Stefanic Anderson, Julian & Hull L.L.P. 250 South Fifth Street, Ste. 700 Boise, ID 83702
---	---

BRADY LAW CHARTERED



---

Chip D. Giles  
Attorneys for Plaintiff

**EXHIBIT 1**

000110

**DEPOSITION OF WALTER AMUNDSON - MAY 7, 2014**

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

DAVID WAYNE STILES,	)	
	)	
Plaintiff,	)	NO. CV PI 1311963
	)	
v.	)	
	)	
WALTER A. AMUNDSON,	)	
	)	
Defendant.	)	
	)	

**I N D E X**

WITNESS	EXAMINATION BY	PAGE
MR. AMUNDSON	Mr. Giles	4
	Mr. Stefanic	54
	Mr. Giles	55

DEPOSITION OF WALTER A. AMUNDSON

May 7, 2014  
1:30 p.m.  
250 S. 5th St.  
Boise, Idaho

Reported by: M.D. WILLIS, INC.  
M. DEAN WILLIS Certified Shorthand Reporters  
CSR NO. 95 P.O. Box 1241  
Prepared for: Eagle, Idaho 83616  
FOURTH JUDICIAL DISTRICT (208) 855-9151  
(ORIGINAL)

DEPOSITION OF WALTER A. AMUNDSON,  
taken at the instance of the plaintiff at 250 S. 5th  
St., Ste. 700, in the City of Boise, State of Idaho,  
commencing at 1:30 p.m., on Wednesday, May 7, 2014, before  
M. DEAN WILLIS, CSR #96, a Notary Public in and for the  
State of Idaho, pursuant to Notice and in accordance with  
the Idaho Rules of Civil Procedure.

**A P P E A R A N C E S**

For the Plaintiff: JOHNSON & MONTELEONE, L.L.P.  
by Jason R.N. Monteleone, Esq.  
405 South Eighth Street  
Suite 250  
Boise, Idaho 83702

BRADY LAW CHARTERED  
By Chip D. Giles, Esq.  
2537 W. State St., Suite 200  
Boise, Idaho 83702

For the Defendant: ANDERSON, JULIAN & HULL  
By Michael Stefanic, Esq.  
250 S. 5th St., Ste. 700  
Boise, Idaho 83702

**E X H I B I T S**

DESCRIPTION	PAGE
4 - Photograph	42
7 - Rental Agreement	19
8 - Photographs	48



DEPOSITION OF WALTER AMUNDSON - MAY 7, 2014

1 WEDNESDAY, MAY 7, 2014, 1:30 P.M., BOISE, IDAHO.

2  
3  
4  
5  
6 **WALTER A. AMUNDSON,**  
7 called as a witness herein, having been first duly sworn,  
8 was examined and testified as follows:

9  
10 **EXAMINATION**

11 **BY MR. GILES:**

12 Q. Mr. Amundson, I won't bore you with the  
13 preliminaries now we have spent the better part of a day  
14 together going through depositions. Do you feel  
15 comfortable with the process?

16 A. Absolutely.

17 Q. Okay. I will do my best to not talk over you.  
18 Likewise, I will try to avoid uh-huh, okay? Likewise you  
19 will do the same. There I go, so -- can you state your --  
20 your full name for the record and spell your last?

21 A. Walter Anton Amundson. A-m-u-n-d-s-o-n.

22 Q. Mr. Amundson, have you ever had your deposition  
23 taken before?

24 A. No.

25 Q. Have you been involved in a civil lawsuit

4

1 before?

2 A. No.

3 Q. Did you do anything in preparation for today?

4 A. In what way?

5 Q. To prepare for your deposition testimony. Did  
6 you talk to your lawyer? Did you review any documents?

7 A. Yes.

8 Q. Can you tell me what you reviewed?

9 A. We just went over what -- what you expected of  
10 me. Tell the truth and --

11 **MR. STEFANIC:** I'm going to object. I have got to  
12 interject an objection. To the extent your answer  
13 requires you to divulge what you and I talked about, don't  
14 answer that question, but you can tell him if you reviewed  
15 any documents.

16 **THE WITNESS:** No.

17 **BY MR. GILES:**

18 Q. You just spoke with your lawyer generally about  
19 the process?

20 A. Yes.

21 **MR. STEFANIC:** Sorry.

22 **BY MR. GILES:**

23 Q. That's fine. Can you give us your [REDACTED]  
24 Mr. Amundson?

25 A. [REDACTED]

5

1 Q. And can you tell me your level of education?

2 A. Two years of college.

3 Q. Where did you go to college?

4 A. University of Nevada in Reno.

5 Q. Were you born in Idaho?

6 A. No.

7 Q. Where were you born?

8 A. Kansas City, Missouri.

9 Q. Did you grow up in Kansas City?

10 A. No.

11 Q. Where were you raised?

12 A. Las Vegas, Nevada.

13 Q. And what year did you go to college?

14 A. '55. '56.

15 Q. And did you obtain a degree?

16 A. No.

17 Q. What were your studies?

18 A. Meteorology.

19 Q. And what did you do after college?

20 A. I was drafted.

21 Q. And you served --

22 A. Two years and two years reserves.

23 Q. What branch?

24 A. The Army.

25 Q. When you returned from the service what did you

6

1 do? When you were discharged I guess I should say.

2 A. I went to work for Ford Motor Company as a  
3 mechanic.

4 Q. And was that in Las Vegas?

5 A. Yes.

6 Q. And how long did you work for Ford?

7 A. Seven years. About seven years.

8 Q. So, that was into your 30s?

9 A. Yes.

10 Q. And what did you do after you left Ford?

11 A. I joined the Clark County Fire Department.

12 Q. Were you a full-time fireman?

13 A. Yes.

14 Q. And how long did you do that?

15 A. Four years.

16 Q. And after working for Clark county what did you

17 do?

18 A. I moved to Boise, Idaho.

19 Q. Do you remember what year that was?

20 A. 1972.

21 Q. And what did you do when you moved to Boise?

22 A. I was a finish carpenter for C&L Construction.

23 Q. You did do carpentry work?

24 A. Yes.

25 Q. Was that something you have done throughout your

7

DEPOSITION OF WALTER AMUNDSON - MAY 7, 2014

1 life?  
2 A. Yes.  
3 Q. As a hobby or did you do it on the side?  
4 A. It started as a hobby.  
5 Q. How long were you a finish carpenter for?  
6 A. Well, since '72.  
7 Q. Up to today?  
8 A. Today.  
9 Q. Are you still doing carpentry work?  
10 A. Yes.  
11 Q. Do you work full time? Part time?  
12 A. (No oral response.)  
13 MR. STEFANIC: What was the answer?  
14 THE WITNESS: No.  
15 BY MR. GILES:  
16 Q. So, you're semi retired?  
17 A. Yes.  
18 Q. Can you tell me about your family and your  
19 children?  
20 A. I have got six. Three boys and three girls.  
21 Q. And how old are your children?  
22 A. I got one that's -- the oldest girl is 54 and  
23 another one that is 50 and the youngest daughter is 36.  
24 My oldest son is 35. My next son is 32. And my youngest  
25 son is 30. Thirty-one. I think.

8

1 Q. Now, is your youngest Roger?  
2 A. Yes. No. No. I beg your pardon. My youngest  
3 one is Mark.  
4 Q. Okay. So, Roger's 32?  
5 A. Yes.  
6 Q. Okay. And do your kids live in the area?  
7 A. Yes.  
8 Q. So, I know Roger lives in Kuna. And I guess  
9 while we are at it if you would give me your -- your older  
10 children's names if you don't mind.  
11 A. The oldest one is -- oh, my goodness. I have  
12 got a Sheri who is -- she's the one that's 54.  
13 Q. Okay.  
14 A. I have got a Kimberly. She's about -- yeah.  
15 She's 53 I think. And my Janna lives right here. She's  
16 -- she's the one that's 36.  
17 Q. Then you have one more boy; is that --  
18 A. Mark and Russell. Russell will be -- he's the  
19 same age -- he's just a year younger than Janna. Your  
20 inquiry about --  
21 Q. So, Mark, 30. Roger, 32. Russell, 35. Janna,  
22 36?  
23 A. Thirty-six.  
24 Q. Kim, 53? Sheri, 54.  
25 A. Right.

9

1 Q. Thank you.  
2 A. That's close.  
3 Q. And when were you married?  
4 A. 1960. June 13.  
5 Q. You have been married ever since 1960?  
6 A. Yes.  
7 Q. Congratulations. That's quite an  
8 accomplishment. How long have you been a property owner?  
9 I guess I could rephrase it. When did you buy your first  
10 property?  
11 A. Personally or for a rental?  
12 Q. Either.  
13 A. Be about 1957.  
14 Q. So, you have been a property owner since '57?  
15 A. Yes.  
16 Q. And that was -- was that your residence that you  
17 bought back in '57?  
18 A. Yes. We bought the property and built a house  
19 on it.  
20 Q. Right when you got back from -- from the  
21 service?  
22 A. Right.  
23 Q. Did you stay in that residence very long or --  
24 A. About ten years.  
25 Q. Was that in Las Vegas?

10

1 A. Las Vegas.  
2 Q. Okay. Did you move to a different house in Las  
3 Vegas?  
4 A. No.  
5 Q. So, you sold that house and came to Idaho?  
6 A. Came to Idaho.  
7 Q. Did you own any other property in Las Vegas?  
8 A. No.  
9 Q. So, when you came to Idaho you bought another  
10 house?  
11 A. Yes.  
12 Q. Where was that house located at?  
13 A. In Boise.  
14 Q. Since then can you tell me what other properties  
15 you have owned?  
16 A. Owned more property in Boise on Five Mile and,  
17 then, we moved to Meridian where I built another house.  
18 Q. So, did you live in the Five Mile property?  
19 A. Oh, yes.  
20 Q. Okay. So, you had a house in Boise, one on Five  
21 Mile, then Meridian. Did you sell the houses you were  
22 living in --  
23 A. Yes.  
24 Q. -- or did you keep them? Okay. So, the house  
25 in Meridian was your residence?

11

DEPOSITION OF WALTER AMUNDSON - MAY 7, 2014

1 A. Is that the one we built? Yes.  
2 Q. Yes. Did you -- have you owned any other  
3 property since?  
4 A. No. Not in Boise.  
5 Q. Okay. What other properties have you purchased  
6 then?  
7 A. The one in Garden Valley.  
8 Q. And that's where you and your wife reside now?  
9 A. Yes.  
10 Q. When did you purchase the property in Kuna?  
11 A. About 2007 I think it was.  
12 Q. Other than the Kuna property have you owned any  
13 other rental properties?  
14 A. Yes.  
15 Q. Can you tell me how many?  
16 A. I had three at one time.  
17 Q. And where were they located at?  
18 A. Two of them were in Meridian and one was in  
19 Boise on 35 -- 35th Street.  
20 Q. Do you own those properties currently?  
21 A. No.  
22 Q. Can you tell me when you owned them?  
23 A. During the '90s. '92 to '97 I think it was.  
24 Q. And those are rental investments?  
25 A. They were rental investments.

12

1 Q. Did you manage them yourself?  
2 A. Yes.  
3 Q. Did you have long-term tenants in those  
4 properties or was it --  
5 A. Yes. You could consider them long term.  
6 Different than what we are discussing now.  
7 Q. How so?  
8 A. The Kuna property is not long term, because it's  
9 more than one tenant.  
10 Q. So, you had families living in these properties?  
11 A. Yes.  
12 Q. Did they live there from '92 to '97 during your  
13 ownership?  
14 A. Well, there was somebody in there, in and out,  
15 yes. But usually for a year or two at a time.  
16 Q. Did you have leases with those renters?  
17 A. Yes.  
18 Q. Do you recall what those -- generally what those  
19 leases were, the terms? Was there a first and last  
20 month's rent?  
21 A. Yes. Yes. And usually it was already printed  
22 out and -- just about the same ones we use today. Or very  
23 similar.  
24 Q. Have you ever used a property manager?  
25 A. No.

13

1 Q. Now, you purchased the property in Kuna in 2007.  
2 Do you own that property outright or is there an  
3 underlying mortgage?  
4 A. Yes.  
5 Q. You own it out -- you own it outright?  
6 A. Yes.  
7 Q. Can you tell me how the property is vested?  
8 Whose name is on the title?  
9 A. Myself and my wife.  
10 Q. And did you buy that property as an investment  
11 property?  
12 A. I guess I would say yes. I would say yes.  
13 Q. Did you have tenants in 2007 when you purchased  
14 it?  
15 A. About the same. '7 or '8. Somewhere in there.  
16 Q. And who were the tenants?  
17 A. It was empty.  
18 Q. But when you bought it did you put tenants in it  
19 in 2007?  
20 A. Say that again.  
21 Q. When you purchased the house in 2007 did you  
22 rent it out? Did you get tenants to move in?  
23 A. Yes.  
24 Q. And who were those tenants?  
25 A. One of them was my son. The other one was my

14

1 daughter.  
2 Q. Did they pay you rent?  
3 A. Yes.  
4 Q. And when you say son, are we talking about  
5 Roger?  
6 A. Roger.  
7 Q. Did you have a lease with them?  
8 A. Verbal.  
9 Q. What was their monthly rent?  
10 A. Two hundred. Two hundred a month.  
11 Q. Apiece?  
12 A. Yes.  
13 Q. Did you ever reside in the --  
14 A. No.  
15 Q. -- 756 West 4th? You never resided there?  
16 A. (No oral response.)  
17 Q. What condition was the property in when you  
18 purchased it?  
19 MR. STEFANIC: I'm going to object. Vague. But you  
20 can go ahead and answer if you understand.  
21 THE WITNESS: Related to what?  
22 BY MR. GILES:  
23 Q. Was it a fixer upper? Was it in good condition  
24 when you bought it? Would you say it needed some  
25 carpentry work, some handyman work?

15

DEPOSITION OF WALTER AMUNDSON - MAY 7, 2014

1 A. Yes, it did. It wasn't a complete fixer upper,  
2 but, yes, it needed attention.  
3 Q. Is it an older home?  
4 A. Yes.  
5 Q. Do you know what year?  
6 A. I don't.  
7 Q. So, when you purchased it in 2007 did you do  
8 some remodeling to the home?  
9 A. Yes.  
10 Q. What did you do?  
11 A. Well, we completely repainted it inside and out  
12 and replaced all of the aluminum windows with vinyl.  
13 Repaired the roof.  
14 Q. Now, when you say we, you mean yourself and --  
15 did you have help?  
16 A. Oh, yes.  
17 Q. Who helped you?  
18 A. Roger.  
19 Q. So, did you -- did you supervise the renovation?  
20 A. Oh, yes. That's what I do for a living.  
21 Q. Was Roger there to help?  
22 A. Yes.  
23 Q. What's Roger's experience in remodeling and  
24 renovation?  
25 A. Well, he's done a lot of painting for me and  
16

1 he's helped hold the other end up when you have something  
2 long.  
3 Q. But the more skilled carpentry, the harder cuts,  
4 that's left up to dad?  
5 A. Yeah. We usually do that together.  
6 Q. What did Roger do for a living?  
7 A. He had a little carpet cleaning business.  
8 Q. And is Roger still residing at 756 West 4th?  
9 A. Yes.  
10 Q. Who else is living there now?  
11 A. Another renter by the name of Mike Post.  
12 Q. Mike Post? What's Roger's education?  
13 A. He's got a -- just high school.  
14 Q. Now, there is a -- there is a white picket fence  
15 on the property. Did you install that white fence?  
16 A. No.  
17 Q. That was preexisting when you --  
18 A. Yes.  
19 Q. What about the cedar fence?  
20 A. That was there as well.  
21 Q. We talked some about the -- the fire pit  
22 yesterday during John Sullivan's deposition. Was that  
23 fire pit existing when you purchased the property?  
24 A. Yes.  
25 Q. What condition was it in when you purchased the  
17

1 property?  
2 A. It was just a pile of rocks and I understand it  
3 was John that opened the center up and made a fire pit out  
4 of it.  
5 Q. How long did John rent from you?  
6 A. Six months about.  
7 Q. So, some point in 2000 -- early 2011 through  
8 August 2011, is that --  
9 A. Yes.  
10 Q. Okay. Did you have a lease with John?  
11 A. Yes.  
12 Q. Do you have a copy of that lease?  
13 A. Yes.  
14 Q. Did you bring it with you today?  
15 A. I don't have mine with me, no.  
16 MR. STEFANIC: You're pointing at me. Do you need a  
17 copy of the lease?  
18 MR. GILES: Yeah. I'd like to see it if you have  
19 one.  
20 MR. STEFANIC: At a break we can do that.  
21 BY MR. GILES:  
22 Q. Thank you. Do you recall the terms of that  
23 lease?  
24 A. Pretty much.  
25 MR. STEFANIC: If we are going to talk about the  
18

1 lease go ahead and let's get it out.  
2 MR. GILES: Yeah. Let's grab it.  
3 (A recess was had.)  
4 (Deposition Exhibit 7 marked.)  
5 BY MR. GILES:  
6 Q. I guess we can go back on the record and before  
7 I go any further, our notice of deposition was duces tecum  
8 and requested you to bring anything that hadn't already  
9 been produced. Just so we can clear the record, you don't  
10 have anything else --  
11 A. I don't.  
12 Q. -- we don't have? So, this lease -- is this the  
13 same lease that you had with the other tenants?  
14 A. Yes.  
15 Q. Did you present this lease to John?  
16 A. Yes. He signed it.  
17 Q. How did you come to meet John?  
18 A. He called me.  
19 Q. How did he get your phone number?  
20 MR. STEFANIC: If you know.  
21 THE WITNESS: From my son.  
22 BY MR. GILES:  
23 Q. So, he knew your son?  
24 A. Through a friend.  
25 Q. And, then, he called you up and asked if he  
19

DEPOSITION OF WALTER AMUNDSON - MAY 7, 2014

1 could rent a room from you?  
2 A. Yes.  
3 Q. Did you come down and meet with him to --  
4 A. I did.  
5 Q. -- sign this agreement? Did you have a  
6 discussion with him surrounding this agreement?  
7 A. Yes.  
8 Q. What did you discuss?  
9 A. The first month's rent in advance and that he'd  
10 share the utilities and that there would be no smoking in  
11 the house and no animals.  
12 Q. Mr. Amundson, it looks to me like the lease says  
13 May 25th.  
14 A. May.  
15 Q. Okay. I know we were speaking generally. Is --  
16 June the first month that John Sullivan resided there if  
17 that was signed on the 25th?  
18 A. No. 25th of May.  
19 Q. Okay. But it wasn't January 2011, it was the  
20 25th of May. We spoke earlier that you say he lived there  
21 for about six months.  
22 A. Yeah.  
23 Q. So, he moved in in May. Do you know when he  
24 moved out?  
25 MR. STEFANIC: If you can remember.

20

1 THE WITNESS: Not that I -- not for sure. But it  
2 seems like it was -- he didn't say a couple weeks after  
3 the accident?  
4 MR. STEFANIC: Don't worry about his testimony. You  
5 just need to testify as to what you remember and if you  
6 know tell him and if you don't and you can't recall, tell  
7 him that.  
8 BY MR. GILES:  
9 Q. I think we got it. I -- do you recognize that  
10 part of your rental agreement?  
11 A. Absolutely.  
12 Q. It's dated October. Is it possible he moved out  
13 in about October? Do you recall?  
14 A. I suppose it's -- let's see. This is the 14th.  
15 Probably.  
16 Q. Okay. Now, Roger -- your son Roger had been  
17 living there since -- since purchase in 2007; correct?  
18 A. Yes.  
19 Q. When did the other tenant Wayne move in?  
20 A. Probably 2008.  
21 Q. Do you recall Wayne's last name?  
22 A. Jenkins.  
23 Q. And did Wayne pay 250 or was he 200 a month?  
24 A. He was 200.  
25 Q. And how did Wayne come to be one of your

21

1 tenants?  
2 A. He's also a friend of my son Roger.  
3 Q. Did you know Wayne at all?  
4 A. No.  
5 Q. Did you have any interaction with Wayne?  
6 A. No.  
7 Q. How did Wayne pay his rent?  
8 A. By cash as well.  
9 Q. Would he give the cash to Roger?  
10 A. If I wasn't -- if I wasn't there and I didn't  
11 make a special trip, he would give it to Roger.  
12 Q. So, how often were you there?  
13 A. Whenever he called me and let me know that he  
14 had the rent.  
15 Q. Whenever --  
16 A. Whenever he got paid.  
17 Q. Whenever Wayne would call you?  
18 A. Yes.  
19 Q. Okay. You would come down and collect the rent?  
20 A. Yes.  
21 Q. Were you there for any other reason?  
22 A. Occasionally. You have to keep the maintenance  
23 up.  
24 Q. How often would you say you traveled to the  
25 property for maintenance?

22

1 A. Probably twice a month.  
2 Q. So, what do you do to maintain the property?  
3 A. Whatever is required. Whatever it needs. I  
4 don't fix it if it isn't broken.  
5 Q. So, since 2007 can you give me some examples of  
6 things that you have fixed on the property?  
7 A. We replaced the yard. Put in a sprinkler  
8 system. Repaired the fence in the back. And hauled  
9 several tons of volcanic rock out of the backyard.  
10 Q. That's part of living in Kuna. My mother lives  
11 in Kuna. I'm familiar with the volcanic rock.  
12 A. Well, the previous owner gathered them.  
13 Q. And during these visits for these repairs would  
14 you -- would you lead the project and Roger would assist  
15 you?  
16 A. When he was there, yes.  
17 Q. But there was times when he wasn't there and it  
18 was --  
19 A. Oh, yeah.  
20 Q. -- it was just you doing the work?  
21 A. Yes.  
22 Q. How often did -- I guess how often did you  
23 communicate with Roger regarding the property and  
24 maintenance and repair?  
25 MR. STEFANIC: Object to form.

23

DEPOSITION OF WALTER AMUNDSON - MAY 7, 2014

1 THE WITNESS: Well --  
2 BY MR. GILES:  
3 Q. I will go ahead and reask it. How often do you  
4 communicate with Roger regarding the property?  
5 A. Oh, at least once a month.  
6 Q. And has that been the standard situation since  
7 you have purchased the property?  
8 A. Yes. Unless something come up of course.  
9 Q. So, you called at least once a month to check in  
10 and see how things are going?  
11 A. Well, I'd stop by at least once a month to get  
12 the rent.  
13 Q. So, these projects you spoke of, installing  
14 sprinklers, repairing the fence, replacing windows, fixing  
15 the roof, are these projects your decision or they are  
16 Roger's decision?  
17 A. No. They are mine.  
18 Q. Has there been anything -- let me back up. Has  
19 there been any projects on the property that were  
20 initiated by Roger?  
21 A. No. Not off my --  
22 Q. Does Roger --  
23 A. We worked together on a sprinkler system, but  
24 that was it. It was his idea to put the sprinkler system  
25 in.

24

1 Q. Other than the sprinkler system, Roger has never  
2 called you and said, dad, I want to do this, I want to do  
3 that, want to repair this?  
4 A. No.  
5 Q. What was your interaction with John Sullivan  
6 when he was living at your property?  
7 A. It was cordial. He always had his rent when it  
8 was due and so, yeah, we got along fine.  
9 Q. Was he a good tenant?  
10 A. Yes, he was.  
11 Q. Were you aware of any disagreements between John  
12 and Wayne?  
13 A. No.  
14 Q. Were you aware that Wayne drank?  
15 A. When?  
16 Q. When you --  
17 A. Later. Probably last year. Yes. But not  
18 initially.  
19 Q. Does your son drink or have people over to  
20 party?  
21 A. No, he never did. Not that I heard of.  
22 Q. Why did Wayne leave your property?  
23 A. I asked him to.  
24 Q. Was he not paying his rent?  
25 A. That, too.

25

1 Q. What else?  
2 A. He was drinking too much and some of that  
3 alcohol was on the premises and he did not have an  
4 addendum.  
5 Q. When did you become aware of his drinking?  
6 A. Well, probably last year or so, yeah.  
7 Q. So, in looking through the rental agreement I  
8 don't see any clauses in here regarding drinking or  
9 activities on the property; is that correct?  
10 A. That's correct.  
11 Q. Did you have any discussion with John Sullivan  
12 about having people over to the property?  
13 A. No.  
14 Q. Did you have any discussion with John Sullivan  
15 about drinking on the property?  
16 A. Initially? No.  
17 Q. Were you aware that there was people coming over  
18 to the property to drink and, then, stand around the fire?  
19 A. Yes.  
20 Q. And how did you know that?  
21 A. Through my son Roger. And Wayne. They both  
22 complained.  
23 Q. Complained that John was being too loud or --  
24 A. Just early in the morning, interrupting his  
25 night's sleep.

26

1 Q. Do you know if Roger or Wayne ever attended any  
2 of these gatherings?  
3 A. I don't.  
4 Q. How did you handle these complaints? Did you  
5 talk to John?  
6 A. No.  
7 Q. Were you concerned with their -- were you  
8 concerned with Roger and Wayne's complaints?  
9 A. Well, yes. Yeah. At first I thought it was  
10 just, you know, complaining about losing sleep and it  
11 didn't go any further than that. Just a complaint.  
12 Q. I'd like to ask you about the bay window that  
13 was removed. Was that your idea?  
14 A. Yes.  
15 Q. Who assisted you with the removal?  
16 A. Roger.  
17 Q. And why did you remove it?  
18 A. Because John asked me to. In a sense. He  
19 complained about having to leave his motorcycle out on the  
20 apron and I said, well, let's put you in a garage door so  
21 he could bring it inside. And, of course, he was in  
22 agreement.  
23 Q. Did Roger have anything that he stored in the --  
24 A. Oh, yeah.  
25 Q. -- in the space?

27

DEPOSITION OF WALTER AMUNDSON - MAY 7, 2014

1 A. Yeah. He had a motorcycle, too. His wasn't  
2 running.  
3 Q. What else was stored in that space?  
4 A. In the garage?  
5 Q. Yeah.  
6 A. Well, the usual things. You know, we built a  
7 bench in the back and air compressor. Garbage can.  
8 Q. So, you and Roger removed the window. Do you  
9 recall where you placed the window once it was removed?  
10 A. Yes.  
11 Q. Where was that?  
12 A. As we took it out it was pretty heavy, so we set  
13 it down fairly soon right next to the fence.  
14 Q. And when you say next to the fence -- I know you  
15 saw some of the pictures that we had that was next to the  
16 vinyl fence?  
17 A. Yeah. I didn't realize that at the time, but  
18 yes.  
19 Q. Do you recall what time of year you removed that  
20 window, what the date was?  
21 A. Yes. It was mid June -- mid or late June.  
22 Q. 2011?  
23 A. Yes.  
24 Q. And was this a similar project on the property,  
25 you were in charge, Roger helped out?

28

1 A. Oh, yes. Yeah. I wanted it done right.  
2 Q. What was your plans with the window once you  
3 removed it?  
4 A. I had it on display. I had it listed on  
5 craigslist for two weeks.  
6 Q. What did you have it listed for? What price?  
7 A. Two hundred.  
8 Q. Did you get any offers?  
9 A. Two.  
10 Q. What happened with those offers?  
11 A. The size was wrong for them.  
12 Q. Were you informed when the -- when the pane was  
13 broken out of the window?  
14 MR. STEFANIC: Object to form. Time frame.  
15 THE WITNESS: When he broke it?  
16 BY MR. GILES:  
17 Q. No. When there was -- let me back up. Were you  
18 -- were you informed by Roger or Wayne when the window  
19 fell on Wayne's pickup and the pane was broken out of it?  
20 A. I was not.  
21 Q. Do you have any idea when that was?  
22 MR. STEFANIC: I'm going to object. Lack of  
23 foundation and speculation.  
24 THE WITNESS: I have no idea.  
25 BY MR. GILES:

29

1 Q. How long did you have the -- the window listed  
2 on craigslist?  
3 A. At least two weeks. It was going on the third  
4 week, as a matter of fact, as I recall.  
5 Q. It was going in the --  
6 A. On the third week and it got broke.  
7 Q. Okay. Let me back up. I'm confused. You  
8 pulled the window out in mid June 2011. Put it on  
9 craigslist --  
10 A. For a couple weeks.  
11 Q. A couple of weeks. And, then, you said that on  
12 the third week -- that would have been the week of the  
13 accident we have been talking about?  
14 A. I think so. Yeah.  
15 Q. So, you were never informed that before the  
16 accident the window was actually broken?  
17 A. No. Because I -- as far as I knew it was still  
18 for sale.  
19 Q. When you received these phone calls on your  
20 window did you -- did you go to the property to show the  
21 window to the potential buyers?  
22 A. No. As soon as they found out the size they  
23 didn't -- weren't interested.  
24 Q. Did you travel to the property at all from mid  
25 June -- between mid June or the date of the accident, June

30

1 8th -- or July 8th?  
2 A. Oh, probably. Yeah. I had to pick up rent.  
3 Q. Do you recall when you picked up the rent?  
4 A. John usually got paid on the 5th.  
5 Q. So, it's your recollection that you traveled to  
6 the property in early July, the 5th or the 6th?  
7 A. Yeah.  
8 Q. Do you recall what time you traveled to the  
9 property?  
10 A. No.  
11 Q. Was it daylight?  
12 A. Oh, yes. Always.  
13 Q. Did you check on your window?  
14 A. No.  
15 Q. Do you recall --  
16 A. I mean not specifically.  
17 Q. Do you recall seeing the window?  
18 A. Sure.  
19 MR. STEFANIC: At the time he picked up the rent on  
20 the 5th?  
21 MR. GILES: At the time you picked up the rent on the  
22 5th do you recall seeing the window?  
23 THE WITNESS: Sure.  
24 BY MR. GILES:  
25 Q. Was it in the same location?

31

DEPOSITION OF WALTER AMUNDSON - MAY 7, 2014

1 A. I can't tell you that. I don't recall now.  
2 Q. Do you recall seeing the shattered pane in the  
3 window on June 5th, approximately, when you went to the  
4 property?  
5 A. No.  
6 Q. Did John Sullivan assist you with the -- the  
7 garage door project?  
8 A. Yes. Well, not me personally, but he and Roger  
9 had to tear out some of the inside and they did that.  
10 Q. How did he become involved in the project?  
11 A. Who?  
12 Q. Sorry. John.  
13 A. I don't know. I didn't ask him.  
14 Q. He just -- John just offered his assistance?  
15 A. Yeah. Probably. Because he was anxious to get  
16 his motorcycle off the apron.  
17 Q. Did you pay John for his help?  
18 A. No.  
19 Q. Did you give him a reduction in rent?  
20 A. No. It's already 200 dollars. How can it get  
21 any lower?  
22 Q. Was it 200 or 250?  
23 A. Two hundred. Was his 250?  
24 MR. STEFANIC: Yeah.  
25 THE WITNESS: Yeah. Okay.

32

1 BY MR. GILES:  
2 Q. So, was it your idea to place the window in its  
3 initial position?  
4 A. Probably. When you're lifting 200 pounds you  
5 want to set it down as soon as possible. Yes.  
6 Q. And it's your recollection the window weighed  
7 about 200 pounds?  
8 A. Oh, yeah. Yeah. It was eight foot long, four  
9 foot high.  
10 Q. How often did you use the walkway on the side of  
11 the house?  
12 A. Not too often. We just used it for wheelbarrow  
13 things, you know, because we go through the garage if  
14 you're carrying anything.  
15 Q. The gate on the back of the fence -- was the  
16 gate existing when you purchased the house?  
17 A. No.  
18 Q. You installed the gate?  
19 A. Yes.  
20 Q. And why did you install the gate?  
21 A. I had -- believe it or not we had drunks coming  
22 from the bar going through our yard at night and one of  
23 them even went over the gate to get away from the police.  
24 The police were catching him -- following him -- chasing  
25 him and he come right through the yard. So, we fenced it

33

1 off so they couldn't use our yard as a pathway.  
2 Q. And you didn't -- in fencing it off you  
3 installed this gate to get in the backyard?  
4 A. (No oral response.)  
5 Q. Did John assist with --  
6 A. Yes.  
7 Q. Did -- did John assist you with the framing of  
8 the -- the door once the window was pulled out?  
9 A. Yes. Yes. Yes.  
10 Q. Did you supervise this?  
11 A. Yes and no. He did it on his own and I had to  
12 repair it, because it had the wrong size, so I tore it out  
13 and started over.  
14 Q. Did he have your permission to --  
15 A. Oh, yeah. In a sense. We kind of worked  
16 together on it.  
17 Q. How did you first learn about the accident?  
18 A. I think it's when I went to pick up the rent.  
19 John was gone to work and Wayne was the one that told me  
20 when I got there that the window had been broken and how  
21 it happened.  
22 Q. So, your recollection was you went to pick up  
23 the rent on the 5th --  
24 A. No. It was later.  
25 Q. -- of July?

34

1 A. Yeah. It was later on. It was later on in the  
2 month. I didn't hear about it until about -- I think it  
3 was the Monday after this happened.  
4 Q. So, you -- is it your recollection that you went  
5 to collect the rent on July -- it would have been the 11th  
6 or 12th, a Monday?  
7 A. Probably.  
8 Q. You weren't there on the 5th?  
9 A. No. I don't think -- I don't know. It was hard  
10 to say, but in that neck of the woods, yeah. But it was  
11 after this happened, because that's -- when he told me  
12 about it I said, well, then, Dave owes me 200 bucks;  
13 right? He broke my window.  
14 Q. Let me back up. When you say this happened, you  
15 mean the accident?  
16 A. (No oral response.)  
17 Q. Okay. Where was the window at when you picked  
18 the rent up?  
19 A. Probably against the cedar fence then. I'm not  
20 going to say yes or no, but I assume that's where it was,  
21 because that's what the picture showed.  
22 Q. Did you go look at the window?  
23 A. Oh, yes. I mean when I -- when he told me it  
24 was broken, yes.  
25 Q. Who told you it was broken?

35



DEPOSITION OF WALTER AMUNDSON - MAY 7, 2014

1 A. Wayne I think.  
2 Q. So, when you looked at it was it in the same  
3 area where you had -- you had left it?  
4 A. No, as a matter of fact.  
5 Q. Where was it?  
6 A. When? Where was it when I --  
7 Q. In the location where you placed the window,  
8 where was the window when you picked up the rent?  
9 A. It was slid off from the concrete onto the dirt  
10 -- onto the gravel.  
11 Q. So, it was north towards the backyard?  
12 A. Yes.  
13 Q. And was the window leaning up against the fence?  
14 A. I think so. I'm not going to say yes or no,  
15 but --  
16 Q. You don't recall if it was propped up by --  
17 A. I don't recall. I do not. It was still  
18 upright. I mean it wasn't laying down if that's what  
19 you're asking.  
20 Q. When you -- when you and your son removed the  
21 window did you lean it up against the fence?  
22 A. Yeah.  
23 Q. And when you returned and were informed of the  
24 accident, you don't recall if the window was leaning up  
25 against the cedar portion of the fence or if it was

36

1 supported by wood slats?  
2 A. No, I don't.  
3 Q. Did you speak with Wayne or Roger about the  
4 window being moved?  
5 A. I didn't. It didn't dawn on me.  
6 Q. Do you know who moved the window?  
7 A. I don't.  
8 Q. Have you had any discussion with -- with your  
9 son or Wayne about the movement of the window?  
10 A. No, because it didn't occur to me.  
11 Q. What was your response when Wayne informed you  
12 of what happened?  
13 A. Well, we didn't know the severity and so I was a  
14 little angry that Dave broke my 200 dollar window.  
15 Q. Did you see the blood on the window?  
16 A. I did after he told me -- took me around there  
17 and showed me.  
18 Q. Were you concerned at that point the amount of  
19 blood?  
20 A. Well, it was obvious that he cut himself, yes.  
21 I didn't know how severe, but it was obvious he got cut.  
22 Q. Was there any blood in the walkway?  
23 A. No.  
24 Q. Did you see shattered glass on the ground?  
25 A. Yes.

37

1 Q. Where at?  
2 A. Right below the window, of course. Where he  
3 fell through it.  
4 Q. Just so we are clear, Wayne is the tenant that  
5 told you Dave broke the window?  
6 A. Yes.  
7 Q. Did you ever talk to Roger about what happened  
8 to the window?  
9 A. No, because he wasn't there. He didn't know.  
10 He didn't know anything about it.  
11 Q. Roger wasn't there when the accident occurred?  
12 A. (No oral response.)  
13 Q. Where was Roger?  
14 MR. STEFANIC: If you know.  
15 THE WITNESS: I can't tell you that.  
16 BY MR. GILES:  
17 Q. Did Roger tell you he wasn't there?  
18 A. Yes.  
19 Q. Was there ever any property damage -- let me go  
20 back. Has there ever been any property damage report on  
21 your rental property? Have your tenants ever damaged your  
22 property?  
23 A. Oh, sure. It's usually insignificant however.  
24 Q. Have the police ever responded to the property  
25 in Kuna?

38

1 A. I don't know.  
2 Q. If they have you haven't been informed?  
3 A. No.  
4 MR. STEFANIC: We were all surprised that the police  
5 were called to this deal.  
6 MR. GILES: Yes. I know. My question was has there  
7 been any other --  
8 MR. STEFANIC: Okay.  
9 MR. GILES: -- police reports prior.  
10 THE WITNESS: I do remember one occasion where they  
11 were chasing a drunk through the yard and they knocked on  
12 the door and when Roger answered the door they accused him  
13 of being a drunk. He said I don't know what you're  
14 talking about. But, yes, that was the only other  
15 occasion.  
16 MR. GILES: Why don't we take a short break.  
17 (A recess was had.)  
18 BY MR. GILES:  
19 Q. We can go back on the record. Mr. Admunson, I  
20 wanted to ask you a few more questions about Wayne. When  
21 did you ask Wayne to leave?  
22 A. It's been about two months ago.  
23 Q. And you said he was drinking. That was part of  
24 the reason?  
25 A. Yes.

39

DEPOSITION OF WALTER AMUNDSON - MAY 7, 2014

1 Q. Were there any other reasons?  
2 A. Well, no rent.  
3 Q. Drinking. Not paying his rent. Had he ever  
4 been untruthful with you?  
5 A. (No oral response.)  
6 Q. Had Wayne ever been untruthful with you?  
7 MR. STEFANIC: Object to form.  
8 THE WITNESS: I don't know.  
9 MR. STEFANIC: Go ahead.  
10 THE WITNESS: Not that I know of.  
11 BY MR. GILES:  
12 Q. You kicked him out for not paying his rent and  
13 drinking too much?  
14 MR. STEFANIC: Asked and answered.  
15 THE WITNESS: Yeah.  
16 BY MR. GILES:  
17 Q. Now, do you recognize this portion of your lease  
18 agreement?  
19 A. Yes.  
20 Q. What caused you to initiate the addendum that  
21 states no alcoholic beverages in or on the premises?  
22 MR. STEFANIC: That's for John Sullivan. The lease;  
23 right?  
24 MR. GILES: Yeah. Exhibit 7. John Sullivan.  
25 THE WITNESS: The accident.

40

1 BY MR. GILES:  
2 Q. The accident. And this is dated the 14th day of  
3 October 2011?  
4 A. (No oral response.)  
5 Q. So, that's some months after the accident?  
6 A. Yes.  
7 Q. Did you give some other addendums to Wayne or  
8 your son?  
9 A. I did not. Not written.  
10 Q. Did you give them a verbal --  
11 A. Yes.  
12 Q. And told them that they could not have alcohol  
13 on the premises?  
14 A. Yes.  
15 Q. I'm going to show you Exhibit 7 and as we look  
16 through this rental agreement there is NA throughout. Can  
17 you tell us what that signifies or how those got there?  
18 A. Yes. I put them on there.  
19 Q. When did you put the NAs on there?  
20 A. When I wrote it out before John signed it.  
21 Q. Why did you do that?  
22 A. If you will notice, it's primarily for housing  
23 and all he was renting from me was a room. I take care of  
24 the maintenance on the house, but he had to keep his room  
25 clean. Or I assumed he would.

41

1 Q. So, through your NAs you meant -- your intention  
2 was to strike all of these lease provisions?  
3 A. Yes.  
4 Q. Leaving only the provisions that pertained to  
5 renting a room?  
6 A. Right.  
7 Q. Do you have a similar -- or did you have a  
8 similar rental agreement with Wayne?  
9 A. Yes.  
10 Q. And was it marked NA throughout?  
11 A. Yes.  
12 Q. And you have never had a rental agreement with  
13 your son?  
14 A. No.  
15 Q. I think this was marked as Exhibit 4 in earlier  
16 depositions. I think we can agree to go ahead and mark  
17 this one as four.  
18 (Deposition Exhibit 4 marked.)  
19 Regarding management of your property, you had a  
20 verbal agreement with your son. Who was -- who was in  
21 control and possession of the property?  
22 MR. STEFANIC: Objection. That's a legal --  
23 BY MR. GILES:  
24 Q. Who controlled the property?  
25 MR. STEFANIC: What do you mean by control?

42

1 THE WITNESS: Control?  
2 BY MR. GILES:  
3 Q. Who was in control of the property? Who made  
4 the decisions regarding repair?  
5 MR. STEFANIC: Okay. That's a fair question.  
6 THE WITNESS: That would be me. Yeah.  
7 BY MR. GILES:  
8 Q. Okay. And you were -- you were in legal  
9 possession of the property?  
10 MR. STEFANIC: Objection.  
11 THE WITNESS: Yes.  
12 MR. STEFANIC: Object to form. Legal possession  
13 meaning did he own it?  
14 MR. GILES: You owned the property?  
15 THE WITNESS: Yes.  
16 BY MR. GILES:  
17 Q. You were on the title?  
18 A. Yes.  
19 MR. STEFANIC: Okay.  
20 THE WITNESS: You asked me that once already.  
21 BY MR. GILES:  
22 Q. Was there anyone else that had control of the  
23 property?  
24 MR. STEFANIC: Object to form. Vague as to control.  
25 THE WITNESS: No.

43

DEPOSITION OF WALTER AMUNDSON - MAY 7, 2014

1 BY MR. GILES:  
2 Q. Now, even though you didn't have a lease with  
3 your son, some of these provisions that you have stricken  
4 refer to repair and alteration. I can point you to line  
5 ten on page two of Exhibit 7. Was that your verbal  
6 agreement with your son?  
7 MR. STEFANIC: Object to form. If you know. That's  
8 a document involving the other tenant and if you can  
9 remember you can tell him. The question is for Roger.  
10 MR. GILES: Correct.  
11 THE WITNESS: So, ask me the question again.  
12 BY MR. GILES:  
13 Q. You didn't have a lease agreement with your son?  
14 A. No.  
15 Q. But you had previously testified that your son  
16 obtained your permission prior to making alterations or  
17 changes to the property; is that a fair statement?  
18 MR. STEFANIC: Object to --  
19 THE WITNESS: No. He would never -- he would never  
20 make any alterations without my approval.  
21 BY MR. GILES:  
22 Q. When you say he you mean your son?  
23 A. Yes.  
24 Q. Did you have an understanding with your son that  
25 he was to keep the premises in a clean condition?

44

1 A. Yes.  
2 Q. Did you have an agreement with your son that he  
3 was not to assign his -- assign his tenancy or let  
4 somebody else step into his shoes or subletting of the  
5 property? Let me ask a different question.  
6 A. Give a different question.  
7 Q. If your son was going to get a new tenant did he  
8 have to ask you?  
9 A. Oh, yes.  
10 Q. Did you have an understanding with your son that  
11 he wasn't going to be able to move out and put somebody in  
12 his place and, then, put the rent in his pocket?  
13 A. It would have to be one of these. He does not  
14 have one of those.  
15 Q. Correct. But did you have that understanding  
16 with your son?  
17 A. Yes.  
18 Q. Thank you.  
19 MR. STEFANIC: You were basically asking him if he  
20 couldn't -- he couldn't assign it to somebody else; is  
21 right?  
22 MR. GILES: Correct.  
23 MR. STEFANIC: Okay.  
24 MR. GILES: That's kind of what I --  
25 MR. STEFANIC: I understood that's what you -- I just

45

1 wanted to make sure I understood you.  
2 BY MR. GILES:  
3 Q. I didn't know what sublet meant until a sort  
4 while ago, so -- did you maintain a right of entry on the  
5 property? Meaning that you could enter the property  
6 whenever you chose?  
7 A. Yes.  
8 Q. I will go back to Exhibit No. 4. Do you  
9 recognize that photograph?  
10 A. No. I don't know who took it.  
11 Q. Can you tell us what that photograph is of?  
12 A. Yeah. This is the bay window. And it's obvious  
13 that it's right after the accident, because here is the  
14 glass.  
15 Q. Is that -- let's step back a little bit. You  
16 testified earlier that the window was eight by four?  
17 A. Yes.  
18 Q. How big are the individual panes on that window?  
19 A. Two by two.  
20 Q. Is that enough glass on the ground to make up a  
21 two foot by two foot pane?  
22 MR. STEFANIC: Objection. Form. Speculation.  
23 THE WITNESS: Obviously not, but the rest of it's  
24 still in there.  
25 BY MR. GILES:

46

1 Q. Based on your experience in -- in construction  
2 and finish carpentry, could you -- could you say that's --  
3 that's not enough glass to make up an entire pane?  
4 MR. STEFANIC: That's -- you're asking to him to make  
5 a judgment off of a two dimensional photo. He doesn't  
6 have a three dimensional photo as to what's there. I  
7 would object.  
8 MR. GILES: That's fine. You can go ahead and  
9 answer.  
10 THE WITNESS: Are you asking me if the rest of it is  
11 still in the frame?  
12 BY MR. GILES:  
13 Q. I'm asking you if there is enough glass on the  
14 ground to make up an approximately --  
15 A. No.  
16 Q. -- two by two pane of glass.  
17 A. No.  
18 Q. Thank you. I'm just trying to make this easy.  
19 We are going to admit these as one exhibit. You want to  
20 call it Exhibit No. 8?  
21 MR. STEFANIC: Yes. And I will -- I will say that I  
22 think those are the photographs -- not in sequential order  
23 -- that are Exhibit 5.  
24 MR. GILES: Five A through -- with the other court  
25 reporter. I will go ahead and admit those.

47

DEPOSITION OF WALTER AMUNDSON - MAY 7, 2014

1 (Deposition Exhibit 8 marked.)  
2 MR. STEFANIC: And the record should reflect that the  
3 reason why we are using this exhibit is because the  
4 original Exhibit 5 is with M&M Court Reporting.  
5 BY MR. GILES:  
6 Q. Mr. Amundson, you returned to the -- to the  
7 property after the accident to collect rent?  
8 A. Yes. I think it was for the rent. Yes.  
9 Q. And you were told by your tenant Wayne that  
10 there had been an accident?  
11 A. (No oral response.)  
12 Q. Did you go inspect the window?  
13 A. Yes. Right then.  
14 Q. Do you recall at that time was the window in the  
15 same -- same location as it is in these pictures?  
16 A. Yes.  
17 Q. And when I say these pictures, I'm referring to  
18 Exhibit 4 and Exhibit 8.  
19 MR. STEFANIC: I want to make sure that the question  
20 is framed fairly for this witness, because we don't -- I  
21 think we know that maybe his wife took these photographs.  
22 If it is tell him and that's -- your testimony is that it  
23 doesn't -- that the window was -- if you can answer his  
24 question, please do.  
25 THE WITNESS: This is where it was, yes. When I saw  
48

1 it after the accident.  
2 BY MR. GILES:  
3 Q. Thank you. Thank you. Now, I'd like you to  
4 look at the first picture on Exhibit No. 8.  
5 A. Uh-huh.  
6 Q. How much of the pane in the upper left-hand  
7 portion of that bay window is missing?  
8 A. How much of what?  
9 Q. The pane. How much of the pane itself is --  
10 A. Oh, the glass?  
11 Q. -- has been punched out of that window --  
12 A. Oh.  
13 Q. -- or has fallen out of the window, was broken  
14 out of the window?  
15 A. I would say 75 percent.  
16 Q. Now, looking at Exhibit 4, would you say all the  
17 glass on the ground makes up that 75 percent?  
18 MR. STEFANIC: Object to the form.  
19 THE WITNESS: Well, they got glass on both sides.  
20 BY MR. GILES:  
21 Q. Let me ask it a different way. Do you think  
22 there is enough glass on the ground to fill that window  
23 back up?  
24 A. No, I don't think so. I would have to say no.  
25 Q. Okay. I will get those back. Thank you. Mr.  
49

1 Amundson, do you recall when -- when you visited the  
2 property after the accident, was the window on the slats  
3 that are present in Exhibit No. 4?  
4 A. I don't recall for sure.  
5 Q. When you removed -- when you and your son Roger  
6 removed the window previously there was no slats used?  
7 A. We laid it -- placed it out here.  
8 Q. And just so we are clear, when you say out here,  
9 you mean the --  
10 A. On the vinyl fence.  
11 Q. So, further out towards the street?  
12 A. Yes. It was sitting on the slab.  
13 Q. On the concrete itself?  
14 A. Yeah.  
15 Q. When you went to your rental property to get the  
16 rent and you looked at the window, did you notice a piece  
17 of wood in the walkway?  
18 A. No. I didn't pay any attention. Sorry.  
19 Q. Have you ever noticed the -- this piece of wood  
20 that's in Exhibit No. 4? This root?  
21 A. No.  
22 Q. Do you have any idea where the -- where the root  
23 came from that -- it looks to me like maybe it was part of  
24 a Christmas tree, but --  
25 A. I have no idea.  
50

1 Q. None of your tenants ever told you anything  
2 about it?  
3 A. No. Not -- I didn't -- John used to gather wood  
4 for his fire pit.  
5 Q. Do you know what kind of wood John gathered for  
6 this fire pit?  
7 A. No. Just from what I heard here.  
8 Q. And when you say here, you mean yesterday's  
9 deposition? Yesterday and earlier today?  
10 A. Yes.  
11 MR. GILES: Thank you. I'm just kind of going back  
12 through my notes here to make sure I didn't miss anything,  
13 Mr. Amundson. I'm close to wrapping up and --  
14 MR. STEFANIC: We will be patient.  
15 BY MR. GILES:  
16 Q. Thanks. Okay, Mr. Amundson. Thanks for being  
17 patient. Just a few more questions. Do you recall when  
18 the gate to the backyard was installed?  
19 A. It was -- if this was '11, it would have been in  
20 the summer of either '10 or -- let's see. Yeah. Summer  
21 of '9 or '10.  
22 Q. Summer of 2009 or 2010?  
23 A. '9 or '10. Yeah.  
24 Q. Once that gate was installed that's when people  
25 started accessing the backyard through the alley?  
51

DEPOSITION OF WALTER AMUNDSON - MAY 7, 2014

1 MR. STEFANIC: Well, I will object to the form.  
2 THE WITNESS: I don't know. They used to come  
3 through this way. That's the reason we put the gate up.  
4 BY MR. GILES:  
5 Q. No. I'm talking about the gate to the backyard.  
6 A. Yeah.  
7 Q. Was there a way to get to the backyard prior to  
8 the gate being installed?  
9 A. No.  
10 Q. So, when that gate was installed people could  
11 access the backyard -- you could access the backyard  
12 through the gate?  
13 A. I could. Yes.  
14 Q. And so could the tenants, so could others?  
15 A. Oh, yes.  
16 Q. Thank you. Mr. Amundson, have you maintained  
17 primary and exclusive control of this rental property?  
18 A. Yes.  
19 MR. STEFANIC: Object to the form. Control is a  
20 legal term of art. What do you mean by control?  
21 MR. GILES: I mean control -- I can define control if  
22 you would like me to.  
23 MR. STEFANIC: Please do. Yes.  
24 BY MR. GILES:  
25 Q. Controlling the property, as a legal definition,  
52

1 is to maintain something. To possess it. In your opinion  
2 do you control the property?  
3 A. Yes.  
4 Q. Do you continue to do so?  
5 A. Yes.  
6 Q. At the time of the accident did you control the  
7 property?  
8 MR. STEFANIC: Same -- same objection, but with your  
9 definition that he -- he owned it and he repaired it.  
10 MR. GILES: Owned it, repaired it, and possessed it.  
11 Maintained --  
12 MR. STEFANIC: Counsel, is that -- I mean he didn't  
13 live there. Object to form.  
14 BY MR. GILES:  
15 Q. Okay. At the time of the accident you  
16 controlled the property.  
17 MR. STEFANIC: Object to the form. Under what  
18 definition?  
19 BY MR. GILES:  
20 Q. Under my previous definition. Did you control  
21 the property under my previous definition? Which was  
22 maintenance. You exerted power over the property, if you  
23 will.  
24 A. (No oral response.)  
25 Q. Is that yes?  
53

1 A. Yes.  
2 Q. At the time of the accident your name was on the  
3 title --  
4 A. Yes.  
5 Q. -- to the property. You maintained the  
6 property?  
7 A. Yes.  
8 Q. And this was exclusive. Nobody else had access  
9 to maintain or control the property?  
10 MR. STEFANIC: Object to form.  
11 THE WITNESS: No. Not that I know of.  
12 BY MR. GILES:  
13 Q. Okay. Thank you. And why were the monthly rent  
14 payments always in cash?  
15 A. Nobody had a checking account.  
16 MR. GILES: I don't think I have anything further at  
17 this time. I don't know if --  
18  
19 EXAMINATION  
20 BY MR. STEFANIC:  
21 Q. I have two quick questions. At all times during  
22 -- well, at the time of this accident were you the owner  
23 of this premises?  
24 A. Yes.  
25 Q. Were you the landlord of this premises?  
54

1 A. Yes.  
2 Q. And did you have three tenants that lived there?  
3 A. Yes.  
4 Q. And they paid rent to you?  
5 A. Yes.  
6 MR. STEFANIC: That's all I have.  
7 MR. MONTELEONE: Could I ask some questions?  
8 MR. STEFANIC: No.  
9 MR. MONTELEONE: You want a clean record. We keep  
10 one lawyer to --  
11 MR. STEFANIC: Yes.  
12 MR. MONTELEONE: -- cross-examination. Let's take a  
13 break.  
14 (A recess was had.)  
15  
16 FURTHER EXAMINATION  
17 BY MR. GILES:  
18 Q. Let's go back on the record. Mr. Amundson, just  
19 a few more questions. Who has the authority for the  
20 repairs on your property in Kuna?  
21 A. Me.  
22 Q. And who has authority over the maintenance of  
23 that property?  
24 A. Myself.  
25 Q. And who has authority with regard to the upkeep  
55

DEPOSITION OF WALTER AMUNDSON - MAY 7, 2014

1 of the property?  
2 A. Myself.  
3 Q. Is it fair to say that any maintenance or repair  
4 to the property is done at your direction?  
5 A. Yes.  
6 Q. Is it fair to say that it would be done at your  
7 discretion?  
8 A. Yes.  
9 Q. At the time of the accident you had three  
10 tenants renting from you; is that correct?  
11 A. Yes.  
12 Q. Is it fair to say that any tenant action taken  
13 with regard to repair and maintenance was done at your  
14 direction?  
15 A. Yes.  
16 Q. And any repair performed by one of your tenants  
17 to the property was for the benefit of the property?  
18 MR. STEFANIC: Objection. Lack of -- facts not in  
19 evidence in terms of that question.  
20 THE WITNESS: You mean if they had my permission?  
21 BY MR. GILES:  
22 Q. I mean any -- any maintenance or upkeep done by  
23 one of your tenants, that was for your benefit as the  
24 property owner; is that correct?  
25 MR. STEFANIC: Object to form.  
56

1 THE WITNESS: I assume so.  
2 BY MR. GILES:  
3 Q. And is that the same with respect to the window,  
4 anything done with the window would have been done at your  
5 direction?  
6 MR. STEFANIC: Object to form. In terms of what?  
7 BY MR. GILES:  
8 Q. In terms of -- oh, sorry. In terms of removing  
9 the window and placing the window on the fence, were these  
10 things done at your direction?  
11 A. Yes.  
12 MR. STEFANIC: On the fence you're talking where he  
13 left it --  
14 MR. GILES: Correct.  
15 MR. STEFANIC: -- on the white vinyl fence? Okay.  
16 MR. GILES: I don't have anything else.  
17 MR. STEFANIC: I don't either. We will read and  
18 sign.  
19  
20 (Whereupon the deposition ended at 3:10 p.m.)  
21 \*\*\*\*\*  
22  
23  
24  
25

57

VERIFICATION

STATE OF \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

I, WALTER A. AMUNDSON, being first duly sworn on my oath, depose and say:

That I am the witness named in the foregoing deposition taken the 7th day of May, 2014, consisting of pages numbered 1 to 57, inclusive; that I have read the said deposition and know the contents thereof; that the questions contained therein were propounded to me; that the answers to said questions were given by me, and that the answers as contained therein (or as corrected by me on the change sheet) are true and correct.

\_\_\_\_\_  
Signature

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 2014, at \_\_\_\_\_, Idaho.

\_\_\_\_\_  
Notary Public for Idaho  
Residing at \_\_\_\_\_, Idaho.  
My Commission Expires \_\_\_\_\_

REPORTER'S CERTIFICATE

STATE OF IDAHO )  
 ) ss.  
County of Ada )

I, M. DEAN WILLIS, Certified Shorthand Reporter and Notary Public in and for the state of Idaho, DO HEREBY CERTIFY:

That prior to being examined, the witness named in the foregoing deposition was by me duly sworn to testify the truth, the whole truth and nothing but the truth;

That said deposition was taken down by me in shorthand at the time and place therein named and thereafter reduced to typewriting by myself, and that the foregoing transcript contains a full, true and verbatim record of said deposition.

I further certify that I have no interest in the event of this action.

WITNESS my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
M. DEAN WILLIS, CSR NO. 95 and  
Notary Public, State of Idaho.  
My Commission expires: 9-15-16

**DEPOSITION OF WALTER AMUNDSON - MAY 7, 2014**

'11 - 51:19,	250 - 21:23, 32:22,	17:19, 17:21, 18:6,	20:6, 21:10, 26:7,	anton - 4:21,	55:22, 55:25,
'34 - 5:25,	32:23,	18:25, 20:21, 21:4,	27:22, 40:18, 41:16,	anxious - 32:15,	avoid - 4:18,
'55 - 6:14,	25th - 20:13, 20:17,	21:13, 26:12, 26:15,	42:8, 42:12, 42:20,	anyone - 43:22,	aware - 25:11, 25:14,
'56 - 6:14,	20:18, 20:20,	27:10, 27:12, 27:19,	44:6, 44:13, 45:2,	anything - 5:3, 19:8,	26:5, 26:17,
'57 - 10:14, 10:17,	30 - 8:25, 9:21,	30:13, 33:7, 34:17,	ahead - 15:20, 19:1,	19:10, 24:18, 27:23,	away - 33:23,
'7 - 14:15,	30s - 7:8,	35:2, 35:2, 35:12,	24:3, 40:9, 42:16,	33:14, 38:10, 51:1,	back - 10:17, 10:20,
'72 - 8:6,	32 - 8:24, 9:4, 9:21,	37:3, 37:9, 38:7,	47:8, 47:25,	51:12, 54:16, 57:4,	19:6, 23:8, 24:18,
'8 - 14:15,	35 - 8:24, 9:21,	38:10, 39:14, 39:20,	air - 28:7,	57:16,	28:7, 29:17, 30:7,
'9 - 51:21, 51:23,	12:19,	39:22, 51:2, 52:5,	alcohol - 26:3, 41:12,	apiece - 15:11,	33:15, 35:14, 38:20,
'90s - 12:23,	35th - 12:19,	absolutely - 4:16,	alcoholic - 40:21,	approval - 44:20,	39:19, 46:8, 46:15,
'92 - 12:23, 13:12,	36 - 8:23, 9:16, 9:22,	21:11,	all - 16:12, 22:3,	approximately -	49:23, 49:25, 51:11,
'97 - 12:23, 13:12,	3:10 - 57:20,	access - 52:11,	30:24, 39:4, 41:23,	32:3, 47:14,	55:18,
11th - 35:5,	4 - 42:15, 42:18,	52:11, 54:8,	42:2, 49:16, 54:21,	apron - 27:20, 32:16,	backyard - 23:9,
12th - 35:6,	46:8, 48:18, 49:16,	accessing - 51:25,	55:6,	area - 9:6, 36:3,	34:3, 36:11, 51:18,
13 - 10:4,	50:3, 50:20,	accident - 21:3,	alley - 51:25,	army - 6:24,	51:25, 52:5, 52:7,
14th - 21:14, 41:2,	4th - 15:15, 17:8,	30:13, 30:16, 30:25,	along - 25:8,	around - 26:18,	52:11, 52:11,
17 - 5:25,	5 - 47:23, 48:4,	34:17, 35:15, 36:24,	already - 13:21, 19:8,	37:16,	bar - 33:22,
1957 - 10:13,	50 - 8:23,	38:11, 40:25, 41:2,	32:20, 43:20,	art - 52:20,	based - 47:1,
1960 - 10:4, 10:5,	53 - 9:15, 9:24,	41:5, 46:13, 48:7,	alteration - 44:4,	ask - 27:12, 32:13,	basically - 45:19,
1972 - 7:20,	54 - 8:22, 9:12, 9:24,	48:10, 49:1, 50:2,	alterations - 44:16,	39:20, 39:21, 44:11,	bay - 27:12, 46:12,
1:30 - 4:1,	5th - 31:4, 31:6,	53:6, 53:15, 54:2,	44:20,	45:5, 45:8, 49:21,	49:7,
200 - 21:23, 21:24,	31:20, 31:22, 32:3,	54:22, 56:9,	aluminum - 16:12,	55:7,	become - 26:5,
200 - 21:23, 33:4,	34:23, 35:8,	accomplishment -	always - 25:7, 31:12,	asking - 36:19,	32:10,
2000 - 18:7,	6th - 31:6,	10:8,	54:14,	45:19, 47:4, 47:10,	before - 4:23, 5:1,
2007 - 12:11, 14:1,	7 - 4:1, 19:4, 40:24,	account - 54:15,	amount - 37:18,	47:13,	19:6, 30:15, 41:20,
14:13, 14:19, 14:21,	41:15, 44:5,	accused - 39:12,	amundson - 4:6,	assign - 45:3, 45:3,	beg - 9:2,
16:7, 21:17, 23:5,	75 - 49:15, 49:17,	action - 56:12,	4:12, 4:21, 4:22,	45:20,	being - 26:23, 37:4,
2008 - 21:20,	756 - 15:15, 17:8,	activities - 26:9,	5:24, 20:12, 48:6,	assist - 23:14, 32:6,	39:13, 51:16, 52:8,
2009 - 51:22,	8 - 47:20, 48:1,	actually - 30:16,	50:1, 51:13, 51:16,	34:5, 34:7,	believe - 33:21,
2010 - 51:22,	48:18, 49:4,	addendum - 26:4,	52:16, 55:18,	assistance - 32:14,	below - 38:2,
2011 - 18:7, 18:8,	8th - 31:1, 31:1,	40:20,	an - 5:12, 10:7, 14:2,	assisted - 27:15,	bench - 28:7,
20:19, 28:22, 30:8,	a-m-u-n-d-s-o-n -	addendums - 41:7,	14:10, 16:3, 26:3,	assume - 35:20,	benefit - 56:17,
41:3,	4:21,	admit - 47:19, 47:25,	44:24, 45:2, 45:10,	57:1,	56:23,
2014 - 4:1,	able - 45:11,	admunson - 39:19,	47:3, 47:14, 48:10,	attended - 27:1,	best - 4:17,
	about - 5:13, 5:18,	advance - 20:9,	angry - 37:14,	attention - 16:2,	better - 4:13,
	7:7, 8:18, 9:14, 9:20,	again - 14:20, 44:11,	animals - 20:11,	50:18,	between - 25:11,
	10:13, 10:24, 12:11,	against - 35:19,	another - 8:23, 11:9,	august - 18:8,	30:25,
	13:22, 14:15, 15:4,	36:13, 36:21, 36:25,	11:17, 17:11,	authority - 55:19,	beverages - 40:21,
		age - 9:19,	answer - 5:12, 5:14,		big - 46:18,
		ago - 39:22, 46:4,	8:13, 15:20, 47:9,		birth - 5:23,
		agree - 42:16,	48:23,		
		agreement - 20:5,	answered - 39:12,		
			40:14,		

**DEPOSITION OF WALTER AMUNDSON - MAY 7, 2014**

bit - 46:15,	can - 4:19, 5:8, 5:14, 5:23, 6:1, 8:18, 11:14, 12:15, 12:22, 14:7, 15:20, 18:20, 19:6, 19:9, 20:25, 23:5, 28:7, 32:20, 39:19, 41:16, 42:16, 44:4, 44:8, 44:9, 46:11, 47:8, 48:23, 52:21,	clean - 41:25, 44:25, 55:9,	construction - 7:22, 47:1,	dated - 21:12, 41:2,	discharged - 7:1,
blood - 37:15, 37:19, 37:22,		cleaning - 17:7,	continue - 53:4,	daughter - 8:23, 15:1,	discretion - 56:7,
boise - 4:1, 7:18, 7:21, 11:13, 11:16, 11:20, 12:4, 12:19,		clear - 19:9, 38:4, 50:8,	control - 42:21, 42:25, 43:1, 43:3, 43:22, 43:24, 52:17, 52:19, 52:20, 52:21, 52:21, 53:2, 53:6, 53:20, 54:9,	dave - 35:12, 37:14, 38:5,	discuss - 20:8,
bore - 4:12,	can't - 21:6, 32:1, 38:15,	close - 10:2, 51:13,	controlled - 42:24, 53:16,	dawn - 37:5,	discussing - 13:6,
born - 6:5, 6:7,	care - 41:23,	collect - 22:19, 35:5, 48:7,	controlling - 52:25,	day - 4:13, 41:2,	discussion - 20:6, 26:11, 26:14, 37:8,
both - 26:21, 49:19,	carpenter - 7:22, 8:5,	college - 6:2, 6:3, 6:13, 6:19,	copy - 18:12, 18:17,	daylight - 31:11,	display - 29:4,
bought - 10:17, 10:18, 11:9, 14:18, 15:24,	carpentry - 7:23, 8:9, 15:25, 17:3, 47:2,	come - 19:17, 20:3, 21:25, 22:19, 24:8, 33:25, 52:2,	cordial - 25:7,	deal - 39:5,	divulge - 5:13,
boy - 9:17,	carpet - 17:7,	comfortable - 4:15,	correct - 21:17, 26:9, 26:10, 44:10, 45:15, 45:22, 56:10, 56:24, 57:14,	decision - 24:15, 24:16,	document - 44:8,
boys - 8:20,	carrying - 33:14,	coming - 26:17, 33:21,	couldn't - 34:1, 45:20, 45:20,	decisions - 43:4,	documents - 5:6, 5:15,
branch - 6:23,	cash - 22:8, 22:9, 54:14,	communicate - 23:23, 24:4,	counsel - 53:12,	define - 52:21,	doesn't - 47:5, 48:23,
break - 18:20, 39:16, 55:13,	catching - 33:24,	company - 7:2,	county - 7:11, 7:16,	definition - 52:25, 53:9, 53:18, 53:20, 53:21,	doing - 8:9, 23:20,
bring - 18:14, 19:8, 27:21,	caused - 40:20,	complained - 26:22, 26:23, 27:19,	couple - 21:2, 30:10, 30:11,	degree - 6:15,	dollar - 37:14,
broke - 29:15, 30:6, 35:13, 37:14, 38:5,	cedar - 17:19, 35:19, 36:25,	complaining - 27:10,	course - 24:8, 27:21, 38:2,	department - 7:11,	dollars - 32:20,
broken - 23:4, 29:13, 29:19, 30:16, 34:20, 35:24, 35:25, 49:13,	center - 18:3,	complaint - 27:11,	court - 47:24, 48:4,	deposition - 4:22, 5:5, 17:22, 19:4, 19:7, 42:18, 48:1, 51:9, 57:20,	don't - 5:13, 9:10, 16:6, 18:15, 19:9, 19:11, 19:12, 21:4, 21:6, 23:4, 26:8, 27:3, 32:1, 32:13, 35:9, 35:9, 36:16, 36:17, 36:24, 37:2, 37:7, 39:1, 39:13, 39:16, 40:8, 46:10, 48:20, 49:24, 50:4, 52:2, 54:16, 54:17, 57:16, 57:17,
bucks - 35:12,	changes - 44:17,	complaints - 27:4, 27:8,	craigslis - 29:5, 30:2, 30:9,	depositions - 4:14, 42:16,	done - 7:25, 16:25, 29:1, 56:4, 56:6, 56:13, 56:22, 57:4, 57:4, 57:10,
built - 10:18, 11:17, 12:1, 28:6,	charge - 28:25,	complete - 16:1,	cross-examination - 55:12,	didn't - 21:2, 22:10, 27:11, 28:17, 30:23, 32:13, 34:2, 35:2, 37:5, 37:5, 37:10, 37:13, 37:21, 38:9, 38:10, 44:2, 44:13, 46:3, 50:18, 51:3, 51:12, 53:12,	door - 27:20, 32:7, 34:8, 39:12, 39:12,
business - 17:7,	chasing - 33:24, 39:11,	completely - 16:11,	currently - 12:20,	different - 11:2, 13:6, 45:5, 45:6, 49:21,	down - 20:3, 22:19, 28:13, 33:5, 36:18,
buy - 10:9, 14:10,	check - 24:9, 31:13,	compressor - 28:7,	cut - 37:20, 37:21,	dimensional - 47:5, 47:6,	drafted - 6:20,
buyers - 30:21,	checking - 54:15,	concerned - 27:7, 27:8, 37:18,	cuts - 17:3,	direction - 56:4, 56:14, 57:5, 57:10,	drank - 25:14,
c&l - 7:22,	children - 8:19, 8:21,	concrete - 36:9, 50:13,	dad - 17:4, 25:2,	dirt - 36:9,	drink - 25:19, 26:18,
call - 22:17, 47:20,	children's - 9:10,	condition - 15:17, 15:23, 17:25, 44:25,	damage - 38:19, 38:20,	disagreements - 25:11,	drinking - 26:2, 26:5, 26:8, 26:15, 39:23, 40:3, 40:13,
called - 4:7, 19:18, 19:25, 22:13, 24:9, 25:2, 39:5,	chose - 46:6,	confused - 30:7,	damaged - 38:21,		drunk - 39:11, 39:13,
calls - 30:19,	christmas - 50:24,	congratulations - 10:7,	date - 5:23, 28:20, 30:25,		
came - 11:5, 11:6, 11:9, 50:23,	city - 6:8, 6:9,	consider - 13:5,			
	civil - 4:25,				
	clark - 7:11, 7:16,				
	clauses - 26:8,				



**DEPOSITION OF WALTER AMUNDSON - MAY 7, 2014**

drunks - 33:21,	examples - 23:5,	fill - 49:22,	further - 19:7, 27:11,	glass - 37:24, 46:14,	harder - 17:3,
duces - 19:7,	exclusive - 52:17,	fine - 5:23, 25:8,	50:11, 54:16, 55:16,	46:20, 47:3, 47:13,	has - 24:6, 24:18,
due - 25:8,	54:8,	47:8,	garage - 27:20, 28:4,	47:16, 49:10, 49:17,	24:18, 25:1, 38:20,
duly - 4:7,	exerted - 53:22,	finish - 7:22, 8:5,	32:7, 33:13,	49:19, 49:22,	39:6, 49:11, 49:13,
during - 12:23,	exhibit - 19:4, 40:24,	47:2,	garbage - 28:7,	go - 4:19, 6:3, 6:13,	55:19, 55:22, 55:25,
13:12, 17:22, 23:13,	41:15, 42:15, 42:18,	fire - 7:11, 17:21,	garden - 12:7,	15:20, 19:1, 19:6,	hauled - 23:8,
54:21,	44:5, 46:8, 47:19,	17:23, 18:3, 26:18,	gate - 33:15, 33:16,	19:7, 24:3, 27:11,	haven't - 39:2,
earlier - 20:20,	47:20, 47:23, 48:1,	51:4, 51:6,	33:18, 33:20, 33:23,	30:20, 33:13, 35:22,	he'd - 20:9,
42:15, 46:16, 51:9,	48:3, 48:4, 48:18,	fireman - 7:12,	34:3, 51:18, 51:24,	38:19, 39:19, 40:9,	he's - 9:18, 9:19,
early - 18:7, 26:24,	48:18, 49:4, 49:16,	first - 4:7, 10:9,	52:3, 52:5, 52:8,	42:16, 46:8, 47:8,	16:25, 17:1, 17:13,
31:6,	50:3, 50:20,	13:19, 20:9, 20:16,	52:10, 52:12,	47:25, 48:12, 55:18,	22:2,
easy - 47:18,	existing - 17:23,	27:9, 34:17, 49:4,	gather - 51:3,	going - 4:14, 5:11,	hear - 35:2,
education - 6:1,	33:16,	five - 11:16, 11:18,	gathered - 23:12,	15:19, 18:25, 24:10,	heard - 25:21, 51:7,
17:12,	expected - 5:9,	11:20, 47:24,	51:5,	29:22, 30:3, 30:5,	heavy - 28:12,
eight - 33:8, 46:16,	experience - 16:23,	fix - 23:4,	gatherings - 27:2,	33:22, 35:20, 36:14,	help - 16:15, 16:21,
either - 10:12, 51:20,	47:1,	fixed - 23:6,	generally - 5:18,	41:15, 45:7, 45:11,	32:17,
57:17,	extent - 5:12,	fixer - 15:23, 16:1,	13:18, 20:15,	47:19, 51:11,	helped - 16:17, 17:1,
else - 17:10, 19:10,	fact - 30:4, 36:4,	fixing - 24:14,	get - 14:22, 19:1,	gone - 34:19,	28:25,
26:1, 28:3, 43:22,	facts - 56:18,	following - 33:24,	19:19, 24:11, 29:8,	good - 15:23, 25:9,	got - 5:11, 8:20,
45:4, 45:20, 54:8,	fair - 43:5, 44:17,	follows - 4:8,	32:15, 32:20, 33:23,	goodness - 9:11,	8:22, 9:12, 9:14,
57:16,	56:3, 56:6, 56:12,	foot - 33:8, 33:9,	34:3, 45:7, 49:25,	high - 17:13, 33:9,	10:20, 17:13, 21:9,
empty - 14:17,	fairly - 28:13, 48:20,	46:21, 46:21,	50:15, 52:7,	22:16, 25:8, 30:6,	22:16, 25:8, 30:6,
end - 17:1,	fallen - 49:13,	ford - 7:2, 7:6, 7:10,	giles - 4:11, 5:17,	31:4, 34:20, 37:21,	31:4, 34:20, 37:21,
ended - 57:20,	familiar - 23:11,	form - 23:25, 29:14,	5:22, 8:15, 15:22,	41:17, 49:19,	41:17, 49:19,
enough - 46:20,	families - 13:10,	40:7, 43:12, 43:24,	18:18, 18:21, 19:2,	grab - 19:2,	41:17, 49:19,
47:3, 47:13, 49:22,	family - 8:18,	44:7, 46:22, 49:18,	19:5, 19:22, 21:8,	gravel - 36:10,	ground - 37:24,
enter - 46:5,	far - 30:17,	52:1, 52:19, 53:13,	24:2, 29:16, 29:25,	ground - 37:24,	46:20, 47:14, 49:17,
entire - 47:3,	feel - 4:14,	53:17, 54:10, 56:25,	31:21, 31:24, 33:1,	49:22,	49:22,
entry - 46:4,	fell - 29:19, 38:3,	57:6,	38:16, 39:6, 39:9,	grow - 6:9,	guess - 7:1, 9:8,
even - 33:23, 44:2,	fence - 17:14, 17:15,	found - 30:22,	39:16, 39:18, 40:11,	had - 19:3, 39:17,	10:9, 14:12, 19:6,
ever - 4:22, 10:5,	17:19, 23:8, 24:14,	foundation - 29:23,	40:16, 40:24, 41:1,	55:14,	23:22,
13:24, 15:13, 27:1,	28:13, 28:14, 28:16,	four - 7:15, 33:8,	42:23, 43:2, 43:7,	hadn't - 19:8,	had - 19:3, 39:17,
38:7, 38:19, 38:20,	33:15, 35:19, 36:13,	42:17, 46:16,	43:14, 43:16, 43:21,	handle - 27:4,	55:14,
38:21, 38:24, 40:3,	36:21, 36:25, 50:10,	frame - 29:14, 47:11,	44:1, 44:10, 44:12,	handyman - 15:25,	55:14,
40:6, 50:19, 51:1,	57:9, 57:12, 57:15,	framed - 48:20,	44:21, 45:22, 45:24,	happened - 29:10,	55:14,
evidence - 56:19,	fenced - 33:25,	framing - 34:7,	46:2, 46:25, 47:8,	34:21, 35:3, 35:11,	34:21, 35:3, 35:11,
examination - 4:10,	fencing - 34:2,	friend - 19:24, 22:2,	47:12, 47:24, 48:5,	35:14, 37:12, 38:7,	35:14, 37:12, 38:7,
54:19, 55:16,	few - 39:20, 51:17,	full - 4:20, 8:11,	49:2, 49:20, 51:11,	hard - 35:9,	hard - 35:9,
examined - 4:8,	55:19,	full-time - 7:12,	51:15, 52:4, 52:21,	harder - 17:3,	harder - 17:3,
			52:24, 53:10, 53:14,	has - 24:6, 24:18,	has - 24:6, 24:18,
			53:19, 54:12, 54:16,	24:18, 25:1, 38:20,	24:18, 25:1, 38:20,
			55:17, 56:21, 57:2,	39:6, 49:11, 49:13,	39:6, 49:11, 49:13,
			57:7, 57:14, 57:16,	55:19, 55:22, 55:25,	55:19, 55:22, 55:25,
			girl - 8:22,	hailed - 23:8,	hailed - 23:8,
			girls - 8:20,	haven't - 39:2,	haven't - 39:2,
			give - 5:23, 9:9,	he'd - 20:9,	he'd - 20:9,
			22:9, 22:11, 23:5,	he's - 9:18, 9:19,	he's - 9:18, 9:19,
			32:19, 41:7, 41:10,	16:25, 17:1, 17:13,	16:25, 17:1, 17:13,
			45:6,	22:2,	22:2,
				hear - 35:2,	hear - 35:2,
				heard - 25:21, 51:7,	heard - 25:21, 51:7,
				heavy - 28:12,	heavy - 28:12,
				help - 16:15, 16:21,	help - 16:15, 16:21,
				32:17,	32:17,
				helped - 16:17, 17:1,	helped - 16:17, 17:1,
				28:25,	28:25,
				here - 9:15, 26:8,	here - 9:15, 26:8,
				46:13, 50:7, 50:8,	46:13, 50:7, 50:8,
				51:7, 51:8, 51:12,	51:7, 51:8, 51:12,
				high - 17:13, 33:9,	high - 17:13, 33:9,
				himself - 37:20,	himself - 37:20,
				hobby - 8:3, 8:4,	hobby - 8:3, 8:4,
				hold - 17:1,	hold - 17:1,
				home - 16:3, 16:8,	home - 16:3, 16:8,
				house - 10:18, 11:2,	house - 10:18, 11:2,
				11:5, 11:10, 11:12,	11:5, 11:10, 11:12,
				11:17, 11:20, 11:24,	11:17, 11:20, 11:24,
				14:21, 20:11, 33:11,	14:21, 20:11, 33:11,
				33:16, 41:24,	33:16, 41:24,
				houses - 11:21,	houses - 11:21,
				housing - 41:22,	housing - 41:22,
				how - 7:6, 7:14, 8:5,	how - 7:6, 7:14, 8:5,
				8:21, 10:8, 12:15,	8:21, 10:8, 12:15,
				13:7, 14:7, 18:5,	13:7, 14:7, 18:5,
				19:17, 19:19, 21:25,	19:17, 19:19, 21:25,
				22:7, 22:12, 22:24,	22:7, 22:12, 22:24,
				23:22, 23:22, 24:3,	23:22, 23:22, 24:3,
				24:10, 26:20, 27:4,	24:10, 26:20, 27:4,
				30:1, 32:10, 32:20,	30:1, 32:10, 32:20,
				33:10, 34:17, 34:20,	33:10, 34:17, 34:20,
				37:21, 41:17, 46:18,	37:21, 41:17, 46:18,

**DEPOSITION OF WALTER AMUNDSON - MAY 7, 2014**

49:6, 49:8, 49:9,	interject - 5:12,	keep - 11:24, 22:22, 41:24, 44:25, 55:9,	leases - 13:16, 13:19, 36:7, 48:15,	marked. - 19:4, 42:18, 48:1,
however - 38:23,	interrupting - 26:24,	kicked - 40:12,	least - 24:5, 24:9, 24:11, 30:3,	married - 10:3, 10:5,
hundred - 15:10, 15:10, 29:7, 32:23,	into - 7:8, 45:4,	kids - 9:6,	leave - 25:22, 27:19, 39:21,	matter - 30:4, 36:4,
i'd - 18:18, 24:11, 27:12, 49:3,	investment - 14:10,	kim - 9:24,	leaving - 42:4,	may - 4:1, 20:13, 20:14, 20:18, 20:20, 20:23,
i'm - 5:11, 15:19, 23:11, 29:22, 30:7, 35:19, 36:14, 41:15, 47:13, 47:18, 48:17, 51:11, 51:13, 52:5,	investments - 12:24, 12:25,	kimberly - 9:14,	left - 7:10, 17:4, 36:3, 57:13,	maybe - 48:21, 50:23,
idaho - 4:1, 6:5, 7:18, 11:5, 11:6, 11:9,	involved - 4:25, 32:10,	kind - 34:15, 45:24, 51:5, 51:11,	left-hand - 49:6,	me - 5:8, 5:10, 6:1, 8:18, 9:9, 11:14, 12:15, 12:22, 14:7, 16:25, 18:15, 18:16, 19:18, 20:12, 22:13, 22:13, 23:5, 24:18, 27:18, 29:17, 30:7, 32:8, 34:19, 35:11, 35:12, 35:14, 35:23, 37:5, 37:10, 37:16, 37:16, 37:17, 38:19, 41:23, 43:6, 43:20, 44:11, 45:5, 47:10, 49:21, 50:23, 52:22, 55:21,
idea - 24:24, 27:13, 29:21, 29:24, 33:2, 50:22, 50:25,	involving - 44:8,	knew - 19:23, 30:17,	legal - 42:22, 43:8, 43:12, 52:20, 52:25,	mean - 16:14, 31:16, 35:15, 35:23, 36:18, 42:25, 44:22, 50:9, 51:8, 52:20, 52:21, 53:12, 56:20, 56:22,
individual - 46:18,	isn't - 23:4,	knocked - 39:11,	let - 22:13, 24:18, 29:17, 30:7, 35:14, 38:19, 45:3, 45:5, 49:21,	meaning - 43:13, 46:5,
informed - 29:12, 29:18, 30:15, 36:23, 37:11, 39:2,	its - 33:2,	kuna - 9:8, 12:10, 12:12, 13:8, 14:1, 23:10, 23:11, 38:25, 55:20,	let's - 19:1, 19:2, 21:14, 27:20, 46:15, 51:20, 55:12, 55:18,	meant - 42:1, 46:3,
initial - 33:3,	itself - 49:9, 50:13,	lack - 29:22, 56:18,	level - 6:1,	mechanic - 7:3,
initially - 25:18, 26:16,	janna - 9:15, 9:19, 9:21,	laid - 50:7,	life - 8:1,	meet - 19:17, 20:3,
initiate - 40:20,	january - 20:19,	landlord - 54:25,	lifting - 33:4,	meridian - 11:17, 11:21, 11:25, 12:18,
initiated - 24:20,	jenkins - 21:22,	las - 6:12, 7:4, 10:25, 11:1, 11:2, 11:7,	like - 18:18, 20:12, 21:2, 27:12, 49:3, 50:23, 52:22,	meteorology - 6:18,
inquiry - 9:20,	john - 17:22, 18:3, 18:5, 18:10, 19:15, 19:17, 20:16, 25:5, 25:11, 26:11, 26:14, 26:23, 27:5, 27:18, 31:4, 32:6, 32:12, 32:14, 32:17, 34:5, 34:7, 34:19, 40:22, 40:24, 41:20, 51:3, 51:5,	last - 4:20, 13:19, 21:21, 25:17, 26:6,	likewise - 4:18, 4:18,	mid - 28:21, 28:21, 30:8, 30:24, 30:25,
inside - 16:11, 27:21, 32:9,	joined - 7:11,	late - 28:21,	line - 44:4,	mike - 17:11, 17:12,
insignificant - 38:23,	judgment - 47:5,	later - 25:17, 34:24, 35:1, 35:1,	listed - 29:4, 29:6, 30:1,	mile - 11:16, 11:18, 11:21,
inspect - 48:12,	july - 31:1, 31:6, 34:25, 35:5,	lawsuit - 4:25,	little - 17:7, 37:14, 46:15,	mind - 9:10,
install - 17:15, 33:20,	june - 5:25, 10:4, 20:16, 28:21, 28:21, 30:8, 30:25, 30:25, 30:25, 32:3,	lawyer - 5:6, 5:18, 55:10,	live - 9:6, 11:18, 13:12, 53:13,	mine - 18:15, 24:17,
installed - 33:18, 34:3, 51:18, 51:24, 52:8, 52:10,	just - 5:9, 5:18, 9:19, 13:22, 17:13, 18:2, 19:9, 21:5, 23:20, 26:24, 27:10, 27:11, 32:14, 32:14, 33:12, 38:4, 45:25, 47:18, 50:8, 51:7, 51:11, 51:17, 55:18,	laying - 36:18,	lived - 20:20, 55:2,	
installing - 24:13,	kanas - 6:8, 6:9,	lead - 23:14,	lives - 9:8, 9:15, 23:10,	
intention - 42:1,		lean - 36:21,	living - 11:22, 13:10, 16:20, 17:6, 17:10, 21:17, 23:10, 25:6,	
interaction - 22:5, 25:5,		leaning - 36:13, 36:24,	located - 11:12, 12:17,	
interested - 30:23,		learn - 34:17,	location - 31:25,	
		lease - 15:7, 18:10, 18:12, 18:17, 18:23, 19:1, 19:12, 19:13, 19:15, 20:12, 40:17, 40:22, 42:2, 44:2, 44:13,		

DEPOSITION OF WALTER AMUNDSON - MAY 7, 2014

miss - 51:12,	nas - 41:19, 42:1,	obtain - 6:15,	opinion - 53:1,	55:4,	31:21, 35:17, 36:8,
missing - 49:7,	neck - 35:10,	obtained - 44:16,	oral - 8:12, 15:16,	painting - 16:25,	picket - 17:14,
missouri - 6:8,	need - 18:16, 21:5,	obvious - 37:20,	34:4, 35:16, 38:12,	pane - 29:12, 29:19,	pickup - 29:19,
monday - 35:3, 35:6,	needed - 15:24, 16:2,	37:21, 46:12,	40:5, 41:4, 48:11,	32:2, 46:21, 47:3,	picture - 35:21, 49:4,
monteleone - 55:7,	needs - 23:3,	obviously - 46:23,	53:24,	47:16, 49:6, 49:9,	pictures - 28:15,
55:9, 55:12,	nevada - 6:4, 6:12,	occasion - 39:10,	order - 47:22,	49:9,	48:15, 48:17,
month - 15:10,	never - 15:15, 25:1,	39:15,	original - 48:4,	panes - 46:18,	piece - 50:16, 50:19,
20:16, 21:23, 23:1,	25:21, 30:15, 42:12,	occasionally - 22:22,	other - 11:7, 11:14,	pardon - 9:2,	pile - 18:2,
24:5, 24:9, 24:11,	44:19, 44:19,	occur - 37:10,	12:2, 12:5, 12:12,	part - 4:13, 8:11,	pit - 17:21, 17:23,
35:2,	new - 45:7,	occurred - 38:11,	12:13, 14:25, 17:1,	21:10, 23:10, 39:23,	18:3, 51:4, 51:6,
month's - 13:20,	next - 8:24, 28:13,	october - 21:12,	19:13, 21:19, 22:21,	50:23,	place - 33:2, 45:12,
20:9,	28:14, 28:15,	21:13, 41:3,	25:1, 39:7, 39:14,	party - 25:20,	placed - 28:9, 36:7,
monthly - 15:9,	night - 33:22,	off - 24:21, 32:16,	40:1, 41:7, 44:8,	pathway - 34:1,	50:7,
54:13,	night's - 26:25,	34:1, 34:2, 36:9,	47:24,	patient - 51:14,	placing - 57:9,
months - 18:6, 20:21,	nobody - 54:8, 54:15,	47:5,	others - 52:14,	51:17,	plans - 29:2,
39:22, 41:5,	none - 51:1,	offered - 32:14,	our - 19:7, 33:22,	pay - 15:2, 21:23,	please - 48:24,
more - 9:17, 11:16,	north - 36:11,	offers - 29:8, 29:10,	34:1,	22:7, 32:17, 50:18,	52:23,
13:9, 17:3, 39:20,	not - 4:17, 12:4,	often - 22:12, 22:24,	out - 13:14, 13:22,	40:12,	pocket - 45:12,
51:17, 55:19,	13:8, 21:1, 21:1,	23:22, 23:22, 24:3,	14:5, 14:22, 16:11,	payments - 54:14,	point - 18:7, 37:18,
morning - 26:24,	24:21, 25:17, 25:21,	33:10, 33:12,	18:3, 19:1, 20:24,	people - 25:19,	44:4,
mortgage - 14:3,	25:24, 26:3, 29:20,	old - 8:21,	21:12, 23:9, 27:19,	26:12, 26:17, 51:24,	52:10,
mother - 23:10,	31:16, 32:8, 33:12,	older - 9:9, 16:3,	28:12, 28:25, 29:13,	52:10,	pointing - 18:16,
motor - 7:2,	33:21, 35:19, 36:14,	oldest - 8:22, 8:24,	29:19, 30:8, 30:22,	percent - 49:15,	police - 33:23, 33:24,
motorcycle - 27:19,	36:17, 40:3, 40:10,	9:11,	32:9, 34:8, 34:12,	49:17,	38:24, 39:4, 39:9,
28:1, 32:16,	40:12, 41:9, 41:9,	once - 24:5, 24:9,	40:12, 41:20, 45:11,	performed - 56:16,	portion - 36:25,
move - 11:2, 14:22,	41:12, 45:3, 45:13,	24:11, 28:9, 29:2,	49:11, 49:13, 49:14,	permission - 34:14,	40:17, 49:7,
21:19, 45:11,	46:23, 47:3, 47:22,	34:8, 43:20, 51:24,	50:7, 50:8, 50:11,	44:16, 56:20,	position - 33:3,
moved - 7:18, 7:21,	51:3, 54:11, 56:18,	one - 8:22, 8:23, 9:3,	outright - 14:2, 14:5,	personally - 10:11,	possess - 53:1,
11:17, 20:23, 20:24,	notes - 51:12,	9:11, 9:12, 9:16,	over - 4:17, 5:9,	32:8,	possessed - 53:10,
21:12, 37:4, 37:6,	notice - 19:7, 41:22,	9:17, 11:20, 12:1,	25:19, 26:12, 26:17,	performed - 56:16,	possession - 42:21,
movement - 37:9,	50:16,	12:7, 12:16, 12:18,	33:23, 34:13, 53:22,	44:16, 56:20,	43:9, 43:12,
much - 18:24, 26:2,	noticed - 50:19,	13:9, 14:25, 14:25,	55:22,	personally - 10:11,	possible - 21:12,
40:13, 49:6, 49:8,	number - 19:19,	18:19, 21:25, 33:22,	owes - 35:12,	32:8,	33:5,
49:9,	object - 5:11, 15:19,	34:19, 39:10, 42:17,	own - 11:7, 12:20,	pertained - 42:4,	post - 17:11, 17:12,
myself - 14:9, 55:24,	23:25, 29:14, 29:22,	45:13, 45:14, 47:19,	14:2, 14:5, 14:5,	phone - 19:19, 30:19,	potential - 30:21,
56:2,	40:7, 43:12, 43:24,	55:10, 56:16, 56:23,	34:11, 43:13,	photo - 47:5, 47:6,	pounds - 33:4, 33:7,
na - 41:16, 42:10,	44:7, 44:18, 47:7,	ones - 13:22,	owned - 11:15,	photograph - 46:9,	power - 53:22,
name - 4:20, 14:8,	49:18, 52:1, 52:19,	only - 39:14, 42:4,	11:16, 12:2, 12:12,	46:11,	
17:11, 21:21, 54:2,	53:13, 53:17, 54:10,	onto - 36:9, 36:10,	12:22, 43:14, 53:9,	photographs - 47:22,	
names - 9:10,	56:25, 57:6,	opened - 18:3,	53:10,	48:21,	
	objection - 5:12,		owner - 10:8, 10:14,	pick - 31:2, 34:18,	
	42:22, 43:10, 46:22,		23:12, 54:22, 56:24,	34:22,	
	53:8, 56:18,		ownership - 13:13,	picked - 31:3, 31:19,	
			p.m. - 4:1, 57:20,		
			page - 44:5,		
			paid - 22:16, 31:4,		

**DEPOSITION OF WALTER AMUNDSON - MAY 7, 2014**

preexisting - 17:17,	25:6, 25:22, 26:9, 26:12, 26:15, 26:18, 28:24, 30:20, 30:24, 31:6, 31:9, 32:4, 38:19, 38:20, 38:21, 38:22, 38:24, 42:19, 42:21, 42:24, 43:3, 43:9, 43:14, 43:23, 44:17, 45:5, 46:5, 46:5, 48:7, 50:2, 50:15, 52:17, 52:25, 53:2, 53:7, 53:16, 53:21, 53:22, 54:5, 54:6, 54:9, 55:20, 55:23, 56:1, 56:4, 56:17, 56:17, 56:24,	reasons - 40:1,  recall - 13:18, 18:22, 21:6, 21:13, 21:21, 28:9, 28:19, 30:4, 31:3, 31:8, 31:15, 31:17, 31:22, 32:1, 32:2, 36:16, 36:17, 36:24, 48:14, 50:1, 50:4, 51:17,  received - 30:19,  recess - 19:3, 39:17, 55:14,  recognize - 21:9, 40:17, 46:9,  recollection - 31:5, 33:6, 34:22, 35:4,  record - 4:20, 19:6, 19:9, 39:19, 48:2, 55:9, 55:18,  reduction - 32:19,  refer - 44:4,  referring - 48:17,  reflect - 48:2,  regard - 55:25, 56:13,  regarding - 23:23, 24:4, 26:8, 42:19, 43:4,  related - 15:21,  remember - 7:19, 20:25, 21:5, 39:10, 44:9,  remodeling - 16:8, 16:23,  removal - 27:15,  remove - 27:17,  removed - 27:13, 28:8, 28:9, 28:19, 29:3, 36:20, 50:5, 50:6,  removing - 57:8,  reno - 6:4,	renovation - 16:19, 16:24,  rent - 13:20, 14:22, 15:2, 15:9, 18:5, 20:1, 20:9, 22:7, 22:14, 22:19, 24:12, 25:7, 25:24, 31:2, 31:3, 31:19, 31:21, 32:19, 34:18, 34:23, 35:5, 35:18, 36:8, 40:2, 40:3, 40:12, 45:12, 48:7, 48:8, 50:16, 54:13, 55:4,  rental - 10:11, 12:13, 12:24, 12:25, 21:10, 26:7, 38:21, 41:16, 42:8, 42:12, 50:15, 52:17,  renter - 17:11,  renters - 13:16,  renting - 41:23, 42:5, 56:10,  repainted - 16:11,  repair - 23:24, 25:3, 34:12, 43:4, 44:4, 56:3, 56:13, 56:16,  repaired - 16:13, 23:8, 53:9, 53:10,  repairing - 24:14,  repairs - 23:13, 55:20,  rephrase - 10:9,  replaced - 16:12, 23:7,  replacing - 24:14,  report - 38:20,  reporter - 47:25,  reporting - 48:4,  reports - 39:9,  requested - 19:8,  required - 23:3,  requires - 5:13,	reserves - 6:22,  reside - 12:8, 15:13,  resided - 15:15, 20:16,  residence - 10:16, 10:23, 11:25,  residing - 17:8,  respect - 57:3,  responded - 38:24,  response - 37:11,  response. - 8:12, 15:16, 34:4, 35:16, 38:12, 40:5, 41:4, 48:11, 53:24,  rest - 46:23, 47:10,  retired - 8:16,  returned - 6:25, 36:23, 48:6,  review - 5:6,  reviewed - 5:8, 5:14,  right - 9:15, 9:25, 10:20, 10:22, 28:13, 29:1, 33:25, 35:13, 38:2, 40:23, 42:6, 45:21, 46:4, 46:13, 48:13,  rock - 23:9, 23:11,  rocks - 18:2,  roger - 9:1, 9:8, 9:21, 15:5, 15:6, 16:18, 16:21, 17:6, 17:8, 21:16, 21:16, 22:2, 22:9, 22:11, 23:14, 23:23, 24:4, 24:20, 24:22, 25:1, 26:21, 27:1, 27:8, 27:16, 27:23, 28:8, 28:25, 29:18, 32:8, 37:3, 38:7, 38:11, 38:13, 38:17, 39:12, 44:9, 50:5,  roger's - 9:4, 16:23, 17:12, 24:16,  roof - 16:13, 24:15,	room - 20:1, 41:23, 41:24, 42:5,  root - 50:20, 50:22,  running - 28:2,  russell - 9:18, 9:18, 9:21,  said - 25:2, 27:20, 30:11, 35:12, 39:13, 39:23,  sale - 30:18,  same - 4:19, 9:19, 13:22, 14:15, 19:13, 31:25, 36:2, 48:15, 48:15, 53:8, 53:8, 57:3,  saw - 28:15, 48:25,  say - 7:1, 14:12, 14:12, 14:20, 15:4, 15:24, 16:14, 20:20, 21:2, 22:24, 28:14, 35:10, 35:14, 35:20, 36:14, 44:22, 47:2, 47:21, 48:17, 49:15, 49:16, 49:24, 50:8, 51:8, 56:3, 56:6, 56:12,  says - 20:12,  school - 17:13,  see - 18:18, 21:14, 24:10, 26:8, 37:15, 37:24, 51:20,  seeing - 31:17, 31:22, 32:2,  seems - 21:2,  sell - 11:21,  semi - 8:16,  sense - 27:18, 34:15,  sequential - 47:22,  served - 6:21,  service - 6:25, 10:21,  set - 28:12, 33:5,
----------------------	---	---	--	--	---

**DEPOSITION OF WALTER AMUNDSON - MAY 7, 2014**

seven - 7:7, 7:7,	50:6,	sprinkler - 23:7, 24:23, 24:24, 25:1,	sullivan - 20:16, 25:5, 26:11, 26:14, 32:6, 40:22, 40:24,	14:24, 19:13, 22:1, 38:21, 51:1, 52:14, 55:2, 56:10, 56:16, 56:23,	48:21, 57:9,
several - 23:9,	sleep - 26:25, 27:10,	sprinklers - 24:14,	sullivan's - 17:22,	term - 13:5, 13:8, 52:20,	they - 12:17, 12:25, 13:12, 15:2, 24:15, 24:17, 26:21, 30:22, 30:22, 32:9, 34:1, 39:2, 39:10, 39:11, 39:12, 41:12, 49:19, 52:2, 55:4, 56:20,
severe - 37:21,	slid - 36:9,	stand - 26:18,	summer - 51:20, 51:20, 51:22,	terms - 13:19, 18:22, 56:19, 57:6, 57:8, 57:8,	things - 23:6, 24:10, 28:6, 33:13, 57:10,
severity - 37:13,	smoking - 20:10,	standard - 24:6,	supervise - 16:19, 34:10,	testified - 4:8, 44:15, 46:16,	think - 8:25, 9:15, 12:11, 12:23, 21:9, 30:14, 34:18, 35:2, 35:9, 36:1, 36:14, 42:15, 42:16, 47:22, 48:8, 48:21, 49:21, 49:24, 54:16,
share - 20:10,	sold - 11:5,	started - 8:4, 34:13, 51:25,	supported - 37:1,	testify - 21:5,	third - 30:3, 30:6, 30:12,
shattered - 32:2, 37:24,	some - 15:24, 15:25, 16:8, 17:21, 18:7, 23:5, 26:2, 28:15, 32:9, 41:5, 41:7, 44:3, 55:7,	state - 4:19,	suppose - 21:14,	testimony - 5:5, 21:4, 48:22,	thirty-one - 8:25,
she's - 9:12, 9:14, 9:15, 9:15, 9:16,	somebody - 13:14, 45:4, 45:11, 45:20,	statement - 44:17,	sure - 21:1, 31:18, 31:23, 38:23, 46:1, 48:19, 50:4, 51:12,	than - 9:19, 12:12, 13:6, 13:9, 25:1, 27:11,	thirty-six - 9:23,
sheri - 9:12, 9:24,	something - 7:25, 17:1, 24:8, 53:1,	states - 40:21,	surprised - 39:4,	thank - 10:1, 18:22, 45:18, 47:18, 49:3, 49:3, 49:25, 51:11, 52:16, 54:13,	though - 44:2,
shoes - 45:4,	somewhere - 14:15,	stay - 10:23,	surrounding - 20:6,	thanks - 51:16, 51:16,	thought - 27:9,
short - 39:16,	son - 8:24, 8:24, 8:25, 14:25, 15:4, 19:21, 19:23, 21:16, 22:2, 25:19, 26:21, 36:20, 37:9, 41:8, 42:13, 42:20, 44:3, 44:6, 44:13, 44:15, 44:22, 44:24, 45:2, 45:7, 45:10, 45:16, 50:5,	stefanic - 5:11, 5:21, 8:13, 15:19, 18:16, 18:20, 18:25, 19:20, 20:25, 21:4, 23:25, 29:14, 29:22, 31:19, 32:24, 38:14, 39:4, 39:8, 40:7, 40:9, 40:14, 40:22, 42:22, 42:25, 43:5, 43:10, 43:12, 43:19, 43:24, 44:7, 44:18, 45:19, 45:23, 45:25, 46:22, 47:4, 47:21, 48:2, 48:19, 49:18, 51:14, 52:1, 52:19, 52:23, 53:8, 53:12, 53:17, 54:10, 54:20, 55:6, 55:8, 55:11, 56:18, 56:25, 57:6, 57:12, 57:15, 57:17,	sworn - 4:7,	that's - 5:23, 8:22, 9:12, 9:16, 10:2, 10:7, 12:8, 16:20, 17:4, 23:10, 26:10, 35:11, 35:20, 35:21, 36:18, 40:22, 41:5, 42:22, 43:5, 44:7, 45:24, 45:25, 47:2, 47:3, 47:4, 47:8, 48:22, 50:20, 51:24, 52:3, 55:6,	three - 8:20, 8:20, 12:16, 47:6, 55:2, 56:9,
should - 7:1, 48:2,	soon - 28:13, 30:22, 33:5,	step - 45:4, 46:15,	system - 23:8, 24:23, 24:24, 25:1,	that's - 5:23, 8:22, 9:12, 9:16, 10:2, 10:7, 12:8, 16:20, 17:4, 23:10, 26:10, 35:11, 35:20, 35:21, 36:18, 40:22, 41:5, 42:22, 43:5, 44:7, 45:24, 45:25, 47:2, 47:3, 47:4, 47:8, 48:22, 50:20, 51:24, 52:3, 55:6,	through - 4:14, 18:7, 19:24, 26:7, 26:21, 33:13, 33:22, 33:25, 38:3, 39:11, 41:16, 42:1, 47:24, 51:12, 51:25, 52:3, 52:12,
show - 30:20, 41:15,	sort - 46:3,	still - 8:9, 17:8, 30:17, 36:17, 46:24, 47:11,	take - 39:16, 41:23, 55:12,	thanks - 51:16, 51:16,	throughout - 7:25, 41:16, 42:10,
showed - 35:21, 37:17,	space - 27:25, 28:3,	stop - 24:11,	taken - 4:23, 56:12,	their - 15:9, 27:7,	time - 8:11, 8:11, 12:16, 13:15, 28:17, 28:19, 29:14, 31:8, 31:19, 31:21, 48:14, 53:6, 53:15, 54:2, 54:17, 54:22, 56:9,
side - 8:3, 33:10,	speak - 37:3,	stored - 27:23, 28:3,	talk - 4:17, 5:6, 18:25, 27:5, 38:7,	them - 11:24, 12:18, 12:22, 13:1, 13:5, 14:25, 15:7, 23:12, 29:11, 33:23, 41:10, 41:12, 41:18,	times - 23:17, 54:21,
sides - 49:19,	speaking - 20:15,	street - 12:19, 50:11,	talked - 5:13, 17:21,	then - 9:17, 11:14, 11:17, 11:21, 12:6, 19:25, 26:18, 30:11, 35:12, 35:19, 45:12, 48:13,	title - 14:8, 43:17, 54:3,
sign - 20:5, 57:18,	special - 22:11,	stricken - 44:3,	talking - 15:4, 30:13, 39:14, 52:5, 57:12,	these - 13:10, 23:13, 23:13, 24:13, 24:15, 27:2, 27:4, 30:19, 42:2, 44:3, 45:13, 47:19, 48:15, 48:17,	today - 5:3, 8:7, 8:8, 13:22, 18:14, 51:9,
signed - 19:16, 20:17, 41:20,	specifically - 31:16,	strike - 42:2,	tear - 32:9,	ten - 10:24, 44:5,	together - 4:14, 17:5, 24:23, 34:16,
signifies - 41:17,	speculation - 29:23, 46:22,	studies - 6:17,	tecum - 19:7,	tenancy - 45:3,	
similar - 13:23, 28:24, 42:7, 42:8,	spell - 4:20,	sublet - 46:3,	tell - 5:8, 5:10, 5:14, 6:1, 8:18, 11:14, 12:15, 12:22, 14:7, 21:6, 21:6, 32:1, 38:15, 38:17, 41:17, 44:9, 46:11, 48:22,	tenant - 13:9, 21:19, 25:9, 38:4, 44:8, 45:7, 48:9, 56:12,	
since - 8:6, 10:5, 10:14, 11:14, 12:3, 21:17, 21:17, 23:5, 24:6,	spent - 4:13,	subletting - 45:4,	take - 39:16, 41:23, 55:12,	tenants - 13:3, 14:13, 14:16, 14:18, 14:22,	
sitting - 50:12,	spoke - 5:18, 20:20, 24:13,		taken - 4:23, 56:12,		
situation - 24:6,			talk - 4:17, 5:6, 18:25, 27:5, 38:7,		
six - 8:20, 18:6, 20:21,			talked - 5:13, 17:21,		
size - 29:11, 30:22, 34:12,			talking - 15:4, 30:13, 39:14, 52:5, 57:12,		
skilled - 17:3,			tear - 32:9,		
slab - 50:12,			tecum - 19:7,		
slats - 37:1, 50:2,			tell - 5:8, 5:10, 5:14, 6:1, 8:18, 11:14, 12:15, 12:22, 14:7, 21:6, 21:6, 32:1, 38:15, 38:17, 41:17, 44:9, 46:11, 48:22,		

DEPOSITION OF WALTER AMUNDSON - MAY 7, 2014

told - 34:19, 35:11, 35:23, 35:25, 37:16, 38:5, 41:12, 48:9, 51:1,	unless - 24:8,	50:10, 57:15,	weighed - 33:6,	which - 53:21,	43:15, 43:20, 43:25, 44:11, 44:19, 46:23, 47:10, 48:20, 48:25, 49:19, 52:2, 54:11, 56:20, 57:1,	
tons - 23:9,	until - 35:2, 46:3,	visited - 50:1,	well - 8:6, 13:14, 16:11, 16:25, 17:20, 22:8, 23:12, 24:1, 24:11, 26:6, 27:9, 27:20, 28:6, 32:8, 35:12, 37:13, 37:20, 40:2, 49:19, 52:1, 54:22,	while - 9:9, 46:4,	won't - 4:12,	
too - 25:25, 26:2, 26:23, 28:1, 33:12, 40:13,	untruthful - 40:4, 40:6,	visits - 23:13,	went - 5:9, 7:2, 32:3, 33:23, 34:18, 34:22, 35:4, 50:15,	white - 17:14, 17:15, 57:15,	wood - 37:1, 50:17, 50:19, 51:3, 51:5,	
took - 28:12, 37:16, 46:10, 48:21,	up - 6:9, 8:7, 17:1, 17:4, 18:3, 19:25, 22:23, 24:8, 24:18, 29:17, 30:7, 31:2, 31:3, 31:19, 31:21, 34:18, 34:22, 35:14, 35:18, 36:8, 36:13, 36:16, 36:21, 36:24, 46:20, 47:3, 47:14, 49:17, 49:23, 51:13, 52:3,	volcanic - 23:9, 23:11,	weren't - 30:23, 35:8,	who - 9:12, 14:16, 14:24, 16:17, 17:10, 27:15, 32:11, 35:25, 37:6, 42:20, 42:20, 42:24, 43:3, 43:3, 46:10, 55:19, 55:22, 55:25,	woods - 35:10,	
tore - 34:12,	upkeep - 55:25, 56:22,	walkway - 33:10, 37:22, 50:17,	west - 15:15, 17:8,	whose - 14:8,	work - 7:2, 7:6, 7:23, 8:9, 8:11, 15:25, 15:25, 23:20, 34:19,	
towards - 36:11, 50:11,	upper - 15:23, 16:1, 49:6,	walter - 4:6, 4:21,	what's - 16:23, 17:12, 47:6,	why - 25:22, 27:17, 33:20, 39:16, 41:21, 48:3, 54:13,	worked - 24:23, 34:15,	
travel - 30:24,	upright - 36:18,	wanted - 29:1, 39:20, 46:1,	whatever - 23:3, 23:3,	wife - 12:8, 14:9, 48:21,	working - 7:16,	
traveled - 22:24, 31:5, 31:8,	us - 5:23, 41:17, 46:11,	wasn't - 16:1, 20:19, 22:10, 22:10, 23:17, 28:1, 36:18, 38:9, 38:11, 38:17, 45:11, 46:1,	wheelbarrow - 33:12,	will - 4:17, 4:18, 4:19, 9:18, 24:3, 41:22, 46:8, 47:21, 47:21, 47:25, 49:25, 51:14, 52:1, 53:23, 57:17,	worry - 21:4,	
tree - 50:24,	used - 13:24, 33:12, 50:6, 51:3, 52:2,	way - 5:4, 49:21, 52:3, 52:7,	when - 6:25, 7:1, 7:21, 10:3, 10:9, 10:20, 11:9, 12:10, 12:22, 14:13, 14:18, 14:21, 15:4, 15:17, 15:24, 16:7, 16:14, 17:1, 17:17, 17:23, 17:25, 20:23, 21:19, 23:16, 23:17, 25:6, 25:7, 25:15, 25:16, 26:5, 28:14, 29:12, 29:12, 29:15, 29:17, 29:18, 29:21, 30:19, 31:3, 32:3, 33:4, 33:16, 34:18, 34:20, 35:11, 35:14, 35:17, 35:23, 35:23, 36:2, 36:6, 36:6, 36:8, 36:20, 36:20, 36:23, 37:11, 38:11, 39:12, 39:20, 41:19, 41:20, 44:22, 48:17, 48:25, 50:1, 50:1, 50:5, 50:5, 50:8, 50:15, 51:8, 51:17, 51:24, 52:10,	wayne - 5:4, 49:21, 52:3, 52:7,	wind - 27:12, 28:8, 28:9, 28:20, 29:2, 29:13, 29:18, 30:1, 30:8, 30:16, 30:20, 30:21, 31:13, 31:17, 31:22, 32:3, 33:2, 33:6, 34:8, 34:20, 35:13, 35:17, 35:22, 36:7, 36:8, 36:13, 36:21, 36:24, 37:4, 37:6, 37:9, 37:14, 37:15, 38:2, 38:5, 38:8, 46:12, 46:16, 46:18, 48:12, 48:14, 48:23, 49:7, 49:11, 49:13, 49:14, 49:22, 50:2, 50:6, 50:16, 57:3, 57:4, 57:9, 57:9,	written - 41:9,
trip - 22:11,	usually - 13:15, 13:21, 17:5, 31:4, 38:23,	wayne's - 21:21, 27:8, 29:19,	windows - 16:12, 24:14,	wrote - 41:20,	wrapping - 51:13,	
truth - 5:10,	utilities - 20:10,	we - 4:13, 5:9, 9:9, 10:18, 11:17, 12:1, 13:6, 13:22, 15:4, 16:11, 16:14, 17:5, 17:21, 18:20, 18:25, 19:6, 19:9, 19:12, 20:15, 20:20, 21:9, 23:7, 24:23, 25:8, 28:6, 28:12, 28:12, 28:15, 30:13, 33:12, 33:13, 33:21, 33:25, 34:15, 37:13, 38:4, 39:4, 39:16, 39:19, 41:15, 42:16, 47:19, 48:3, 48:20, 48:21, 50:7, 50:8, 51:14, 52:3, 55:9, 57:17,	without - 44:20,	yard - 23:7, 33:22, 33:25, 34:1, 39:11,	working - 7:16,	
try - 4:18,	vague - 15:19, 43:24,	we - 4:13, 5:9, 9:9, 10:18, 11:17, 12:1, 13:6, 13:22, 15:4, 16:11, 16:14, 17:5, 17:21, 18:20, 18:25, 19:6, 19:9, 19:12, 20:15, 20:20, 21:9, 23:7, 24:23, 25:8, 28:6, 28:12, 28:12, 28:15, 30:13, 33:12, 33:13, 33:21, 33:25, 34:15, 37:13, 38:4, 39:4, 39:16, 39:19, 41:15, 42:16, 47:19, 48:3, 48:20, 48:21, 50:7, 50:8, 51:14, 52:3, 55:9, 57:17,	witness - 4:7, 5:16, 8:14, 15:21, 19:21, 21:1, 24:1, 29:15, 29:24, 31:23, 32:25, 38:15, 39:10, 40:8, 40:10, 40:15, 40:25, 43:1, 43:6, 43:11,	yeah - 9:14, 17:5, 18:18, 19:2, 20:22, 23:19, 25:8, 26:6, 27:9, 27:24, 28:1, 28:5, 28:17, 29:1, 30:14, 31:2, 31:7, 32:15, 32:24, 32:25, 33:8, 33:8, 34:15, 35:1, 35:10, 36:22, 40:15, 40:24, 43:6, 46:12, 50:14, 51:20, 51:23, 52:6,	worry - 21:4,	
trying - 47:18,	valley - 12:7,	wednesday - 4:1,	years - 6:2, 6:22, 6:22, 7:7, 7:7, 7:15, 10:24,	wrong - 29:11, 34:12,	wrapping - 51:13,	
twice - 23:1,	vegas - 6:12, 7:4, 10:25, 11:1, 11:3, 11:7,	week - 30:4, 30:6, 30:12, 30:12,	yesterday - 17:22, 51:9,	wrote - 41:20,	written - 41:9,	
two - 6:2, 6:22, 6:22, 12:18, 13:15, 15:10, 15:10, 29:5, 29:7, 29:9, 30:3, 32:23, 39:22, 44:5, 46:19, 46:19, 46:21, 46:21, 47:5, 47:16, 47:16, 54:21,	verbal - 15:8, 41:10, 42:20, 44:5,	weeks - 21:2, 29:5, 30:3, 30:10, 30:11,	younger - 9:19,	written - 41:9,	wrapping - 51:13,	
uh-huh - 4:18, 49:5,	very - 10:23, 13:22,	we - 4:13, 5:9, 9:9, 10:18, 11:17, 12:1, 13:6, 13:22, 15:4, 16:11, 16:14, 17:5, 17:21, 18:20, 18:25, 19:6, 19:9, 19:12, 20:15, 20:20, 21:9, 23:7, 24:23, 25:8, 28:6, 28:12, 28:12, 28:15, 30:13, 33:12, 33:13, 33:21, 33:25, 34:15, 37:13, 38:4, 39:4, 39:16, 39:19, 41:15, 42:16, 47:19, 48:3, 48:20, 48:21, 50:7, 50:8, 51:14, 52:3, 55:9, 57:17,	youngest - 8:23, 8:24, 9:1, 9:2,	written - 41:9,	wrapping - 51:13,	
under - 53:17, 53:20, 53:21,	vested - 14:7,	we - 4:13, 5:9, 9:9, 10:18, 11:17, 12:1, 13:6, 13:22, 15:4, 16:11, 16:14, 17:5, 17:21, 18:20, 18:25, 19:6, 19:9, 19:12, 20:15, 20:20, 21:9, 23:7, 24:23, 25:8, 28:6, 28:12, 28:12, 28:15, 30:13, 33:12, 33:13, 33:21, 33:25, 34:15, 37:13, 38:4, 39:4, 39:16, 39:19, 41:15, 42:16, 47:19, 48:3, 48:20, 48:21, 50:7, 50:8, 51:14, 52:3, 55:9, 57:17,	years - 6:2, 6:22, 6:22, 7:7, 7:7, 7:15, 10:24,	written - 41:9,	wrapping - 51:13,	
underlying - 14:3,	vinyl - 16:12, 28:16,	we - 4:13, 5:9, 9:9, 10:18, 11:17, 12:1, 13:6, 13:22, 15:4, 16:11, 16:14, 17:5, 17:21, 18:20, 18:25, 19:6, 19:9, 19:12, 20:15, 20:20, 21:9, 23:7, 24:23, 25:8, 28:6, 28:12, 28:12, 28:15, 30:13, 33:12, 33:13, 33:21, 33:25, 34:15, 37:13, 38:4, 39:4, 39:16, 39:19, 41:15, 42:16, 47:19, 48:3, 48:20, 48:21, 50:7, 50:8, 51:14, 52:3, 55:9, 57:17,	yesterday - 17:22, 51:9,	written - 41:9,	wrapping - 51:13,	
understand - 15:20, 18:2,		we - 4:13, 5:9, 9:9, 10:18, 11:17, 12:1, 13:6, 13:22, 15:4, 16:11, 16:14, 17:5, 17:21, 18:20, 18:25, 19:6, 19:9, 19:12, 20:15, 20:20, 21:9, 23:7, 24:23, 25:8, 28:6, 28:12, 28:12, 28:15, 30:13, 33:12, 33:13, 33:21, 33:25, 34:15, 37:13, 38:4, 39:4, 39:16, 39:19, 41:15, 42:16, 47:19, 48:3, 48:20, 48:21, 50:7, 50:8, 51:14, 52:3, 55:9, 57:17,	yesterday's - 51:8,	written - 41:9,	wrapping - 51:13,	
understanding - 44:24, 45:10, 45:15,		we - 4:13, 5:9, 9:9, 10:18, 11:17, 12:1, 13:6, 13:22, 15:4, 16:11, 16:14, 17:5, 17:21, 18:20, 18:25, 19:6, 19:9, 19:12, 20:15, 20:20, 21:9, 23:7, 24:23, 25:8, 28:6, 28:12, 28:12, 28:15, 30:13, 33:12, 33:13, 33:21, 33:25, 34:15, 37:13, 38:4, 39:4, 39:16, 39:19, 41:15, 42:16, 47:19, 48:3, 48:20, 48:21, 50:7, 50:8, 51:14, 52:3, 55:9, 57:17,	younger - 9:19,	written - 41:9,	wrapping - 51:13,	
understood - 45:25, 46:1,		we - 4:13, 5:9, 9:9, 10:18, 11:17, 12:1, 13:6, 13:22, 15:4, 16:11, 16:14, 17:5, 17:21, 18:20, 18:25, 19:6, 19:9, 19:12, 20:15, 20:20, 21:9, 23:7, 24:23, 25:8, 28:6, 28:12, 28:12, 28:15, 30:13, 33:12, 33:13, 33:21, 33:25, 34:15, 37:13, 38:4, 39:4, 39:16, 39:19, 41:15, 42:16, 47:19, 48:3, 48:20, 48:21, 50:7, 50:8, 51:14, 52:3, 55:9, 57:17,	youngest - 8:23, 8:24, 9:1, 9:2,	written - 41:9,	wrapping - 51:13,	
university - 6:4,		we - 4:13, 5:9, 9:9, 10:18, 11:17, 12:1, 13:6, 13:22, 15:4, 16:11, 16:14, 17:5, 17:21, 18:20, 18:25, 19:6, 19:9, 19:12, 20:15, 20:20, 21:9, 23:7, 24:23, 25:8, 28:6, 28:12, 28:12, 28:15, 30:13, 33:12, 33:13, 33:21, 33:25, 34:15, 37:13, 38:4, 39:4, 39:16, 39:19, 41:15, 42:16, 47:19, 48:3, 48:20, 48:21, 50:7, 50:8, 51:14, 52:3, 55:9, 57:17,		written - 41:9,	wrapping - 51:13,	

**EXHIBIT 2**

000134

**DEPOSITION OF ROGER AMUNDSON - AUGUST 14, 2014**

<p>IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA</p> <p>DAVID WAYNE STILES,            )   )           Plaintiff,                ) CASE NO. CV PI 1311963 vs.                                    )   ) WALTER A. AMUNDSON,         )   )           Defendants.                )   )</p> <hr/> <p align="center">August 14, 2014 3:25 p.m. 250 S. 5th St. Boise, Idaho</p> <p align="center"><u>DEPOSITION OF ROGER AMUNDSON</u></p> <p>Reported by:            M.D. WILLIS, INC. M. DEAN WILLIS        Certified Shorthand Reporters CSR NO. 95             P.O. Box 1241 Prepared for:         Eagle, Idaho 83616 FOURTH JUDICIAL DISTRICT   (208) 855-9151 (ORIGINAL)</p> <hr/> <p>DEPOSITION OF ROGER AMUNDSON taken at the instance of the plaintiff at 250 S. 5th St., Suite 700, in the city of Boise, State of Idaho, commencing at 3:25 p.m., Thursday, August 14, 2014, before M. DEAN WILLIS, Certified Shorthand Reporter and Notary public in and for the State of Idaho, pursuant to notice, and in accordance with the Idaho Rules of Civil Procedure.</p> <p align="center"><b>A P P E A R A N C E S</b></p> <p>For the Plaintiff:    Jason R.N. Monteleone, Esq.                                   JOHNSON &amp; MONTELEONE                                   405 S. Eighth St., Ste 240                                   Boise, Idaho 83702</p> <p>For the Defendants: Michael Stefanic, Esq.                                   ANDERSON, JULIAN &amp; HULL                                   250 S. 5th St., Ste. 700                                   Boise, Idaho 83701</p> <p>Also Present:         Chip Giles                                   Walter Amundson</p>	<p align="center"><b>I N D E X</b></p> <table border="0"> <tr> <td style="width: 50%;">WITNESS</td> <td style="width: 30%;">EXAMINATION BY</td> <td style="width: 20%;">PAGE</td> </tr> <tr> <td>ROGER AMUNDSON</td> <td>MR. MONTELEONE</td> <td align="center">4</td> </tr> </table> <table border="0"> <tr> <td align="center" colspan="3"><b>E X H I B I T S</b></td> </tr> <tr> <td style="width: 50%;">DESCRIPTION</td> <td style="width: 30%;"></td> <td style="width: 20%;">PAGE</td> </tr> <tr> <td>8 - Photo</td> <td></td> <td align="center">104</td> </tr> </table>	WITNESS	EXAMINATION BY	PAGE	ROGER AMUNDSON	MR. MONTELEONE	4	<b>E X H I B I T S</b>			DESCRIPTION		PAGE	8 - Photo		104
WITNESS	EXAMINATION BY	PAGE														
ROGER AMUNDSON	MR. MONTELEONE	4														
<b>E X H I B I T S</b>																
DESCRIPTION		PAGE														
8 - Photo		104														



DEPOSITION OF ROGER AMUNDSON - AUGUST 14, 2014

1 THURSDAY, AUGUST 14, 2014, 3:25 P.M., BOISE, IDAHO.

2  
3  
4  
5

6 ROGER AMUNDSON,  
7 called as a witness herein, having been first duly sworn,  
8 was examined and testified as follows:

9

10 EXAMINATION

11 BY MR. MONTELEONE:

12 Q. Let the record reflect that this is the time  
13 and the place for the taking of the deposition of Roger  
14 Amundson. This deposition is being taken pursuant to  
15 notice and the Idaho Rules of Civil Procedure. This  
16 deposition will be used for all purposes allowed under  
17 those rules.

18 If you would, please, state your name and spell  
19 your last name for the record.

20 A. Roger Amundson. A-m-u-n-d-s-o-n.

21 Q. And, Mr. Amundson, is it your understanding we  
22 are here over the accident that happened July 8th, 2011,  
23 at the premises located at 756 West 4th Street in Kuna?

24 A. Yes.

25 Q. Now, there was a notice of deposition that went

4

1 out in your case. Have you ever seen -- in this case.  
2 Have you ever seen that notice of deposition before?  
3 A. I have not.  
4 Q. Okay. It asks you to bring certain documents  
5 with you today. Since you have never seen the notice we  
6 are going to go over it together. Had you received the  
7 notice it would have asked you to provide all photos,  
8 documents, or other tangible items which depict the bay  
9 window at issue in this case, whether installed or  
10 uninstalled or any documents or other tangible items  
11 which relate in any way to the incident, which is the  
12 basis for this litigation. The incident, of course,  
13 being what I have mentioned before, the accident on July  
14 8th, 2011. Do you have any photos, documents, or other  
15 items that depict the window that's at issue in this  
16 case?

17 A. I do not.

18 Q. Okay. Do you have any document or other  
19 tangible items that involved the incident that is the  
20 current --

21 A. I don't.

22 Q. Okay.

23 A. I do not.

24 Q. So, you wouldn't have any documents responsive  
25 to that notice anyway; correct?

5

1 A. That is correct.

2 Q. Okay. Have you ever given a deposition before?

3 A. No, I have not.

4 Q. Have you ever given testimony in a court of law  
5 or administrative proceeding?

6 A. No, I have not.

7 Q. Okay. That's a good thing. A couple of ground  
8 rules today that will make things move along a little  
9 more smoothly is can you answer audibly and verbally?

10 You have to give me yeses and no's versus shakes of the  
11 head or uh-huhs or huh-uhs, because Mr. Willis, our court  
12 reporter, won't be able to pick up --

13 A. Right.

14 Q. -- uh-huhs and huh-uhs and shakes of the head.

15 So, can you answer audibly and verbally for me today?

16 A. Yes.

17 Q. And, then, could you wait for me to finish my  
18 question and, then, I will extend you the same courtesy  
19 and wait for you to finish your answer before I ask my

20 next question, that way we won't be talking over one  
21 another. Can you do that for me today?

22 A. Yes.

23 Q. Okay. And, then, finally, you understand you  
24 have taken an oath to give true testimony. Your  
25 testimony today is just as it would be in a court of law,

6

1 subject to pain of perjury for falsehood. Do you  
2 understand that?

3 A. Yes.

4 Q. Okay. We are here over a window that was  
5 located on those premises in Kuna I just mentioned  
6 moments ago and in front of you are a number of  
7 photographs that are exhibits and I will have you look at  
8 first Exhibit 5, which is a collection of photographs and  
9 if you would, please, Mr. Amundson, look through each of  
10 the different pages of Exhibit 5 and, then, I'm going to  
11 ask you a few questions.

12 A. All right.

13 Q. Okay. Have you seen those photos that are in  
14 Exhibit 5 before today?

15 A. No, I have not.

16 Q. Okay. Do you recognize what's depicted in  
17 Exhibit 5?

18 A. Yes.

19 Q. Okay. What's depicted in Exhibit 5?

20 A. There is blood on the window and a broken panel  
21 of glass.

22 Q. Okay. Now, that broken panel of glass, when  
23 did it break?

24 A. That I am not sure of.

25 Q. Okay. Do you recall an instance where this

7

DEPOSITION OF ROGER AMUNDSON - AUGUST 14, 2014

1 window had actually been stored after its removal from  
2 the house closer to the front of the property near the  
3 white vinyl fence?  
4 A. I have no idea.  
5 Q. Okay. Was this window removed from the  
6 structure at 756 West 4th Street?  
7 A. Yes.  
8 Q. Who removed it?  
9 A. Me and my father.  
10 Q. Okay. And your father being Walter Amundson;  
11 correct?  
12 A. Correct.  
13 Q. After you removed it where did you place it?  
14 A. Along that fence. The white picket fence.  
15 Q. Okay. And I understand there is a white vinyl  
16 fence and, then, going towards the back of the property  
17 it becomes a wooden cedar fence; is that correct?  
18 A. No. They are both wood. There is no vinyl.  
19 Q. Okay. I have not been to the premises, so I  
20 don't --  
21 A. The white picket fence is a wooden fence.  
22 Q. Okay. Thank you for the clarification. So,  
23 there was a white fence line and, then, a cedar fence  
24 line?  
25 A. Correct.

8

1 Q. Okay. And what side of the property did that  
2 run on, the north, south, east or west?  
3 A. Our side is on the west side. So, I placed the  
4 window on the west side of the fence.  
5 Q. Okay. But with respect to the house, which is  
6 Exhibit 2 -- do you see Exhibit 2, Mr. Amundson?  
7 A. Yes, I do.  
8 Q. Okay. And is that the premises located at 756  
9 West 4th Street in Kuna?  
10 A. Yes, it is.  
11 Q. Okay. And how was oriented? That is where the  
12 porch is, is that the north, south, east or west side of  
13 the house?  
14 A. I am looking west in the picture.  
15 Q. Okay. So, that white Toyota pickup truck would  
16 be on the east side of the property?  
17 A. Correct.  
18 Q. And, therefore, the white wooden fence would be  
19 on the east side of the property?  
20 A. Correct.  
21 Q. Okay. When that window, which is depicted in  
22 Exhibit 5, was removed from the structure it was  
23 initially placed near the white wooden fence; is that  
24 correct?  
25 A. It was placed on the white wooden fence.

9

1 Q. Okay. If you look at Exhibit 4, have you seen  
2 exhibit -- that photograph which is Exhibit 4 previously?  
3 A. Yes, I have.  
4 Q. Okay. When did you see that exhibit?  
5 A. By Mike -- he showed it to me in a previous --  
6 previous time. I don't remember exactly when I saw that,  
7 but I have seen it before.  
8 Q. Okay. In Exhibit 4 is the same window we have  
9 been discussing depicted?  
10 A. Correct.  
11 Q. And you see the white slats that are supporting  
12 it?  
13 A. Yes.  
14 Q. Okay. Are those white slats piece of scrap?  
15 A. Yes.  
16 Q. And was that scrap taken from when the house  
17 was renovated and a garage door was put in?  
18 A. That is correct.  
19 Q. When that window that's shown in Exhibits 4 and  
20 5 was placed on the white wooden fence line, were those  
21 slats that are in Exhibit 4 attached to the window?  
22 A. Yes.  
23 Q. Okay. So, when you said earlier that the  
24 window was actually leaning up against the white wooden  
25 fence --

10

1 A. It kind of is, but it's got these slats on it.  
2 Q. Okay. So --  
3 A. So, there is a definite structure so it won't  
4 fall into the fence.  
5 Q. Okay. And that's what I'm getting at, because  
6 -- and I apologize if my questions seem obvious, but I  
7 have got to understand how this was set up after you guys  
8 removed it from the house. You brought it over to the  
9 white wooden fence and, then, did you use the slats that  
10 are shown in Exhibit 4 to butt up against the white  
11 wooden fence for support?  
12 A. That's correct.  
13 Q. Okay. Did you have anything over on the other  
14 side of the window holding it in place? That is there  
15 was a side of the window that had slats that butted up  
16 against the white wooden fence. Did the other side have  
17 concrete block or any other device to hold that window in  
18 place?  
19 A. No.  
20 Q. Okay.  
21 A. Just what you're seeing there in that picture.  
22 Q. Okay. But that picture shows --  
23 A. That window pretty much moved from up here to  
24 here.  
25 Q. Okay. How far would that be distance wise?

11

DEPOSITION OF ROGER AMUNDSON - AUGUST 14, 2014

1 MR. STEFANIC: If you know.  
2 THE WITNESS: Twenty feet.  
3 BY MR. MONTELEONE:  
4 Q. Okay. And when you say from here to there,  
5 you're saying from where it was originally placed along  
6 the white wooden fence to where it is actually shown  
7 against the cedar fence in Exhibit 4?  
8 A. That is correct.  
9 Q. Okay. Now, when that window was placed along  
10 the white wooden fence who placed it there?  
11 A. That would be me.  
12 Q. Okay.  
13 A. That was after the fact. Wayne broke a panel  
14 with his car.  
15 Q. Okay. And we are going to talk about that.  
16 What I'm asking first -- when the window was removed from  
17 the house I assume shortly after its removal it was  
18 placed along the white wooden fence; is that correct?  
19 A. Say that exactly again.  
20 Q. Sure. After the window was removed from the  
21 house in order to do the renovation, I assume shortly  
22 after the window's removal from the house, it was placed  
23 up against the white wooden fence with the support slats?  
24 A. That is correct.  
25 Q. Is that correct? So, in other words, was it

12

1 removed and, then, kept in one piece and placed over  
2 where the white wooden fence was?  
3 A. That's correct.  
4 Q. Okay.  
5 A. And the whole thing was to sell it was that was  
6 -- to put it out in front so people can see it.  
7 Q. Okay. And who moved it from next to the house  
8 over to the white wooden fence?  
9 A. Me and my father.  
10 Q. Okay. And is that because your father and you  
11 were the ones primarily doing the renovation on the  
12 property?  
13 A. That's correct.  
14 Q. And the purpose of the renovation was to put in  
15 a garage door where that white -- where that window  
16 that's at issue in this case is located on Exhibit 2?  
17 A. That is correct.  
18 Q. Now, prior to the window being moved from the  
19 white wooden fence to the cedar fencing, one of the panes  
20 of glass was broken; is that correct?  
21 A. That is correct.  
22 Q. How was it broken?  
23 A. Wayne had opened his door into it with his  
24 vehicle.  
25 Q. Now, I got to speak with Wayne earlier this

13

1 afternoon and at the time he had a GMC Sonoma pickup.  
2 A. That is correct.  
3 Q. So, what color was that truck?  
4 A. White.  
5 Q. But that's not the white --  
6 A. That's not --  
7 Q. -- pickup truck shown in Exhibit 2?  
8 A. No. That's dad's tan pickup.  
9 Q. Okay.  
10 A. And this is my buddy Chris' Ford pickup.  
11 Q. Okay. And when you just said this is your  
12 buddy Chris' Ford pickup, you're pointing to the vehicle  
13 in the upper right of Exhibit 4?  
14 A. That is correct.  
15 Q. All right. The pane of glass that was broken  
16 is located on what part of the window?  
17 A. That's what I'm unsure of. It's been too long  
18 ago.  
19 Q. Okay. Sure. If you look at Exhibit 4, from  
20 the ground up you can see three --  
21 A. Okay.  
22 Q. You can see three panes of glass vertically.  
23 Is there a fourth one?  
24 A. No. There was only the three panes.  
25 Q. So, if we look --

14

1 A. Three. Six. Nine.  
2 Q. Okay.  
3 A. Just like you see in Exhibit 2.  
4 Q. Well, in Exhibit 2 it looks like there is 12  
5 panes of glass. Three vertically and four horizontally.  
6 A. I would agree with that, too.  
7 Q. Okay. But if you look at Exhibit 4, it only  
8 looks like there are two horizontally, as opposed to four  
9 horizontally.  
10 A. Right.  
11 Q. So, my question is this, Mr. Amundson. Was  
12 that window that's shown in Exhibit 2 actually two  
13 separate window structures?  
14 A. No. It's all one piece.  
15 Q. Where did the other six panes of glass go that  
16 are shown on Exhibit 2?  
17 A. They are just kind of around the corner. The  
18 glass had a weird round concave to it.  
19 Q. Kind of like a bay window?  
20 A. Yes.  
21 Q. So, are you telling me in Exhibit 4 --  
22 A. They are hiding behind in the picture, because  
23 you're at a weird angle here.  
24 Q. Okay. So, the pane of glass that Wayne broke,  
25 if you look at Exhibit 2, would be the pane of glass in

15

DEPOSITION OF ROGER AMUNDSON - AUGUST 14, 2014

1 the upper left of those 12 panes of glass shown in  
2 Exhibit 2; is that true?  
3 A. I don't remember.  
4 Q. Okay.  
5 A. I really don't remember.  
6 Q. Based on the photographic evidence, if you look  
7 at Exhibit 4, we have the window with -- you see three  
8 vertical panes; correct?  
9 A. Correct.  
10 Q. And you just testified earlier that while you  
11 see two horizontal panes of glass, there are actually two  
12 more that you just can't see because of the angles of the  
13 photograph. Do you recall that testimony?  
14 A. Yes.  
15 Q. So, if we compare Exhibit 4 to Exhibit 2 and we  
16 know the broken pane of glass is the upper right one --  
17 excuse me -- the upper left one in Exhibit 4, doesn't it  
18 follow that that would have been the same one on Exhibit  
19 2 that is the upper left pane out of the 12 panes of  
20 glass?  
21 A. That would be correct.  
22 Q. Okay. Now, that pane of glass was broken by  
23 Wayne's truck door.  
24 MR. STEFANIC: Object to form.  
25 BY MR. MONTELEONE:

16

1 Q. Was that your testimony earlier?  
2 A. You know, I'm really not sure of that. I  
3 really don't remember exactly where Wayne broke the  
4 glass, but there was only one panel of glass broken in  
5 that whole thing.  
6 Q. Correct. Do you recall anything about the wind  
7 blowing down the window onto Wayne's truck?  
8 A. I don't remember any of that, no.  
9 Q. How did you come to learn how that pane of  
10 glass broke?  
11 A. With Wayne's vehicle? He told me that he broke  
12 the window with his truck and it got bent, because I was  
13 wanting to sell the window and that just took value out  
14 of the window.  
15 Q. Okay. And you wanted to sell that window,  
16 because that's something your dad wanted to do?  
17 A. That was something I wanted to do.  
18 Q. Okay. Were you -- if the window had been sold  
19 would you have gotten the money from the sale of the  
20 window?  
21 A. Possibly, yes.  
22 Q. Okay.  
23 A. Yes.  
24 Q. Who else would have gotten it?  
25 A. I -- if dad wanted a part of that he could have

17

1 had a part of that.  
2 Q. Sure. And that's because --  
3 A. That was just between me and my dad.  
4 Q. And you two were jointly working on this  
5 project together?  
6 A. That's correct.  
7 Q. Were your father and you the two that were  
8 primarily handling the renovation of that structure?  
9 A. Yes.  
10 Q. Now, at some point you did get help from John  
11 Sullivan who was a tenant at the time; is that correct?  
12 A. No. That is not correct.  
13 Q. Okay. Did John --  
14 A. He did not help at all in that.  
15 Q. Okay. He didn't do any of the framing?  
16 A. Nothing.  
17 Q. Okay. So, was all of the work done on that  
18 structure to renovate it and put in a garage door where  
19 the bay window had been?  
20 A. That was all prior to John even moving into the  
21 house.  
22 Q. Okay. Let's make a little timeline. When did  
23 you first move into the property?  
24 A. Like '010. Maybe '09.  
25 Q. Okay. Do you remember what season of the year

18

1 it was?  
2 A. I don't. It was summer. I don't remember  
3 exactly the month.  
4 MR. STEFANIC: Can we pause just --  
5 MR. MONTELEONE: Sure. Let's go off the record for  
6 a second.  
7 (An off-the-record discussion ensued.)  
8 (A recess was had.)  
9 BY MR. MONTELEONE:  
10 Q. Back on the record. Mr. Amundson, when we left  
11 off we were talking about when you moved into this  
12 property on 4th Street in Kuna and you thought it was  
13 2009 or 2010 and you thought it was the summertime; is  
14 that correct?  
15 A. That's correct.  
16 Q. Do you remember which month of summer by  
17 chance?  
18 A. I haven't got a clue.  
19 Q. Okay. This accident happened in July of 2011.  
20 So, it would be the summer of 2011. That may help orient  
21 you -- orient us a little bit. Had you been in the house  
22 for a full year or a full two years before the accident?  
23 A. A good two years. Possibly almost three,  
24 because I had my sister there for a whole year, maybe a  
25 year and a half.

19

DEPOSITION OF ROGER AMUNDSON - AUGUST 14, 2014

1 Q. Okay.  
2 A. And she moved down to Cali and, then, I had all  
3 these roommates start moving in.  
4 Q. Okay. And those roommates would include Wayne  
5 Jenkins --  
6 A. And --  
7 Q. -- and John Sullivan.  
8 A. And after they are gone some more, you know,  
9 which just got worse and worse, you know. I'm pretty  
10 much done with roommates.  
11 Q. Okay. Are you still living at that property?  
12 A. Yes, I am.  
13 Q. If you believe you have been in there for three  
14 years before Mr. Stiles' accident, is it possible that  
15 you moved into these premises in the summer of 2008?  
16 A. Possibly. I don't really remember when I moved  
17 in. I don't know exact date.  
18 Q. The window was broken you believe by Wayne's  
19 truck door; is that correct?  
20 A. That is correct.  
21 Q. The door on the passenger side of the truck or  
22 the driver's side?  
23 A. Passenger side.  
24 Q. So, is it fair for me to infer that Wayne had  
25 someone in the passenger side that opened it up and it

20

1 hit the window or had he backed into the driveway?  
2 A. I don't really remember exactly the incident.  
3 MR. STEFANIC: Object to the form. Speculation.  
4 THE WITNESS: But I remember that he just opened the  
5 door into it and broke it.  
6 BY MR. MONTELEONE:  
7 Q. Okay. If you looked at Exhibit 4, how high up  
8 is that pane of glass that's broke, if you can  
9 approximate for me, from the ground to where the pane of  
10 glass is?  
11 A. Like four feet.  
12 Q. Okay. And do you believe that that is  
13 consistent with the car door of a GMC Sonoma pickup  
14 opening up into that window where it was situated on the  
15 white fence?  
16 A. Well, the angle it is now is a bit steeper of  
17 an angle than it was up against the white.  
18 Q. Okay.  
19 A. So, the white was more of a vertical, so --  
20 Q. So --  
21 A. So, there was a difference in height here,  
22 because I structured it out --  
23 Q. Okay.  
24 A. -- further with the slats, so it wasn't falling  
25 into the cedar fence at all.

21

1 Q. But so I'm clear, when the window was first  
2 placed next to the white fence it was more vertical and  
3 steeper than the way it's depicted in Exhibit 4 against  
4 the cedar fence?  
5 A. That is correct.  
6 Q. Why did you make it less vertical when you  
7 moved it to the cedar fence?  
8 A. So it wouldn't fall on the fence. I didn't  
9 want to lean it on the fence like it was with the white  
10 fence.  
11 Q. When it was leaning against the white fence  
12 were the support slats on the side of the fence opposite  
13 the window?  
14 A. No. They were like it is, they were just not  
15 as steep.  
16 Q. Okay. I thought it was steeper when it was  
17 against the white fence compared to the cedar fence?  
18 A. These were more vertical. The slats here were  
19 more vertical. Like -- about like that on the white  
20 fence and I just took them and moved them back.  
21 Q. Correct. And, then, that also made the window  
22 be less vertical.  
23 A. That's correct.  
24 Q. And why did you do that?  
25 A. So it wasn't leaning on this fence.

22

1 Q. Did it make the window more stable?  
2 A. It did a bit, yes. It wasn't so in the wind  
3 either.  
4 Q. Because the cedar fence is taller than the  
5 white fence?  
6 A. That's correct.  
7 Q. And when the window was initially placed  
8 against the white fence that it was more vertical and  
9 more exposed to wind because the white fence was shorter  
10 than the cedar fence; is that correct?  
11 A. That's correct.  
12 Q. Who moved it from where it was located after  
13 the pane of glass was broken to where it's located in  
14 Exhibit 4?  
15 A. That would be me.  
16 Q. Okay. Did anyone help you?  
17 A. No.  
18 Q. So, that's a window, even though it's got all  
19 12 panes, that one person could move?  
20 A. Not lift, but I -- I kind of drug it over  
21 there. You know, balanced and drug it.  
22 Q. Okay. And you dragged it about 20 feet?  
23 A. That's about right. I didn't move it very far,  
24 because it was heavy.  
25 Q. I bet it was really heavy.

23

DEPOSITION OF ROGER AMUNDSON - AUGUST 14, 2014

1 A. Yeah.  
2 Q. How many pounds would you estimate that window  
3 to be?  
4 A. A good five.  
5 Q. Five hundred?  
6 A. Yeah. At least.  
7 Q. Five hundred pounds?  
8 A. Maybe not that much. Maybe like 250, maybe  
9 300, but it -- it was heavy.  
10 Q. But 250 to 300 pounds?  
11 A. Yeah.  
12 Q. Is there any reason that you didn't knock out  
13 the rest of the glass from the pane that had been broken?  
14 A. I had done that. Just not prior to the  
15 accident.  
16 Q. Okay. You did it after the accident?  
17 A. That's correct. So it wouldn't get damaged  
18 anymore.  
19 Q. But can we agree, sir, that the pane of glass  
20 that's broken and shown on Exhibit 5-A was not broken by  
21 Mr. Stiles putting his hand through it?  
22 MR. STEFANIC: Object to form. Calls for  
23 speculation.  
24 THE WITNESS: No, it was not. Stiles did not break  
25 any part of glass period.

24

1 BY MR. MONTELEONE:  
2 Q. So, when Mr. Stiles injured himself --  
3 A. That was a jagged ledge.  
4 Q. Okay.  
5 A. Just like you're seeing in this pic.  
6 Q. So, what broke the glass was something to do  
7 with Mr. Jenkins' vehicle --  
8 A. That's correct.  
9 Q. -- correct? And what Mr. Stiles cut himself on  
10 would have been a piece of jagged glass left after it had  
11 previously been broken by Mr. Jenkins' vehicle?  
12 A. That is correct.  
13 Q. And, then, following Mr. Stiles' accident you  
14 broke out the rest of the glass in that broken pane; is  
15 that correct?  
16 A. That is correct.  
17 Q. Why did you do that?  
18 A. So nobody else would hurt themselves.  
19 Q. Okay.  
20 A. It was a hazard.  
21 Q. Okay.  
22 A. So, I eliminated the hazard. And, then, that  
23 just got -- you know, just sat there for a bit and I just  
24 decided to destroy the whole thing.  
25 Q. And we are going to get to that. The one thing

25

1 I have a question in my mind for a long time is where did  
2 the window go. So, we are going to get into that. But  
3 here the -- talking about -- and just focusing on that  
4 period of time when you moved it from the white wooden  
5 fence to the cedar fence, how long had this window been  
6 up against the white wooden fence prior to the pane of  
7 glass being broken?  
8 A. Probably a month it sat there with a broken  
9 pane on the concrete in front of the white fence there.  
10 Q. Okay. So, let me start at the beginning. I  
11 think I asked a horrible question. The window is removed  
12 from the structure and fairly immediately placed over by  
13 the white wooden fence; is that correct?  
14 A. That's correct.  
15 Q. And your father and you placed it there?  
16 A. That's correct.  
17 Q. And, then, it sat there next to the white  
18 wooden fence for approximately a month before it was  
19 broken?  
20 MR. STEFANIC: Misstates his testimony.  
21 THE WITNESS: At least.  
22 BY MR. MONTELEONE:  
23 Q. Okay. Let me just ask you then. How long did  
24 the window sit along that white wooden fence until it was  
25 -- before it was broken?

26

1 A. That I am unsure of the exact time and length.  
2 Q. Was it greater than a month, though?  
3 MR. STEFANIC: Object to form. Speculation.  
4 THE WITNESS: I wouldn't say greater. I would say  
5 just about a month.  
6 BY MR. MONTELEONE:  
7 Q. Okay. Do you recall when this renovation on  
8 the structure was being done by your dad and you?  
9 A. Say again.  
10 Q. When were your dad and you doing this  
11 renovation on the structure?  
12 A. When was I?  
13 Q. Yes.  
14 A. I have got no idea what date that was either.  
15 Q. Okay. How much before Mr. Stiles' accident,  
16 which is in July of 2011, was the renovation done?  
17 A. Say that again.  
18 Q. Sure. If we used as a point of reference July  
19 of 2011, which is when Mr. Stiles had his accident, if we  
20 use that as our frame of reference, our point of  
21 reference, how much before that was the renovation being  
22 done installing the garage door?  
23 A. It was all done.  
24 Q. Okay.  
25 A. We ripped it all out and had it done before

27

DEPOSITION OF ROGER AMUNDSON - AUGUST 14, 2014

1 Sullivan even moved in there.  
2 Q. Okay. And how much time between the renovation  
3 being completed and Mr. Stiles having his accident?  
4 A. All of it. It was completed completely.  
5 Q. Right. But I -- and I'm sorry to interrupt  
6 you, but I'm wondering what is the period of time from  
7 when you completed the renovation to when the accident  
8 happened? Was it weeks? Months? Years?  
9 A. A few months.  
10 Q. So, does that make the renovation being done in  
11 April of 2011, which would be about three months before  
12 this accident?  
13 MR. STEFANIC: Objection. Speculation.  
14 THE WITNESS: I don't remember really.  
15 BY MR. MONTELEONE:  
16 Q. Okay. You didn't know I was going to be  
17 jogging your memory so much this afternoon.  
18 A. Right.  
19 Q. Is the -- can you quantify for me at all in any  
20 regard the amount of time from when the renovation began  
21 to when it was completed? How long did it take your dad  
22 and you to complete that renovation?  
23 A. Not very long. Maybe two weeks at the most.  
24 Q. And I assume you probably weren't doing it in  
25 the middle of winter?

28

1 A. No. It was -- this is summer.  
2 Q. Okay.  
3 A. About this time of year.  
4 Q. So, you --  
5 A. It was hot. It was warm.  
6 Q. So, that would more than likely make it late  
7 May, June, July time frame. Can we agree on that?  
8 MR. STEFANIC: As to when the renovations were --  
9 BY MR. MONTELEONE:  
10 Q. As to when the renovation was done. Thank you.  
11 And it took about two weeks to complete it; is that  
12 correct?  
13 A. That's correct.  
14 Q. So, the renovation was completed -- if we are  
15 using a loose time frame -- sometime early to mid June.  
16 Does that sound approximately correct?  
17 A. Sure. I mean I really don't remember exactly  
18 the month or what month it was in.  
19 Q. Okay. Well -- and, again, using this as a  
20 point of reference that date of the accident, which is  
21 the end of the first week of July --  
22 MR. STEFANIC: July 8th.  
23 BY MR. MONTELEONE:  
24 Q. Yes. Can you tell me in any estimation how  
25 much time between the completion of the two week

29

1 renovation and that accident happening? A week? A  
2 month? Two months? Can you give me any reasonable  
3 estimate for that?  
4 A. I don't know. I really don't know.  
5 Q. Okay. But are you still relatively confident  
6 that the window had been placed along the white wooden  
7 fence for about a month?  
8 A. Yes. I'm pretty sure of that. At least a  
9 month.  
10 Q. At least a month before the pane was broken  
11 by --  
12 A. Wayne Jenkins.  
13 Q. Okay. His vehicle?  
14 A. That is correct.  
15 Q. And your understanding is that Mr. Jenkins  
16 opened the car door and that broke the pane of glass?  
17 A. That was my understanding. Yes.  
18 Q. What's that understanding based on? Is that  
19 something Wayne told you?  
20 A. That's what Wayne told me. Yes.  
21 Q. Okay. Did Wayne ever mention to you that the  
22 wind had knocked it onto his truck?  
23 A. No. He never mentioned anything. He just  
24 mentioned that he broke the glass window with his door.  
25 Q. And, then, after he mentioned that -- strike

30

1 that. When he mentioned that to you were you inside the  
2 house?  
3 A. Yes, I was.  
4 Q. Okay. Did you, then, go outside to look at  
5 window?  
6 A. I don't remember. I don't know if I did or  
7 not.  
8 Q. Okay. Do you recall how much time between Mr.  
9 Jenkins telling you the pane of glass had been broken and  
10 Mr. Stiles being injured?  
11 A. I'm not following you on that one.  
12 Q. Just wondering if you can tell me the amount of  
13 time between when Wayne tells you, hey, a pane of glass  
14 has been broken in the window and, then, Mr. Stiles being  
15 injured? Was there two weeks between that? Four weeks?  
16 A. There was a lot of time in between that,  
17 because that window sat broken for a while before his  
18 friend got hurt on it.  
19 Q. Okay. And when you say it had sat for a while  
20 before his friend had been hurt on it, did the broken  
21 window sit along the white wooden fence for a while?  
22 A. That's cedar.  
23 Q. Okay.  
24 A. Because I moved it right after Wayne broke it.  
25 Q. That's what I was getting at. So, Wayne comes

31

DEPOSITION OF ROGER AMUNDSON - AUGUST 14, 2014

1 into the house and tells you a pane of glass has been  
2 broken in the window and he tell you that inside the  
3 house; correct?  
4 A. That's correct.  
5 Q. And, then, do you promptly go outside to look  
6 at the window to see how damaged it is?  
7 A. I don't remember exactly if I did or not.  
8 Q. Well, at some point in time you go out and look  
9 at it.  
10 A. At some point, yeah.  
11 Q. Okay.  
12 A. It might have been the next day even.  
13 Q. But it was probably within 48 hours of Mr.  
14 Jenkins telling you?  
15 A. That's correct.  
16 Q. Can we agree on that? And probably in all  
17 likelihood within 24 hours of Mr. Jenkins telling you?  
18 A. I would assume so.  
19 Q. Did you ever have a for sale sign on the  
20 window?  
21 A. I did at one point, yes.  
22 Q. Okay. And which pane of glass did you have it  
23 on?  
24 A. I didn't. I just had it on a -- like a piece  
25 of tape stuck to a panel.

32

1 Q. Okay. Do you remember which panel you had it  
2 stuck to?  
3 A. Like that middle one. Right in the middle.  
4 Q. Okay.  
5 A. Right on that X. It was up high. People can  
6 see it.  
7 Q. And you're looking at Exhibit 2.  
8 A. It was just about right -- right in the middle  
9 of that.  
10 Q. Okay. So, it would be on the second of the  
11 three rows, either two or three columns in. It would be  
12 one of those two middle windows; is that correct?  
13 A. That's correct.  
14 Q. Okay.  
15 A. I would say right in the middle of four.  
16 Q. You had a for sale sign on there or a little  
17 piece of tape that said for sale; is that correct?  
18 A. I had a piece of paper like so --  
19 Q. Okay.  
20 A. -- that said for sale on it that I taped on it.  
21 Q. Did you write that up?  
22 A. Yes, I did.  
23 Q. Okay.  
24 A. I made the for sale sign.  
25 Q. Sure. Did your dad tell you to do it?

33

1 A. Yes. Well, he didn't tell me to do it, but I  
2 asked him if I could sell it.  
3 Q. Uh-huh. And he said that would be fine?  
4 A. That would be fine.  
5 Q. So, Wayne tells you the pane of glass is  
6 broken. At some point shortly after he tells you that  
7 you go out and look at the window and as soon as you look  
8 at it do you drag it back to along the cedar fence?  
9 A. I don't remember any of that. It's been a  
10 couple years, so -- I don't remember.  
11 Q. Okay. Did the window with the broken pane of  
12 glass remain along the white wooden fence after the glass  
13 had broken or did you immediately pull it back to the  
14 cedar fence?  
15 A. I don't remember.  
16 Q. When did you tell your dad that the pane of  
17 glass had been broken?  
18 MR. STEFANIC: Object to form. Assumes facts not in  
19 evidence.  
20 THE WITNESS: I don't think I ever did. It was  
21 after the fact when this accident --  
22 BY MR. MONTELEONE:  
23 Q. Okay. So, prior to the accident involving Mr.  
24 Stiles, you had not told your father that the pane of  
25 glass had been broken?

34

1 A. That is correct.  
2 Q. Had your father been to the premises after the  
3 pane of glass had been broken, but prior to the accident?  
4 MR. STEFANIC: Objection. Calls for speculation.  
5 THE WITNESS: I don't know.  
6 BY MR. MONTELEONE:  
7 Q. Okay. Now, my understanding is your father  
8 would come to the premises to pick up rent each month; is  
9 that true?  
10 A. That is true. So, I'm sure he, you know, had  
11 been there and -- it never got mentioned.  
12 Q. Okay. Well, what day of the month would your  
13 father typically pick up the rent?  
14 A. It was usually about the 15th, because Wayne  
15 got paid every 15th.  
16 Q. Okay.  
17 A. So, I would wait until the 15th and --  
18 Q. So, rent wasn't due the first of the month, it  
19 was typically due the 15th of the month?  
20 A. That is correct. Wayne only got paid every two  
21 weeks and it landed on the 15th and the 28th.  
22 Q. But at this time -- in this time frame around  
23 when this accident happened your dad would pick up the  
24 rent the middle of the month?  
25 A. Close to, but not -- you know, the 15th -- a

35



DEPOSITION OF ROGER AMUNDSON - AUGUST 14, 2014

1 quarter of a month. Yeah. Just about.  
2 Q. Okay. If it was paid on the 15th your dad  
3 might come the 16th or 17th, you know, when ever it  
4 worked out for his schedule, but it was sometime --  
5 several days following the 15th of each month?  
6 A. Correct.  
7 Q. What time of the month was it when Wayne told  
8 you that he had broken the pane of glass?  
9 A. Say again.  
10 Q. What time of the month was it when Wayne told  
11 you he had broken the pane of glass?  
12 A. I have no idea. I have no idea.  
13 Q. How much time past between you first seeing  
14 that pane of glass broken and you dragging the window  
15 back to the cedar line -- cedar fence line?  
16 A. I'm unsure --  
17 MR. STEFANIC: Object to form. Speculation.  
18 THE WITNESS: I have no idea. It's speculation on  
19 the time there.  
20 BY MR. MONTELEONE:  
21 Q. Sure. Let's think about it this way then.  
22 A. I have no idea.  
23 Q. Can you give me an estimate as to how long  
24 after you learned of the pane of glass being broken that  
25 the window with the broken pane of glass stayed along the

36

1 white wooden fence line?  
2 MR. STEFANIC: I'm going to object to the form and I  
3 would just say he can give an estimate if he has facts or  
4 a knowledge to base that on, but I would caution --  
5 nobody wants you to speculate. So, you can answer his  
6 question if you can.  
7 THE WITNESS: I'm sorry. What was your question  
8 again?  
9 BY MR. MONTELEONE:  
10 Q. Of course. How much time past between you  
11 learning of the pane being broken and, then, you moving  
12 the window back along cedar fence line?  
13 A. That I'm not sure of. I really don't know how  
14 long that took.  
15 Q. Can you quantify it in -- was it weeks?  
16 Months?  
17 MR. STEFANIC: Objection. Speculation.  
18 THE WITNESS: I don't know. I really don't know. I  
19 don't remember how long it sat there before I moved it.  
20 BY MR. MONTELEONE:  
21 Q. Were you concerned about having that large  
22 window with the broken pane of glass out on the front  
23 part of the property near the white wooden fence?  
24 A. I was concerned about the broken panel and it  
25 being in the driveway where he can break it more.

37

1 Q. Why did you move the window from where it was  
2 next to the white wooden fence to where it's depicted  
3 along the cedar fence in Exhibit 4?  
4 A. So it wasn't getting damaged.  
5 Q. You weren't concerned about anyone being  
6 injured?  
7 A. No, because this area is a blocked off area and  
8 nobody really goes through this area and the fence here,  
9 gate, you seriously have to lift on it to get it even  
10 open. Like there is a good four inches of lift and the  
11 thing is heavy, so --  
12 Q. When you say the thing, you mean the gate or  
13 the window?  
14 A. The gate.  
15 Q. Okay. The gate that --  
16 A. Nobody is really going through that area.  
17 Q. Okay. Well, there would be these bonfire  
18 parties.  
19 A. And they were going right through the garage.  
20 Garage door open. Back door of the garage open. Right  
21 straight to the pit.  
22 Q. But these bonfires -- get together were  
23 occurring before the renovation was even done, weren't  
24 they?  
25 A. No.

38

1 Q. Okay. We will come back --  
2 A. The renovation happened before Sullivan moved  
3 in.  
4 Q. And is it your testimony there were no bonfire  
5 get together prior to Mr. Sullivan moving in?  
6 A. No.  
7 Q. No, that's not your testimony, or, no, there  
8 weren't any of those bonfire get together?  
9 A. There was no bonfires prior to Sullivan.  
10 Q. Moving in?  
11 A. Correct.  
12 Q. Okay. How long had that window been dragged  
13 back along the cedar fence line where it's depicted in  
14 Exhibit 4 and the accident happening?  
15 MR. STEFANIC: Object to form. Speculation.  
16 THE WITNESS: I have no idea.  
17 BY MR. MONTELEONE:  
18 Q. You don't know how long it was back there  
19 before the accident occurred?  
20 A. I don't. I have no idea.  
21 Q. After the accident happened what became of the  
22 window?  
23 A. Nothing. It sat there.  
24 Q. For how long?  
25 A. For a few weeks after the accident, because

39

DEPOSITION OF ROGER AMUNDSON - AUGUST 14, 2014

1 Sullivan was wanting to do these pictures and stuff.  
2 Q. When did you break the glass out of the pane?  
3 MR. STEFANIC: In relationship to the -- just  
4 anytime?  
5 MR. MONTELEONE: The accident --  
6 THE WITNESS: I don't remember exactly how long.  
7 Like several days later.  
8 BY MR. MONTELEONE:  
9 Q. Okay. Well, at the time these photos were  
10 taken, obviously, the glass had not been broken out of  
11 the busted pane; correct?  
12 A. Correct. And I left that for Sullivan's  
13 picture taking, you know, and, then, I cleaned it out,  
14 you know, like prior -- or after that, you know. Not  
15 sure the time --  
16 Q. I'm just trying to understand the sequence of  
17 events. Because before you said Sullivan wanted to take  
18 photos, so it was there for a few weeks. So, that means  
19 that busted glass was in there for a few weeks. Do you  
20 follow me?  
21 A. Yeah.  
22 Q. Now, the sequence of events is something you  
23 would know about, because I, obviously, wasn't there  
24 during this time frame, nor have I ever been. So, the  
25 accident happens July 8th, 2011. How much time passes

40

1 before you knock that glass out?  
2 A. I have no idea. At least a month. Maybe three  
3 weeks.  
4 Q. Okay. And during that period of time was Mr.  
5 Sullivan asking you to leave that window right where it  
6 is?  
7 A. No. Told him I didn't leave anything. I could  
8 have destroyed that at anytime.  
9 Q. Okay. Well, I thought you said that Mr.  
10 Sullivan --  
11 A. He was wanting to take pictures of it and I  
12 just left it so he could do that. It wasn't a request of  
13 Sullivan's.  
14 Q. Okay.  
15 A. I don't know if that was a good idea to do  
16 that, but I should have just destroyed it as soon as  
17 Wayne broke a panel in it.  
18 MR. STEFANIC: Listen to his questions.  
19 BY MR. MONTELEONE:  
20 Q. Why should you have just destroyed it after  
21 Wayne broke the panel?  
22 A. Because none of this would have occurred.  
23 Q. And, then, there wouldn't have been this --  
24 A. Hazard.  
25 Q. This hazard on your premises?

41

1 A. Right. But, you know, there was not anybody  
2 supposed to even be going through that area to begin  
3 with. That's why I set it in that area, so it was out of  
4 the way of people.  
5 Q. Was there any signage that said no entry on  
6 this area that's depicted with gravel in Exhibit 4?  
7 A. No.  
8 Q. Was there any type of warning?  
9 A. No. There was no warning. I wasn't even at  
10 the house at the time of the accident, so I could have  
11 set up something if I knew.  
12 Q. Okay. But at any rate, in this gravel walkway  
13 area that's in Exhibit 4 where the gate is there is a  
14 latched gate that goes into the back yard; correct?  
15 A. That's correct.  
16 Q. And so that is an area that can be used for  
17 ingress and egress out of the backyard to that property?  
18 A. Not very easily.  
19 Q. And that's because you have to --  
20 A. That's because the gate is so heavy.  
21 Q. But there is still -- it's a hatch gate. It's  
22 not a solid fence line at the end of that --  
23 A. That's correct.  
24 Q. -- walkway that's shown in Exhibit 4?  
25 A. Right. It is a latched gate and it can be

42

1 swung open.  
2 Q. And it clearly was on the date of this  
3 accident?  
4 A. No. He had opened it in the middle of the  
5 night when he going through this area to the accident and  
6 tripped on that.  
7 Q. Tripped on -- what did you just point out?  
8 A. This big stump looking thing that Sullivan has  
9 priorly been burning a bunch of tree limbs and stuff for  
10 the bonfire.  
11 Q. Did you know that that stump that's shown in  
12 Exhibit 4 was the type of wood that Sullivan had been  
13 burning prior to the accident having occurred?  
14 A. Yes. This, plus a bunch of panels from the  
15 neighbors. A big pile of like -- what are those --  
16 pallets. A bunch of pallets and stuff. Bunch of old  
17 Christmas trees and -- he was just acquiring wood at  
18 random all over the place.  
19 Q. Okay. The tree stump that's in Exhibit 4,  
20 looks to me like the bottom part of a Christmas tree.  
21 A. That is correct.  
22 Q. You would agree with that?  
23 A. Yes. And he had priorly burnt part of that and  
24 pulled it back out, so he can dig the pit back out and it  
25 sat there.

43

DEPOSITION OF ROGER AMUNDSON - AUGUST 14, 2014

1 Q. How long was it there in that gravel walkway  
2 that's depicted in Exhibit 4 prior to the accident?  
3 A. That is the same duration of time as the window  
4 sitting on the side of the fence here.  
5 Q. So, that tree stump that's in Exhibit 4 and the  
6 window that's in Exhibit 4 had both been out there in  
7 that walkway area for a period of time before the  
8 accident?  
9 A. That's correct.  
10 Q. And that period of time was at least several  
11 weeks?  
12 A. I would assume. At least.  
13 MR. STEFANIC: Objection. Speculation.  
14 MR. MONTELEONE: Or perhaps a month or more?  
15 MR. STEFANIC: Speculation. Objection.  
16 THE WITNESS: I don't know exactly. I have no idea  
17 of the duration of time.  
18 BY MR. MONTELEONE:  
19 Q. Okay. I'm just following up with what our  
20 prior testimony was, Mr. Amundson, and you said that that  
21 stump and that window had both been out there for a  
22 period of time together in that gravel walkway area.  
23 A. That's correct.  
24 Q. And that period of time existed for a while  
25 before Mr. Stiles had his accident.

44

1 A. That's correct.  
2 Q. Had you ever known anyone at any period of  
3 time that you lived at these premises to walk back  
4 through here?  
5 A. No. He was the first.  
6 Q. Was he the last?  
7 A. At the time, yeah. Nobody had gone through  
8 that.  
9 Q. Up until now has anyone walked through that  
10 gravel walkway area shown in the exhibit since the  
11 accident?  
12 A. No. Other than me, no.  
13 Q. Why have you walked through there?  
14 A. Right now I have got a bunch of boards up here  
15 and that's about the only reason I'm going back there is  
16 to get all of the like posts and stuff that I have placed  
17 there so I can rebuild the fence in the yard. That's  
18 just like random posts that are just sitting there. But  
19 I can acquire them from the front of the house. I don't  
20 need to go through the gate.  
21 Q. Did you ever share with your father that the  
22 window had been damaged before Stiles hurt himself?  
23 MR. STEFANIC: Object to form. Asked and answered.  
24 THE WITNESS: I don't know. Say that again.  
25 BY MR. MONTELEONE:

45

1 Q. Did you ever advise your father of the damage  
2 to the window -- the broken pane of glass prior to Mr.  
3 Stiles having an accident?  
4 MR. STEFANIC: Objection. Asked and answered.  
5 THE WITNESS: I don't know. I don't remember if I  
6 did or not.  
7 BY MR. MONTELEONE:  
8 Q. Did you tell your father about the accident  
9 after Mr. Stiles had it?  
10 A. Yes, I did.  
11 Q. When did you do that?  
12 A. This is after he done the suing and he --  
13 Sullivan was talking to me about it.  
14 Q. Okay. Well, let's go at it from this  
15 direction. How did you find out about the accident?  
16 A. Pretty much Sullivan.  
17 Q. Okay. Did he tell you the day it happened?  
18 A. No. This is a couple days later after the  
19 accident.  
20 Q. Had you been out of town?  
21 A. I was at a buddy's house.  
22 Q. The night of the accident you were at a buddy's  
23 house?  
24 A. The night of the -- I was at a buddy's house  
25 and I came home to that accident.

46

1 Q. What do you mean you came home to the accident?  
2 A. Like I came home and the accident had already  
3 occurred.  
4 Q. Okay. But it was in the morning hours after  
5 the accident, is that correct, or are we talking several  
6 days later?  
7 A. No. This is probably a day later. I would say  
8 a day later.  
9 Q. Okay. Who was the buddy with whom you had been  
10 staying?  
11 A. That would be the Chris here in the pictures.  
12 Q. And what's Chris' last name?  
13 A. Bowler.  
14 Q. Okay. And where does he live?  
15 A. He lives in Nampa.  
16 Q. Okay. Do you happen to know what street?  
17 A. Not exactly, no.  
18 Q. Okay. How do you spell Bowler?  
19 A. B-o-w-l-e-r.  
20 Q. And if Mr. Bowler is here depicted in Exhibit  
21 4 --  
22 A. This is Sullivan you're seeing.  
23 Q. Okay. But that's Mr. Bowler's vehicle --  
24 A. That's correct.  
25 Q. -- depicted in the upper right corner of

47

DEPOSITION OF ROGER AMUNDSON - AUGUST 14, 2014

1 Exhibit 4; correct?  
2 A. Correct.  
3 Q. So, if Mr. Sullivan is there and Mr. Bowler's  
4 vehicle is there, does that help orient you as to when  
5 this photograph was taken?  
6 A. Not at all.  
7 Q. Okay. When you returned to your house after  
8 the accident after being at Mr. Bowler's residence, did  
9 Mr. Bowler drive you home or were you in your own  
10 vehicle?  
11 A. Yes. At the time I did not have a vehicle.  
12 Q. Okay. So, does that help orient you as to when  
13 this photograph would have been taken?  
14 A. Not really.  
15 Q. Okay. Well, we have Mr. Bowler's vehicle. Was  
16 that regularly in the driveway at your house back in July  
17 of 2011?  
18 A. No. He only dropped me off and, then, took  
19 off.  
20 Q. So, this would have been shortly after the  
21 accident; is that correct? This being Exhibit 4.  
22 A. I would say a couple days, yeah.  
23 Q. Now --  
24 A. Possibly that's -- no, that's the broken panel.  
25 Q. Well, it was broken when it got moved back to  
48

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1 the cedar fence line, so it would have to be broken;  
2 correct?  
3 A. Yeah.  
4 Q. Okay.  
5 A. Yeah.  
6 Q. So, what's depicted in Exhibit 4, that has to  
7 be a broken pane of glass, because that window was never  
8 along the cedar fence line until after the glass had been  
9 broken.  
10 A. That's correct.  
11 Q. Correct? I'm sorry?  
12 A. That is correct.  
13 Q. Okay. Now, we have got Mr. Bowler -- stay with  
14 me here on Exhibit 4, Mr. Amundson. Thank you. We have  
15 got Mr. Bowler's vehicle. We have got John Sullivan  
16 standing there. We have got the window located along the  
17 cedar fence line. All of that told, is it more likely  
18 than not this photo was taken shortly after the accident  
19 happened?  
20 A. I would assume so. I would agree with that.  
21 Q. Would it have been taken near in time to Mr.  
22 Sullivan describing the accident to you?  
23 A. I think this is about the same time that he was  
24 telling me of the accident, then, he went around and took  
25 all these pictures.  
49

1 Q. And that would have been within 24 hours or so  
2 after the accident, wouldn't it have?  
3 MR. STEFANIC: Objection. Speculation.  
4 THE WITNESS: I have no idea.  
5 BY MR. MONTELEONE:  
6 Q. I mean this was a big event. Was Mr. Sullivan  
7 shook up?  
8 MR. STEFANIC: Objection.  
9 THE WITNESS: I don't remember that either.  
10 BY MR. MONTELEONE:  
11 Q. What did Mr. Sullivan tell you about the  
12 accident?  
13 A. I don't really remember that either. I don't  
14 remember what his details were.  
15 Q. Can you recount anything that Mr. Sullivan told  
16 you about how the accident happened?  
17 A. I don't.  
18 Q. Did you review the scene of the accident with  
19 Mr. Sullivan at all?  
20 A. No.  
21 Q. Did you discuss with Mr. Sullivan whether Mr.  
22 Stiles had tripped on that wooden stump?  
23 A. Yes. Sullivan has -- is the one who told me  
24 about this stump.  
25 Q. Okay.  
50

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1 A. That he had tripped on it.  
2 Q. All right. Does that jog your memory as to  
3 anything else Mr. Sullivan told you about the accident?  
4 We know that Mr. Sullivan told you that Mr. Stiles  
5 tripped on the stump. Anything else you can recall Mr.  
6 Sullivan told you about the accident?  
7 A. I don't. I don't remember anything about that.  
8 Q. Do you recall if Mr. Sullivan told you that Mr.  
9 Stiles' put -- cut his arm on the glass --  
10 A. Yes. I --  
11 Q. -- the broken pane of glass?  
12 A. -- can recall that, yes.  
13 Q. Okay. Anything else you can recall that Mr.  
14 Sullivan told you about the accident?  
15 A. No. I don't remember anything he said about  
16 this accident.  
17 Q. After Mr. Sullivan shared with you that the  
18 stump was tripped on by Mr. Stiles and he cut his arm on  
19 a pane of broken glass in the window, what did you think  
20 about the situation?  
21 MR. STEFANIC: Object to form.  
22 THE WITNESS: I have no idea at the time.  
23 BY MR. MONTELEONE:  
24 Q. Well, I'm asking you to recall now what you  
25 thought then. I mean did you think, "Oh, shit, we  
51

DEPOSITION OF ROGER AMUNDSON - AUGUST 14, 2014

1 shouldn't have had that stump there?"  
2 MR. STEFANIC: Objection. He didn't have the stump  
3 there.  
4 MR. MONTELEONE: Speaking objections are not  
5 tolerated. You can make your objection to the form.  
6 MR. STEFANIC: Object to the form.  
7 MR. MONTELEONE: You may answer.  
8 THE WITNESS: I'm sorry, rephrase your question.  
9 BY MR. MONTELEONE:  
10 Q. Sure. My question is after Mr. Sullivan --  
11 MR. STEFANIC: Object to the form as well, Jason,  
12 since you're at it. You have represented to him I think  
13 that that stump is where it was at the time of the  
14 accident and you know well from the other testimony that  
15 that's not true.  
16 MR. MONTELEONE: First of all, one witness'  
17 testimony doesn't control, counsel. Just because there  
18 is adverse testimony --  
19 MR. STEFANIC: Be fair to this witness, then.  
20 MR. MONTELEONE: I'm being absolutely fair. He's  
21 the one that resided there. He's the one that knows the  
22 details of this. You and I don't. Neither of us were  
23 there at the time of the accident, counsel. That's why  
24 I'm examining this witness.  
25 MR. STEFANIC: Go ahead.

52

1 BY MR. MONTELEONE:  
2 Q. Mr. Amundson, after it had been recounted to  
3 you by Mr. Sullivan that Mr. Stiles tripped on that  
4 wooden stump and cut his arm on a piece of -- a shard of  
5 glass from the broken pane, did you think, oh, God,  
6 that's a problem?  
7 A. I didn't think of that, no.  
8 Q. What did you think?  
9 A. I didn't at the time.  
10 Q. You didn't think anything about it?  
11 A. No.  
12 Q. Did you think that maybe you needed --  
13 A. I thought it was just another belligerent  
14 accident, you know.  
15 Q. What do you mean another belligerent accident?  
16 Had there been other accidents on the premises?  
17 A. Not as severe as this, no.  
18 Q. Okay. Well, what were the other accidents?  
19 A. Like there was some fighting going on.  
20 Q. Okay. And where did that occur?  
21 A. In the house.  
22 Q. And was that drunken fights?  
23 A. Belligerent fights. Yes.  
24 Q. And --  
25 A. And, you know, things get broken and stuff, but

53

1 nothing really major accident that people got hurt like  
2 this.  
3 Q. Okay. Well, I'm just following up with your  
4 testimony, Mr. Amundson. You said there were other  
5 belligerent accidents.  
6 A. I may have said that wrong.  
7 Q. Okay.  
8 A. I wouldn't say other accidents, but there was  
9 belligerent accidents happening, like as such is what I  
10 just assumed that that's what happened, just, you know, a  
11 belligerent accident.  
12 Q. What do you mean --  
13 A. Everybody is always every day totally slammed  
14 where they can't even walk.  
15 Q. Drunk.  
16 A. Drunk. So, I assumed that's what happened  
17 here.  
18 Q. Right. But do you have any evidence or  
19 information to support that?  
20 A. I don't.  
21 Q. Okay.  
22 A. I really don't have any evidence to back that  
23 up.  
24 Q. Were you at the house at the time of the  
25 accident?

54

1 A. No.  
2 Q. You were over at Mr. Bowler's; correct?  
3 A. That is correct.  
4 Q. And do you have any idea whether Mr. Stiles had  
5 consumed any alcohol or drugs prior to this accident?  
6 A. I do not. I assumed he was drunk with  
7 everybody there.  
8 Q. Do you know that he passed the gaze and the  
9 nystagmus test administered to him by law enforcement  
10 officers following this accident?  
11 MR. STEFANIC: Object to form. Assumes facts not in  
12 evidence.  
13 THE WITNESS: I did not know that.  
14 BY MR. MONTELEONE:  
15 Q. Do you have any reason -- do you have any  
16 information whatsoever that Mr. Stiles was intoxicated at  
17 the time of this accident?  
18 A. I have no evidence of that.  
19 Q. Getting back to these fights. Did the fights  
20 always occur inside the house?  
21 A. No.  
22 Q. Did they occur on --  
23 A. Out on the lawn here.  
24 Q. The front lawn? Did they ever spill back into  
25 this walkway graveled area on Exhibit 4?

55

DEPOSITION OF ROGER AMUNDSON - AUGUST 14, 2014

1 A. No.  
2 Q. Did the fighting ever happen in the backyard?  
3 A. No. No.  
4 Q. So, it was always either in the house or in the  
5 front yard?  
6 A. That's correct.  
7 Q. Okay. Did anyone ever receive significant  
8 injuries in these fights?  
9 A. No.  
10 Q. Who was involved in the fights?  
11 A. That I don't really recall. Sullivan maybe.  
12 MR. STEFANIC: He's asking you if you know who it  
13 was. If so tell him. If not don't guess. Geez.  
14 THE WITNESS: I really don't.  
15 MR. STEFANIC: Do you want to say somebody else was  
16 there and -- just tell us who it is if you know. If you  
17 don't, say you don't.  
18 THE WITNESS: I don't -- I don't remember who  
19 exactly -- you know, there was just fighting going on.  
20 BY MR. MONTELEONE:  
21 Q. Let's go at it from this angle. You moved into  
22 the house --  
23 A. There was always fighting going on in the  
24 house, so that's nothing new.  
25 Q. Okay. You moved into the house in the summer

56

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1 of 2008, 2009, or 2010. With reference to when you moved  
2 into the house, when did the fighting begin?  
3 A. That I don't remember. I don't know exactly.  
4 My sister.  
5 Q. Okay. Why did the fighting begin when your  
6 sister was in there?  
7 A. Because she's crazy.  
8 Q. I have got one of those, too. Crazy sister.  
9 But was there -- when did the partying begin or had it  
10 always just --  
11 A. When Sullivan moved in.  
12 Q. Okay. So, it's your testimony prior to  
13 Sullivan moving in there had not been as much drinking  
14 alcohol and partying on that --  
15 A. That is correct.  
16 Q. Had it occurred at all?  
17 A. Not at all.  
18 Q. Not at all?  
19 A. Maybe a little bit with my sister, but not like  
20 what Sullivan and Wayne were doing.  
21 Q. Okay. Well --  
22 A. Like from a scale of ten to -- you know, she  
23 was a two.  
24 Q. Okay.  
25 A. And they were a ten.

57

1 Q. Okay. Now, when did Mr. Sullivan move into the  
2 premises?  
3 A. That I don't really remember exactly the date  
4 and time and --  
5 Q. Okay. How much time between Mr. Sullivan  
6 moving into the premises and Mr. Stiles' accident  
7 occurring?  
8 A. Half a year at least.  
9 Q. At least a half a year?  
10 A. Yes.  
11 Q. So, he --  
12 A. Six months.  
13 Q. Okay.  
14 A. So, he was living there for a good six months  
15 and, then, Stiles' accident.  
16 Q. Okay. So, we have got a six month period where  
17 Sullivan's moved in before the accident that brings us  
18 here today. During that six month period was there a lot  
19 of partying at this house?  
20 A. Prior to Sullivan?  
21 Q. No. During the six months after Mr. Sullivan  
22 moves in up to the point where the accident happened --  
23 so, that's about a six month period.  
24 A. There had been a lot of partying going on.  
25 Q. Okay. And it's your testimony --

58

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1 A. A lot of partying.  
2 Q. Okay. And your testimony is that the partying  
3 did not begin until Mr. Sullivan moved in?  
4 A. That's correct. I don't party like he does.  
5 Q. Okay.  
6 A. And, you know, he gets all drunk -- goes to the  
7 bars and, then, he brings the bar home.  
8 Q. Okay. Now, we are getting to the topic I'd  
9 like to discuss. So, during the six months that Mr.  
10 Sullivan was living in the house and prior to Mr. Stiles'  
11 accident he was bringing a lot of people over to the  
12 house to party?  
13 A. It was miserable.  
14 Q. Okay.  
15 A. For me and Wayne to even try to even get some  
16 sleep to go to work.  
17 Q. Did you ever complain about that to your dad?  
18 A. No, I did not.  
19 Q. Why not?  
20 A. Because I thought I could handle it.  
21 Q. Were you able to handle it?  
22 A. Yes, actually. I just ended up kicking him  
23 out.  
24 Q. But that was after the accident.  
25 A. This was after the accident. Yes.

59

DEPOSITION OF ROGER AMUNDSON - AUGUST 14, 2014

1 Q. I'm talking about the six month period after  
2 Mr. Sullivan moves in and the accident happens. I need  
3 you to focus on that six month period with me. Can you  
4 do that --  
5 A. Okay.  
6 Q. -- Mr. Amundson?  
7 A. Okay.  
8 Q. You didn't tell your dad about all this  
9 partying that was occurring at the house; correct?  
10 A. That's correct.  
11 Q. And the reason you didn't is because you  
12 thought you could handle it; correct?  
13 A. That's correct.  
14 Q. It turns out you weren't able to handle it.  
15 A. No.  
16 Q. Okay. And the partying continued?  
17 A. That's correct.  
18 Q. And was there illegal drug use at the premises?  
19 A. No. Just alcohol.  
20 Q. Okay.  
21 A. High alcohol.  
22 Q. And you never smelled any pot being smoked in  
23 the backyard?  
24 A. No.  
25 Q. Never saw anyone using drugs inside the house

60

1 that they were inhaling?  
2 A. No.  
3 Q. And in that six month period between Mr.  
4 Sullivan moving in and the accident happening, there was  
5 a large number of people that would come over to the  
6 house all ready intoxicated or becoming intoxicated?  
7 MR. STEFANIC: Object to form.  
8 MR. MONTELEONE: Correct?  
9 THE WITNESS: That is correct.  
10 MR. STEFANIC: What does a large amount of people  
11 mean?  
12 MR. MONTELEONE: And --  
13 THE WITNESS: Just the bar.  
14 BY MR. MONTELEONE:  
15 Q. We are talking a lot of people?  
16 A. We are talking the whole bar. Because the bar  
17 closes at 2:00 and, then, they all come to our house from  
18 2:00 to 7:00.  
19 Q. And the partying would continue.  
20 A. Completely.  
21 Q. And people would become more intoxicated?  
22 A. Loud. Him banging his music. Bumping.  
23 Because he was into the base.  
24 Q. And most of these nights you were there?  
25 A. Most of them, yes. And it was just a headache.

61

1 Q. Would you party with them, too?  
2 A. No. I was not partying with them. Because I  
3 was trying to get some sleep so I can go to work.  
4 Q. Okay.  
5 A. And I constantly was telling John to turn his  
6 music down, so -- you know, he could do his party thing  
7 in the backyard, just keep it down. It wasn't that big  
8 of a deal.  
9 Q. So, he was -- you were fine with him partying  
10 there in the backyard; correct?  
11 A. Right. But it just got way out of control with  
12 that -- too many people over, so that just had to stop?  
13 Q. Too many people being too drunk?  
14 A. That, too.  
15 Q. And did you ever enlist your father's  
16 assistance to deal with this problem prior to the  
17 accident?  
18 A. No, I did not.  
19 Q. And is that because you thought you could  
20 handle it?  
21 A. That is correct.  
22 Q. Did you believe at the time that it was your  
23 responsibility on your father's behalf to take care of  
24 what was occurring on the premises?

25 MR. STEFANIC: Objection. Calls for a legal

62

1 conclusion.  
2 THE WITNESS: I would say no on that.  
3 BY MR. MONTELEONE:  
4 Q. Well, your father owned the premises; correct?  
5 A. That's correct.  
6 Q. And you were charged with the safekeeping and  
7 maintenance of the premises; correct?  
8 MR. STEFANIC: Objection. That's not -- assumes  
9 facts not in evidence.  
10 THE WITNESS: No.  
11 BY MR. MONTELEONE:  
12 Q. Well, who was responsible for the maintenance,  
13 safekeeping, and upkeep of the premises?  
14 A. Well, me and -- me and dad.  
15 Q. Okay. You two were jointly responsible for the  
16 maintenance, upkeep, and safety of these premises located  
17 at 756 West 4th Street in Kuna; correct?  
18 MR. STEFANIC: Object to form.  
19 THE WITNESS: Yes.  
20 BY MR. MONTELEONE:  
21 Q. And, in fact, whenever you did anything to  
22 upkeep or maintain the premises you were doing it on  
23 behalf of your father, because he was the property owner?  
24 A. That's correct.  
25 Q. And some examples of that would be you mowed

63

DEPOSITION OF ROGER AMUNDSON - AUGUST 14, 2014

1 the lawn; is that correct?  
2 A. That's correct.  
3 Q. And you would store the equipment behind the  
4 garage door that was installed after the renovation;  
5 correct?  
6 A. No. I stored the equipment in the garage.  
7 Q. Okay. But the garage would be behind the  
8 garage door; correct? Garage door. Behind the garage  
9 door you have the garage.  
10 A. Correct.  
11 Q. And that's where you kept the lawn equipment?  
12 A. Correct.  
13 Q. And did you keep an air compressor back there,  
14 too?  
15 A. No. I did not have a compressor at the time.  
16 Q. Okay. Was it automatic sprinklers on the  
17 premises?  
18 A. Yes, there is.  
19 Q. And those automatic sprinklers had to get blown  
20 out when winter was coming; correct?  
21 A. That is correct.  
22 Q. Who blew out the sprinklers?  
23 A. My father.  
24 Q. And if there were any issues with the house  
25 relative to its maintenance and upkeep, who was

64

1 responsible for tackling those issues?  
2 A. That would be me.  
3 Q. Okay. And why would it be you?  
4 A. Because I was living there and he lives in  
5 Garden Valley and he lives a hundred miles away and so it  
6 would be more convenient for me just to handle it.  
7 Q. So, the arrangement was for you to take care of  
8 it, because your father lived at a distance, so you would  
9 do those things for and on behalf of your father, because  
10 you were living at the premises?  
11 A. That's correct.  
12 Q. During the time from when you moved into the  
13 premises did your father ever have to come down and do  
14 any repair or maintenance on the premises, other than  
15 this garage door renovation?  
16 A. Yes.  
17 Q. What types of things did he do?  
18 A. We have actually replaced a few doors to the  
19 house. We have sided the little shed in the back of the  
20 house. Painted the whole thing. I have done a little  
21 repairs with the roofing. Just like in maintenance  
22 inside with like the electrical -- just, you know, some  
23 stuff to keep up on.  
24 Q. Sure. The normal maintenance and care one has  
25 to give to their home. Now, insofar as that maintenance

65

1 and care, the electrical, the replacement of doors, the  
2 roofing, the siding repair that was done, all of those  
3 things -- you did those jointly with your father; is that  
4 correct?  
5 A. That's correct.  
6 Q. And you two were jointly responsible for the  
7 upkeep and maintenance of the property.  
8 MR. STEFANIC: Objection.  
9 MR. MONTELEONE: Would you agree with that? I'm  
10 sorry?  
11 THE WITNESS: I agree with that.  
12 BY MR. MONTELEONE:  
13 Q. Did the leaves ever have to get pulled out of  
14 the gutters?  
15 A. No.  
16 Q. All right.  
17 A. I have never had an issue with that.  
18 Q. Not many trees around?  
19 A. I don't have any gutters.  
20 Q. That would also be a good reason you wouldn't  
21 need to clean out the gutters. Are there many trees in  
22 the yard where leaves fall on the lawn in the fall?  
23 A. Yes. The neighbor's.  
24 Q. Who raked up the leaves?  
25 A. That would be me.

66

1 Q. And that was true of when Mr. Sullivan was  
2 there?  
3 A. Yeah. Then, too. Yeah. I mean it's bad.  
4 Those trees don't -- the neighbor's trees all come to me.  
5 Mine go to the neighbor.  
6 Q. I have got the same problem. I live in the  
7 north end of Boise. It's a similar issue. Now --  
8 A. I just get so many leaves there it's  
9 ridiculous. So, I'm always cleaning leaves.  
10 Q. Okay. The electrical you mentioned, was there  
11 ever a renovation of the electrical -- a change in the  
12 amperage in the home or swapping out light fixtures or  
13 outlets, anything like that?  
14 A. No.  
15 Q. Is it gas heat or electric heat?  
16 A. It's gas heat.  
17 Q. Okay. Water heater. Is it gas or electric?  
18 A. It's gas.  
19 Q. Have you had problems with the heating or water  
20 heater in the home since you moved in?  
21 A. Not at all.  
22 Q. Okay. Other than the garage door renovation  
23 had there been any other large scale maintenance or  
24 improvement projects on the property since you moved in?  
25 A. No.

67



DEPOSITION OF ROGER AMUNDSON - AUGUST 14, 2014

1 Q. Would you say that the door renovation was the  
2 largest project undertaking since you moved into the  
3 property?  
4 A. That is correct.  
5 Q. Did you move into the property shortly after  
6 your father had acquired it or did he have it for some  
7 period of time before you moved it?  
8 A. We moved in just shortly after we acquired it.  
9 Q. Okay. Was it intended to be a home that your  
10 father purchased and that you and your sister were going  
11 to move into and take care of on his behalf?  
12 A. That's correct.  
13 Q. Tell me, if you would, please, Mr. Amundson,  
14 about how you advised your father of the accident  
15 occurring.  
16 A. How would I have advised?  
17 Q. Yeah. How did you do that? Did you -- had he  
18 come by to collect rent that was due that month?  
19 A. No. I had called him and told him.  
20 Q. How much time past between you finding out  
21 about the accident and you giving him a call?  
22 A. Not very much time. It was in the same day.  
23 Q. Were you sheepish about giving him a call?  
24 A. No.  
25 Q. Okay. When you called him up what did you tell

68

1 him?  
2 A. I told him that one of his -- Sullivan's  
3 friends went through that panel that we -- you know, the  
4 bay window.  
5 Q. Did you tell him --  
6 A. And cut his arm on it.  
7 Q. Did you tell him that the pane of glass had  
8 already been broken before Stiles was injured on it?  
9 A. I don't think so, but I really don't remember.  
10 MR. STEFANIC: After he --  
11 THE WITNESS: You know.  
12 MR. STEFANIC: I need to say something. I just was  
13 clarifying the question and the question was -- whatever  
14 you said and I said after he was talking to his father  
15 after the accident? Is that where you're going?  
16 MR. MONTELEONE: Correct. We are just talking about  
17 the initial time Roger tells Walter the accident  
18 happened.  
19 MR. STEFANIC: Okay. Go ahead.  
20 BY MR. MONTELEONE:  
21 Q. Okay. So, with that clarification in mind,  
22 when you first called up your father on the phone to tell  
23 him about Mr. Stiles' accident, did you advise your  
24 father that the pane of glass and the window had already  
25 been broken prior Mr. Stiles' accident?

69

1 A. I don't remember really.  
2 Q. What did you tell your father about the  
3 accident occurring during this first phone call?  
4 A. I don't remember the details either of that. I  
5 mean it's so long ago.  
6 Q. What was your father's response?  
7 A. I can't recall that either, you know. I don't  
8 really remember.  
9 Q. Had you ever seen Mr. Stiles at your house  
10 before the accident?  
11 A. No, I had not.  
12 Q. Do you know --  
13 A. I just assumed that he was just another drunk  
14 from across the street.  
15 Q. Okay. But you know what happens when you  
16 assume, don't you?  
17 A. Right.  
18 Q. So, do you have any reason -- any evidence to  
19 say that he was another drunk from across the street?  
20 A. I don't. I have no evidence of that.  
21 Q. Do you recall your father being irate at all  
22 about this accident having occurred when you first  
23 notified him of it?  
24 A. No.  
25 Q. You seem to take it in stride.

70

1 A. I don't really remember if he did or not.  
2 Q. All right. Getting back to this idea of  
3 another drunk from across the street. What's across  
4 the street from the house where you live?  
5 A. The Creekside Bar.  
6 Q. All right.  
7 A. And on the other corner over here is Cowgirls  
8 Bar.  
9 Q. So, you have got two --  
10 A. I have got nine. There is nine bars in Kuna.  
11 Q. Okay. But at least in the immediate proximity  
12 of your home there are two.  
13 A. There is two.  
14 Q. Okay.  
15 A. Right across the street.  
16 Q. So, that made your house the party house?  
17 A. That's correct. Because of Sullivan.  
18 Q. And Sullivan had been in that house six months  
19 before Mr. Stiles' accident?  
20 A. That's about correct.  
21 Q. Okay. And this partying was occurring on a  
22 nightly basis; is that correct?  
23 A. That's correct.  
24 Q. And you knew that there would be intoxicated  
25 people on the premises during these parties; is that

71

DEPOSITION OF ROGER AMUNDSON - AUGUST 14, 2014

1 correct?  
 2 A. That's correct.  
 3 Q. Did you tell Mr. Sullivan, hey, just cut it  
 4 out?  
 5 A. I have.  
 6 Q. Well, before we are both going to guess --  
 7 A. Before the accident. I have asked him to cut  
 8 it down.  
 9 Q. Did he?  
 10 A. And he didn't.  
 11 Q. How many times did you ask him to cut it down?  
 12 A. A number. A good number.  
 13 Q. Did you ask --  
 14 A. Because I was just complaining about his music  
 15 pounding all the time.  
 16 Q. Was that the big issue, the loudness of the  
 17 music?  
 18 A. The loudness of the music and all of the people  
 19 constantly.  
 20 Q. Did you ever ask Mr. Sullivan to just  
 21 completely stopped it?  
 22 A. Yes, I have.  
 23 Q. How many times?  
 24 A. I can't remember exactly how many times.  
 25 A number.

72

1 Q. Would you more often tell him to keep the music  
 2 turned down or would you tell him to quit the partying  
 3 altogether?  
 4 A. I probably told him to probably keep it down a  
 5 few times. There has been some fights with that  
 6 incident, too. You know, some verbal --  
 7 Q. Tell me about those, Mr. Amundson. You mean  
 8 fights between Mr. Sullivan and yourself?  
 9 A. Right.  
 10 Q. Did they ever become physical?  
 11 A. Not physical, no. It was all verbal.  
 12 Q. And verbally what would be said between the two  
 13 of you?  
 14 A. You know, that you're partying too much and  
 15 you need to quit it, you know. I don't remember exactly  
 16 the fights, but there was some fights over the  
 17 belligerent and the loud music. I couldn't handle it  
 18 anymore.  
 19 Q. Why didn't you ask him to move out prior to the  
 20 accident?  
 21 A. You know, I don't know. That is a very good  
 22 question. I don't have an answer for that one.  
 23 Q. Did you ever seek your dad's counsel or  
 24 guidance on to how to handle the issue?  
 25 A. No.

73

1 Q. Would you have had the authority to evict Mr.  
 2 Sullivan?  
 3 MR. STEFANIC: Object to form. That's a legal  
 4 conclusion.  
 5 THE WITNESS: Yes and no.  
 6 BY MR. MONTELEONE:  
 7 Q. Why do you qualify it, sir?  
 8 A. I would have to contact my dad and, then, I  
 9 would go about it that way.  
 10 Q. Is that because relative to matters insofar as  
 11 the premises, your dad made the decision, but you would  
 12 carry them out for him?  
 13 MR. STEFANIC: Object to form.  
 14 THE WITNESS: No. I would make some of the  
 15 decisions and he would carry them out.  
 16 MR. MONTELEONE: Okay.  
 17 THE WITNESS: Like I'm requesting to move him out  
 18 and, then, he would take and move him out.  
 19 BY MR. MONTELEONE:  
 20 Q. Okay. Well, let's go from your testimony that  
 21 said, yes and no, you could evict Mr. Sullivan. You,  
 22 then, said that you would have to contact your dad and  
 23 your dad would make that decision; is that correct?  
 24 A. That's correct.  
 25 Q. And, then, would it be within your purview,

74

1 once your dad said evict Mr. Sullivan, would it have been  
 2 in your purview, then, to effectuate that eviction of Mr.  
 3 Sullivan?  
 4 MR. STEFANIC: Objection.  
 5 THE WITNESS: Can you rephrase that?  
 6 MR. MONTELEONE: You bet.  
 7 THE WITNESS: I'm not sure what you're saying.  
 8 BY MR. MONTELEONE:  
 9 Q. Had it risen to the point where Mr. Sullivan  
 10 needed to be evicted? I understood your testimony to be  
 11 that your father would make that decision; is that  
 12 correct?  
 13 A. That's correct.  
 14 Q. But, then, after your father would have made  
 15 that decision, then, would you have been the one to make  
 16 the eviction happen?  
 17 MR. STEFANIC: Objection.  
 18 THE WITNESS: No. That would be all dad.  
 19 BY MR. MONTELEONE:  
 20 Q. All right. So, when you said before that -- or  
 21 when I asked you could you evict Mr. Sullivan --  
 22 A. Me personally? No. But I could help to get it  
 23 evicted.  
 24 Q. Okay. And what do you mean by that, sir?  
 25 A. Like I would contact dad and, then, I would set

75

DEPOSITION OF ROGER AMUNDSON - AUGUST 14, 2014

1 it up to get it evicted.  
2 Q. So, you and your father would be working in  
3 tandem to handle any eviction of a tenant?  
4 MR. STEFANIC: Object --  
5 THE WITNESS: That's correct.  
6 MR. MONTELEONE: Let's take a break.  
7 (A recess was had.)  
8 BY MR. MONTELEONE:  
9 Q. Okay. Let's go back on the record. Mr.  
10 Amundson, before we took that short break we were  
11 chatting about all of the partying that was occurring in  
12 the six months between Mr. Sullivan moving in and Mr.  
13 Stiles' accident happening. After Mr. Stiles' accident  
14 did the partying stop?  
15 A. No.  
16 Q. For how long did it continue?  
17 A. Up until he moved out.  
18 Q. And when did Mr. Sullivan move out?  
19 A. I haven't got the time of that. I have no  
20 idea. A couple months. A month.  
21 Q. A month or --  
22 A. I think we gave him a full 30 days.  
23 Q. Well, following the accident did your father  
24 have John and Wayne sign a document saying that there  
25 wouldn't be any alcohol consumed on the premises?

76

1 A. That is correct.  
2 Q. Okay. What else did that --  
3 MR. STEFANIC: Is that both? Did you say both Wayne  
4 and him?  
5 MR. MONTELEONE: Right.  
6 MR. STEFANIC: Okay. And if you know that to be  
7 true, tell him.  
8 THE WITNESS: Yeah.  
9 MR. STEFANIC: I only have one with John, but --  
10 THE WITNESS: They both signed one.  
11 BY MR. MONTELEONE:  
12 Q. And what was the purpose of that?  
13 A. Probably to prevent this.  
14 Q. What do you mean when you say prevent this?  
15 A. Like all the belligerent happening or accidents  
16 or any kind of an occurrence happening to the property.  
17 Which should have took place, but Sullivan kind of broke  
18 all those rules like right away.  
19 Q. Okay. Let's see if we can unpack that. So,  
20 following this accident --  
21 MR. STEFANIC: I have to object to that prior  
22 question on the grounds that it does go to remedial  
23 measures, but you can go ahead.  
24 BY MR. MONTELEONE:  
25 Q. After Mr. Stiles' accident and your father had

77

1 Wayne Jenkins and John Sullivan sign a document that said  
2 they would not consume alcohol on the premises, did that  
3 document say anything else that you recall?  
4 A. No.  
5 Q. Okay.  
6 A. I don't really remember the document exactly.  
7 Q. But it did say no consumption of alcohol on the  
8 premises; correct?  
9 A. That was for sure. Yes.  
10 Q. And what was the purpose of that document?  
11 MR. STEFANIC: If you know. Object to form.  
12 THE WITNESS: I don't. I have no idea of the  
13 purpose of the document.  
14 BY MR. MONTELEONE:  
15 Q. Did you sign the same document?  
16 A. Yes, I did.  
17 Q. Did you abide by the document?  
18 A. I -- yes. I did.  
19 Q. Did you have any involvement in obtaining Wayne  
20 Jenkins' signature on the document?  
21 A. That I am not sure of.  
22 Q. Did you have any involvement in obtaining John  
23 Sullivan's signature on the document?  
24 A. No. I didn't have involvement in any of them.  
25 Q. Well -- but my question is this, sir: Did your

78

1 father personally obtain Wayne's and John's signatures or  
2 did he give the paper to you for you to give to them?  
3 A. He personally did it.  
4 Q. Mr. Sullivan remained on the premises for you  
5 think a month or two following the accident; is that your  
6 understanding?  
7 A. That would be my understanding.  
8 Q. And, then, he moved out. Were you guys on good  
9 terms when he moved out?  
10 A. Yes. Me and John were.  
11 Q. Okay. Have you talked to John recently?  
12 A. No, not really.  
13 Q. Have you talked to him since he moved out?  
14 A. No.  
15 Q. But, at any rate, things ended on good terms?  
16 A. Yes. I try to make it that way, so I don't  
17 have any conflicting coming back to attack, you know what  
18 I mean?  
19 Q. Sure.  
20 A. A lot of roommates will do that. They got --  
21 you know, turn into an enemy and, then, they come back  
22 and just rob the -- rob you blind.  
23 Q. Okay.  
24 A. And either mess something up or just -- you  
25 know. I didn't want any of that occurring, so I tried to

79

DEPOSITION OF ROGER AMUNDSON - AUGUST 14, 2014

1 make good terms with Sullivan.  
2 Q. Okay. But for the period of time after Mr.  
3 Stiles' accident until Mr. Sullivan moving out the  
4 partying continued?  
5 A. That would be correct.  
6 Q. Did Mr. Jenkins ever engage in these partyings?  
7 A. Once or twice, but the majority of the time he  
8 was to himself in his own room.  
9 Q. Playing videogames?  
10 A. Or trying to sleep.  
11 Q. Okay.  
12 A. Because he had to get up early. He was a --  
13 like a 2:00 o'clock in the morning. He was a night shift  
14 worker, so --  
15 Q. When he was working for the Boise police as a  
16 janitor?  
17 A. Yeah.  
18 Q. He had the night shift?  
19 A. He had night shift.  
20 Q. Okay.  
21 A. It was either that one or another janitorial  
22 job. One of his jobs. He's gone through about three or  
23 four janitorial jobs --  
24 Q. When did he --  
25 A. -- when he was living there.

80

1 Q. When did he move out of the premises at 756  
2 West 4th Street?  
3 A. I don't remember exactly the date, but that was  
4 after Mr. Sullivan. Like quite a while. Like I had  
5 Wayne still living with me for -- I have no idea on the  
6 time of that.  
7 Q. Okay. Did you have anymore roommates after  
8 Wayne moved out?  
9 A. Yes.  
10 Q. Who were those people?  
11 A. That I had -- who was it? It was a Tonya and  
12 Carl. Some friends of Mark's. My brother.  
13 Q. Okay. How did they work out as roommates?  
14 A. They worked out all right, but in the end they  
15 didn't turn out all that good.  
16 Q. Why is that?  
17 A. They just robbed me blind. Took everything of  
18 mine. Took a bunch of tools. A bunch of my silverware.  
19 Dishes. Everything.  
20 Q. Did they have parties at the house?  
21 A. Not like Sullivan, no.  
22 Q. Any other roommates besides that couple you  
23 just mentioned?  
24 A. Yes. Yes. Who was it just recently? That I  
25 got rid of? Oh. That was Abe. Abe.

81

1 Q. Okay. What's Abe's last name?  
2 A. Hailey. Abe Hailey. And Wayne were both  
3 living together and I moved them both out.  
4 Q. So, you asked Wayne Jenkins to leave?  
5 A. Yes. And he did -- actually, no. Wayne  
6 Jenkins actually ended up moving out on a DUI being in  
7 jail. So, it was kind of a forced deal.  
8 Q. Well, how was that forced? Who made that  
9 decision?  
10 A. That would have been his parents and dad.  
11 Q. Okay. And did you have any involvement in  
12 moving his stuff out?  
13 A. No. His dad came over and cleared his room  
14 out.  
15 Q. Did you ever see Wayne Jenkins intoxicated  
16 around the premises?  
17 A. Yes.  
18 Q. He drank Steel Reserve?  
19 A. Like always.  
20 Q. Okay.  
21 A. I would say Wayne is a bigger drinker than  
22 Sullivan when it comes to intake.  
23 Q. Got you. Would Wayne come out of his room  
24 drunk and naked and offend people?  
25 A. I wouldn't say offend, but I seen him once or

82

1 twice that way.  
2 Q. Coming out of his room --  
3 A. All drunk.  
4 Q. -- and naked.  
5 A. Stumbling down the hall, trying to make it to  
6 the bathroom.  
7 Q. Without any clothes on?  
8 A. Yeah.  
9 Q. Okay. The couple that you mentioned, the ones  
10 that robbed you blind, do you remember their last names?  
11 A. Carl and Tonya -- what was their last name? I  
12 don't recall it. I don't remember their last name. I  
13 really don't remember.  
14 Q. Okay. Were they a married couple?  
15 A. Yes.  
16 Q. So, other than that married couple, the  
17 gentleman named Abe Hailey, have you had --  
18 A. Worst guy ever.  
19 Q. And why do you say that?  
20 A. He did worse than Carl and Tonya by far.  
21 Q. As far as robbing you blind?  
22 A. Completely. He took all kinds of stuff.  
23 Q. Other than Carl and Tonya and Abe Hailey, have  
24 you had any other roommates since Mr. Sullivan moved out?  
25 A. No.

83

DEPOSITION OF ROGER AMUNDSON - AUGUST 14, 2014

1 Q. Who lives in the premises currently?  
2 A. Me and buddy Mike.  
3 Q. And I hear -- I would presume that it's a more  
4 copacetic --  
5 A. Way better friend.  
6 Q. Okay.  
7 A. I have been with this friend -- I have had --  
8 have known this friend for a while, so I'm sticking with  
9 friends that I know, not no random people anymore.  
10 Q. Okay. So, other than your current roommate  
11 Mike -- which, by the way, what's his last name?  
12 A. His name is Post. P-o-s-t.  
13 Q. And other than Mike Post, Abe Hailey, the  
14 couple Carl and Tonya, have there been any other  
15 roommates in the premises since Mr. Sullivan moved out?  
16 A. No.  
17 Q. Now, when these new roommates have moved in has  
18 your father had to okay their moving in?  
19 A. Yes.  
20 Q. And do they sign a lease?  
21 A. Yes, they do.  
22 Q. And do they sign a statement similar to the one  
23 that Wayne and John said about no consumption of alcohol  
24 on the premises?  
25 A. That I'm unsure of.

84

1 Q. In order to get the lease signed, does your  
2 father do that himself or does he get the lease to you  
3 and you get the signatures?  
4 A. He does all of that himself.  
5 Q. Okay.  
6 A. So, I'm really unsure of a lot of that, because  
7 he's the one that does it all.  
8 Q. What about the lease that was signed by John  
9 Sullivan, did you obtain Mr. Sullivan's signature on that  
10 lease or did your father do it directly?  
11 A. My father did that directly, too.  
12 Q. And, then, with respect to Wayne Jenkins, any  
13 lease that Mr. Jenkins signed --  
14 A. With my father. I had no part in that.  
15 Q. Okay. Now, turning back to the period of time  
16 following the accident, what became of that window?  
17 A. I destroyed it.  
18 Q. How did you destroy it?  
19 A. I took a sledge hammer to it and broke it all  
20 up in tiny, tiny pieces and stuff it all in the can.  
21 Q. Garbage can?  
22 A. Garbage can.  
23 Q. Why did you do that?  
24 A. Because it's not salable anymore. It's broken.  
25 Q. Why wasn't it salable anymore?

85

1 A. Oh, I'm sure I could have replaced that glass,  
2 but it would have been, you know, me putting money in to  
3 try to get money, which was not going to happen, so I  
4 just decided to get rid of it.  
5 Q. How much time past after the accident until you  
6 took the sledge hammer to it?  
7 A. I have no idea.  
8 Q. Months? Weeks? Days? Any estimate?  
9 A. I really don't remember how long it sat there  
10 before I destroyed it.  
11 Q. Did you leave the window and the piece of wood  
12 in the exact same locations where they were at the time  
13 you understood the accident to have occurred?  
14 MR. STEFANIC: Can you restate that or read it back?  
15 BY MR. MONTELEONE:  
16 Q. Sure. Did you leave the window and the wooden  
17 stump in the same locations as you understood they were  
18 at the time of Mr. Stiles' accident?  
19 MR. STEFANIC: Objection. Calls for speculation.  
20 He wasn't there.  
21 THE WITNESS: I don't have an answer for that.  
22 BY MR. MONTELEONE:  
23 Q. Okay. Let me lay -- let me ask a foundational  
24 question. Exhibit 4, do you see where the wooden stump's  
25 located?

86

1 A. That's correct.  
2 Q. Do you see where the window is located?  
3 A. That's correct.  
4 Q. Is it your understanding that generally those  
5 are the same locations those two items were at the time  
6 of Mr. Stiles' accident?  
7 A. No.  
8 Q. Okay. What's your understanding of where the  
9 items were located?  
10 A. That stump was out in the middle here. Like  
11 right in front of the gate.  
12 Q. Right on the side of the gate --  
13 A. Right there.  
14 Q. -- that Mr. Stiles walked through?  
15 A. Correct. So, he had to trip over it and, then,  
16 fell into the window.  
17 Q. And it was right next to that gate; correct?  
18 A. Like right -- pretty much, you know, in the  
19 middle of the gate and the window, like this way.  
20 Q. So, in order to walk through this gravel  
21 walkway depicted in Exhibit 4, that stump was between  
22 where Mr. Stiles was and where the window was, but it was  
23 much closer to the gate?  
24 A. That would be correct.  
25 Q. Okay. When you are standing in the backyard to

87

DEPOSITION OF ROGER AMUNDSON - AUGUST 14, 2014

1 open that gate -- and I understand it's heavy and it may  
2 not be square and it's difficult to open, but when you  
3 open that gate and you're standing in the backyard does  
4 the gate open in or out?  
5 A. Yeah. You pull the gate.  
6 Q. Okay.  
7 A. You have to lift and, then, drag it on the  
8 ground a little bit.  
9 Q. And you pull it in?  
10 A. Pull it in, yes.  
11 Q. Okay.  
12 A. So, it's --  
13 Q. And, then, shortly on the other side --  
14 A. You get a good gap.  
15 Q. Okay. And, then, shortly on the other side of  
16 that gate was where that stump was located; correct?  
17 MR. STEFANIC: Object to form.  
18 THE WITNESS: (No oral response.)  
19 MR. MONTELEONE: Is that a yes?  
20 THE WITNESS: Yes.  
21 BY MR. MONTELEONE:  
22 Q. Okay. Had you seen that stump there before the  
23 accident happened?  
24 A. Yes.  
25 Q. And was it located right by the gate?

88

1 A. Yes. And John had put it there.  
2 Q. Okay.  
3 A. Prior to a bunch of other limbs that were  
4 sitting right there that he already had burned.  
5 Q. But you saw that stump right by the gate prior  
6 to the accident having happened; correct?  
7 A. No.  
8 Q. Well, I just --  
9 A. I don't remember exactly, you know. This stump  
10 has been moved around and I don't know if it was sitting  
11 there prior to the accident, but I know that it was there  
12 during the accident.  
13 Q. Okay. Well, your testimony not even two  
14 minutes ago was the stump was close to the gate, a gate  
15 that opened in, and was between Mr. Stiles and that  
16 window at the time of the accident; is that correct?  
17 A. Mr. --  
18 Q. Mr. Stiles was the one that had the accident.  
19 A. Say that again -- all that --  
20 Q. I will. The gate opens in --  
21 A. Okay.  
22 Q. -- on the side of the house by where the gravel  
23 covered walkway is; correct?  
24 A. No. It opened into the backyard.  
25 Q. Right. As you're standing in the backyard, as

89

1 Mr. Stiles was prior to this accident, you would pull the  
2 gate into the backyard; correct?  
3 A. Correct.  
4 Q. And, then, is there a threshold where that gate  
5 sits?  
6 A. No.  
7 Q. Okay. Is it just grass covered?  
8 A. Just gravel that's hard.  
9 Q. Okay. What abuts the gravel, grass, or is  
10 there a border?  
11 A. Nothing. Gravel. Gravel.  
12 Q. Gravel into the backyard?  
13 A. Gravel into the backyard.  
14 Q. And so that it's set up like a walkway?  
15 A. Correct.  
16 Q. And if you're in the backyard and you walk up  
17 to that gate from the backyard it looks like a walkway;  
18 correct?  
19 A. Not necessarily.  
20 MR. STEFANIC: Object to the form.  
21 THE WITNESS: It's just an area there that I have in  
22 the backyard squared off with some gravel. It doesn't go  
23 very far. About as wide as the width here and it just  
24 goes beyond the fence.  
25 BY MR. MONTELEONE:

90

1 Q. How far beyond the gate does it go? The gate  
2 and the fence?  
3 A. A good five feet.  
4 Q. And it looks like a walkway?  
5 MR. STEFANIC: Object to form.  
6 MR. MONTELEONE: Does it not?  
7 MR. STEFANIC: Argumentative.  
8 THE WITNESS: I would say no.  
9 BY MR. MONTELEONE:  
10 Q. And why not?  
11 A. Because there is just too much stuff there to  
12 be a walkway.  
13 Q. What do you mean too much stuff?  
14 A. I have got like a barbecue here and over here I  
15 got a camper shell. And there is just objects in the way  
16 that it can't be a walkway.  
17 Q. Was that the way it was on the date of the  
18 accident?  
19 A. That's correct. I had my camper shell still  
20 sitting there.  
21 Q. Did it block the gate?  
22 A. Kind of.  
23 Q. Well, when you swung the gate into the backyard  
24 could the gate swing all the way open flush with the  
25 fence?

91

DEPOSITION OF ROGER AMUNDSON - AUGUST 14, 2014

1 A. No. The ground would prevent that.  
2 Q. Okay.  
3 A. And the weight of the door, the way it's  
4 wanting to fall to the ground anyway, it was not  
5 happening.  
6 Q. Okay. Would the camper shell where it was  
7 located have prevented the swing of the gate to run flush  
8 with the fence?  
9 A. At the time, yes.  
10 Q. Have you moved the camper shell since the time  
11 of the accident?  
12 A. After the accident? Yes.  
13 Q. Why did you move it?  
14 A. Because I didn't want it in that area anymore.  
15 I wanted more access to that area and I was cleaning up  
16 the backyard.  
17 Q. All right. Now, turning back to where the  
18 stump's located, I need to clarify this. Can we agree  
19 that that stump is a tripping hazard?  
20 MR. STEFANIC: Object to form.  
21 THE WITNESS: I would agree.  
22 BY MR. MONTELEONE:  
23 Q. And was that stump close to the gate on the  
24 side away from the backyard at the time of this accident?  
25 A. Pretty much right there.

92

1 Q. Dead center of where people would walk?  
2 A. Dead center right in between this and the gate.  
3 Q. Okay. The court reporter --  
4 A. It's pretty much standing at the gate taking a  
5 picture. So, you're looking at the area right here where  
6 it was.  
7 Q. Okay. The court reporter can't pick up when  
8 you point at the photo and say this.  
9 A. I --  
10 Q. So, we left off -- and we can agree that the  
11 stump presents a tripping hazard; correct?  
12 A. That's correct.  
13 Q. And that stump at the time of Mr. Stiles'  
14 accident was right in the middle of the gravel walkway  
15 and close to the gate; correct?  
16 A. I wouldn't say close to the gate, but it was  
17 definitely in the middle of the walkway.  
18 Q. Okay. How far from the gate to where the stump  
19 was located?  
20 A. Two to three feet.  
21 Q. Okay. I consider it two to three feet in a  
22 walkway to be pretty close. Would you agree with that?  
23 A. Yeah. I guess.  
24 Q. Okay.  
25 A. But this whole stand is probably, you know, 20

93

1 feet total.  
2 Q. And when you say the whole span, are you  
3 talking about the gravel --  
4 A. Just gravel that --  
5 Q. Got to let me finish my question, Mr. Amundson.  
6 When you say the whole span, are you talking about this  
7 gravel walkway that's shown in Exhibit 4?  
8 A. That's correct.  
9 Q. Okay. And that gravel walkway you believe is  
10 about 20 feet long; is that correct?  
11 A. That's correct.  
12 Q. And how wide do you believe it is from the side  
13 of the house to the cedar fence?  
14 A. A good ten feet.  
15 Q. Okay.  
16 A. Maybe less.  
17 Q. And at the time of Mr. Stiles' accident that  
18 stump was right in the middle of the walkway, so it would  
19 be about five foot or so in the width of the walkway;  
20 correct?  
21 A. That would be correct.  
22 Q. And it was about two to three feet from the  
23 gate that opened into the backyard as Mr. Stiles was  
24 walking out of the backyard?  
25 A. Correct.

94

1 Q. Correct? Is there any lighting on that side of  
2 the house?  
3 A. No.  
4 Q. Where is the closest light --  
5 A. The neighbor has a big giant pole on their barn  
6 just over here that illuminates the whole area and there  
7 is a pole out here on the street that has another orange  
8 light, too.  
9 Q. So, when this accident happened in July of  
10 2011 --  
11 A. There in -- definite light.  
12 Q. There was definite light?  
13 A. Like at night even.  
14 Q. And you believe that light came from the  
15 neighbor's barn pole in part; correct?  
16 A. And the telephone pole out in front of the  
17 house.  
18 Q. Okay. Do you know if either of those lights  
19 were operational on the date of the accident?  
20 A. I'm pretty sure of it.  
21 Q. And why do you say that?  
22 A. Because they are on, you know, a light timer  
23 type of thing. They come on at night automatically.  
24 Q. How high is the pole that the neighbors' light  
25 is attached to the barn pole?

95

DEPOSITION OF ROGER AMUNDSON - AUGUST 14, 2014

1 A. It sits up on top of the eave, so it was -- I  
2 have no idea the height of that barn. It's a pretty good  
3 size barn.  
4 Q. So, it's your testimony that on the date of  
5 this accident in the early morning hours on July 8th,  
6 2011, the area where Mr. Stiles fell would have been well  
7 lit?  
8 A. Well lit. Yes.  
9 Q. Do you base that on anything other than the  
10 existence of the barn pole light on the neighbor's  
11 property and the streetlight at the front of your  
12 property?  
13 A. They would both pretty much light up that whole  
14 area there.  
15 Q. Well, I'm asking you do you believe it was lit  
16 at the time, other than those two lights you have  
17 identified --  
18 A. I believe so.  
19 Q. -- any -- anything else that would have lit  
20 that area with ambient light?  
21 A. I believe so. I believe those were both on at  
22 the time of the accident.  
23 Q. Okay. But anything else that would have lit  
24 that area, other than those two lights you have  
25 identified?

96

1 There is no flood light on the side of the house, is  
2 there?  
3 A. No.  
4 Q. Okay. There is no exterior nightlight in an  
5 exterior outlet on that side of the house, is there?  
6 A. Correct.  
7 Q. So, other than the two lights you have  
8 identified, those two lights being the streetlight on the  
9 front of your property and the barn pole light on the  
10 neighbor's adjoining property -- anything else that could  
11 have lit that area?  
12 A. No.  
13 Q. All right. So, you believe that it was well  
14 lit at the time of the accident. You recognize that that  
15 stump is a tripping hazard. That stump was directly two  
16 to three feet from the gate in the middle of that  
17 walkway. Can you see how that presented a significant  
18 hazard for Mr. Stiles on the date of the accident?  
19 MR. STEFANIC: Objection to form and it's an  
20 incomplete hypothetical.  
21 THE WITNESS: That was placed there by Sullivan.  
22 BY MR. MONTELEONE:  
23 Q. Okay. That wasn't my question, sir.  
24 A. But yes.  
25 Q. My question is: The way we have just --

97

1 A. Yes, it is a hazard.  
2 Q. Okay. A signature tripping hazard; correct?  
3 MR. STEFANIC: Objection. Legal conclusion.  
4 Argumentative.  
5 THE WITNESS: That's correct.  
6 BY MR. MONTELEONE:  
7 Q. And a significant tripping hazard with a large  
8 pane of busted out glass with shards on the other side of  
9 where he would trip; correct?  
10 MR. STEFANIC: Objection. Speculation.  
11 THE WITNESS: That I wasn't aware of that hazard at  
12 the time, but that's how it occurred.  
13 BY MR. MONTELEONE:  
14 Q. Now that we have had an opportunity to talk at  
15 length about this event, can you recall how much time  
16 past between you placing that window along the cedar  
17 fence and this accident occurring?  
18 A. I have no idea of the time of that.  
19 Q. And can you tell me how much time past between  
20 when you first noticed the wooden stump in the center of  
21 the gravel walkway in Exhibit 4 and the accident  
22 occurring?  
23 A. That was after the accident.  
24 Q. Okay.  
25 A. And I was wondering why the stump was still

98

1 sitting there, because that stump had been sitting there  
2 prior to the accident for quite a long time.  
3 Q. That stump over which Mr. Stiles tripped was in  
4 the middle of that walkway for a lengthy period of time  
5 before the accident; correct?  
6 A. That is correct.  
7 MR. STEFANIC: Object to form.  
8 THE WITNESS: Even before the window moved to there.  
9 BY MR. MONTELEONE:  
10 Q. Okay. So, when you moved that window with the  
11 broken pane of glass into the gravel walkway next to the  
12 cedar fence that wooden stump was already in the middle  
13 of that gravel walkway; is that correct?  
14 A. That's -- at the time that I placed this window  
15 here this was a tree. Okay? He had burnt it down to  
16 this stump and placed it here to -- for I have no idea  
17 what reasons and was acquiring more wood and I guess he  
18 had just forgot about his half a tree that he burnt.  
19 Q. Okay.  
20 A. And if just sat there and sat there and sat  
21 there.  
22 Q. Mr. Amundson, I appreciate the information, but  
23 if I could just get a couple more questions answered, I  
24 think we will be able to finish up. Going back to this  
25 wooden -- what we have been calling the wooden stump.

99



DEPOSITION OF ROGER AMUNDSON - AUGUST 14, 2014

1 It's right here in Exhibit 4. Do you see what I'm  
2 looking at?  
3 A. I do.  
4 Q. Okay. It was -- that wooden stump was in that  
5 condition in the middle of the gravel walkway in Exhibit  
6 4 two to three feet from the gate for a significant  
7 period of time before the accident happened; is that  
8 correct?  
9 MR. STEFANIC: Object to from. What is a  
10 significant amount of time?  
11 MR. MONTELEONE: Do you understand what the word  
12 significant means, sir?  
13 THE WITNESS: Yes, I do.  
14 BY MR. MONTELEONE:  
15 Q. Okay. Well, that was his objection. So, my  
16 question, again, is: Was the wooden stump in the middle  
17 of the gravel walkway two to three feet from the gate on  
18 the outside of the backyard for a significant period of  
19 time before Mr. Stiles' accident?  
20 MR. STEFANIC: Same objection.  
21 THE WITNESS: I would say yes.  
22 BY MR. MONTELEONE:  
23 Q. And was that stump in that same location when  
24 you moved the window -- the bay window with a broken pane  
25 of glass into the gravel walkway area --

100

1 A. Yes.  
2 Q. -- against the cedar fence?  
3 A. It was.  
4 Q. To prepare for your deposition today, did you  
5 do anything in particular to help get ready for today?  
6 A. No, I did not. I really hate to say that,  
7 but --  
8 Q. No. That's all right. Did you have to take  
9 time away from work?  
10 A. No. I was actually helping a buddy do some  
11 yard work and I got kind of tied up with that.  
12 Q. Okay.  
13 A. That's why it was kind of late.  
14 Q. Well, that's not what I asked. I just felt so  
15 bad that you had to take time away from your job in  
16 particular this afternoon. Did you talk to Mr. Stefanic  
17 prior to today about this deposition? Mr. Stefanic being  
18 Mike here to your right?  
19 A. Yes.  
20 Q. Okay. Did you talk with him in person or on  
21 the phone?  
22 A. On the phone.  
23 Q. And how many times did you speak with Mr.  
24 Stefanic?  
25 A. That I'm unsure of.

101

1 Q. Was it more than once?  
2 A. A couple times. I would say a couple times.  
3 Q. And what did you two discuss?  
4 A. Just what we were going to be going over here  
5 today.  
6 Q. Did you ever share with Mr. Stefanic that you  
7 believed the accident could have been avoided?  
8 MR. STEFANIC: Objection to form. Legal conclusion.  
9 THE WITNESS: Say that again. Rephrase that.  
10 BY MR. MONTELEONE:  
11 Q. Did you ever share with Mr. Stefanic, the  
12 gentleman immediately to your right, that this accident  
13 could have been avoided?  
14 A. No, I didn't.  
15 Q. Have you ever shared that with anyone?  
16 A. No, I have not.  
17 Q. Now, that we have had a chance to talk about  
18 this accident in detail today, are you of the opinion  
19 that this accident could have been avoided?  
20 MR. STEFANIC: Objection to form.  
21 THE WITNESS: Possibly. It is impossible to answer  
22 that yes.  
23 BY MR. MONTELEONE:  
24 Q. I mean the tripping hazard could have been  
25 removed; correct?

102

1 A. That's correct.  
2 Q. The shards of glass and the busted pain could  
3 have been knocked out; correct?  
4 A. That's correct.  
5 Q. The window could have been placed somewhere  
6 else altogether, other than along the cedar fence in the  
7 middle of the gravel walkway; correct?  
8 A. No, not necessarily. I really don't have any  
9 other place to put that window and that was -- looked  
10 about the safest place, because it's on the side of the  
11 house and out of the way.  
12 Q. Okay. Couldn't have been laid down flat in the  
13 garage?  
14 A. No. Not at the time. Because we still had the  
15 flooring in there.  
16 Q. How about --  
17 A. We have taken the door out and this window and  
18 still had part of the flooring in here, because there was  
19 -- raised it up for a dining area I think they had there.  
20 I'm not sure what it was along with that, but other than  
21 that --  
22 Q. What do you mean the dining area they had  
23 there?  
24 A. The people prior to owning the house before we  
25 owned the house, they did some renovating and sealed off

103

DEPOSITION OF ROGER AMUNDSON - AUGUST 14, 2014

1 the garage and turned the garage into a dining room and  
2 we renovated and turned it back to the garage.

3 Q. I need to run you through what's been marked as  
4 Exhibit 8.

5 (Deposition Exhibit 8 marked.)

6 Thank you. Mr. Amundson, placed before you is  
7 a document marked Exhibit 8 to your deposition -- or to  
8 the depositions that have previously been taken in this  
9 case and we have --

10 MR. STEFANIC: Are those the same photographs?

11 MR. MONTELEONE: That's what I'm not sure of,  
12 because --

13 MR. STEFANIC: Five --

14 MR. MONTELEONE: -- if you look at --

15 THE WITNESS: They are not the same.

16 MR. MONTELEONE: They are not the same.

17 THE WITNESS: This one is not.

18 MR. MONTELEONE: Okay. Let's go off the record for  
19 a second.

20 (An off-the-record discussion ensued.)

21 BY MR. MONTELEONE:

22 Q. Okay. Let's go back on the record. Placed  
23 before you, Mr. Amundson, is Exhibit 8 to your deposition  
24 and in that exhibit -- on the first page of Exhibit 8 do  
25 those appear to be blood stains?

104

1 A. Yes.

2 Q. And those would be from Mr. Stiles during his  
3 accident; correct?

4 A. That I'm not sure of.

5 Q. Are you aware of anyone else bleeding to that  
6 extent on the window that --

7 A. No. So, let's go with the assumption of it  
8 being Stiles'.

9 Q. Okay. Go to the second page of Exhibit 8.

10 Same question. Does that appear to be Mr. Stiles' blood?

11 A. I would assume so. Yeah. Nobody else bled on  
12 that.

13 Q. Third photograph in Exhibit 8, is that Mr.  
14 Sullivan standing behind a window?

15 A. Yes.

16 Q. Okay. And is that Mr. Stiles' blood on the  
17 window?

18 A. Yes.

19 Q. Do you know why Mr. Sullivan was standing  
20 behind there at the time this photo was taken?

21 A. I have no idea why. Other than him taking a  
22 picture.

23 Q. Well, it looks like he has his back to the  
24 window. Can we agree on that? Look at his feet.

25 A. Right. So, I don't even know why he's -- he

105

1 was behind the window, like in this area.

2 Q. Do you know who took that photo that is the  
3 third sheet of Exhibit 8?

4 A. I don't. No. All of these, I'm assuming are  
5 the Sullivan's phone.

6 Q. Did you take any photographs of the broken  
7 window, either before or after the accident?

8 A. No. I really should have, though.

9 Q. If you would turn to the fourth page of Exhibit  
10 8. Is that Mr. Sullivan behind the window again?

11 A. Yes.

12 Q. I believe that --

13 A. That is Sullivan still. The same personal  
14 that --

15 Q. Okay. How can you identify that as Mr.  
16 Sullivan?

17 A. His baggy, weird, almost coming off him pants,  
18 you know. He always -- it's the style of the way he wore  
19 his clothes.

20 Q. He's a sagging jeans guy?

21 A. Yes.

22 Q. Okay. Go to the fifth page of Exhibit 8 and,  
23 again, is that Mr. Stiles' blood on the window?

24 A. I would assume so.

25 Q. Okay. And the shards of glass that are in the

106

1 broken pane in the upper left, was that the condition of  
2 that pane of glass after it had been damaged by Mr.  
3 Jenkins' truck?

4 A. No.

5 Q. Okay.

6 A. Stiles had broken it way more.

7 Q. Okay. But there were already -- it was already  
8 broken prior to Mr. Stiles' accident; correct?

9 A. That's correct.

10 Q. And there were sharp shards of glass that were  
11 in that window pane that Mr. Stiles fell into on this  
12 accident; correct?

13 A. That is correct.

14 Q. But you think he broke out even more shards of  
15 glass?

16 A. That's because it was -- there was just like a  
17 little hole in the pane and he -- he has taken out the  
18 whole pane -- like all of that was pretty much him.  
19 Stiles.

20 Q. Okay. But prior to the accident somehow,  
21 whether by wind or Mr. Jenkins' door, something on Mr.  
22 Jenkins' vehicle came in contact with that pane of glass;  
23 correct?

24 A. That's correct.

25 Q. Describe the damage to that pane of glass after

107

DEPOSITION OF ROGER AMUNDSON - AUGUST 14, 2014

1 Mr. Jenkins' vehicle damaged it and prior to Mr. Stiles'  
2 accident?  
3 A. Just a little hole the size of the mirror.  
4 Q. So, do you believe it was Mr. Jenkins' rearview  
5 mirror from his Sonoma truck that broke the pane of  
6 glass?  
7 A. That is correct.  
8 Q. And a rearview mirror, can we agree, would put  
9 a hole in a pane of glass that size -- the hole would be,  
10 oh, say maybe six to eight inches in diameter.  
11 MR. STEFANIC: Objection. Speculation.  
12 THE WITNESS: No. It was just a little side mirror.  
13 BY MR. MONTELEONE:  
14 Q. All right. So, how big was the diameter of the  
15 hole in the pane of glass caused by --  
16 A. I would say a four by four hole.  
17 Q. Okay.  
18 A. Maybe a little bigger. Like a five inch by  
19 five inch. A little -- it was just a -- a puncture  
20 through, you know.  
21 Q. But clearly broken before Mr. Stiles was on  
22 that property?  
23 A. Clearly.  
24 Q. I forgot to ask you. When you took the sledge  
25 hammer to this window was any --

108

1 A. I cleared out all the glass before I took the  
2 sledge.  
3 Q. You know how to do construction.  
4 A. Yes. I didn't want a big old glass mess, so --  
5 Q. Okay. When you did that -- when you took the  
6 sledge hammer to it, did you do it even in part because  
7 of this accident?  
8 MR. STEFANIC: Object to form.  
9 THE WITNESS: No.  
10 MR. MONTELEONE: You just didn't think --  
11 THE WITNESS: The accident was completely irrelevant  
12 to me getting it trashed and demolished.  
13 BY MR. MONTELEONE:  
14 Q. Your motivation was you didn't think you could  
15 sell it?  
16 A. That's correct.  
17 Q. Did you try to market this window in any way?  
18 Did you put in on craigslist?  
19 A. Yes.  
20 Q. Okay. How much were you trying to sell it for?  
21 A. I was trying to get a hundred bucks out of it.  
22 Q. Okay. That was your original post to  
23 craigslist?  
24 A. That's correct.  
25 Q. Have you kept a copy of that post?

109

1 A. No.  
2 Q. Did you try to list it on any other internet  
3 site?  
4 A. No. Just craigslist.  
5 Q. Okay. So, other than craigslist and the little  
6 for sale sign you placed on it, did you try to market it  
7 in any other way?  
8 A. Not at all.  
9 Q. And --  
10 A. I didn't get that far with it.  
11 Q. And on the for sale sign you made did you have  
12 a dollar amount on it?  
13 A. No.  
14 Q. It just said for sale?  
15 A. Just said for sale.  
16 Q. Did you spell f-o-r? Did you use the number  
17 four like a lot of --  
18 A. F-o-r. I spelled it out.  
19 MR. MONTELEONE: Okay. Let's take a quick break and  
20 we are just about done.  
21 (A recess was had.)  
22 BY MR. MONTELEONE:  
23 Q. Let's go back on the record here. Mr.  
24 Amundson, when your father gave his deposition in this  
25 case he was clear that he believed the window pane was

110

1 broken when Mr. Stiles put his hand through it.  
2 MR. STEFANIC: Are you saying that's what Walter  
3 said?  
4 MR. MONTELEONE: It's in his deposition.  
5 MR. STEFANIC: That one hundred percent misstates  
6 his testimony.  
7 MR. MONTELEONE: It's in his deposition clear as a  
8 bell and under Rule 30 a deposition can be used for any  
9 purpose.  
10 MR. STEFANIC: Let's find the page then and show it  
11 to him.  
12 MR. MONTELEONE: You bet.  
13 MR. STEFANIC: You bet.  
14 MR. MONTELEONE: Let's go off the record.  
15 (An off-the-record discussion ensued.)  
16 BY MR. MONTELEONE:  
17 Q. Let's go back on the record. When your father  
18 testified in his deposition, Mr. Amundson, he had  
19 testified that Mr. Stiles had broken the window when he  
20 fell through it and that prior to Mr. Stiles' fall the  
21 window had not been broken. Is that testimony  
22 erroneous?  
23 A. I'm not too familiar with erroneous. What does  
24 that mean?  
25 Q. Was he wrong? Was your father wrong in his

111

DEPOSITION OF ROGER AMUNDSON - AUGUST 14, 2014

1 belief that the window pane had not been broken prior to  
2 Mr. Stiles' accident?  
3 A. That is correct. He was not aware.  
4 Q. Okay. Did you undertake any efforts to conceal  
5 the broken window from him?  
6 A. No. I just was not mentioning it -- I wasn't  
7 hiding it or anything.  
8 Q. When I say broken, I mean broken by Mr.  
9 Jenkins' vehicle?  
10 A. Correct.  
11 Q. So, after the window pane had been broken by  
12 Mr. Jenkins' vehicle, you didn't undertake any efforts to  
13 keep that fact from your father?  
14 A. No.  
15 Q. Did you ask either of your roommates to keep  
16 that fact from your father?  
17 A. No.  
18 Q. Now, in his deposition your father mentions  
19 that it was -- the window was listed for 200 dollars.  
20 Can you help reconcile why your father said 200 dollars  
21 to list the window for sale and you said a hundred  
22 dollars?  
23 A. I have no -- nothing to say on that. I  
24 don't know. Maybe he misunderstood the cost. I have no  
25 idea.

112

1 Q. Okay. But the price you wanted to put on the  
2 window was a hundred dollars?  
3 A. That's correct. That's what I listed it for.  
4 Q. Okay. And when you say listed, you put it on  
5 craigslist for a hundred dollars?  
6 A. That's correct.  
7 Q. Did you ever discuss with your father the  
8 amount of purchase price for that window?  
9 A. No.  
10 Q. Where did you attend school?  
11 A. Meridian.  
12 Q. What -- did you graduate from there?  
13 A. No.  
14 Q. Okay. What year were you scheduled to  
15 graduate? Or, in other words, did you start at Meridian  
16 High?  
17 A. I don't -- I have no idea. I don't really  
18 remember. I would have to look.  
19 Q. What's your date of -- what's your date of  
20 birth?  
21 A. 1/4/78.  
22 Q. Okay. So, you probably would have started high  
23 school around '92. Does that sound about right?  
24 [REDACTED] in --  
25 A. Yeah. That sounds about right.

113

1 Q. So, you would have graduated then -- scheduled  
2 to graduate in 1996; does that sound about right?  
3 A. That sounds about right.  
4 Q. The reason I ask all that is I think you  
5 overlapped with my co-counsel Chip Giles at Meridian  
6 High. I think you guys were both there at the same  
7 time.  
8 MR. STEFANIC: Did you guys know each other?  
9 THE WITNESS: Possibly. I don't know him, no.  
10 MR. MONTELEONE: You guys didn't eat lunch  
11 together.  
12 THE WITNESS: No.  
13 MR. STEFANIC: Had calculus together I'm sure.  
14 BY MR. MONTELEONE:  
15 Q. Have you ever been convicted of a felony?  
16 A. No.  
17 Q. All right. Are you under the influence of any  
18 medications or alcohol that would affect your ability to  
19 understand my questions today?  
20 A. No. Not at all.  
21 Q. Are you under the influence of any alcohol or  
22 medication or drugs, legal or illegal, that would affect  
23 your ability to tell the truth today?  
24 A. No. Not at all.  
25 MR. MONTELEONE: I thank you for your time. I don't

114

1 have any further questions, Mr. Amundson.  
2 MR. STEFANIC: I will reserve my questions for the  
3 time of trial. Thank you.

4  
5 (Whereupon the deposition ended at 5:54 p.m.)  
6 \*\*\*\*\*  
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115

DEPOSITION OF ROGER AMUNDSON - AUGUST 14, 2014

VERIFICATION

STATE OF IDAHO )  
 ) ss.  
County of \_\_\_\_\_ )

I, ROGER AMUNDSON, being first duly sworn on my oath, depose and say:

That I am the witness named in the foregoing deposition, consisting of pages numbered 1 through 115, inclusive; that I have read the said deposition and know the contents thereof; that the questions contained herein were propounded to me; that the answers to said questions were given by me, and that the answer as contained there (or as corrected by me therein) are true and correct.

\_\_\_\_\_  
ROGER AMUNDSON

Subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_, Idaho.

\_\_\_\_\_  
Notary Public for Idaho Residing  
At \_\_\_\_\_, Idaho  
My commission expires: \_\_\_\_\_

REPORTER'S CERTIFICATE

STATE OF IDAHO )  
 ) ss.  
County of Ada )

I, M. DEAN WILLIS, Certified Shorthand Reporter and Notary Public in and for the state of Idaho, DO HEREBY CERTIFY:

That prior to being examined, the witness named in the foregoing deposition was by me duly sworn to testify the truth, the whole truth and nothing but the truth;

That said deposition was taken down by me in shorthand at the time and place therein named and thereafter reduced to typewriting by myself, and that the foregoing transcript contains a full, true and verbatim record of said deposition.

I further certify that I have no interest in the event of this action.

WITNESS my hand and seal this \_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
M. DEAN WILLIS, CSR NO. 95 and  
Notary Public, State of Idaho.  
My Commission expires: 9-15-16

DEPOSITION OF ROGER AMUNDSON - AUGUST 14, 2014

'09 - 19:24,	4 - 11:1, 11:2, 11:8, 11:19, 11:21, 12:10, 13:7, 15:13, 15:19, 16:7, 16:21, 17:7, 17:15, 17:17, 22:7, 23:3, 24:14, 39:3, 40:14, 43:6, 43:13, 43:24, 44:12, 44:19, 45:2, 45:5, 45:6, 48:21, 49:1, 49:21, 50:6, 50:14, 56:25, 87:24, 88:21, 95:7, 99:21, 101:1, 101:6,	31:7, 34:8, 36:14, 37:1, 37:21, 38:21, 38:24, 39:5, 41:23, 46:15, 47:8, 47:13, 47:15, 50:23, 51:11, 51:16, 51:24, 52:3, 52:6, 52:7, 52:14, 52:15, 52:20, 54:10, 59:23, 60:17, 61:1, 61:8, 69:14, 69:21, 69:23, 70:16, 70:23, 71:2, 71:22, 72:20, 73:14, 74:7, 75:9, 77:11, 81:22, 85:23, 86:8, 91:23, 95:3, 95:6, 95:10, 95:19, 95:22, 99:15, 100:18, 102:17, 103:17, 104:10, 104:16, 111:20, 114:23, 114:25, 115:2, 115:3,	90:11, 90:12, 90:16, 90:18, 91:1, 92:18, 93:11, 93:12, 93:24, 94:14, 95:17, 96:9, 96:19, 97:5, 97:22, 98:14, 98:18, 99:17, 99:21, 99:23, 100:2, 100:5, 101:7, 101:19, 103:7, 103:12, 103:18, 103:19, 106:3, 107:7, 108:8, 108:12, 108:20, 109:2, 110:7, 110:11, 113:2,	13:23, 22:17, 23:3, 23:11, 23:17, 24:8, 27:6, 102:2,	70:24, 90:4, 100:12, 108:7, 108:7,	
'78 - 114:24,	48 - 33:13,	absolutely - 53:20,	accidents - 54:16, 54:18, 55:5, 55:8, 55:9, 78:15,	ago - 8:6, 15:18, 71:5, 90:14,	altogether - 74:3, 104:6,	
'92 - 114:23,	4th - 5:23, 9:6, 10:9, 20:12, 64:17, 82:2,	abuts - 91:9,	acquire - 46:19,	agree - 16:6, 25:19, 30:7, 33:16, 44:22, 50:20, 67:9, 67:11, 93:18, 93:21, 94:10, 94:22, 106:24, 109:8,	always - 55:13, 56:20, 57:4, 57:23, 58:10, 68:9, 83:19, 107:18,	
1/4/78 - 114:21,	5 - 8:8, 8:10, 8:14, 8:17, 8:19, 10:22, 11:20,	access - 93:15,	acquired - 69:6, 69:8,	ahead - 53:25, 70:19, 78:23,	am - 8:24, 10:14, 21:12, 28:1, 79:21,	
12 - 16:4, 17:1, 17:19, 24:19,	5-a - 25:20,	accident - 5:22, 6:13, 20:19, 20:22, 21:14, 25:15, 25:16, 26:13, 28:15, 28:19, 29:3, 29:7, 29:12, 30:20, 31:1, 35:21, 35:23, 36:3, 36:23, 40:14, 40:19, 40:21, 40:25, 41:5, 41:25, 43:10, 44:3, 44:5, 44:13, 45:2, 45:8, 45:25, 46:11, 47:3, 47:8, 47:15, 47:19, 47:22, 47:25, 48:1, 48:2, 48:5, 49:8, 49:21, 50:18, 50:22, 50:24, 51:2, 51:12, 51:16, 51:18, 52:3, 52:6, 52:14, 52:16, 53:14, 53:23, 54:14, 54:15, 55:1, 55:11, 55:25, 56:5, 56:10, 56:17, 59:6, 59:15, 59:17, 59:22, 60:11, 60:24, 60:25, 61:2, 62:4, 63:17, 69:14, 69:21, 70:15, 70:17, 70:23, 70:25, 71:3, 71:10, 71:22, 72:19, 73:7, 74:20, 77:13, 77:13, 77:23, 78:20, 78:25, 80:5, 81:3, 86:16, 87:5, 87:13, 87:18, 88:6, 89:23, 90:6,	across - 71:14, 71:19, 72:3, 72:3, 72:15,	acquiring - 44:17, 100:17,	air - 65:13,	amount - 29:20, 32:12, 62:10, 101:10, 111:12, 114:8,
14 - 5:1, 114:24,	7:00 - 62:18,	actually - 9:1, 11:24, 13:6, 16:12, 17:11, 60:22, 66:18, 83:5, 83:6, 102:10,	adjoining - 98:10,	alcohol - 56:5, 58:14, 61:19, 61:21, 77:25, 79:2, 79:7, 85:23, 115:18, 115:21,	amperage - 68:12,	
15th - 36:14, 36:15, 36:17, 36:19, 36:21, 36:25, 37:2, 37:5,	756 - 5:23, 9:6, 10:8, 64:17, 82:1,	advised - 69:14, 69:16,	administered - 56:9,	all - 5:16, 6:7, 8:12, 15:15, 16:14, 19:14, 19:17, 19:20, 21:2, 22:25, 24:18, 28:23, 28:25, 29:4, 29:19, 33:16, 44:18, 46:16, 49:6, 50:17, 50:25, 51:19, 52:2, 53:16, 58:16, 58:17, 58:18, 60:6, 61:8, 62:6, 62:17, 67:2, 67:16, 68:4, 68:21, 71:21, 72:2, 72:6, 73:15, 73:18, 74:11, 76:18, 76:20, 77:11, 78:15, 78:18, 82:14, 82:15, 84:3, 84:22, 86:4, 86:7, 86:19, 86:20, 90:19, 92:24, 93:17, 98:13, 102:8, 107:4, 108:18, 109:14, 110:1, 111:8, 115:4, 115:17, 115:20, 115:24,	ambient - 97:20,	amundson - 5:6, 5:14, 5:20, 5:21, 8:9, 9:10, 10:6, 16:11, 20:10, 45:20, 50:14, 54:2, 55:4, 61:6, 69:13, 74:7, 77:10, 95:5, 100:22, 105:6, 105:23, 111:24, 112:18, 116:1,
16th - 37:3,	8th - 5:22, 6:14, 30:22, 41:25, 97:5,	advice - 47:1, 70:23,	administrative - 7:5,	allowed - 5:16,	an - 7:24, 8:25, 20:7, 22:17, 37:23, 38:3, 43:16, 47:3, 65:13, 67:17, 74:22, 78:16, 80:21, 87:21, 91:21, 98:4, 98:19, 99:14, 105:20, 112:15,	
17th - 37:3,	a-m-u-n-d-s-o-n - 5:20,	advise - 47:1, 70:23,	adverse - 53:18,	almost - 20:23, 107:17,	angle - 16:23, 22:16, 22:17, 57:21,	
1996 - 115:2,	abe - 82:25, 82:25, 83:2, 84:17, 84:23, 85:13,	advised - 69:14, 69:16,	advice - 47:1, 70:23,	angles - 17:12,	angles - 17:12,	
2 - 10:6, 10:6, 14:16, 15:7, 16:3, 16:4, 16:12, 16:16, 16:25, 17:2, 17:15, 17:19, 34:7,	abe's - 83:1,	affect - 115:18, 115:22,	advise - 47:1, 70:23,	another - 7:21, 54:13, 54:15, 71:13, 71:19, 72:3, 81:21, 96:7,	another - 7:21, 54:13, 54:15, 71:13, 71:19, 72:3, 81:21, 96:7,	
2:00 - 62:17, 62:18, 81:13,	abide - 79:17,	afternoon - 15:1, 29:17, 102:16,	advised - 69:14, 69:16,	answer - 7:9, 7:15, 7:19, 38:5, 53:7, 74:22, 87:21, 103:21,	answer - 7:9, 7:15, 7:19, 38:5, 53:7, 74:22, 87:21, 103:21,	
20 - 24:22, 94:25, 95:10,	ability - 115:18, 115:23,	again - 13:19, 28:9, 28:17, 30:19, 37:9, 38:8, 46:24, 90:19, 101:16, 103:9, 107:10, 107:23,	advised - 69:14, 69:16,	answered - 46:23, 47:4, 100:23,	answered - 46:23, 47:4, 100:23,	
200 - 113:19, 113:20,	able - 7:12, 60:21, 61:14, 100:24,	against - 11:24, 12:10, 12:16, 13:7,	advised - 69:14, 69:16,	anybody - 43:1,	anybody - 43:1,	
2008 - 21:15, 58:1,	about - 13:15, 18:6, 20:11, 23:19, 24:22, 24:23, 27:3, 28:5, 29:11, 30:3, 30:11,		advised - 69:14, 69:16,	anymore - 25:18, 74:18, 82:7, 85:9, 86:24, 86:25, 93:14,	anymore - 25:18, 74:18, 82:7, 85:9, 86:24, 86:25, 93:14,	
2009 - 20:13, 58:1,			advised - 69:14, 69:16,			
2010 - 20:13, 58:1,			advised - 69:14, 69:16,			
2011 - 5:22, 6:14, 20:19, 20:20, 28:16, 28:19, 29:11, 41:25, 49:17, 96:10, 97:6,			advised - 69:14, 69:16,			
2014 - 5:1,			advised - 69:14, 69:16,			
24 - 33:17, 51:1,			advised - 69:14, 69:16,			
250 - 25:8, 25:10,			advised - 69:14, 69:16,			
28th - 36:21,			advised - 69:14, 69:16,			
3:25 - 5:1,			advised - 69:14, 69:16,			
30 - 77:22, 112:8,			advised - 69:14, 69:16,			
300 - 25:9, 25:10,			advised - 69:14, 69:16,			

**DEPOSITION OF ROGER AMUNDSON - AUGUST 14, 2014**

<p>anyone - 24:16, 39:5, 46:2, 46:9, 57:7, 61:25, 103:15, 106:5,</p> <p>anything - 12:13, 18:6, 31:23, 42:7, 51:15, 52:3, 52:5, 52:7, 52:13, 52:15, 54:10, 64:21, 68:13, 79:3, 97:9, 97:19, 97:23, 98:10, 102:5, 113:7,</p> <p>anytime - 41:4, 42:8,</p> <p>anyway - 6:25, 93:4,</p> <p>apologize - 12:6,</p> <p>appear - 105:25, 106:10,</p> <p>appreciate - 100:22,</p> <p>approximate - 22:9,</p> <p>approximately - 27:18, 30:16,</p> <p>april - 29:11,</p> <p>area - 39:7, 39:7, 39:8, 39:16, 43:2, 43:3, 43:6, 43:13, 43:16, 44:5, 45:7, 45:22, 46:10, 56:25, 91:21, 93:14, 93:15, 94:5, 96:6, 97:6, 97:14, 97:20, 97:24, 98:11, 101:25, 104:19, 104:22, 107:1,</p> <p>argumentative - 92:7, 99:4,</p> <p>arm - 52:9, 52:18, 54:4, 70:6,</p> <p>around - 16:17, 36:22, 50:24, 67:18, 83:16, 90:10, 114:23,</p> <p>arrangement - 66:7,</p> <p>ask - 7:19, 8:11, 27:23, 73:11, 73:13, 73:20, 74:19, 87:23, 109:24, 113:15, 115:4,</p>	<p>asking - 13:16, 42:5, 52:24, 57:12, 97:15,</p> <p>asks - 6:4,</p> <p>assistance - 63:16,</p> <p>assume - 13:17, 13:21, 29:24, 33:18, 45:12, 50:20, 71:16, 106:11, 107:24,</p> <p>assumed - 55:10, 55:16, 56:6, 71:13,</p> <p>assumes - 35:18, 56:11, 64:8,</p> <p>assuming - 107:4,</p> <p>assumption - 106:7,</p> <p>attached - 11:21, 96:25,</p> <p>attack - 80:17,</p> <p>attend - 114:10,</p> <p>audibly - 7:9, 7:15,</p> <p>august - 5:1,</p> <p>authority - 75:1,</p> <p>automatic - 65:16, 65:19,</p> <p>automatically - 96:23,</p> <p>avoided - 103:7, 103:13, 103:19,</p> <p>aware - 99:11, 106:5, 113:3,</p> <p>away - 66:5, 78:18, 93:24, 102:9, 102:15,</p> <p>b-o-w-l-e-r - 48:19,</p> <p>back - 9:16, 20:10, 23:20, 35:8, 35:13, 37:15, 38:12, 39:20, 40:1, 40:13, 40:18, 43:14, 44:24, 44:24, 46:3, 46:15, 49:16, 49:25, 55:22, 56:19, 56:24, 65:13, 66:19, 72:2, 77:9, 80:17, 80:21, 86:15, 87:14,</p>	<p>93:17, 100:24, 105:2, 105:22, 106:23, 111:23, 112:17,</p> <p>backed - 22:1,</p> <p>backyard - 43:17, 57:2, 61:23, 63:7, 63:10, 88:25, 89:3, 90:24, 90:25, 91:2, 91:12, 91:13, 91:16, 91:17, 91:22, 92:23, 93:16, 93:24, 95:23, 95:24, 101:18,</p> <p>bad - 68:3, 102:15,</p> <p>baggy - 107:17,</p> <p>balanced - 24:21,</p> <p>banging - 62:22,</p> <p>bar - 60:7, 62:13, 62:16, 62:16, 72:5, 72:8,</p> <p>barbecue - 92:14,</p> <p>barn - 96:5, 96:15, 96:25, 97:2, 97:3, 97:10, 98:9,</p> <p>bars - 60:7, 72:10,</p> <p>base - 38:4, 62:23, 97:9,</p> <p>based - 17:6, 31:18,</p> <p>basis - 6:12, 72:22,</p> <p>bathroom - 84:6,</p> <p>bay - 6:8, 16:19, 19:19, 70:4, 101:24,</p> <p>became - 40:21, 86:16,</p> <p>become - 62:21, 74:10,</p> <p>becomes - 9:17,</p> <p>becoming - 62:6,</p> <p>before - 6:2, 6:13, 7:2, 7:19, 8:14, 11:7, 20:22, 21:14, 27:18, 27:25, 28:15, 28:21, 28:25, 29:11, 31:10,</p>	<p>32:17, 32:20, 38:19, 39:23, 40:2, 40:19, 41:17, 42:1, 45:7, 45:25, 46:22, 59:17, 69:7, 70:8, 71:10, 72:19, 73:6, 73:7, 76:20, 77:10, 87:10, 89:22, 100:5, 100:8, 101:7, 101:19, 104:24, 105:6, 105:23, 107:7, 109:21, 110:1,</p> <p>began - 29:20,</p> <p>begin - 43:2, 58:2, 58:5, 58:9, 60:3,</p> <p>beginning - 27:10,</p> <p>behalf - 63:23, 64:23, 66:9, 69:11,</p> <p>behind - 16:22, 65:3, 65:7, 65:8, 106:14, 106:20, 107:1, 107:10,</p> <p>being - 5:14, 6:13, 9:10, 14:18, 27:7, 28:8, 28:21, 29:3, 29:10, 32:10, 32:14, 37:24, 38:11, 38:25, 39:5, 49:8, 49:21, 53:20, 61:22, 63:13, 71:21, 83:6, 98:8, 102:17, 106:8,</p> <p>belief - 113:1,</p> <p>believe - 21:13, 21:18, 22:12, 63:22, 95:9, 95:12, 96:14, 97:15, 97:18, 97:21, 97:21, 98:13, 107:12, 109:4,</p> <p>believed - 103:7, 111:25,</p> <p>bell - 112:8,</p> <p>belligerent - 54:13, 54:15, 54:23, 55:5, 55:9, 55:11, 74:17, 78:15,</p> <p>bent - 18:12,</p> <p>besides - 82:22,</p> <p>bet - 24:25, 76:6,</p>	<p>112:12, 112:13,</p> <p>better - 85:5,</p> <p>between - 19:3, 29:2, 30:25, 32:8, 32:13, 32:15, 32:16, 37:13, 38:10, 59:5, 62:3, 69:20, 74:8, 74:12, 77:12, 88:21, 90:15, 94:2, 99:16, 99:19,</p> <p>beyond - 91:24, 92:1,</p> <p>big - 44:8, 44:15, 51:6, 63:7, 73:16, 96:5, 109:14, 110:4,</p> <p>bigger - 83:21, 109:18,</p> <p>birth - 114:20,</p> <p>bit - 20:21, 22:16, 24:2, 26:23, 58:19, 89:8,</p> <p>bled - 106:11,</p> <p>bleeding - 106:5,</p> <p>blew - 65:22,</p> <p>blind - 80:22, 82:17, 84:10, 84:21,</p> <p>block - 12:17, 92:21,</p> <p>blocked - 39:7,</p> <p>blood - 8:20, 105:25, 106:10, 106:16, 107:23,</p> <p>blowing - 18:7,</p> <p>blown - 65:19,</p> <p>boards - 46:14,</p> <p>boise - 5:1, 68:7, 81:15,</p> <p>bonfire - 39:17, 40:4, 40:8, 44:10,</p> <p>bonfires - 39:22, 40:9,</p> <p>border - 91:10,</p> <p>born - 114:24,</p>	<p>both - 9:18, 45:6, 45:21, 73:6, 78:3, 78:3, 78:10, 83:2, 83:3, 97:13, 97:21, 115:6,</p> <p>bottom - 44:20,</p> <p>bowler - 48:13, 48:18, 48:20, 49:9, 50:13,</p> <p>bowler's - 48:23, 49:3, 49:8, 49:15, 50:15, 56:2,</p> <p>break - 8:23, 25:24, 38:25, 41:2, 77:6, 77:10, 111:19,</p> <p>bring - 6:4,</p> <p>bringing - 60:11,</p> <p>brings - 59:17, 60:7,</p> <p>broke - 13:13, 16:24, 18:3, 18:10, 18:11, 22:5, 22:8, 26:6, 26:14, 31:16, 31:24, 32:24, 42:17, 42:21, 78:17, 86:19, 108:14, 109:5,</p> <p>broken - 8:20, 8:22, 14:20, 14:22, 15:15, 17:16, 17:22, 18:4, 21:18, 24:13, 25:13, 25:20, 25:20, 26:11, 26:14, 27:7, 27:8, 27:19, 27:25, 31:10, 32:9, 32:14, 32:17, 32:20, 33:2, 35:6, 35:11, 35:13, 35:17, 35:25, 36:3, 37:8, 37:11, 37:14, 37:24, 37:25, 38:11, 38:22, 38:24, 41:10, 47:2, 49:24, 49:25, 50:1, 50:7, 50:9, 52:11, 52:19, 54:5, 54:25, 70:8, 70:25, 86:24, 100:11, 101:24, 107:6, 108:1, 108:6, 108:8, 109:21, 112:1, 112:19, 112:21, 113:1, 113:5, 113:8, 113:8, 113:11,</p> <p>brother - 82:12,</p>
---	---	---	--	--	--

**DEPOSITION OF ROGER AMUNDSON - AUGUST 14, 2014**

brought - 12:8,	51:15, 52:5, 52:12, 52:13, 53:5, 61:3, 63:3, 76:5, 78:19, 78:23, 86:20, 86:21, 86:22, 87:14, 93:18, 94:10, 98:17, 99:15, 99:19, 106:24, 107:15, 109:8, 112:8, 113:20,	chris' - 15:10, 15:12, 48:12,	comes - 32:25, 83:22,	65:10, 65:12, 65:20, 65:21, 66:11, 67:4, 67:5, 69:4, 69:12, 70:16, 72:17, 72:20, 72:22, 72:23, 73:1, 73:2, 75:23, 75:24, 76:12, 76:13, 77:5, 78:1, 79:8, 81:5, 88:1, 88:3, 88:15, 88:17, 88:24, 89:16, 90:6, 90:16, 90:23, 91:2, 91:3, 91:15, 91:18, 92:19, 94:11, 94:12, 94:15, 95:8, 95:10, 95:11, 95:20, 95:21, 95:25, 96:1, 96:15, 98:6, 99:2, 99:5, 99:9, 100:5, 100:6, 100:13, 101:8, 103:25, 104:1, 104:3, 104:4, 104:7, 106:3, 108:8, 108:9, 108:12, 108:13, 108:23, 108:24, 109:7, 110:16, 110:24, 113:3, 113:10, 114:3, 114:6,	
bucks - 110:21,	can't - 17:12, 55:14, 71:7, 73:24, 92:16, 94:7,	christmas - 44:17, 44:20,	coming - 65:20, 80:17, 84:2, 107:17,	consumption - 79:7, 85:23,	
buddy - 15:10, 15:12, 48:9, 85:2, 102:10,	car - 13:14, 22:13, 31:16,	civil - 5:15,	compare - 17:15,	contact - 75:8, 75:22, 76:25, 108:22,	
buddy's - 47:21, 47:22, 47:24,	care - 63:23, 66:7, 66:24, 67:1, 69:11,	clarification - 9:22, 70:21,	compared - 23:17,	continue - 62:19, 77:16,	
bumping - 62:22,	carl - 82:12, 84:11, 84:20, 84:23, 85:14,	clarify - 93:18,	complain - 60:17,	continued - 61:16, 81:4,	
bunch - 44:9, 44:14, 44:16, 44:16, 46:14, 82:18, 82:18, 90:3,	carry - 75:12, 75:15,	clarifying - 70:13,	complaining - 73:14,	control - 53:17, 63:11,	
burned - 90:4,	case - 6:1, 6:1, 6:9, 6:16, 14:16, 105:9, 111:25,	clean - 67:21,	complete - 29:22, 30:11,	convenient - 66:6,	
burning - 44:9, 44:13,	caused - 109:15,	cleaned - 41:13,	completed - 29:3, 29:4, 29:7, 29:21, 30:14,	convicted - 115:15,	
burnt - 44:23, 100:15, 100:18,	caution - 38:4,	cleaning - 68:9, 93:15,	completely - 29:4, 62:20, 73:21, 84:22, 110:11,	copacetic - 85:4,	
busted - 41:11, 41:19, 99:8, 104:2,	cedar - 9:17, 9:23, 13:7, 14:19, 22:25, 23:4, 23:7, 23:17, 24:4, 24:10, 27:5, 32:22, 35:8, 35:14, 37:15, 37:15, 38:12, 39:3, 40:13, 50:1, 50:8, 50:17, 95:13, 99:16, 100:12, 102:2, 104:6,	clear - 23:1, 111:25, 112:7,	completion - 30:25,	copy - 110:25,	
butt - 12:10,	center - 94:1, 94:2, 99:20,	cleared - 83:13, 110:1,	compressor - 65:13, 65:15,	corner - 16:17, 48:25, 72:7,	
butted - 12:15,	certain - 6:4,	clearly - 44:2, 109:21, 109:23,	conceal - 113:4,	correct - 6:25, 7:1, 9:11, 9:12, 9:17, 9:25, 10:17, 10:20, 10:24, 11:10, 11:18, 12:12, 13:8, 13:18, 13:24, 13:25, 14:3, 14:13, 14:17, 14:20, 14:21, 15:2, 15:14, 17:8, 17:9, 17:21, 18:6, 19:6, 19:11, 19:12, 20:14, 20:15, 21:19, 21:20, 23:5, 23:21, 23:23, 24:6, 24:10, 24:11, 25:17, 26:8, 26:9, 26:12, 26:15, 26:16, 27:13, 27:14, 27:16, 30:12, 30:13, 30:16, 31:14, 33:3, 33:4, 33:15, 34:12, 34:13, 34:17, 36:1, 36:20, 37:6, 40:11, 41:11, 41:12, 43:14, 43:15, 43:23, 44:21, 45:9, 45:23, 46:1, 48:5, 48:24, 49:1, 49:2, 49:21, 50:2, 50:10, 50:11, 50:12, 56:2, 56:3, 57:6, 58:15, 60:4, 61:9, 61:10, 61:12, 61:13, 61:17, 62:8, 62:9, 63:10, 63:21, 64:4, 64:5, 64:7, 64:17, 64:24, 65:1, 65:2, 65:5, 65:8,	couldn't - 74:17, 104:12,
calculus - 115:13,	change - 68:11,	close - 36:25, 90:14, 93:23, 94:15, 94:16, 94:22,	conceal - 113:4,	counsel - 53:17, 53:23, 74:23,	
cali - 21:2,	charged - 64:6,	closer - 9:2, 88:23,	concerned - 38:21, 38:24, 39:5,	couple - 7:7, 35:10, 47:18, 49:22, 77:20, 82:22, 84:9, 84:14, 84:16, 85:14, 100:23, 103:2, 103:2,	
call - 69:21, 69:23, 71:3,	chatting - 77:11,	closes - 62:17,	conclusion - 64:1, 75:4, 99:3, 103:8,	course - 6:12, 38:10,	
called - 5:7, 69:19, 69:25, 70:22,	chance - 20:17, 103:17,	closes - 62:17,	concrete - 12:17, 27:9,	court - 7:4, 7:11, 7:25, 94:3, 94:7,	
calling - 100:25,	change - 68:11,	closest - 96:4,	condition - 101:5, 108:1,	courtesy - 7:18,	
calls - 25:22, 36:4, 63:25, 87:19,	change - 68:11,	clothes - 84:7, 107:19,	confident - 31:5,	covered - 90:23, 91:7,	
came - 47:25, 48:1, 48:2, 83:13, 96:14, 108:22,	change - 68:11,	clue - 20:18,	conflicting - 80:17,	cowgirls - 72:7,	
camper - 92:15, 92:19, 93:6, 93:10,	change - 68:11,	co-counsel - 115:5,	consider - 94:21,	craigslit - 110:18, 110:23, 111:4, 111:5, 114:5,	
can - 7:9, 7:15, 7:21, 14:6, 15:20, 15:22, 20:4, 22:8, 25:19, 29:19, 30:7, 30:24, 31:2, 32:12, 33:16, 34:5, 37:23, 38:3, 38:5, 38:6, 38:15, 38:25, 43:16, 43:25, 44:24, 46:17, 46:19,	change - 68:11,	collect - 69:18,	consistent - 22:13,	crazy - 58:7, 58:8,	
	change - 68:11,	collection - 8:8,	constantly - 63:5, 73:19,	creekside - 72:5,	
	change - 68:11,	color - 15:3,	construction - 110:3,		
	change - 68:11,	columns - 34:11,	consume - 79:2,		
	change - 68:11,	come - 18:9, 36:8, 37:3, 40:1, 62:5, 62:17, 66:13, 68:4, 69:18, 80:21, 83:23, 96:23,	consumed - 56:5, 77:25,		



## DEPOSITION OF ROGER AMUNDSON - AUGUST 14, 2014

current - 6:20, 85:10,	depicted - 8:16, 8:19, 10:21, 11:9, 23:3, 39:2, 40:13, 43:6, 45:2, 48:20, 48:25, 50:6, 88:21,	directly - 86:10, 86:11, 98:15,	79:6, 79:12, 80:16, 82:3, 84:12, 84:12, 84:13, 87:9, 87:21, 90:9, 90:10, 104:8, 106:25, 107:4, 113:24, 114:17, 114:17, 115:9, 115:25,	drunk - 55:15, 55:16, 56:6, 60:6, 63:13, 83:24, 84:3,	eliminated - 26:22,
currently - 85:1,	deposition - 5:13, 5:14, 5:16, 5:25, 6:2, 7:2, 102:4, 102:17, 105:5, 105:7, 105:23, 111:24, 112:4, 112:7, 112:8, 112:18, 113:18, 116:5,	discuss - 51:21, 60:9, 103:3, 114:7,	done - 19:17, 21:10, 25:14, 28:8, 28:16, 28:22, 28:23, 28:25, 29:10, 30:10, 39:23, 47:12, 66:20, 67:2, 111:20,	drunken - 54:22,	else - 18:24, 26:18, 52:3, 52:5, 52:13, 57:15, 78:2, 79:3, 97:19, 97:23, 98:10, 104:6, 106:5, 106:11,
cut - 26:9, 52:9, 52:18, 54:4, 70:6, 73:3, 73:7, 73:11,	depositions - 105:8,	discussing - 11:9,	door - 11:17, 14:15, 14:23, 17:23, 19:18, 21:19, 21:21, 22:5, 22:13, 28:22, 31:16, 31:24, 39:20, 39:20, 65:4, 65:8, 65:8, 65:9, 66:15, 68:22, 69:1, 93:3, 104:17, 108:21,	drunky - 71:13, 71:19, 72:3,	end - 30:21, 43:22, 68:7, 82:14,
dad - 18:16, 18:25, 19:3, 28:8, 28:10, 29:21, 34:25, 35:16, 36:23, 37:2, 60:17, 61:8, 64:14, 75:8, 75:11, 75:22, 75:23, 76:1, 76:18, 76:25, 83:10, 83:13,	describe - 108:25,	discussion - 20:7, 105:20, 112:15,	doors - 66:18, 67:1,	due - 36:18, 36:19, 69:18,	ended - 60:22, 80:15, 83:6, 116:5,
dad's - 15:8, 74:23,	describing - 50:22,	dishes - 82:19,	down - 18:7, 21:2, 63:6, 63:7, 66:13, 73:8, 73:11, 74:2, 74:4, 84:5, 100:15, 104:12,	dui - 83:6,	enemy - 80:21,
damage - 47:1, 108:25,	destroy - 26:24, 86:18,	distance - 12:25, 66:8,	drag - 35:8, 89:7,	duly - 5:7,	enforcement - 56:9,
damaged - 25:17, 33:6, 39:4, 46:22, 108:2, 109:1,	destroyed - 42:8, 42:16, 42:20, 86:17, 87:10,	document - 6:18, 77:24, 79:1, 79:3, 79:6, 79:10, 79:13, 79:15, 79:17, 79:20, 79:23, 105:7,	dragged - 24:22, 40:12,	duration - 45:3, 45:17,	engage - 81:6,
date - 21:17, 28:14, 30:20, 44:2, 59:3, 82:3, 92:17, 96:19, 97:4, 98:18, 114:19, 114:19,	details - 51:14, 53:22, 71:4,	documents - 6:4, 6:8, 6:10, 6:14, 6:24,	dragging - 37:14,	during - 41:24, 42:4, 59:18, 59:21, 60:9, 66:12, 71:3, 72:25, 90:12, 106:2,	enlist - 63:15,
day - 33:12, 36:12, 47:17, 48:7, 48:8, 55:13, 69:22,	device - 12:17,	doesn't - 17:17, 53:17, 91:22,	drank - 83:18,	each - 8:9, 36:8, 37:5, 115:8,	ensued - 20:7, 105:20, 112:15,
days - 37:5, 41:7, 47:18, 48:6, 49:22, 77:22, 87:8,	diameter - 109:10, 109:14,	doing - 14:11, 28:10, 29:24, 58:20, 64:22,	drinker - 83:21,	earlier - 11:23, 14:25, 17:10, 18:1,	entry - 43:5,
dead - 94:1, 94:2,	didn't - 19:15, 23:8, 24:23, 25:12, 29:16, 33:24, 35:1, 42:7, 53:2, 54:7, 54:9, 54:10, 61:8, 61:11, 73:10, 74:19, 79:24, 80:25, 82:15, 93:14, 103:14, 110:4, 110:10, 110:14, 111:10, 113:12, 115:10,	dollar - 111:12,	drinking - 58:13,	early - 30:15, 81:12, 97:5,	equipment - 65:3, 65:6, 65:11,
deal - 63:8, 63:16, 83:7,	difference - 22:21,	dollars - 113:19, 113:20, 113:22, 114:2, 114:5,	drive - 49:9,	easily - 43:18,	erroneous - 112:22, 112:23,
decided - 26:24, 87:4,	different - 8:10,	don't - 6:21, 9:20, 11:6, 17:3, 17:5, 18:3, 18:8, 20:2, 20:2, 21:16, 21:17, 22:2, 29:14, 30:17, 31:4, 31:4, 32:6, 32:6, 33:7, 35:9, 35:10, 35:15, 35:20, 36:5, 38:13, 38:18, 38:18, 38:19, 40:18, 40:20, 41:6, 42:15, 45:16, 46:19, 46:24, 47:5, 47:5, 51:9, 51:13, 51:13, 51:17, 52:7, 52:7, 52:15, 53:22, 55:20, 55:22, 57:11, 57:13, 57:14, 57:17, 57:17, 57:18, 57:18, 58:3, 58:3, 59:3, 60:4, 67:19, 68:4, 70:9, 70:9, 71:1, 71:4, 71:7, 71:16, 71:20, 72:1, 74:15, 74:21, 74:22,	driver's - 21:22,	eat - 115:10,	estimate - 25:2, 31:3, 37:23, 38:3, 87:8,
decision - 75:11, 75:23, 76:11, 76:15, 83:9,	difficult - 89:2,	dig - 44:24,	dropped - 49:18,	east - 10:2, 10:12, 10:16, 10:19,	estimation - 30:24,
decisions - 75:15,	dining - 104:19, 104:22, 105:1,	direction - 47:15,	drug - 24:20, 24:21, 61:18,	east - 10:2, 10:12, 10:16, 10:19,	even - 19:20, 24:18, 29:1, 33:12, 39:9, 39:23, 43:2, 43:9, 55:14, 60:15, 60:15, 90:13, 96:13, 100:8, 106:25, 108:14, 110:6,
definite - 12:3, 96:11, 96:12,	direction - 47:15,		drugs - 56:5, 61:25, 115:22,	egress - 43:17,	event - 51:6, 99:15,
definitely - 94:17,				eight - 109:10,	events - 41:17, 41:22,
demolished - 110:12,				either - 24:3, 28:14, 34:11, 51:9, 51:13, 57:4, 71:4, 71:7, 80:24, 81:21, 96:18, 107:7, 113:15,	ever - 6:1, 6:2, 7:2, 7:4, 31:21, 33:19, 35:20, 37:3, 41:24, 46:2, 46:21, 47:1, 56:24, 57:2, 57:7, 60:17, 63:15, 66:13, 67:13, 68:11, 71:9, 73:20, 74:10, 74:23, 81:6, 83:15, 84:18, 103:6, 103:11,
depict - 6:8, 6:15,				electrical - 66:22, 67:1, 68:10, 68:11,	

DEPOSITION OF ROGER AMUNDSON - AUGUST 14, 2014

103:15, 114:7, 115:15,  every - 36:15, 36:20, 55:13,  everybody - 55:13, 56:7,  everything - 82:17, 82:19,  evict - 75:1, 75:21, 76:1, 76:21,  evicted - 76:10, 76:23, 77:1,  eviction - 76:2, 76:16, 77:3,  evidence - 17:6, 35:19, 55:18, 55:22, 56:12, 56:18, 64:9, 71:18, 71:20,  exact - 21:17, 28:1, 87:12,  exactly - 11:6, 13:19, 18:3, 20:3, 22:2, 30:17, 33:7, 41:6, 45:16, 48:17, 57:19, 58:3, 59:3, 73:24, 74:15, 79:6, 82:3, 90:9,  examination - 5:10,  examined - 5:8,  examining - 53:24,  examples - 64:25,  excuse - 17:17,  exhibit - 8:8, 8:10, 8:14, 8:17, 8:19, 10:6, 10:6, 10:22, 11:1, 11:2, 11:2, 11:4, 11:8, 11:21, 12:10, 13:7, 14:16, 15:7, 15:13, 15:19, 16:3, 16:4, 16:7, 16:12, 16:16, 16:21, 16:25, 17:2, 17:7, 17:15, 17:15, 17:17, 17:18, 22:7, 23:3, 24:14, 25:20, 34:7, 39:3, 40:14, 43:6, 43:13, 43:24, 44:12,	44:19, 45:2, 45:5, 45:6, 46:10, 48:20, 49:1, 49:21, 50:6, 50:14, 56:25, 87:24, 88:21, 95:7, 99:21, 101:1, 101:5, 105:4, 105:5, 105:7, 105:23, 105:24, 105:24, 106:9, 106:13, 107:3, 107:9, 107:22,  exhibits - 8:7, 11:19,  existed - 45:24,  existence - 97:10,  exposed - 24:9,  extend - 7:18,  extent - 106:6,  exterior - 98:4, 98:5,  f-o-r - 111:16, 111:18,  fact - 13:13, 35:21, 64:21, 113:13, 113:16,  facts - 35:18, 38:3, 56:11, 64:9,  fair - 21:24, 53:19, 53:20,  fairly - 27:12,  fall - 12:4, 23:8, 67:22, 67:22, 93:4, 112:20,  falling - 22:24,  falsehood - 8:1,  familiar - 112:23,  far - 12:25, 24:23, 84:20, 84:21, 91:23, 92:1, 94:18, 111:10,  father - 9:9, 9:10, 14:9, 14:10, 19:7, 27:15, 35:24, 36:2, 36:7, 36:13, 46:21, 47:1, 47:8, 64:4, 64:23, 65:23, 66:8, 66:9, 66:13, 67:3, 69:6, 69:10, 69:14,	70:14, 70:22, 70:24, 71:2, 71:21, 76:11, 76:14, 77:2, 77:23, 78:25, 80:1, 85:18, 86:2, 86:10, 86:11, 86:14, 111:24, 112:17, 112:25, 113:13, 113:16, 113:18, 113:20, 114:7,  father's - 63:15, 63:23, 71:6,  feet - 13:2, 22:11, 24:22, 92:3, 94:20, 94:21, 95:1, 95:10, 95:14, 95:22, 98:16, 101:6, 101:17, 106:24,  fell - 88:16, 97:6, 108:11, 112:20,  felony - 115:15,  felt - 102:14,  fence - 9:3, 9:14, 9:14, 9:16, 9:17, 9:21, 9:21, 9:23, 9:23, 10:4, 10:18, 10:23, 10:25, 11:20, 11:25, 12:4, 12:9, 12:11, 12:16, 13:6, 13:7, 13:10, 13:18, 13:23, 14:2, 14:8, 14:19, 22:15, 22:25, 23:2, 23:4, 23:7, 23:8, 23:9, 23:10, 23:11, 23:12, 23:17, 23:17, 23:20, 23:25, 24:4, 24:5, 24:8, 24:9, 24:10, 27:5, 27:5, 27:6, 27:9, 27:13, 27:18, 27:24, 31:7, 32:21, 35:8, 35:12, 35:14, 37:15, 38:1, 38:12, 38:23, 39:2, 39:3, 39:8, 40:13, 43:22, 45:4, 46:17, 50:1, 50:8, 50:17, 91:24, 92:2, 92:25, 93:8, 95:13, 99:17, 100:12, 102:2, 104:6,  fencing - 14:19,  few - 8:11, 29:9, 40:25, 41:18, 41:19, 66:18, 74:5,	fifth - 107:22,  fighting - 54:19, 57:2, 57:19, 57:23, 58:2, 58:5,  fights - 54:22, 54:23, 56:19, 56:19, 57:8, 57:10, 74:5, 74:8, 74:16, 74:16,  finally - 7:23,  find - 47:15, 112:10,  finding - 69:20,  fine - 35:3, 35:4, 63:9,  finish - 7:17, 7:19, 95:5, 100:24,  first - 5:7, 8:8, 13:16, 19:23, 23:1, 30:21, 36:18, 37:13, 46:5, 53:16, 70:22, 71:3, 71:22, 99:20, 105:24,  five - 25:4, 25:5, 25:7, 92:3, 95:19, 105:13, 109:18, 109:19,  fixtures - 68:12,  flat - 104:12,  flood - 98:1,  flooring - 104:15, 104:18,  flush - 92:24, 93:7,  focus - 61:3,  focusing - 27:3,  follow - 17:18, 41:20,  following - 26:13, 32:11, 37:5, 45:19, 55:3, 56:10, 77:23, 78:20, 80:5, 86:16,  follows - 5:8,  foot - 95:19,  forced - 83:7, 83:8,	ford - 15:10, 15:12,  forgot - 100:18, 109:24,  form - 17:24, 22:3, 25:22, 28:3, 35:18, 37:17, 38:2, 40:15, 46:23, 52:21, 53:5, 53:6, 53:11, 56:11, 62:7, 64:18, 75:3, 75:13, 79:11, 89:17, 91:20, 92:5, 93:20, 98:19, 100:7, 103:8, 103:20, 110:8,  foundational - 87:23,  four - 16:5, 16:8, 22:11, 32:15, 34:15, 39:10, 81:23, 109:16, 109:16, 111:17,  fourth - 15:23, 107:9,  frame - 28:20, 30:7, 30:15, 36:22, 41:24,  framing - 19:15,  friend - 32:18, 32:20, 85:5, 85:7, 85:8,  friends - 70:3, 82:12, 85:9,  front - 8:6, 9:2, 14:6, 27:9, 38:22, 46:19, 56:24, 57:5, 88:11, 96:16, 97:11, 98:9,  full - 20:22, 20:22, 77:22,  further - 22:24, 116:1,  gap - 89:14,  garage - 11:17, 14:15, 19:18, 28:22, 39:19, 39:20, 39:20, 65:4, 65:6, 65:7, 65:8, 65:8, 65:8, 65:9, 66:15, 68:22, 104:13, 105:1, 105:1, 105:2,  garbage - 86:21, 86:22,	garden - 66:5,  gas - 68:15, 68:16, 68:17, 68:18,  gate - 39:9, 39:12, 39:14, 39:15, 43:13, 43:14, 43:20, 43:21, 43:25, 46:20, 88:11, 88:12, 88:17, 88:19, 88:23, 89:1, 89:3, 89:4, 89:5, 89:16, 89:25, 90:5, 90:14, 90:14, 90:20, 91:2, 91:4, 91:17, 92:1, 92:1, 92:21, 92:23, 92:24, 93:7, 93:23, 94:2, 94:4, 94:15, 94:16, 94:18, 95:23, 98:16, 101:6, 101:17,  gave - 77:22, 111:24,  gaze - 56:8,  geez - 57:13,  generally - 88:4,  gentleman - 84:17, 103:12,  get - 19:10, 25:17, 26:25, 27:2, 39:9, 39:22, 40:5, 40:8, 46:16, 54:25, 60:15, 63:3, 65:19, 67:13, 68:8, 76:22, 77:1, 81:12, 86:1, 86:2, 86:3, 87:3, 87:4, 89:14, 100:23, 102:5, 110:21, 111:10,  gets - 60:6,  getting - 12:5, 32:25, 39:4, 56:19, 60:8, 72:2, 110:12,  giant - 96:5,  giles - 115:5,  give - 7:10, 7:24, 31:2, 37:23, 38:3, 66:25, 80:2, 80:2,  given - 7:2, 7:4,  giving - 69:21, 69:23,  glass - 8:21, 8:22,
--	--	--	--	---	---

DEPOSITION OF ROGER AMUNDSON - AUGUST 14, 2014

14:20, 15:15, 15:22, 16:5, 16:15, 16:18, 16:24, 16:25, 17:1, 17:11, 17:16, 17:20, 17:22, 18:4, 18:4, 18:10, 22:8, 22:10, 24:13, 25:13, 25:19, 25:25, 26:6, 26:10, 26:14, 27:7, 31:16, 31:24, 32:9, 32:13, 33:1, 33:22, 35:5, 35:12, 35:12, 35:17, 35:25, 36:3, 37:8, 37:11, 37:14, 37:24, 37:25, 38:22, 41:2, 41:10, 41:19, 42:1, 47:2, 50:7, 50:8, 52:9, 52:11, 52:19, 54:5, 70:7, 70:24, 87:1, 99:8, 100:11, 101:25, 104:2, 107:25, 108:2, 108:10, 108:15, 108:22, 108:25, 109:6, 109:9, 109:15, 110:1, 110:4,	74:21, 80:8, 80:15, 81:1, 82:15, 89:14, 92:3, 95:14, 97:2,  got - 12:1, 12:7, 14:25, 18:12, 20:18, 21:9, 24:18, 26:23, 28:14, 32:18, 36:11, 36:15, 36:20, 46:14, 49:25, 50:13, 50:15, 50:15, 50:16, 55:1, 58:8, 59:16, 63:11, 68:6, 72:9, 72:10, 77:19, 80:20, 82:25, 83:23, 92:14, 92:15, 95:5, 102:11,  gotten - 18:19, 18:24,  graduate - 114:12, 114:15, 115:2,  graduated - 115:1,  grass - 91:7, 91:9,  gravel - 43:6, 43:12, 45:1, 45:22, 46:10, 88:20, 90:22, 91:8, 91:9, 91:11, 91:11, 91:12, 91:13, 91:22, 94:14, 95:3, 95:4, 95:7, 95:9, 99:21, 100:11, 100:13, 101:5, 101:17, 101:25, 104:7,  graveled - 56:25,  greater - 28:2, 28:4,  ground - 7:7, 15:20, 22:9, 89:8, 93:1, 93:4,  grounds - 78:22,  guess - 57:13, 73:6, 94:23, 100:17,  guidance - 74:24,  gutters - 67:14, 67:19, 67:21,  guy - 84:18, 107:20,  guys - 12:7, 80:8, 115:6, 115:8, 115:10,  had. - 20:8, 77:7,	111:21,  hailey - 83:2, 83:2, 84:17, 84:23, 85:13,  half - 20:25, 59:8, 59:9, 100:18,  hall - 84:5,  hammer - 86:19, 87:6, 109:25, 110:6,  hand - 25:21, 112:1,  handle - 60:20, 60:21, 61:12, 61:14, 63:20, 66:6, 74:17, 74:24, 77:3,  handling - 19:8,  happen - 48:16, 57:2, 76:16, 87:3,  happened - 5:22, 20:19, 29:8, 36:23, 40:2, 40:21, 47:17, 50:19, 51:16, 55:10, 55:16, 59:22, 70:18, 89:23, 90:6, 96:9, 101:7,  happening - 31:1, 40:14, 55:9, 62:4, 77:13, 78:15, 78:16, 93:5,  happens - 41:25, 61:2, 71:15,  hard - 91:8,  has - 32:14, 33:1, 38:3, 44:8, 46:9, 50:6, 51:23, 66:24, 74:5, 85:17, 90:10, 96:5, 96:7, 106:23, 108:17,  hatch - 43:21,  hate - 102:6,  haven't - 20:18, 77:19,  hazard - 26:20, 26:22, 42:24, 42:25, 93:19, 94:11, 98:15, 98:18, 99:1, 99:2, 99:7, 99:11, 103:24,	he's - 53:20, 53:21, 57:12, 81:22, 86:7, 106:25, 107:20,  head - 7:11, 7:14,  headache - 62:25,  hear - 85:3,  heat - 68:15, 68:15, 68:16,  heater - 68:17, 68:20,  heating - 68:19,  heavy - 24:24, 24:25, 25:9, 39:11, 43:20, 89:1,  height - 22:21, 97:2,  help - 19:10, 19:14, 20:20, 24:16, 49:4, 49:12, 76:22, 102:5, 113:20,  helping - 102:10,  here - 5:22, 8:4, 12:23, 12:24, 13:4, 16:23, 22:21, 23:18, 27:3, 39:8, 45:4, 46:4, 46:14, 48:11, 48:20, 50:14, 55:17, 56:23, 59:18, 72:7, 88:10, 91:23, 92:14, 92:14, 94:5, 96:6, 96:7, 100:15, 100:16, 101:1, 102:18, 103:4, 104:18, 111:23,  hey - 32:13, 73:3,  hiding - 16:22, 113:7,  high - 22:7, 34:5, 61:21, 96:24, 114:16, 114:22, 115:6,  himself - 26:2, 26:9, 46:22, 81:8, 86:2, 86:4,  hit - 22:1,  hold - 12:17,  holding - 12:14,	hole - 108:17, 109:3, 109:9, 109:9, 109:15, 109:16,  home - 47:25, 48:1, 48:2, 49:9, 60:7, 66:25, 68:12, 68:20, 69:9, 72:12,  horizontal - 17:11,  horizontally - 16:5, 16:8, 16:9,  horrible - 27:11,  hot - 30:5,  hours - 33:13, 33:17, 48:4, 51:1, 97:5,  house - 9:2, 10:5, 10:13, 11:16, 12:8, 13:17, 13:21, 13:22, 14:7, 19:21, 20:21, 32:2, 33:1, 33:3, 43:10, 46:19, 47:21, 47:23, 47:24, 49:7, 49:16, 54:21, 55:24, 56:20, 57:4, 57:22, 57:24, 57:25, 58:2, 59:19, 60:10, 60:12, 61:9, 61:25, 62:6, 62:17, 65:24, 66:19, 66:20, 71:9, 72:4, 72:16, 72:16, 72:18, 82:20, 90:22, 95:13, 96:2, 96:17, 98:1, 98:5, 104:11, 104:24, 104:25,  how - 10:11, 12:7, 12:25, 14:22, 18:9, 18:9, 22:7, 25:2, 27:5, 27:23, 28:15, 28:21, 29:2, 29:21, 30:24, 32:8, 33:6, 37:13, 37:23, 38:10, 38:13, 38:19, 40:12, 40:18, 40:24, 41:6, 41:25, 45:1, 47:15, 48:18, 51:16, 59:5, 69:14, 69:16, 69:17, 69:20, 73:11, 73:23, 73:24, 74:24, 77:16, 82:13, 83:8, 86:18, 87:5, 87:9, 92:1, 94:18, 95:12, 96:24, 98:17, 99:12, 99:15, 99:19, 102:23, 104:16, 107:15,	109:14, 110:3, 110:20,  huh-uhs - 7:11, 7:14,  hundred - 25:5, 25:7, 66:5, 110:21, 112:5, 113:21, 114:2, 114:5,  hurt - 26:18, 32:18, 32:20, 46:22, 55:1,  hypothetical - 98:20,  i'd - 60:8,  i'm - 8:10, 12:5, 13:16, 15:17, 18:2, 21:9, 23:1, 29:5, 29:6, 31:8, 32:11, 36:10, 37:16, 38:2, 38:7, 38:13, 41:16, 45:19, 46:15, 50:11, 52:24, 53:8, 53:20, 53:24, 55:3, 61:1, 67:9, 68:9, 75:17, 76:7, 85:8, 85:25, 86:6, 87:1, 96:20, 97:15, 101:1, 102:25, 104:20, 105:11, 106:4, 107:4, 112:23, 115:13,  idaho - 5:1, 5:15,  idea - 9:4, 28:14, 37:12, 37:12, 37:18, 37:22, 40:16, 40:20, 42:2, 42:15, 45:16, 51:4, 52:22, 56:4, 72:2, 77:20, 79:12, 82:5, 87:7, 97:2, 99:18, 100:16, 106:21, 113:25, 114:17,  identified - 97:17, 97:25, 98:8,  identify - 107:15,  illegal - 61:18, 115:22,  illuminates - 96:6,  immediate - 72:11,  immediately - 27:12, 35:13, 103:12,  impossible - 103:21,
---	---	--	--	---	---

**DEPOSITION OF ROGER AMUNDSON - AUGUST 14, 2014**

improvement - 68:24,	22:14, 22:25, 27:2, 33:1, 43:14, 56:24, 57:21, 57:25, 58:2, 59:1, 59:6, 62:23, 66:12, 69:2, 69:5, 69:11, 80:21, 88:16, 90:24, 91:2, 91:12, 91:13, 92:23, 95:23, 100:11, 101:25, 105:1, 108:11,	109:1, 109:4, 113:9, 113:12,	109:12, 109:19, 110:10, 111:4, 111:14, 111:15, 111:20, 113:6,	65:1, 65:11, 67:22,	light - 68:12, 96:4, 96:8, 96:11, 96:12, 96:14, 96:22, 96:24, 97:10, 97:13, 97:20, 98:1, 98:9,
inch - 109:18, 109:19,		job - 81:22, 102:15,		lay - 87:23,	
inches - 39:10, 109:10,		jobs - 81:22, 81:23,	keep - 63:7, 65:13, 66:23, 74:1, 74:4, 113:13, 113:15,	lean - 23:9,	lighting - 96:1,
incident - 6:11, 6:12, 6:19, 22:2, 74:6,	intoxicated - 56:16, 62:6, 62:6, 62:21, 72:24, 83:15,	jog - 52:2,	kept - 14:1, 65:11, 110:25,	leaning - 11:24, 23:11, 23:25,	lights - 96:18, 97:16, 97:24, 98:7, 98:8,
include - 21:4,	involved - 6:19, 57:10,	jogging - 29:17,	kicking - 60:22,	learn - 18:9,	like - 16:3, 16:4, 16:8, 16:19, 19:24, 22:11, 23:9, 23:14, 23:19, 23:19, 25:8, 26:5, 33:24, 34:3, 34:18, 39:10, 41:7, 41:14, 44:15, 44:20, 46:16, 46:18, 48:2, 54:19, 55:1, 55:9, 58:19, 58:22, 60:4, 60:9, 66:21, 66:22, 68:13, 75:17, 76:25, 78:15, 78:18, 81:13, 82:4, 82:4, 82:21, 83:19, 88:10, 88:18, 88:19, 91:14, 91:17, 92:4, 92:14, 96:13, 106:23, 107:1, 108:16, 108:18, 109:18, 111:17,
incomplete - 98:20,	involvement - 79:19, 79:22, 79:24, 83:11,	john - 19:10, 19:13, 19:20, 21:7, 50:15, 63:5, 77:24, 78:9, 79:1, 79:22, 80:10, 80:11, 85:23, 86:8, 90:1,	kind - 12:1, 16:17, 16:19, 24:20, 78:16, 78:17, 83:7, 92:22, 102:11, 102:13,	learned - 37:24,	
infer - 21:24,	involving - 35:23,	john's - 80:1,	kinds - 84:22,	learning - 38:11,	
influence - 115:17, 115:21,	irate - 71:21,	jointly - 19:4, 64:15, 67:3, 67:6,	knew - 43:11, 72:24,	lease - 85:20, 86:1, 86:2, 86:8, 86:10, 86:13,	
information - 55:19, 56:16, 100:22,	irrelevant - 110:11,	july - 5:22, 6:13, 20:19, 28:16, 28:18, 30:7, 30:21, 30:22, 41:25, 49:16, 96:9, 97:5,	knock - 25:12, 42:1,	least - 25:6, 27:21, 31:8, 31:10, 42:2, 45:10, 45:12, 59:8, 59:9, 72:11,	
ingress - 43:17,	issue - 6:9, 6:15, 14:16, 67:17, 68:7, 73:16, 74:24,	june - 30:7, 30:15,	knocked - 31:22, 104:3,	leave - 42:5, 42:7, 83:4, 87:11, 87:16,	
inhaling - 62:1,	issues - 65:24, 66:1, 24:7,	just - 7:25, 8:5, 12:21, 15:11, 16:3, 16:17, 17:10, 17:12, 18:13, 19:3, 20:4, 21:9, 22:4, 23:14, 23:20, 25:14, 26:5, 26:23, 26:23, 26:23, 27:3, 27:23, 28:5, 31:23, 32:12, 33:24, 34:8, 37:1, 38:3, 41:3, 41:16, 42:12, 42:16, 42:20, 44:7, 44:17, 45:19, 46:18, 46:18, 53:17, 54:13, 55:3, 55:10, 55:10, 57:16, 57:19, 58:10, 60:22, 61:19, 62:13, 62:25, 63:7, 63:11, 63:12, 66:6, 66:21, 66:22, 68:8, 69:8, 70:12, 70:16, 71:13, 71:13, 73:3, 73:14, 73:20, 80:22, 80:24, 82:17, 82:23, 82:24, 87:4, 90:8, 91:7, 91:8, 91:21, 91:23, 92:11, 92:15, 95:4, 96:6, 98:25, 100:18, 100:20, 100:23, 102:14, 103:4, 108:16, 109:3,	knowledge - 38:4,	leaves - 67:13, 67:22, 67:24, 68:8, 68:9,	
initial - 70:17,	items - 6:8, 6:10, 6:15, 6:19, 88:5, 88:9,		known - 46:2, 85:8,	ledge - 26:3,	
initially - 10:23, 24:7,	its - 9:1, 13:17, 65:25,		knows - 53:21,	left - 17:1, 17:17, 17:19, 20:10, 26:10, 41:12, 42:12, 94:10, 108:1,	likelihood - 33:17,
injured - 26:2, 32:10, 32:15, 39:6, 70:8,	jagged - 26:3, 26:10,		kuna - 5:23, 8:5, 10:9, 20:12, 64:17, 72:10,	legal - 63:25, 75:3, 99:3, 103:8, 115:22,	likely - 30:6, 50:17,
injuries - 57:8,	jail - 83:7,		laid - 104:12,	length - 28:1, 99:15,	limbs - 44:9, 90:3,
inside - 32:1, 33:2, 56:20, 61:25, 66:22,	janitor - 81:16,		landed - 36:21,	lengthy - 100:4,	line - 9:23, 9:24, 11:20, 37:15, 37:15, 38:1, 38:12, 40:13, 43:22, 50:1, 50:8, 50:17,
insofar - 66:25, 75:10,	janitorial - 81:21, 81:23,		large - 38:21, 62:5, 62:10, 68:23, 99:7,	less - 23:6, 23:22, 95:16,	list - 111:2, 113:21,
installed - 6:9, 65:4,	jason - 53:11,		largest - 69:2,	let - 5:12, 27:10, 27:23, 87:23, 87:23, 95:5,	listed - 113:19, 114:3, 114:4,
installing - 28:22,	jeans - 107:20,		last - 5:19, 46:6, 48:12, 83:1, 84:10, 84:11, 84:12, 85:11,	let's - 19:22, 20:5, 37:21, 47:14, 57:21, 75:20, 77:6, 77:9, 78:19, 105:18, 105:22, 106:7, 111:19, 111:23, 112:10, 112:14, 112:17,	listen - 42:18,
instance - 8:25,	jenkins - 21:5, 31:12, 31:15, 32:9, 33:14, 33:17, 79:1, 81:6, 83:4, 83:6, 83:15, 86:12, 86:13,		latched - 43:14, 43:25,	lift - 24:20, 39:9, 39:10, 89:7,	lit - 97:7, 97:8, 97:15, 97:19, 97:23, 98:11, 98:14,
intake - 83:22,	jenkins' - 26:7, 26:11, 79:20, 108:3, 108:21, 108:22,		late - 30:6, 102:13,		litigation - 6:12,
intended - 69:9,			later - 41:7, 47:18, 48:6, 48:7, 48:8,		little - 7:8, 19:22, 20:21, 34:16, 58:19, 66:19, 66:20, 89:8, 108:17, 109:3,
internet - 111:2,			law - 7:4, 7:25, 56:9,		
interrupt - 29:5,			lawn - 56:23, 56:24,		
into - 12:4, 14:23, 19:20, 19:23, 20:11, 21:15, 22:1, 22:5,					

**DEPOSITION OF ROGER AMUNDSON - AUGUST 14, 2014**

109:12, 109:18, 109:19, 111:5,	lunch - 115:10,	41:20, 44:20, 46:12, 47:13, 49:18, 50:14, 50:24, 51:23, 60:15, 61:3, 64:14, 64:14, 66:2, 66:6, 67:25, 68:4, 69:13, 74:7, 76:22, 80:10, 82:5, 82:17, 85:2, 87:2, 87:23, 87:23, 95:5, 99:19, 110:12,	85:11, 85:13, 102:18,  miles - 66:5,  mind - 27:1, 70:21,  mine - 68:5, 82:18,  minutes - 90:14,  mirror - 109:3, 109:5, 109:8, 109:12,	month - 20:3, 20:16, 27:8, 27:18, 28:2, 28:5, 30:18, 30:18, 31:2, 31:7, 31:9, 31:10, 36:8, 36:12, 36:18, 36:19, 36:24, 37:1, 37:5, 37:7, 37:10, 42:2, 45:14, 59:16, 59:18, 59:23, 61:1, 61:3, 62:3, 69:18, 77:20, 77:21, 80:5,	38:11, 40:5, 40:10, 58:13, 59:6, 62:4, 77:12, 81:3, 83:6, 83:12, 85:18,  mowed - 64:25,  much - 12:23, 21:10, 25:8, 28:15, 28:21, 29:2, 29:17, 30:25, 32:8, 37:13, 38:10, 41:25, 47:16, 58:13, 59:5, 69:20, 69:22, 74:14, 87:5, 88:18, 88:23, 92:11, 92:13, 93:25, 94:4, 97:13, 99:15, 99:19, 108:18, 110:20,
live - 48:14, 68:6, 72:4,	made - 23:21, 34:24, 72:16, 75:11, 76:14, 83:8, 111:11,	mean - 30:17, 39:12, 48:1, 51:6, 52:25, 54:15, 55:12, 62:11, 68:3, 71:5, 74:7, 76:24, 78:14, 80:18, 92:13, 103:24, 104:22, 112:24, 113:8,	miserable - 60:13,  misstates - 27:20, 112:5,  misunderstood - 113:24,	months - 29:8, 29:9, 29:11, 31:2, 38:16, 59:12, 59:14, 59:21, 60:9, 72:18, 77:12, 77:20, 87:8,	music - 62:22, 63:6, 73:14, 73:17, 73:18, 74:1, 74:17,
lived - 46:3, 66:8,	maintain - 64:22,	means - 41:18, 101:12,	moments - 8:6,	more - 7:9, 17:12, 21:8, 22:19, 23:2, 23:18, 23:19, 24:1, 24:8, 24:9, 30:6, 38:25, 45:14, 50:17, 62:21, 66:6, 74:1, 85:3, 93:15, 100:17, 100:23, 103:1, 108:6, 108:14,	named - 84:17,
lives - 48:15, 66:4, 66:5, 85:1,	maintenance - 64:7, 64:12, 64:16, 65:25, 66:14, 66:21, 66:24, 66:25, 67:7, 68:23,	measures - 78:23,	money - 18:19, 87:2, 87:3,	morning - 48:4, 81:13, 97:5,	names - 84:10,
living - 21:11, 59:14, 60:10, 66:4, 66:10, 81:25, 82:5, 83:3,	major - 55:1,	medication - 115:22,	monteleone - 5:11, 13:3, 17:25, 20:5, 20:9, 22:6, 26:1, 27:22, 28:6, 29:15, 30:9, 30:23, 35:22, 36:6, 37:20, 38:9, 38:20, 40:17, 41:5, 41:8, 42:19, 45:14, 45:18, 46:25, 47:7, 51:5, 51:10, 52:23, 53:4, 53:7, 53:9, 53:16, 53:20, 54:1, 56:14, 57:20, 62:8, 62:12, 62:14, 64:3, 64:11, 64:20, 67:9, 67:12, 70:16, 70:20, 75:6, 75:16, 75:19, 76:6, 76:8, 76:19, 77:6, 77:8, 78:5, 78:11, 78:24, 79:14, 87:15, 87:22, 89:19, 89:21, 91:25, 92:6, 92:9, 93:22, 98:22, 99:6, 99:13, 100:9, 101:11, 101:14, 101:22, 103:10, 103:23, 105:11, 105:14, 105:16, 105:18, 105:21, 109:13, 110:10, 110:13, 111:19, 111:22, 112:4, 112:7, 112:12, 112:14, 112:16, 115:10, 115:14, 115:25,	most - 29:23, 62:24, 62:25,	nampa - 48:15,
located - 5:23, 8:5, 10:8, 14:16, 15:16, 24:12, 24:13, 50:16, 64:16, 87:25, 88:2, 88:9, 89:16, 89:25, 93:7, 93:18, 94:19,	majority - 81:7,	medications - 115:18,	misunderstood - 113:24,	motivation - 110:14,	named - 84:17,
location - 101:23,	make - 7:8, 19:22, 23:6, 24:1, 29:10, 30:6, 53:5, 75:14, 75:23, 76:11, 76:15, 80:16, 81:1, 84:5,	memory - 29:17, 52:2,	misstates - 27:20, 112:5,	move - 7:8, 19:23, 24:19, 24:23, 39:1, 59:1, 69:5, 69:11, 74:19, 75:17, 75:18, 77:18, 82:1, 93:13,	names - 84:10,
locations - 87:12, 87:17, 88:5,	many - 25:2, 63:12, 63:13, 67:18, 67:21, 68:8, 73:11, 73:23, 73:24, 102:23,	mention - 31:21,	misstates - 27:20, 112:5,	most - 29:23, 62:24, 62:25,	nampa - 48:15,
long - 15:17, 27:1, 27:5, 27:23, 29:21, 29:23, 37:23, 38:14, 38:19, 40:12, 40:18, 40:24, 41:6, 45:1, 71:5, 77:16, 87:9, 95:10, 100:2,	mark's - 82:12,	mentioned - 6:13, 8:5, 31:23, 31:24, 31:25, 32:1, 36:11, 68:10, 82:23, 84:9,	misstates - 27:20, 112:5,	morning - 48:4, 81:13, 97:5,	near - 9:2, 10:23, 38:23, 50:21,
look - 8:7, 8:9, 11:1, 15:19, 15:25, 16:7, 16:25, 17:6, 32:4, 33:5, 33:8, 35:7, 35:7, 105:14, 106:24, 114:18,	marked - 105:3, 105:7,	mentioning - 113:6,	misstates - 27:20, 112:5,	most - 29:23, 62:24, 62:25,	necessarily - 91:19, 104:8,
looked - 22:7, 104:9,	marked. - 105:5,	mentions - 113:18,	misstates - 27:20, 112:5,	motivation - 110:14,	need - 46:20, 61:2, 67:21, 70:12, 74:15, 93:18, 105:3,
looking - 10:14, 34:7, 44:8, 94:5, 101:2,	market - 110:17, 111:6,	meridian - 114:11, 114:15, 115:5,	misstates - 27:20, 112:5,	move - 7:8, 19:23, 24:19, 24:23, 39:1, 59:1, 69:5, 69:11, 74:19, 75:17, 75:18, 77:18, 82:1, 93:13,	needed - 54:12, 76:10,
looks - 16:4, 16:8, 44:20, 91:17, 92:4, 106:23,	married - 84:14, 84:16,	mess - 80:24, 110:4,	misstates - 27:20, 112:5,	morning - 48:4, 81:13, 97:5,	neighbor - 68:5, 96:5,
loose - 30:15,	matters - 75:10,	mid - 30:15,	misstates - 27:20, 112:5,	most - 29:23, 62:24, 62:25,	neighbors - 44:15,
lot - 32:16, 59:18, 59:24, 60:1, 60:11, 62:15, 80:20, 86:6, 111:17,	maybe - 19:24, 20:24, 25:8, 25:8, 25:8, 29:23, 42:2, 54:12, 57:11, 58:19, 95:16, 109:10, 109:18, 113:24,	middle - 29:25, 34:3, 34:3, 34:8, 34:12, 34:15, 36:24, 44:4, 88:10, 88:19, 94:14, 94:17, 95:18, 98:16, 100:4, 100:12, 101:5, 101:16, 104:7,	misstates - 27:20, 112:5,	motivation - 110:14,	neighbors' - 67:23, 68:4, 96:15, 97:10, 98:10,
loud - 62:22, 74:17,	me - 7:10, 7:15, 7:17, 7:21, 9:9, 11:5, 13:11, 14:9, 16:21, 17:17, 18:11, 19:3, 21:24, 22:9, 24:15, 27:10, 27:23, 29:19, 30:24, 31:2, 31:20, 32:12, 35:1, 37:23,	might - 33:12, 37:3,	misstates - 27:20, 112:5,	move - 7:8, 19:23, 24:19, 24:23, 39:1, 59:1, 69:5, 69:11, 74:19, 75:17, 75:18, 77:18, 82:1, 93:13,	neighbors' - 67:23, 68:4, 96:15, 97:10, 98:10,
loudness - 73:16, 73:18,		mike - 11:5, 85:2,	misstates - 27:20, 112:5,	morning - 48:4, 81:13, 97:5,	neighbors' - 67:23, 68:4, 96:15, 97:10, 98:10,

**DEPOSITION OF ROGER AMUNDSON - AUGUST 14, 2014**

36:11, 50:7, 61:22, 61:25, 67:17,	92:6, 92:10, 93:4, 102:6, 102:14, 103:16, 104:8, 104:14, 104:20, 105:11, 105:15, 105:16, 105:17, 106:4, 111:8, 112:21, 112:23, 113:1, 113:3, 113:6, 115:20, 115:24,	obvious - 12:6,	onto - 18:7, 31:22,	out - 6:1, 14:6, 17:19, 18:13, 22:22, 25:12, 26:14, 28:25, 33:8, 35:7, 37:4, 38:22, 41:2, 41:10, 41:13, 42:1, 43:3, 43:17, 44:7, 44:24, 44:24, 45:6, 45:21, 47:15, 47:20, 56:23, 60:23, 61:14, 63:11, 65:20, 65:22, 67:13, 67:21, 68:12, 69:20, 73:4, 74:19, 75:12, 75:15, 75:17, 75:18, 77:17, 77:18, 80:8, 80:9, 80:13, 81:3, 82:1, 82:8, 82:13, 82:14, 82:15, 83:3, 83:6, 83:12, 83:14, 83:23, 84:2, 84:24, 85:15, 88:10, 89:4, 95:24, 96:7, 96:16, 99:8, 104:3, 104:11, 104:17, 108:14, 108:17, 110:1, 110:21, 111:18,	pages - 8:10,  paid - 36:15, 36:20, 37:2,  pain - 8:1, 104:2,  painted - 66:20,  pallets - 44:16, 44:16,  pane - 15:15, 16:24, 16:25, 17:16, 17:19, 17:22, 18:9, 22:8, 22:9, 24:13, 25:13, 25:19, 26:14, 27:6, 27:9, 31:10, 31:16, 32:9, 32:13, 33:1, 33:22, 35:5, 35:11, 35:16, 35:24, 36:3, 37:8, 37:11, 37:14, 37:24, 37:25, 38:11, 38:22, 41:2, 41:11, 47:2, 50:7, 52:11, 52:19, 54:5, 70:7, 70:24, 99:8, 100:11, 101:24, 108:1, 108:2, 108:11, 108:17, 108:18, 108:22, 108:25, 109:5, 109:9, 109:15, 111:25, 113:1, 113:11,  panel - 8:20, 8:22, 13:13, 18:4, 33:25, 34:1, 38:24, 42:17, 42:21, 49:24, 70:3,  panels - 44:14,  panes - 14:19, 15:22, 15:24, 16:5, 16:15, 17:1, 17:8, 17:11, 17:19, 24:19,  pans - 107:17,  paper - 34:18, 80:2,  parents - 83:10,  part - 15:16, 18:25, 19:1, 25:25, 38:23, 44:20, 44:23, 86:14, 96:15, 104:18, 110:6,  particular - 102:5, 102:16,  parties - 39:18, 72:25, 82:20,
new - 57:24, 85:17,	nothing - 19:16, 40:23, 55:1, 57:24, 91:11, 113:23,	obviously - 41:10, 41:23,	open - 39:10, 39:20, 39:20, 44:1, 89:1, 89:2, 89:3, 89:4, 92:24,	outlet - 98:5,	
next - 7:20, 14:7, 23:2, 27:17, 33:12, 39:2, 88:17, 100:11,	noticed - 99:20,	occur - 54:20, 56:20, 56:22,	opened - 14:23, 21:25, 22:4, 31:16, 44:4, 90:15, 90:24, 95:23,	outlets - 68:13,	
night - 44:5, 47:22, 47:24, 81:13, 81:18, 81:19, 96:13, 96:23,	notified - 71:23,	occurred - 40:19, 42:22, 44:13, 48:3, 58:16, 71:22, 87:13, 99:12,	opening - 22:14,	outside - 32:4, 33:5, 101:18,	
nightlight - 98:4,	notice - 5:15, 5:25, 6:2, 6:5, 6:7, 6:25,	occurrence - 78:16,	opens - 90:20,	over - 5:22, 6:6, 7:20, 8:4, 12:8, 12:13, 14:1, 14:8, 24:20, 27:12, 44:18, 56:2, 60:11, 62:5, 63:12, 72:7, 74:16, 83:13, 88:15, 92:14, 96:6, 100:3, 103:4,	
nightly - 72:22,	number - 8:6, 62:5, 73:12, 73:12, 73:25, 111:16,	occurring - 39:23, 59:7, 61:9, 63:24, 69:15, 71:3, 72:21, 77:11, 80:25, 99:17, 99:22,	operational - 96:19,	overlapped - 115:5,	
nights - 62:24,	nystagmus - 56:9,	off - 20:5, 20:11, 39:7, 49:18, 49:19, 91:22, 94:10, 104:25, 105:18, 107:17, 112:14,	opinion - 103:18,	own - 49:9, 81:8,	
nine - 16:1, 72:10, 72:10,	o'clock - 81:13,	off-the-record - 20:7, 105:20, 112:15,	opportunity - 99:14,	owned - 64:4, 104:25,	
no's - 7:10,	oath - 7:24,	offend - 83:24, 83:25,	opposed - 16:8,	owner - 64:23,	
nobody - 26:18, 38:5, 39:8, 39:16, 46:7, 106:11,	object - 17:24, 22:3, 25:22, 28:3, 35:18, 37:17, 38:2, 40:15, 46:23, 52:21, 53:6, 53:11, 56:11, 62:7, 64:18, 75:3, 75:13, 77:4, 78:21, 79:11, 89:17, 91:20, 92:5, 93:20, 100:7, 101:9, 110:8,	officers - 56:10,	opposite - 23:12,	owning - 104:24,	
none - 42:22,	objection - 29:13, 36:4, 38:17, 45:13, 45:15, 47:4, 51:3, 51:8, 53:2, 53:5, 63:25, 64:8, 67:8, 76:4, 76:17, 87:19, 98:19, 99:3, 99:10, 101:15, 101:20, 103:8, 103:20, 109:11,	often - 74:1,	oral - 89:18,	p-o-s-t - 85:12,	
nor - 41:24,	objections - 53:4,	old - 44:16, 110:4,	orange - 96:7,	p.m. - 5:1, 116:5,	
normal - 66:24,	objects - 92:15,	once - 76:1, 81:7, 83:25, 103:1,	order - 13:21, 86:1, 88:20,	page - 105:24, 106:9, 107:9, 107:22, 112:10,	
north - 10:2, 10:12, 68:7,	obtain - 80:1, 86:9,	one - 7:20, 14:1, 14:19, 15:23, 16:14, 17:16, 17:17, 17:18, 18:4, 24:19, 26:25, 32:11, 33:21, 34:3, 34:12, 51:23, 53:16, 53:21, 53:21, 58:8, 66:24, 70:2, 74:22, 76:15, 78:9, 78:10, 81:21, 81:22, 85:22, 86:7, 90:18, 105:17, 112:5,	oriented - 10:11,		
not - 6:3, 6:17, 6:23, 7:3, 7:6, 8:15, 8:24, 9:19, 15:5, 15:6, 18:2, 19:12, 19:14, 23:14, 24:20, 25:8, 25:14, 25:20, 25:24, 25:24, 29:23, 32:7, 32:11, 33:7, 35:18, 35:24, 36:25, 38:13, 40:7, 41:10, 41:14, 43:1, 43:18, 43:22, 47:6, 48:17, 49:6, 49:11, 49:14, 50:18, 53:4, 53:15, 54:17, 56:6, 56:11, 56:13, 57:13, 58:13, 58:17, 58:18, 58:19, 60:3, 60:18, 60:19, 63:2, 63:18, 64:8, 64:9, 65:15, 67:18, 68:21, 69:22, 71:11, 72:1, 74:11, 76:7, 79:2, 79:21, 80:12, 82:21, 85:9, 86:24, 87:3, 89:2, 90:13, 91:19,	obtaining - 79:19, 79:22,	ones - 14:11, 84:9,	only - 15:24, 16:7, 18:4, 36:20, 46:15, 49:18, 78:9,		

DEPOSITION OF ROGER AMUNDSON - AUGUST 14, 2014

party - 60:4, 60:12, 63:1, 63:6, 72:16,	photo - 50:18, 94:8, 106:20, 107:2,	playing - 81:9,	pretty - 12:23, 21:9, 31:8, 47:16, 88:18, 93:25, 94:4, 94:22, 96:20, 97:2, 97:13, 108:18,	69:3, 69:5, 78:16, 97:11, 97:12, 98:9, 98:10, 109:22,	quite - 82:4, 100:2,
partying - 58:9, 58:14, 59:19, 59:24, 60:1, 60:2, 61:9, 61:16, 62:19, 63:2, 63:9, 72:21, 74:2, 74:14, 77:11, 77:14, 81:4,	photograph - 11:2, 17:13, 49:5, 49:13, 106:13,	please - 5:18, 8:9, 69:13,	prevent - 78:13, 78:14, 93:1,	provide - 6:7,	raised - 104:19,
partyings - 81:6,	photographic - 17:6,	plus - 44:14,	prevented - 93:7,	proximity - 72:11,	raked - 67:24,
passed - 56:8,	photographs - 8:7, 8:8, 105:10, 107:6,	point - 19:10, 28:18, 28:20, 30:20, 33:8, 33:10, 33:21, 35:6, 44:7, 59:22, 76:9, 94:8,	previous - 11:5, 11:6,	pull - 35:13, 89:5, 89:9, 89:10, 91:1,	random - 44:18, 46:18, 85:9,
passenger - 21:21, 21:23, 21:25,	photos - 6:7, 6:14, 8:13, 41:9, 41:18,	pointing - 15:12,	previously - 11:2, 26:11, 105:8,	pulled - 44:24, 67:13,	rate - 43:12, 80:15,
passes - 41:25,	physical - 74:10, 74:11,	pole - 96:5, 96:7, 96:15, 96:16, 96:24, 96:25, 97:10, 98:9,	price - 114:1, 114:8,	puncture - 109:19,	read - 87:14,
past - 37:13, 38:10, 69:20, 87:5, 99:16, 99:19,	pic - 26:5,	police - 81:15,	primarily - 14:11, 19:8,	purchase - 114:8,	ready - 62:6, 102:5,
pause - 20:4,	pick - 7:12, 36:8, 36:13, 36:23, 94:7,	porch - 10:12,	prior - 14:18, 19:20, 25:14, 27:6, 35:23, 36:3, 40:5, 40:9, 41:14, 44:13, 45:2, 45:20, 47:2, 56:5, 58:12, 59:20, 60:10, 63:16, 70:25, 74:19, 78:21, 90:3, 90:5, 90:11, 91:1, 100:2, 102:17, 104:24, 108:8, 108:20, 109:1, 112:20, 113:1,	purchased - 69:10,	really - 17:5, 18:2, 18:3, 21:16, 22:2, 24:25, 29:14, 30:17, 31:4, 38:13, 38:18, 39:8, 39:16, 49:14, 51:13, 55:1, 55:22, 57:11, 57:14, 59:3, 70:9, 71:1, 71:8, 72:1, 79:6, 80:12, 84:13, 86:6, 87:9, 102:6, 104:8, 107:8, 114:17,
people - 14:6, 34:5, 43:4, 55:1, 60:11, 62:5, 62:10, 62:15, 62:21, 63:12, 63:13, 72:25, 73:18, 82:10, 83:24, 85:9, 94:1, 104:24,	picket - 9:14, 9:21,	possible - 21:14,	priorly - 44:9, 44:23,	purpose - 14:14, 78:12, 79:10, 79:13, 112:9,	rearview - 109:4, 109:8,
percent - 112:5,	pickup - 10:15, 15:1, 15:7, 15:8, 15:10, 15:12, 22:13,	possibly - 18:21, 20:23, 21:16, 49:24, 103:21, 115:9,	probably - 27:8, 29:24, 33:13, 33:16, 48:7, 74:4, 74:4, 78:13, 94:25, 114:22,	purposes - 5:16,	reason - 25:12, 46:15, 56:15, 61:11, 67:20, 71:18, 115:4,
perhaps - 45:14,	picture - 10:14, 12:21, 12:22, 16:22, 41:13, 94:5, 106:22,	post - 85:12, 85:13, 110:22, 110:25,	problem - 54:6, 63:16, 68:6,	pursuant - 5:14,	reasonable - 31:2,
period - 25:25, 27:4, 29:6, 42:4, 45:7, 45:10, 45:22, 45:24, 46:2, 59:16, 59:18, 59:23, 61:1, 61:3, 62:3, 69:7, 81:2, 86:15, 100:4, 101:7, 101:18,	pictures - 41:1, 42:11, 48:11, 50:25,	posts - 46:16, 46:18,	problems - 68:19,	purview - 75:25, 76:2,	reasons - 100:17,
perjury - 8:1,	piece - 11:14, 14:1, 16:14, 26:10, 33:24, 34:17, 34:18, 54:4, 87:11,	pot - 61:22,	procedure - 5:15,	put - 11:17, 14:6, 14:14, 19:18, 52:9, 90:1, 104:9, 109:8, 110:18, 112:1, 114:1, 114:4,	rebuild - 46:17,
person - 24:19, 102:20,	pieces - 86:20,	pounding - 73:15,	proceeding - 7:5,	putting - 25:21, 87:2,	recall - 8:25, 17:13, 18:6, 28:7, 32:8, 52:5, 52:8, 52:12, 52:13, 52:24, 57:11, 71:7, 71:21, 79:3, 84:12, 99:15,
personal - 107:13,	pile - 44:15,	pounds - 25:2, 25:7, 25:10,	project - 19:5, 69:2,	qualify - 75:7,	receive - 57:7,
personally - 76:22, 80:1, 80:3,	pit - 39:21, 44:24,	premises - 5:23, 8:5, 9:19, 10:8, 21:15, 36:2, 36:8, 42:25, 46:3, 54:16, 59:2, 59:6, 61:18, 63:24, 64:4, 64:7, 64:13, 64:16, 64:22, 65:17, 66:10, 66:13, 66:14, 72:25, 75:11, 77:25, 79:2, 79:8, 80:4, 82:1, 83:16, 85:1, 85:15, 85:24,	projects - 68:24,	quarter - 37:1,	received - 6:6,
phone - 70:22, 71:3, 102:21, 102:22, 107:5,	place - 5:13, 9:13, 12:14, 12:18, 44:18, 78:17, 104:9, 104:10,	prepare - 102:4,	promptly - 33:5,	question - 7:18, 7:20, 16:11, 27:1, 27:11, 38:6, 38:7, 53:8, 53:10, 70:13, 70:13, 74:22, 78:22, 79:25, 87:24, 95:5, 98:23, 98:25, 101:16, 106:10,	recently - 80:11, 82:24,
	placed - 10:3, 10:23, 10:25, 11:20, 13:5, 13:9, 13:10, 13:18, 13:22, 14:1, 23:2, 24:7, 27:12, 27:15, 31:6, 46:16, 98:21, 100:14, 100:16, 104:5, 105:6, 105:22, 111:6,	presented - 98:17,	property - 9:2, 9:16, 10:1, 10:16, 10:19, 14:12, 19:23, 20:12, 21:11, 38:23, 43:17, 64:23, 67:7, 68:24,	questions - 8:11, 12:6, 42:18, 100:23, 115:19, 116:1, 116:2,	recess - 20:8, 77:7, 111:21,
	placing - 99:16,	presents - 94:11,	presume - 85:3,	quick - 111:19,	recognize - 8:16, 98:14,
		presume - 85:3,		quit - 74:2, 74:15,	reconcile - 113:20,

**DEPOSITION OF ROGER AMUNDSON - AUGUST 14, 2014**

record - 5:12, 5:19, 20:5, 20:10, 77:9, 105:18, 105:22, 111:23, 112:14, 112:17,	renovated - 11:17, 105:2,	rest - 25:13, 26:14,	round - 16:18,	28:17, 32:19, 34:15, 37:9, 38:3, 39:12, 46:24, 48:7, 49:22, 55:8, 57:15, 57:17, 64:2, 69:1, 70:12, 71:19, 78:3, 78:14, 79:3, 79:7, 83:21, 83:25, 84:19, 90:19, 92:8, 94:8, 94:16, 95:2, 95:6, 96:21, 101:21, 102:6, 103:2, 103:9, 109:10, 109:16, 113:8, 113:23, 114:4,	separate - 16:13,
recount - 51:15,	renovating - 104:25,	restate - 87:14,	rows - 34:11,	77:24, 112:2,	sequence - 41:16, 41:22,
recounted - 54:2,	renovation - 13:21, 14:11, 14:14, 19:8, 28:7, 28:11, 28:16, 28:21, 29:2, 29:7, 29:10, 29:20, 29:22, 30:10, 30:14, 31:1, 39:23, 40:2, 65:4, 66:15, 68:11, 68:22, 69:1,	returned - 49:7,	rule - 112:8,	77:24, 112:2,	seriously - 39:9,
reference - 28:18, 28:20, 28:21, 30:20, 58:1,	renovations - 30:8,	review - 51:18,	rules - 5:15, 5:17, 7:8, 78:18,	77:24, 112:2,	set - 12:7, 43:3, 43:11, 76:25, 91:14,
reflect - 5:12,	rent - 36:8, 36:13, 36:18, 36:24, 69:18,	rid - 82:25, 87:4,	run - 10:2, 93:7, 105:3,	77:24, 112:2,	several - 37:5, 41:7, 45:10, 48:5,
regard - 29:20,	repair - 66:14, 67:2,	ridiculous - 68:9,	safekeeping - 64:6, 64:13,	77:24, 112:2,	severe - 54:17,
regularly - 49:16,	repairs - 66:21,	right - 7:13, 8:12, 15:13, 15:15, 16:10, 17:16, 24:23, 29:5, 29:18, 32:24, 34:3, 34:5, 34:8, 34:8,	safest - 104:10,	77:24, 112:2,	shakes - 7:10, 7:14,
relate - 6:11,	rephrase - 53:8, 76:5, 103:9,	34:15, 39:19, 39:20, 42:5, 43:1, 43:25, 46:14, 48:25, 52:2, 55:18, 63:11, 67:16, 71:17, 72:2, 72:6, 72:15, 74:9, 76:20, 78:5, 78:18, 82:14, 88:11, 88:12, 88:13, 88:17, 88:18, 89:25, 90:4, 90:5, 90:25, 93:17, 93:25, 94:2, 94:5, 94:14, 95:18, 98:13, 101:1, 102:8, 102:18, 103:12, 106:25, 109:14, 114:23, 114:25, 115:2, 115:3, 115:17,	safety - 64:16,	77:24, 112:2,	shard - 54:4,
relationship - 41:3,	replaced - 66:18, 87:1,	71:17, 72:2, 72:6, 72:15, 74:9, 76:20, 78:5, 78:18, 82:14, 88:11, 88:12, 88:13, 88:17, 88:18, 89:25, 90:4, 90:5, 90:25, 93:17, 93:25, 94:2, 94:5, 94:14, 95:18, 98:13, 101:1, 102:8, 102:18, 103:12, 106:25, 109:14, 114:23, 114:25, 115:2, 115:3, 115:17,	sagging - 107:20,	77:24, 112:2,	shards - 99:8, 104:2, 107:25, 108:10, 108:14,
relative - 65:25, 75:10,	replacement - 67:1,	ripped - 28:25,	said - 11:23, 15:11, 34:17, 34:20, 35:3, 41:17, 42:9, 43:5, 45:20, 52:15, 55:4, 55:6, 70:14, 70:14, 74:12, 75:21, 75:22, 76:1, 76:20, 79:1, 85:23, 111:14, 111:15, 112:3, 113:20, 113:21,	77:24, 112:2,	share - 46:21, 103:6, 103:11,
relatively - 31:5,	reporter - 7:12, 94:3, 94:7,	risen - 76:9,	salable - 86:24, 86:25,	77:24, 112:2,	shared - 52:17, 103:15,
remain - 35:12,	represented - 53:12,	rob - 80:22, 80:22,	sale - 18:19, 33:19, 34:16, 34:17, 34:20, 34:24, 111:6, 111:11, 111:14, 111:15, 113:21,	77:24, 112:2,	sharp - 108:10,
remained - 80:4,	request - 42:12,	robbed - 82:17, 84:10,	same - 7:18, 11:8, 17:18, 45:3, 50:23, 68:6, 69:22, 79:15, 87:12, 87:17, 88:5, 101:20, 101:23, 105:10, 105:15, 105:16, 106:10, 107:13, 115:6,	77:24, 112:2,	she's - 58:7,
remedial - 78:22,	requesting - 75:17,	robbing - 84:21,	sat - 26:23, 27:8, 27:17, 32:17, 32:19, 38:19, 40:23, 44:25, 87:9, 100:20, 100:20, 100:20,	77:24, 112:2,	shed - 66:19,
remember - 11:6, 17:3, 17:5, 18:3, 18:8, 19:25, 20:2, 20:16, 21:16, 22:2, 22:4, 29:14, 30:17, 32:6, 33:7, 34:1, 35:9, 35:10, 35:15, 38:19, 41:6, 47:5, 51:9, 51:13, 51:14, 52:7, 52:15, 57:18, 58:3, 59:3, 70:9, 71:1, 71:4, 71:8, 72:1, 73:24, 74:15, 79:6, 82:3, 84:10, 84:12, 84:13, 87:9, 90:9, 114:18,	reserve - 83:18, 116:2,	roger - 5:6, 5:13, 5:20, 70:17,	seeing - 12:21, 26:5, 37:13, 48:22,	77:24, 112:2,	sheepish - 69:23,
removal - 9:1, 13:17, 13:22,	resided - 53:21,	roofing - 66:21, 67:2,	seek - 74:23,	77:24, 112:2,	sheet - 107:3,
removed - 9:5, 9:8, 9:13, 10:22, 12:8, 13:16, 13:20, 14:1, 27:11, 103:25,	residence - 49:8,	room - 81:8, 83:13, 83:23, 84:2, 105:1,	seem - 12:6, 71:25,	77:24, 112:2,	shell - 92:15, 92:19, 93:6, 93:10,
renovate - 19:18,	respect - 10:5, 86:12,	roommate - 85:10,	seen - 6:1, 6:2, 6:5, 8:13, 11:1, 11:7, 71:9, 83:25, 89:22,	77:24, 112:2,	shift - 81:13, 81:18, 81:19,
	response - 71:6,	roommates - 21:3, 21:4, 21:10, 80:20, 82:7, 82:13, 82:22, 84:24, 85:15, 85:17, 113:15,	sell - 14:5, 18:13, 18:15, 35:2, 110:15, 110:20,	77:24, 112:2,	shit - 52:25,
	response. - 89:18,		say - 13:4, 13:19, 28:4, 28:4, 28:9,	77:24, 112:2,	shook - 51:7,
	responsibility - 63:23,			77:24, 112:2,	short - 77:10,
	responsible - 64:12, 64:15, 66:1, 67:6,			77:24, 112:2,	shorter - 24:9,
	responsive - 6:24,			77:24, 112:2,	shortly - 13:17, 13:21, 35:6, 49:20, 50:18, 69:5, 69:8, 89:13, 89:15,
				77:24, 112:2,	should - 42:16, 42:20, 78:17, 107:8,
				77:24, 112:2,	shouldn't - 53:1,



**DEPOSITION OF ROGER AMUNDSON - AUGUST 14, 2014**

show - 112:10,	sister - 20:24, 58:4, 58:6, 58:8, 58:19, 69:10,	someone - 21:25,	stand - 94:25,	stiles - 25:21, 25:24, 26:2, 26:9, 28:19, 29:3, 32:10, 32:14, 35:24, 45:25, 46:22, 47:3, 47:9, 51:22, 52:4, 52:18, 54:3, 56:4, 56:16, 70:8, 71:9, 88:14, 88:22, 90:15, 90:18, 91:1, 95:23, 97:6, 98:18, 100:3, 106:2, 108:6, 108:11, 108:19, 109:21, 112:1, 112:19,	stuck - 33:25, 34:2,
showed - 11:5,	sit - 27:24, 32:21,	something - 18:16, 18:17, 26:6, 31:19, 41:22, 43:11, 70:12, 80:24, 108:21,	standing - 50:16, 88:25, 89:3, 90:25, 94:4, 106:14, 106:19,	stuff - 41:1, 44:9, 44:16, 46:16, 54:25, 66:23, 83:12, 84:22, 86:20, 92:11, 92:13,	
shown - 11:19, 12:10, 13:6, 15:7, 16:12, 16:16, 17:1, 25:20, 43:24, 44:11, 46:10, 95:7,	site - 111:3,	sometime - 30:15, 37:4,	start - 21:3, 27:10, 114:15,	stumbling - 84:5,	
shows - 12:22,	sits - 91:5, 97:1,	somewhere - 104:5,	started - 114:22,	stump - 44:8, 44:11, 44:19, 45:5, 45:21, 51:22, 51:24, 52:5, 52:18, 53:1, 53:2, 53:13, 54:4, 87:17, 88:10, 88:21, 89:16, 89:22, 90:5, 90:9, 90:14, 93:19, 93:23, 94:11, 94:13, 94:18, 95:18, 98:15, 98:15, 99:20, 99:25, 100:1, 100:3, 100:12, 100:16, 100:25, 101:4, 101:16, 101:23,	
side - 10:1, 10:3, 10:3, 10:4, 10:12, 10:16, 10:19, 12:14, 12:15, 12:16, 21:21, 21:22, 21:23, 21:25, 23:12, 45:4, 88:12, 89:13, 89:15, 90:22, 93:24, 95:12, 96:1, 98:1, 98:5, 99:8, 104:10, 109:12,	sitting - 45:4, 46:18, 90:4, 90:10, 92:20, 100:1, 100:1,	sonoma - 15:1, 22:13, 109:5,	state - 5:18,	stump's - 87:24, 93:18,	
sided - 66:19,	situation - 52:20,	soon - 35:7, 42:16,	statement - 85:22,	style - 107:18,	
siding - 67:2,	six - 16:1, 16:15, 59:12, 59:14, 59:16, 59:18, 59:21, 59:23, 60:9, 61:1, 61:3, 62:3, 72:18, 77:12, 109:10,	sorry - 29:5, 38:7, 50:11, 53:8, 67:10,	stay - 50:13,	subject - 8:1,	
sign - 33:19, 34:16, 34:24, 77:24, 79:1, 79:15, 85:20, 85:22, 111:6, 111:11,	size - 97:3, 109:3, 109:9,	sound - 30:16, 114:23, 115:2,	stayed - 37:25,	such - 55:9,	
signage - 43:5,	slammed - 55:13,	sounds - 114:25, 115:3,	staying - 48:10,	suing - 47:12,	
signature - 79:20, 79:23, 86:9, 99:2,	slats - 11:11, 11:14, 11:21, 12:1, 12:9, 12:15, 13:23, 22:24, 23:12, 23:18,	south - 10:2, 10:12,	steel - 83:18,	sullivan - 19:11, 21:7, 29:1, 40:2, 40:5, 40:9, 41:1, 41:17, 42:5, 42:10, 44:8, 44:12, 47:13, 47:16, 48:22, 49:3, 50:15, 50:22, 51:6, 51:11, 51:15, 51:19, 51:21, 51:23, 52:3, 52:4, 52:6, 52:8, 52:14, 52:17, 53:10, 54:3, 57:11, 58:11, 58:13, 58:20, 59:1, 59:5, 59:20, 59:21, 60:3, 60:10, 61:2, 62:4, 68:1, 72:17, 72:18, 73:3, 73:20, 74:8, 75:2, 75:21, 76:1, 76:3, 76:9, 76:21, 77:12, 77:18, 78:17, 79:1, 80:4, 81:1, 81:3, 82:4, 82:21, 83:22, 84:24, 85:15, 86:9, 98:21, 106:14, 106:19,	
signatures - 80:1, 86:3,	sledge - 86:19, 87:6, 109:24, 110:2, 110:6,	span - 95:2, 95:6,	steep - 23:15,	stump's - 87:24, 93:18,	
signed - 78:10, 86:1, 86:8, 86:13,	sleep - 60:16, 63:3, 81:10,	spec - 14:25, 102:23,	steeper - 22:16, 23:3, 23:16,	style - 107:18,	
significant - 57:7, 98:17, 99:7, 101:6, 101:10, 101:12, 101:18,	smelled - 61:22,	speaking - 53:4,	stefanic - 13:1, 17:24, 20:4, 22:3, 25:22, 27:20, 28:3, 29:13, 30:8, 30:22, 35:18, 36:4, 37:17, 38:2, 38:17, 40:15, 41:3, 42:18, 45:13, 45:15, 46:23, 47:4, 51:3, 51:8, 52:21, 53:2, 53:6, 53:11, 53:19, 53:25, 56:11, 57:12, 57:15, 62:7, 62:10, 63:25, 64:8, 64:18, 67:8, 70:10, 70:12, 70:19, 75:3, 75:13, 76:4, 76:17, 77:4, 78:3, 78:6, 78:9, 78:21, 79:11, 87:14, 87:19, 89:17, 91:20, 92:5, 92:7, 93:20, 98:19, 99:3, 99:10, 100:7, 101:9, 101:20, 102:16, 102:17, 102:24, 103:6, 103:8, 103:11, 103:20, 105:10, 105:13, 109:11, 110:8, 112:2, 112:5, 112:10, 112:13, 115:8, 115:13, 116:2,	stopped - 73:21,	subject - 8:1,
silverware - 82:18,	smoked - 61:22,	speculate - 38:5,	steep - 23:15,	such - 55:9,	
similar - 68:7, 85:22,	smoothly - 7:9,	speculation - 22:3, 25:23, 28:3, 29:13, 36:4, 37:17, 37:18, 38:17, 40:15, 45:13, 45:15, 51:3, 87:19, 99:10, 109:11,	steeper - 22:16, 23:3, 23:16,	suing - 47:12,	
since - 6:5, 46:10, 53:12, 68:20, 68:24, 69:2, 80:13, 84:24, 85:15, 93:10,	sold - 18:18,	spell - 5:18, 48:18, 111:16,	stefanic - 13:1, 17:24, 20:4, 22:3, 25:22, 27:20, 28:3, 29:13, 30:8, 30:22, 35:18, 36:4, 37:17, 38:2, 38:17, 40:15, 41:3, 42:18, 45:13, 45:15, 46:23, 47:4, 51:3, 51:8, 52:21, 53:2, 53:6, 53:11, 53:19, 53:25, 56:11, 57:12, 57:15, 62:7, 62:10, 63:25, 64:8, 64:18, 67:8, 70:10, 70:12, 70:19, 75:3, 75:13, 76:4, 76:17, 77:4, 78:3, 78:6, 78:9, 78:21, 79:11, 87:14, 87:19, 89:17, 91:20, 92:5, 92:7, 93:20, 98:19, 99:3, 99:10, 100:7, 101:9, 101:20, 102:16, 102:17, 102:24, 103:6, 103:8, 103:11, 103:20, 105:10, 105:13, 109:11, 110:8, 112:2, 112:5, 112:10, 112:13, 115:8, 115:13, 116:2,	store - 65:3,	suing - 47:12,
sir - 25:19, 75:7, 76:24, 79:25, 98:23, 101:12,	solid - 43:22,	spelled - 111:18,	store - 65:3,	sullivan - 19:11, 21:7, 29:1, 40:2, 40:5, 40:9, 41:1, 41:17, 42:5, 42:10, 44:8, 44:12, 47:13, 47:16, 48:22, 49:3, 50:15, 50:22, 51:6, 51:11, 51:15, 51:19, 51:21, 51:23, 52:3, 52:4, 52:6, 52:8, 52:14, 52:17, 53:10, 54:3, 57:11, 58:11, 58:13, 58:20, 59:1, 59:5, 59:20, 59:21, 60:3, 60:10, 61:2, 62:4, 68:1, 72:17, 72:18, 73:3, 73:20, 74:8, 75:2, 75:21, 76:1, 76:3, 76:9, 76:21, 77:12, 77:18, 78:17, 79:1, 80:4, 81:1, 81:3, 82:4, 82:21, 83:22, 84:24, 85:15, 86:9, 98:21, 106:14, 106:19,	
	some - 19:10, 21:8, 33:8, 33:10, 35:6, 54:19, 60:15, 63:3, 64:25, 66:22, 69:6, 74:5, 74:6, 74:16, 75:14, 82:12, 91:22, 102:10, 104:25,	spill - 56:24,	store - 65:3,	style - 107:18,	
	somebody - 57:15,	sprinklers - 65:16, 65:19, 65:22,	stopped - 73:21,	subject - 8:1,	
	somehow - 108:20,	square - 89:2,	store - 65:3,	such - 55:9,	
		squared - 91:22,	store - 65:3,	suing - 47:12,	
		stable - 24:1,	store - 65:3,	sullivan - 19:11, 21:7, 29:1, 40:2, 40:5, 40:9, 41:1, 41:17, 42:5, 42:10, 44:8, 44:12, 47:13, 47:16, 48:22, 49:3, 50:15, 50:22, 51:6, 51:11, 51:15, 51:19, 51:21, 51:23, 52:3, 52:4, 52:6, 52:8, 52:14, 52:17, 53:10, 54:3, 57:11, 58:11, 58:13, 58:20, 59:1, 59:5, 59:20, 59:21, 60:3, 60:10, 61:2, 62:4, 68:1, 72:17, 72:18, 73:3, 73:20, 74:8, 75:2, 75:21, 76:1, 76:3, 76:9, 76:21, 77:12, 77:18, 78:17, 79:1, 80:4, 81:1, 81:3, 82:4, 82:21, 83:22, 84:24, 85:15, 86:9, 98:21, 106:14, 106:19,	
		stains - 105:25,	store - 65:3,	style - 107:18,	
			store - 65:3,	subject - 8:1,	
			store - 65:3,	such - 55:9,	
			store - 65:3,	suing - 47:12,	
			store - 65:3,	sullivan - 19:11, 21:7, 29:1, 40:2, 40:5, 40:9, 41:1, 41:17, 42:5, 42:10, 44:8, 44:12, 47:13, 47:16, 48:22, 49:3, 50:15, 50:22, 51:6, 51:11, 51:15, 51:19, 51:21, 51:23, 52:3, 52:4, 52:6, 52:8, 52:14, 52:17, 53:10, 54:3, 57:11, 58:11, 58:13, 58:20, 59:1, 59:5, 59:20, 59:21, 60:3, 60:10, 61:2, 62:4, 68:1, 72:17, 72:18, 73:3, 73:20, 74:8, 75:2, 75:21, 76:1, 76:3, 76:9, 76:21, 77:12, 77:18, 78:17, 79:1, 80:4, 81:1, 81:3, 82:4, 82:21, 83:22, 84:24, 85:15, 86:9, 98:21, 106:14, 106:19,	

DEPOSITION OF ROGER AMUNDSON - AUGUST 14, 2014

107:10, 107:13, 107:16,	talking - 7:20, 20:11, 27:3, 47:13, 48:5, 61:1, 62:15, 62:16, 70:14, 70:16, 95:3, 95:6,	30:6, 46:12, 50:18, 66:14, 68:22, 83:21, 84:16, 84:20, 84:23, 85:10, 85:13, 97:9, 97:16, 97:24, 98:7, 103:1, 104:6, 104:20, 106:21, 111:5,	themselves - 26:18,	108:14, 110:10, 110:14, 115:4, 115:6,	99:15, 99:18, 99:19, 100:2, 100:4, 100:14, 101:7, 101:10, 101:19, 102:9, 102:15, 104:14, 106:20, 115:7, 115:25, 116:3,
sullivan's - 41:12, 42:13, 59:17, 70:2, 79:23, 86:9, 107:5,	taller - 24:4,	thank - 9:22, 30:10, 50:14, 105:6, 115:25, 116:3,	then - 7:17, 7:18, 7:23, 8:10, 9:16, 9:23, 12:9, 14:1, 21:2, 23:21, 26:13, 26:22, 27:17, 27:23, 31:25, 32:4, 32:14, 33:5, 37:21, 38:11, 41:13, 42:23, 49:18, 50:24, 52:25, 53:19, 59:15, 60:7, 62:17, 68:3, 75:8, 75:18, 75:22, 75:25, 76:2, 76:14, 76:15, 76:25, 80:8, 80:21, 86:12, 88:15, 89:7, 89:13, 89:15, 91:4, 112:10, 115:1,	third - 106:13, 107:3,	101:19, 102:9, 102:15, 104:14, 106:20, 115:7, 115:25, 116:3,
summer - 20:2, 20:16, 20:20, 21:15, 30:1, 57:25,	tan - 15:8,	that's - 6:15, 7:7, 11:19, 12:5, 12:12, 14:3, 14:13, 14:16, 15:5, 15:6, 15:8, 15:17, 16:12, 18:16, 19:2, 19:6, 20:15, 22:8, 23:23, 24:6, 24:11, 24:18, 24:23, 25:17, 25:20, 26:8, 27:14, 27:16, 30:13, 31:20, 32:22, 32:25, 33:4, 33:15, 34:13, 40:7, 43:3, 43:6, 43:13, 43:15, 43:19, 43:20, 43:23, 43:24, 44:11, 44:19, 45:2, 45:5, 45:6, 45:9, 45:23, 46:1, 46:15, 46:17, 48:23, 48:24, 49:24, 49:24, 50:10, 53:15, 53:23, 54:6, 55:10, 55:16, 57:6, 57:24, 59:23, 60:4, 61:10, 61:13, 61:17, 64:5, 64:8, 64:24, 65:2, 65:11, 66:11, 67:5, 69:12, 72:17, 72:20, 72:23, 73:2, 75:3, 75:24, 76:13, 77:5, 88:1, 88:3, 91:8, 92:19, 94:12, 95:7, 95:8, 95:11, 99:5, 99:12, 100:14, 102:8, 102:13, 102:14, 104:1, 104:4, 105:11, 108:9, 108:16, 108:24, 110:16, 110:24, 112:2, 114:3, 114:3, 114:6,	there" - 53:1,	though - 24:18, 28:2, 107:8,	101:19, 102:9, 102:15, 104:14, 106:20, 115:7, 115:25, 116:3,
summertime - 20:13,	tandem - 77:3,	therefore - 10:18,	there" - 53:1,	thought - 20:12, 20:13, 23:16, 42:9, 52:25, 54:13, 60:20, 61:12, 63:19,	101:19, 102:9, 102:15, 104:14, 106:20, 115:7, 115:25, 116:3,
support - 12:11, 13:23, 23:12, 55:19,	tangible - 6:8, 6:10, 6:19,	these - 12:1, 21:3, 21:15, 23:18, 39:17, 39:22, 41:1, 41:9, 46:3, 50:25, 56:19, 57:8, 62:24, 64:16, 72:25, 81:6, 85:17, 107:4,	there" - 53:1,	three - 15:20, 15:22, 15:24, 16:1, 16:5, 17:7, 20:23, 21:13, 29:11, 34:11, 34:11, 42:2, 81:22, 94:20, 94:21, 95:22, 98:16, 101:6, 101:17,	101:19, 102:9, 102:15, 104:14, 106:20, 115:7, 115:25, 116:3,
supporting - 11:11,	tape - 33:25, 34:17,	they - 9:18, 16:17, 16:22, 21:8, 23:14, 23:14, 39:19, 39:24, 55:14, 56:22, 56:24, 58:25, 62:1, 62:17, 74:10, 78:10, 79:2, 80:20, 80:21, 82:13, 82:14, 82:14, 82:17, 82:20, 84:14, 85:20, 85:21, 85:22, 87:12, 87:17, 96:22, 96:23, 97:13, 104:19, 104:22, 104:25, 105:15, 105:16,	there" - 53:1,	threshold - 91:4,	101:19, 102:9, 102:15, 104:14, 106:20, 115:7, 115:25, 116:3,
supposed - 43:2,	taped - 34:20,	they - 9:18, 16:17, 16:22, 21:8, 23:14, 23:14, 39:19, 39:24, 55:14, 56:22, 56:24, 58:25, 62:1, 62:17, 74:10, 78:10, 79:2, 80:20, 80:21, 82:13, 82:14, 82:14, 82:17, 82:20, 84:14, 85:20, 85:21, 85:22, 87:12, 87:17, 96:22, 96:23, 97:13, 104:19, 104:22, 104:25, 105:15, 105:16,	there" - 53:1,	through - 8:9, 25:21, 39:8, 39:16, 39:19, 43:2, 44:5, 46:4, 46:7, 46:9, 46:13, 46:20, 70:3, 81:22, 88:14, 88:20, 105:3, 109:20, 112:1, 112:20,	101:19, 102:9, 102:15, 104:14, 106:20, 115:7, 115:25, 116:3,
sure - 8:24, 13:20, 15:19, 18:2, 19:2, 20:5, 28:18, 30:17, 31:8, 34:25, 36:10, 37:21, 38:13, 41:15, 53:10, 66:24, 76:7, 79:9, 79:21, 80:19, 87:1, 87:16, 96:20, 104:20, 105:11, 106:4, 115:13,	telephone - 96:16,	they - 9:18, 16:17, 16:22, 21:8, 23:14, 23:14, 39:19, 39:24, 55:14, 56:22, 56:24, 58:25, 62:1, 62:17, 74:10, 78:10, 79:2, 80:20, 80:21, 82:13, 82:14, 82:14, 82:17, 82:20, 84:14, 85:20, 85:21, 85:22, 87:12, 87:17, 96:22, 96:23, 97:13, 104:19, 104:22, 104:25, 105:15, 105:16,	there" - 53:1,	threshold - 91:4,	101:19, 102:9, 102:15, 104:14, 106:20, 115:7, 115:25, 116:3,
swapping - 68:12,	tell - 30:24, 32:12, 33:2, 34:25, 35:1, 35:16, 47:8, 47:17, 51:11, 57:13, 57:16, 61:8, 69:13, 69:25, 70:5, 70:7, 70:22, 71:2, 73:3, 74:1, 74:2, 74:7, 78:7, 99:19, 115:23,	they - 9:18, 16:17, 16:22, 21:8, 23:14, 23:14, 39:19, 39:24, 55:14, 56:22, 56:24, 58:25, 62:1, 62:17, 74:10, 78:10, 79:2, 80:20, 80:21, 82:13, 82:14, 82:14, 82:17, 82:20, 84:14, 85:20, 85:21, 85:22, 87:12, 87:17, 96:22, 96:23, 97:13, 104:19, 104:22, 104:25, 105:15, 105:16,	there" - 53:1,	through - 8:9, 25:21, 39:8, 39:16, 39:19, 43:2, 44:5, 46:4, 46:7, 46:9, 46:13, 46:20, 70:3, 81:22, 88:14, 88:20, 105:3, 109:20, 112:1, 112:20,	101:19, 102:9, 102:15, 104:14, 106:20, 115:7, 115:25, 116:3,
swing - 92:24, 93:7,	telling - 16:21, 32:9, 33:14, 33:17, 50:24, 63:5,	they - 9:18, 16:17, 16:22, 21:8, 23:14, 23:14, 39:19, 39:24, 55:14, 56:22, 56:24, 58:25, 62:1, 62:17, 74:10, 78:10, 79:2, 80:20, 80:21, 82:13, 82:14, 82:14, 82:17, 82:20, 84:14, 85:20, 85:21, 85:22, 87:12, 87:17, 96:22, 96:23, 97:13, 104:19, 104:22, 104:25, 105:15, 105:16,	there" - 53:1,	through - 8:9, 25:21, 39:8, 39:16, 39:19, 43:2, 44:5, 46:4, 46:7, 46:9, 46:13, 46:20, 70:3, 81:22, 88:14, 88:20, 105:3, 109:20, 112:1, 112:20,	101:19, 102:9, 102:15, 104:14, 106:20, 115:7, 115:25, 116:3,
sworn - 5:7,	tells - 32:13, 33:1, 35:5, 35:6, 70:17,	they - 9:18, 16:17, 16:22, 21:8, 23:14, 23:14, 39:19, 39:24, 55:14, 56:22, 56:24, 58:25, 62:1, 62:17, 74:10, 78:10, 79:2, 80:20, 80:21, 82:13, 82:14, 82:14, 82:17, 82:20, 84:14, 85:20, 85:21, 85:22, 87:12, 87:17, 96:22, 96:23, 97:13, 104:19, 104:22, 104:25, 105:15, 105:16,	there" - 53:1,	through - 8:9, 25:21, 39:8, 39:16, 39:19, 43:2, 44:5, 46:4, 46:7, 46:9, 46:13, 46:20, 70:3, 81:22, 88:14, 88:20, 105:3, 109:20, 112:1, 112:20,	101:19, 102:9, 102:15, 104:14, 106:20, 115:7, 115:25, 116:3,
swung - 44:1, 92:23,	ten - 58:22, 58:25, 95:14,	they - 9:18, 16:17, 16:22, 21:8, 23:14, 23:14, 39:19, 39:24, 55:14, 56:22, 56:24, 58:25, 62:1, 62:17, 74:10, 78:10, 79:2, 80:20, 80:21, 82:13, 82:14, 82:14, 82:17, 82:20, 84:14, 85:20, 85:21, 85:22, 87:12, 87:17, 96:22, 96:23, 97:13, 104:19, 104:22, 104:25, 105:15, 105:16,	there" - 53:1,	through - 8:9, 25:21, 39:8, 39:16, 39:19, 43:2, 44:5, 46:4, 46:7, 46:9, 46:13, 46:20, 70:3, 81:22, 88:14, 88:20, 105:3, 109:20, 112:1, 112:20,	101:19, 102:9, 102:15, 104:14, 106:20, 115:7, 115:25, 116:3,
tackling - 66:1,	tenant - 19:11, 77:3,	they - 9:18, 16:17, 16:22, 21:8, 23:14, 23:14, 39:19, 39:24, 55:14, 56:22, 56:24, 58:25, 62:1, 62:17, 74:10, 78:10, 79:2, 80:20, 80:21, 82:13, 82:14, 82:14, 82:17, 82:20, 84:14, 85:20, 85:21, 85:22, 87:12, 87:17, 96:22, 96:23, 97:13, 104:19, 104:22, 104:25, 105:15, 105:16,	there" - 53:1,	through - 8:9, 25:21, 39:8, 39:16, 39:19, 43:2, 44:5, 46:4, 46:7, 46:9, 46:13, 46:20, 70:3, 81:22, 88:14, 88:20, 105:3, 109:20, 112:1, 112:20,	101:19, 102:9, 102:15, 104:14, 106:20, 115:7, 115:25, 116:3,
take - 29:21, 41:17, 42:11, 63:23, 66:7, 69:11, 71:25, 75:18, 77:6, 102:8, 102:15, 107:6, 111:19,	terms - 80:9, 80:15, 81:1,	they - 9:18, 16:17, 16:22, 21:8, 23:14, 23:14, 39:19, 39:24, 55:14, 56:22, 56:24, 58:25, 62:1, 62:17, 74:10, 78:10, 79:2, 80:20, 80:21, 82:13, 82:14, 82:14, 82:17, 82:20, 84:14, 85:20, 85:21, 85:22, 87:12, 87:17, 96:22, 96:23, 97:13, 104:19, 104:22, 104:25, 105:15, 105:16,	there" - 53:1,	through - 8:9, 25:21, 39:8, 39:16, 39:19, 43:2, 44:5, 46:4, 46:7, 46:9, 46:13, 46:20, 70:3, 81:22, 88:14, 88:20, 105:3, 109:20, 112:1, 112:20,	101:19, 102:9, 102:15, 104:14, 106:20, 115:7, 115:25, 116:3,
taken - 5:14, 7:24, 11:16, 41:10, 49:5, 49:13, 50:18, 50:21, 104:17, 105:8, 106:20, 108:17,	test - 56:9,	they - 9:18, 16:17, 16:22, 21:8, 23:14, 23:14, 39:19, 39:24, 55:14, 56:22, 56:24, 58:25, 62:1, 62:17, 74:10, 78:10, 79:2, 80:20, 80:21, 82:13, 82:14, 82:14, 82:17, 82:20, 84:14, 85:20, 85:21, 85:22, 87:12, 87:17, 96:22, 96:23, 97:13, 104:19, 104:22, 104:25, 105:15, 105:16,	there" - 53:1,	through - 8:9, 25:21, 39:8, 39:16, 39:19, 43:2, 44:5, 46:4, 46:7, 46:9, 46:13, 46:20, 70:3, 81:22, 88:14, 88:20, 105:3, 109:20, 112:1, 112:20,	101:19, 102:9, 102:15, 104:14, 106:20, 115:7, 115:25, 116:3,
taking - 5:13, 41:13, 94:4, 106:21,	testified - 5:8, 17:10, 112:18, 112:19,	they - 9:18, 16:17, 16:22, 21:8, 23:14, 23:14, 39:19, 39:24, 55:14, 56:22, 56:24, 58:25, 62:1, 62:17, 74:10, 78:10, 79:2, 80:20, 80:21, 82:13, 82:14, 82:14, 82:17, 82:20, 84:14, 85:20, 85:21, 85:22, 87:12, 87:17, 96:22, 96:23, 97:13, 104:19, 104:22, 104:25, 105:15, 105:16,	there" - 53:1,	through - 8:9, 25:21, 39:8, 39:16, 39:19, 43:2, 44:5, 46:4, 46:7, 46:9, 46:13, 46:20, 70:3, 81:22, 88:14, 88:20, 105:3, 109:20, 112:1, 112:20,	101:19, 102:9, 102:15, 104:14, 106:20, 115:7, 115:25, 116:3,
talk - 13:15, 99:14, 102:16, 102:20, 103:17,	testimony - 7:4, 7:24, 7:25, 17:13, 18:1, 27:20, 40:4, 40:7, 45:20, 53:14, 53:17, 53:18, 55:4, 58:12, 59:25, 60:2, 75:20, 76:10, 90:13, 97:4, 112:6, 112:21,	they - 9:18, 16:17, 16:22, 21:8, 23:14, 23:14, 39:19, 39:24, 55:14, 56:22, 56:24, 58:25, 62:1, 62:17, 74:10, 78:10, 79:2, 80:20, 80:21, 82:13, 82:14, 82:14, 82:17, 82:20, 84:14, 85:20, 85:21, 85:22, 87:12, 87:17, 96:22, 96:23, 97:13, 104:19, 104:22, 104:25, 105:15, 105:16,	there" - 53:1,	through - 8:9, 25:21, 39:8, 39:16, 39:19, 43:2, 44:5, 46:4, 46:7, 46:9, 46:13, 46:20, 70:3, 81:22, 88:14, 88:20, 105:3, 109:20, 112:1, 112:20,	101:19, 102:9, 102:15, 104:14, 106:20, 115:7, 115:25, 116:3,
talked - 80:11, 80:13,	than - 22:17, 23:3, 24:4, 24:10, 28:2,	them - 23:20, 23:20, 46:19, 62:25, 63:1, 63:2, 75:12, 75:15, 79:24, 80:2, 83:3,	there" - 53:1,	through - 8:9, 25:21, 39:8, 39:16, 39:19, 43:2, 44:5, 46:4, 46:7, 46:9, 46:13, 46:20, 70:3, 81:22, 88:14, 88:20, 105:3, 109:20, 112:1, 112:20,	101:19, 102:9, 102:15, 104:14, 106:20, 115:7, 115:25, 116:3,

**DEPOSITION OF ROGER AMUNDSON - AUGUST 14, 2014**

topic - 60:8,	93:17,	until - 27:24, 36:17,	vertical - 17:8, 22:19,	water - 68:17, 68:19,	weight - 93:3,
total - 95:1,	turns - 61:14,	46:9, 50:8, 60:3,	23:2, 23:6, 23:18,	way - 6:11, 7:20,	weird - 16:18, 16:23,
totally - 55:13,	twenty - 13:2,	77:17, 81:3, 87:5,	23:19, 23:22, 24:8,	23:3, 37:21, 43:4,	107:17,
towards - 9:16,	twice - 81:7, 84:1,	up - 7:12, 11:24,	vertically - 15:22,	63:11, 75:9, 80:16,	well - 16:4, 22:16,
town - 47:20,	two - 16:8, 16:12,	12:7, 12:10, 12:15,	16:5,	84:1, 85:5, 85:11,	30:19, 33:8, 35:1,
toyota - 10:15,	17:11, 17:11, 19:4,	12:23, 13:23, 15:20,	very - 24:23, 29:23,	88:19, 92:15, 92:17,	36:12, 39:17, 41:9,
trashed - 110:12,	19:7, 20:22, 20:23,	21:25, 22:7, 22:14,	43:18, 69:22, 74:21,	92:24, 93:3, 98:25,	42:9, 47:14, 49:15,
tree - 44:9, 44:19,	29:23, 30:11, 30:25,	22:17, 27:6, 34:5,	91:23,	104:11, 107:18,	49:25, 52:24, 53:11,
44:20, 45:5, 100:15,	31:2, 32:15, 34:11,	34:21, 36:8, 36:13,	videogames - 81:9,	108:6, 110:17, 111:7,	53:14, 54:18, 55:3,
100:18,	34:12, 36:20, 58:23,	36:23, 43:11, 45:19,	vinyl - 9:3, 9:15,	wayne - 13:13,	58:21, 64:4, 64:12,
trees - 44:17, 67:18,	64:15, 67:6, 72:9,	46:9, 46:14, 51:7,	9:18,	14:23, 14:25, 16:24,	64:14, 73:6, 75:20,
67:21, 68:4, 68:4,	72:12, 72:13, 74:12,	55:3, 55:23, 59:22,	wait - 7:17, 7:19,	18:3, 21:4, 21:24,	77:23, 79:25, 83:8,
trial - 116:3,	80:5, 88:5, 90:13,	60:22, 66:23, 67:24,	36:17,	31:12, 31:19, 31:20,	90:8, 90:13, 92:23,
tried - 80:25,	94:20, 94:21, 95:22,	69:25, 70:22, 77:1,	walk - 46:3, 55:14,	31:21, 32:13, 32:24,	97:6, 97:8, 97:15,
trip - 88:15, 99:9,	97:16, 97:24, 98:7,	77:17, 80:24, 81:12,	88:20, 91:16, 94:1,	32:25, 35:5, 36:14,	98:13, 101:15,
tripped - 44:6, 44:7,	98:8, 98:15, 101:6,	83:6, 86:20, 91:14,	walked - 46:9, 46:13,	36:20, 37:7, 37:10,	102:14, 106:23,
51:22, 52:1, 52:5,	101:17, 103:3,	97:1, 97:13, 100:24,	88:14,	42:17, 42:21, 58:20,	went - 5:25, 50:24,
52:18, 54:3, 100:3,	type - 43:8, 44:12,	102:11, 104:19,	walking - 95:24,	60:15, 77:24, 78:3,	70:3,
tripping - 93:19,	96:23,	upkeep - 64:13,	walkway - 43:12,	79:1, 79:19, 82:5,	weren't - 29:24, 39:5,
94:11, 98:15, 99:2,	types - 66:17,	64:16, 64:22, 65:25,	43:24, 45:1, 45:7,	82:8, 83:2, 83:4,	39:23, 40:8, 61:14,
99:7, 103:24,	typically - 36:13,	67:7,	45:22, 46:10, 56:25,	83:5, 83:15, 83:21,	west - 5:23, 9:6,
truck - 10:15, 15:3,	36:19,	upper - 15:13, 17:1,	88:21, 90:23, 91:14,	83:23, 85:23, 86:12,	10:2, 10:3, 10:4,
15:7, 17:23, 18:7,	uh-huh - 35:3,	17:16, 17:17, 17:19,	91:17, 92:4, 92:12,	wayne's - 17:23,	10:9, 10:12, 10:14,
18:12, 21:19, 21:21,	uh-huhs - 7:11, 7:14,	48:25, 108:1,	92:16, 94:14, 94:17,	18:7, 18:11, 21:18,	64:17, 82:2,
31:22, 108:3, 109:5,	under - 5:16, 112:8,	us - 20:21, 53:22,	94:22, 95:7, 95:9,	80:1,	what's - 8:16, 8:19,
true - 7:24, 17:2,	115:17, 115:21,	57:16, 59:17,	95:18, 95:19, 98:17,	we - 5:21, 6:5, 7:20,	31:18, 48:12, 50:6,
36:9, 36:10, 53:15,	understand - 7:23,	use - 12:9, 28:20,	99:21, 100:4, 100:11,	8:4, 11:8, 13:15,	72:3, 83:1, 85:11,
68:1, 78:7,	8:2, 9:15, 12:7,	61:18, 111:16,	100:13, 101:5,	15:25, 17:7, 17:15,	88:8, 105:3, 114:19,
truth - 115:23,	41:16, 89:1, 101:11,	used - 5:16, 28:18,	101:17, 101:25,	17:15, 20:4, 20:10,	114:19,
try - 60:15, 80:16,	115:19,	43:16, 112:8,	104:7,	20:11, 25:19, 26:25,	whatever - 70:13,
87:3, 110:17, 111:2,	understanding -	using - 30:15, 30:19,	walter - 9:10, 70:17,	27:2, 28:18, 28:19,	whatsoever - 56:16,
111:6,	5:21, 31:15, 31:17,	61:25,	112:2,	28:25, 30:7, 30:14,	when - 8:22, 10:21,
trying - 41:16, 63:3,	31:18, 36:7, 80:6,	usually - 36:14,	wanted - 18:15,	33:16, 40:1, 48:5,	11:4, 11:6, 11:16,
81:10, 84:5, 110:20,	80:7, 88:4, 88:8,	valley - 66:5,	18:16, 18:17, 18:25,	49:15, 50:13, 50:14,	11:19, 11:23, 13:4,
110:21,	understood - 76:10,	value - 18:13,	41:17, 93:15, 114:1,	50:15, 50:16, 52:4,	13:9, 13:16, 15:11,
turn - 63:5, 80:21,	87:13, 87:17,	vehicle - 14:24,	warning - 43:8, 43:9,	52:25, 59:16, 60:8,	19:22, 20:10, 20:11,
82:15, 107:9,	undertake - 113:4,	15:12, 18:11, 26:7,	41:1, 42:11, 93:4,	62:15, 62:16, 66:18,	21:16, 23:1, 23:6,
turned - 74:2, 105:1,	113:12,	26:11, 31:13, 48:23,	wants - 38:5,	66:19, 69:8, 69:8,	23:11, 23:16, 24:7,
105:2,	undertaking - 69:2,	49:4, 49:10, 49:11,	warm - 30:5,	70:3, 70:16, 73:6,	26:2, 27:4, 28:7,
turning - 86:15,	uninstalled - 6:10,	49:15, 50:15, 108:22,	warning - 43:8, 43:9,	77:10, 77:10, 77:22,	28:10, 28:12, 28:19,
	unpack - 78:19,	109:1, 113:9, 113:12,	wasn't - 22:24,	78:19, 93:18, 94:10,	29:7, 29:7, 29:20,
	unsure - 15:17, 28:1,	verbal - 74:6, 74:11,	23:25, 24:2, 36:18,	94:10, 98:25, 99:14,	29:21, 30:8, 30:10,
	37:16, 85:25, 86:6,	verbally - 7:9, 7:15,	39:4, 41:23, 42:12,	100:24, 100:25,	32:1, 32:13, 32:19,
	102:25,	74:12,	43:9, 63:7, 86:25,	103:4, 103:17,	35:16, 35:21, 36:23,
		versus - 7:10,	87:20, 98:23, 99:11,	104:14, 104:17,	37:3, 37:7, 37:10,
			113:6,	104:24, 105:2, 105:9,	39:12, 41:2, 44:5,
				106:24, 109:8,	47:11, 49:4, 49:7,
				111:20,	49:12, 49:25, 58:1,
				week - 30:21, 30:25,	58:2, 58:5, 58:9,
				31:1,	58:11, 59:1, 65:20,
				weeks - 29:8, 29:23,	66:12, 68:1, 69:25,
				30:11, 32:15, 32:15,	70:22, 71:15, 71:22,
				36:21, 38:15, 40:25,	
				41:18, 41:19, 42:3,	
				45:11, 87:8,	

DEPOSITION OF ROGER AMUNDSON - AUGUST 14, 2014

76:20, 76:21, 77:18, 78:14, 80:9, 81:15, 81:24, 81:25, 82:1, 83:22, 85:17, 88:25, 89:2, 92:23, 94:7, 95:2, 95:6, 96:9, 99:20, 100:10, 101:23, 109:24, 110:5, 110:5, 111:24, 112:1, 112:17, 112:19, 113:8, 114:4,  whenever - 64:21,  whereupon - 116:5,  whether - 6:9, 51:21, 56:4, 108:21,  which - 6:8, 6:11, 6:11, 8:8, 10:5, 10:21, 11:2, 20:16, 21:9, 28:16, 28:19, 29:11, 30:20, 33:22, 34:1, 78:17, 85:11, 87:3, 100:3,  while - 17:10, 32:17, 32:19, 32:21, 45:24, 82:4, 85:8,  white - 9:3, 9:14, 9:15, 9:21, 9:23, 10:15, 10:18, 10:23, 10:25, 11:11, 11:14, 11:20, 11:24, 12:9, 12:10, 12:16, 13:6, 13:10, 13:18, 13:23, 14:2, 14:8, 14:15, 14:19, 15:4, 15:5, 22:15, 22:17, 22:19, 23:2, 23:9, 23:11, 23:17, 23:19, 24:5, 24:8, 24:9, 27:4, 27:6, 27:9, 27:13, 27:17, 27:24, 31:6, 32:21, 35:12, 38:1, 38:23, 39:2,  who - 9:8, 13:10, 14:7, 18:24, 19:11, 24:12, 48:9, 51:23, 57:10, 57:12, 57:16, 57:18, 64:12, 65:22, 65:25, 67:24, 82:10, 82:11, 82:24, 83:8, 85:1, 107:2,  whole - 14:5, 18:5, 20:24, 26:24, 62:16, 66:20, 94:25, 95:2, 95:6, 96:6, 97:13,	108:18,  whom - 48:9,  why - 23:6, 23:24, 26:17, 39:1, 42:20, 43:3, 46:13, 53:23, 58:5, 60:19, 66:3, 74:19, 75:7, 82:16, 84:19, 86:23, 86:25, 92:10, 93:13, 96:21, 99:25, 102:13, 106:19, 106:21, 106:25, 113:20,  wide - 91:23, 95:12,  width - 91:23, 95:19,  will - 5:16, 7:8, 7:18, 8:7, 40:1, 80:20, 90:20, 100:24, 116:2,  willis - 7:11,  wind - 18:6, 24:2, 24:9, 31:22, 108:21,  window - 6:9, 6:15, 8:4, 8:20, 9:1, 9:5, 10:4, 10:21, 11:8, 11:19, 11:21, 11:24, 12:14, 12:15, 12:17, 12:23, 13:9, 13:16, 13:20, 14:15, 14:18, 15:16, 16:12, 16:13, 16:19, 17:7, 18:7, 18:12, 18:13, 18:14, 18:15, 18:18, 18:20, 19:19, 21:18, 22:1, 22:14, 23:1, 23:13, 23:21, 24:1, 24:7, 24:18, 25:2, 27:2, 27:5, 27:11, 27:24, 31:6, 31:24, 32:5, 32:14, 32:17, 32:21, 33:2, 33:6, 33:20, 35:7, 35:11, 37:14, 37:25, 38:12, 38:22, 39:1, 39:13, 40:12, 40:22, 42:5, 45:3, 45:6, 45:21, 46:22, 47:2, 50:7, 50:16, 52:19, 70:4, 70:24, 86:16, 87:11, 87:16, 88:2, 88:16, 88:19, 88:22, 90:16, 99:16, 100:8, 100:10, 100:14, 101:24, 101:24, 104:5, 104:9, 104:17, 106:6, 106:14, 106:17,	106:24, 107:1, 107:7, 107:10, 107:23, 108:11, 109:25, 110:17, 111:25, 112:19, 112:21, 113:1, 113:5, 113:11, 113:19, 113:21, 114:2, 114:8,  window's - 13:22,  windows - 34:12,  winter - 29:25, 65:20,  wise - 12:25,  within - 33:13, 33:17, 51:1, 75:25,  without - 84:7,  witness - 5:7, 13:2, 22:4, 25:24, 27:21, 28:4, 29:14, 35:20, 36:5, 37:18, 38:7, 38:18, 40:16, 41:6, 45:16, 46:24, 47:5, 51:4, 51:9, 52:22, 53:8, 53:19, 53:24, 56:13, 57:14, 57:18, 62:9, 62:13, 64:2, 64:10, 64:19, 67:11, 70:11, 75:5, 75:14, 75:17, 76:5, 76:7, 76:18, 77:5, 78:8, 78:10, 79:12, 87:21, 89:18, 89:20, 91:21, 92:8, 93:21, 98:21, 99:5, 99:11, 100:8, 101:13, 101:21, 103:9, 103:21, 105:15, 105:17, 109:12, 110:9, 110:11, 115:9, 115:12,  witness' - 53:16,  won't - 7:12, 7:20, 12:3,  wondering - 29:6, 32:12, 99:25,  wood - 9:18, 44:12, 44:17, 87:11, 100:17,  wooden - 9:17, 9:21, 10:18, 10:23, 10:25, 11:20, 11:24, 12:9, 12:11, 12:16, 13:6,	13:10, 13:18, 13:23, 14:2, 14:8, 14:19, 27:4, 27:6, 27:13, 27:18, 27:24, 31:6, 32:21, 35:12, 38:1, 38:23, 39:2, 51:22, 54:4, 87:16, 87:24, 99:20, 100:12, 100:25, 100:25, 101:4, 101:16,  word - 101:11,  words - 13:25, 114:15,  wore - 107:18,  work - 19:17, 60:16, 63:3, 82:13, 102:9, 102:11,  worked - 37:4, 82:14,  worker - 81:14,  working - 19:4, 77:2, 81:15,  worse - 21:9, 21:9, 84:20,  worst - 84:18,  wouldn't - 6:24, 23:8, 25:17, 28:4, 42:23, 51:2, 55:8, 67:20, 77:25, 83:25, 94:16,  write - 34:21,  wrong - 55:6, 112:25, 112:25,  x - 34:5,  yard - 43:14, 46:17, 57:5, 67:22, 102:11,  yeah - 25:1, 25:6, 25:11, 33:10, 37:1, 41:21, 46:7, 49:22, 50:3, 50:5, 68:3, 68:3, 69:17, 78:8, 81:17, 84:8, 89:5, 94:23, 106:11, 114:25,  year - 19:25, 20:22, 20:24, 20:25, 30:3, 59:8, 59:9, 114:14,	years - 20:22, 20:23, 21:14, 29:8, 35:10,  yeses - 7:10,
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**EXHIBIT 3**

000180

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

DAVID WAYNE STILES, )  
Plaintiff, )  
vs. ) Case No. CV-PI 1311963  
WALTER A. AMUNDSON, )  
Defendant. )  
\_\_\_\_\_ )

DEPOSITION OF JONATHAN N. SULLIVAN

MAY 6, 2014

REPORTED BY:

BEVERLY A. BENJAMIN, CSR No. 710, RPR

Notary Public

1 THE DEPOSITION OF JONATHAN N. SULLIVAN was  
 2 taken on behalf of the Defendant at the offices of  
 3 Anderson Julian & Hull, 250 South Fifth Street, Boise,  
 4 Idaho, commencing at 1:46 p.m. on May 6, 2014, before  
 5 Beverly A. Benjamin, Certified Shorthand Reporter and  
 6 Notary Public within and for the State of Idaho, in the  
 7 above-entitled matter.

8 APPEARANCES:

9 For Plaintiff:

10 Brady Law Office  
 11 BY MR. CHIP GILES  
 12 2537 West State Street, Suite 200  
 13 Boise, Idaho 83701-1398  
 14 -and-  
 15 Johnson & Monteleone, LLP  
 16 BY MR. JASON R.N. MONTELEONE  
 17 405 South Eighth Street, Suite 250  
 18 Boise, Idaho 83702

19 For Defendant:

20 Anderson Julian & Hull, LLP  
 21 BY MR. MICHAEL P. STEFANIC  
 22 250 South Fifth Street, Suite 700  
 23 P.O. Box 7426  
 24 Boise, Idaho 83707  
 25

1 INDEX

2	TESTIMONY OF JONATHAN N. SULLIVAN	PAGE
3	Examination by Mr. Stefanic	5
4	Examination by Mr. Giles	78
5	Further Examination by Mr. Stefanic	82

7 EXHIBITS

8	NO. DESCRIPTION	PAGE
9	1 - Notice of Deposition Duces Tecum of Jon Sullivan	7
10	2 - Photograph of home	18
11	3 - Photograph of side of home	26
12	4 - Photograph of side of home	49
13	5 - Photographs 5-A through F of window	71

1 ALSO PRESENT: Barry Trent, State Farm  
 2 David Wayne Stiles  
 3 Walter Amundson  
 4 Glenda Amundson  
 5  
 6  
 7  
 8  
 9  
 10  
 11  
 12  
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 25

1 JONATHAN N. SULLIVAN,  
 2 first duly sworn to tell the truth relating to said  
 3 cause, testified as follows:  
 4

5 MR. STEFANIC: Let the record reflect this is  
 6 the time and place of the deposition of Jon Sullivan.  
 7 The deposition has been noticed and will be taken  
 8 pursuant to the Idaho Rules of Civil Procedure.  
 9

10 EXAMINATION

11 QUESTIONS BY MR. STEFANIC:

12 Q. Mr. Sullivan, could you please state your full  
13 name for the record, spelling your last.

14 A. Jonathan Noah Sullivan, S-u-l-l-i-v-a-n.

15 Q. How old are you?

16 A. I'm 31.

17 Q. Your social security number, please.

18 A. [REDACTED]

19 Q. Have you ever had your deposition taken  
20 before?

21 A. No.

22 Q. It's kind of an odd situation with all these  
 23 people in this room, but I will be asking -- I should  
 24 introduce myself. My name is Mike Stefanic and I  
 25 represent Walter Amundson in this case. You know

1 Walter, he was your landlord; correct?  
 2 A. Yes.  
 3 Q. I'll be taking your deposition. There is some  
 4 basic rules of a deposition that I would like to cover  
 5 with you, one of which is you understand that you are  
 6 under oath and your testimony here today is the same as  
 7 it would be over in the courthouse in front of a judge.  
 8 You understand that?  
 9 A. Yes.  
 10 Q. Probably the most important rule that we have  
 11 is to make sure that you understand the question before  
 12 you answer. Okay?  
 13 A. Okay.  
 14 Q. If for whatever reason I ask a goofy question,  
 15 will you let me know and I will rephrase it?  
 16 A. Yes.  
 17 Q. The bottom line is, I don't want you to answer  
 18 a question today that you don't understand; is that  
 19 fair?  
 20 A. That's fair.  
 21 Q. It's important to answer verbally instead of  
 22 "uh-huhs" or "huh-uhs." The court reporter can't take  
 23 that down, and I will remind you from time to time. We  
 24 all do it.  
 25 A. Okay.

1 Q. Do you still have a copy of that lease  
 2 agreement?  
 3 A. I do not.  
 4 Q. Are you related to Mr. Stiles?  
 5 A. Yes.  
 6 Q. In what way?  
 7 A. My cousin.  
 8 Q. Explain, is it your mom or your dad that is  
 9 related?  
 10 A. My dad.  
 11 Q. Your dad has either a brother or a sister to  
 12 his what?  
 13 A. Yes, my father is related to his mother.  
 14 Q. Brother and sister?  
 15 A. Yes.  
 16 Q. Do you have a recollection -- how old are you  
 17 today?  
 18 A. 31.  
 19 Q. Okay. Were you a close family, grew up  
 20 together, played with each other growing up or --  
 21 A. No.  
 22 Q. Can you describe in the last five years  
 23 generally what your relationship has been with  
 24 Mr. Stiles.  
 25 A. We have grown closer when I got older. We

1 Q. Any reason you need a break, we can certainly  
 2 take a break. I would just ask that you answer the  
 3 question pending before you take a break. Okay?  
 4 A. Okay.  
 5 Q. Last thing is, is that I'm going to try not to  
 6 talk when you are talking. If you could extend to me  
 7 the same courtesy, I would appreciate it.  
 8 A. Okay.  
 9 Q. Do you mind if I call you "Jon"?  
 10 A. That's fine.  
 11 Q. Good. Are you under any medication today that  
 12 would affect your ability to understand the questions?  
 13 A. No.  
 14 (Exhibit I marked.)  
 15 Q. (BY MR. STEFANIC) Handing you what has been  
 16 marked as Exhibit No. 1. This is the notice of  
 17 deposition asking you to show up here, and thank you for  
 18 coming. It asks for you to bring copies of any and all  
 19 documents that pertain to the lease of the premises at  
 20 issue or pertaining to Mr. Stiles' claims in this  
 21 matter. Have you brought any documents with you today?  
 22 A. No.  
 23 Q. Are you aware of -- did you have a lease  
 24 agreement?  
 25 A. Yes.

1 have grown closer and talk regularly and drink coffee,  
 2 work on stuff.  
 3 Q. What types of things do you work on?  
 4 A. The last project we did was a dirt bike, built  
 5 a dirt bike.  
 6 Q. What did you do with the dirt bike?  
 7 A. Put it all together, put new parts in it, got  
 8 it all put together and running.  
 9 Q. Whose dirt bike was it?  
 10 A. It was my cousin's.  
 11 Q. David's?  
 12 A. Yes.  
 13 Q. When did you work on this dirt bike?  
 14 A. We finished it up during this winter.  
 15 Q. What types of things did you do with respect  
 16 to putting this bike together versus what he did?  
 17 MR. GILES: Object to the form of the  
 18 question.  
 19 THE WITNESS: Can you repeat that, please.  
 20 Q. (BY MR. STEFANIC) Yes. You obviously had to  
 21 use tools to put this thing together; correct?  
 22 A. Yes.  
 23 Q. I was wondering about the division of labor  
 24 between you and Mr. Stiles regarding putting this bike  
 25 together.



1 MR. GILES: I'd restate my objection.  
 2 Q. (BY MR. STEFANIC) Go ahead.  
 3 A. He did most of the mechanical work. He has a  
 4 lot more knowledge mechanically than I do. So I would  
 5 help when I could and learn as I went.  
 6 Q. What type of mechanical work are you referring  
 7 to that Mr. Stiles did?  
 8 A. Putting the carburetor together, taking it  
 9 apart, removing, replacing gaskets, piston.  
 10 Q. What else?  
 11 A. Just the basic assembly and disassembly of the  
 12 entire bike.  
 13 Q. So would it be fair to say that Mr. Stiles has  
 14 the knowledge of putting a bike together such as this  
 15 and that you are in the position of learning from him?  
 16 A. Yes.  
 17 MR. GILES: Object to the form of the  
 18 question.  
 19 MR. STEFANIC: What is wrong with the  
 20 question?  
 21 MR. GILES: I don't see that it's relevant.  
 22 MR. STEFANIC: Objection to relevancy. Fair  
 23 enough.  
 24 Q. (BY MR. STEFANIC) What tools did you observe  
 25 Mr. Stiles using when he put together a carburetor,

1 Q. Would that have been something that was before  
 2 this accident?  
 3 A. Oh, yeah.  
 4 Q. Since this accident, other than putting  
 5 together a dirt bike, have you done anything with him  
 6 such as putting together a dirt bike, tinkering on  
 7 motors, that sort of thing?  
 8 A. No.  
 9 Q. What did you do to prepare for this deposition  
 10 today?  
 11 A. Can you rephrase that.  
 12 Q. Yeah. Did you meet with anybody in  
 13 preparation for this deposition today?  
 14 A. I just met with these gentlemen.  
 15 Q. Was that today or before the deposition or at  
 16 another date?  
 17 A. Today before the deposition.  
 18 Q. All right. They essentially explained to you  
 19 the process of a deposition?  
 20 A. Yes.  
 21 Q. Did you review any documents with -- these  
 22 gentlemen are the counsel for Mr. Stiles; right?  
 23 A. Yes.  
 24 Q. Did you review any documents?  
 25 A. No.

1 removed gaskets and pistons, et cetera?  
 2 A. Sockets, screwdrivers, wrenches.  
 3 Q. Do you know whether Mr. Stiles is right- or  
 4 left-hand dominant?  
 5 A. Well, I don't know honestly, due to the fact  
 6 of his accident.  
 7 Q. You don't know?  
 8 A. I do not know.  
 9 Q. Did you observe him having any difficulties  
 10 using these tools while he was putting together this  
 11 dirt bike?  
 12 A. Yes.  
 13 Q. What did you observe?  
 14 A. There was a strength factor there, grip. It  
 15 wasn't an easy thing by any means.  
 16 Q. With some effort was he able to do what he  
 17 needed to do to put together the things you've  
 18 identified?  
 19 A. Yes.  
 20 Q. Do you recall him using the wrenches with his  
 21 right or left hand?  
 22 A. I do not remember.  
 23 Q. Have you worked with him on other projects  
 24 such as this dirt bike?  
 25 A. A long time ago.

1 Q. Did you review any pictures?  
 2 A. No.  
 3 Q. Where do you currently reside?  
 4 A. Would you like the address?  
 5 Q. Yes, please.  
 6 A. 6310 Kirkwood Road, Boise, Idaho 83709.  
 7 Q. Other than putting together this dirt bike,  
 8 what other things have you done with your cousin in the  
 9 last -- since this accident that occurred in July of  
 10 2011? You mentioned coffee, I get that.  
 11 A. Just hanging out, talking, nothing much other  
 12 than that really.  
 13 Q. Are you aware of any other hobbies your cousin  
 14 has other than putting together a dirt bike or working  
 15 with tools, that sort of thing?  
 16 A. He's good at racing, likes to race.  
 17 Q. Race what?  
 18 A. Just about anything he can get in. He's good.  
 19 He's got a lot of good achievements from that, a lot of  
 20 trophies.  
 21 Q. Racing, you could be on a motorcycle or a dirt  
 22 bike or on your feet running. What kind of racing does  
 23 he do?  
 24 A. Sorry. Cars, go-carts.  
 25 Q. Have you been with him when he's worked on

1 cars or go-carts since this accident?  
 2 A. No.  
 3 Q. From your understanding has Mr. Stiles raced a  
 4 go-cart or car since this accident in July '11?  
 5 A. No.  
 6 Q. He has not?  
 7 A. Not to my knowledge, no.  
 8 Q. So the last time you saw him race anything was  
 9 before this accident?  
 10 A. Yes.  
 11 Q. Do you have an understanding of whether he  
 12 continues to race or not since this accident?  
 13 A. No.  
 14 Q. You don't know or he does not?  
 15 A. To my knowledge, no, he does not.  
 16 Q. How often do you see Mr. Stiles, say, in a  
 17 month's time?  
 18 A. In a month, a couple times a month usually.  
 19 I've been busy these last couple months, both of us.  
 20 Q. Are you currently employed?  
 21 A. Yes.  
 22 Q. What do you do?  
 23 A. I'm an operator, distributor/operator, truck  
 24 driver, do ground layout, map of the road, excavation.  
 25 Q. Who do you work for?

1 A. Yes.  
 2 Q. I'm going to move on, but what are their  
 3 names?  
 4 A. Brittany Jenkins and Cassandra Grow.  
 5 Q. Are they in the Boise area?  
 6 A. One of them is.  
 7 Q. Which one?  
 8 A. Cassandra.  
 9 Q. Where is Brittany?  
 10 A. She is in North Dakota.  
 11 Q. How old are your kids?  
 12 A. My youngest son is 2, my oldest son is 6.  
 13 Q. High school degree?  
 14 A. GED.  
 15 Q. What year?  
 16 A. I want to say 2005.  
 17 Q. Do you have any other education beyond that?  
 18 A. Yes. BSU, got my CDL and endorsements.  
 19 Q. CDL?  
 20 A. Yes.  
 21 Q. When did you finish that?  
 22 A. 2007.  
 23 Q. Have you ever been in the military?  
 24 A. No.  
 25 Q. Have you been involved in previous lawsuits at

1 A. C&A Paving.  
 2 Q. Do you have a supervisor?  
 3 A. Yes, I do.  
 4 Q. Who is that?  
 5 A. John Mindeola.  
 6 Q. Is that here in town?  
 7 A. Yes, it is.  
 8 Q. Are you married?  
 9 A. Yes, I am.  
 10 Q. Who are you married to?  
 11 A. Sandra Dee Sullivan.  
 12 Q. How long have you been married?  
 13 A. About a year.  
 14 Q. Any previous marriages?  
 15 A. No.  
 16 Q. Any kids?  
 17 A. Yes.  
 18 Q. How many kids do you have?  
 19 A. I have two and she has two.  
 20 Q. So you have two kids from a previous  
 21 relationship?  
 22 A. Yes.  
 23 Q. Same mother?  
 24 A. No.  
 25 Q. Do you keep in touch with these mothers?

1 all?  
 2 A. No.  
 3 Q. One of the questions that drives everybody  
 4 crazy in asking, and I apologize for having to do this,  
 5 it's a standard question. Have you ever been convicted  
 6 of a felony?  
 7 A. Yes.  
 8 Q. When was that and what was it?  
 9 A. 2004, aggravated assault with a deadly weapon.  
 10 Q. And was that in Ada County?  
 11 A. Yes.  
 12 Q. Any other felonies?  
 13 A. No.  
 14 Q. Let's talk about your lease of the place, the  
 15 place we are here for. I understand that you leased or  
 16 you were a tenant in some property owned by Mr.  
 17 Amundson; is that correct?  
 18 A. Yes.  
 19 Q. Do you recall where that property was located?  
 20 A. I don't remember the physical address, but I  
 21 do know where it is.  
 22 Q. In Kuna?  
 23 A. Yes.  
 24 Q. Is it in close proximity to any businesses  
 25 that you are aware of that could guide me there?

1 A. Yes.  
 2 Q. Which ones?  
 3 A. Directly across the street from Creekside and  
 4 Cowgirls.  
 5 Q. I know the general location.  
 6 Let's mark this as the next exhibit.  
 7 (Exhibit 2 marked.)  
 8 MR. STEFANIC: So I don't have copies of  
 9 these, but you have them in your discovery.  
 10 MR. GILES: Yes, we have those. Thanks.  
 11 MR. STEFANIC: Sure.  
 12 Q. (BY MR. STEFANIC) Handing you what has been  
 13 marked as Exhibit No. 2. Does this look like the  
 14 property that you leased from Mr. Amundson?  
 15 A. Yes.  
 16 Q. And that photograph shows a bay window in it,  
 17 right here (indicating).  
 18 A. Yes.  
 19 Q. I understand that that was taken out at some  
 20 point; is that correct?  
 21 A. Yes.  
 22 Q. What was that area turned into after that  
 23 window was taken out?  
 24 A. A garage.  
 25 Q. Were you a tenant at that premises when that

1 took place?  
 2 A. Yes.  
 3 Q. Does that photograph show generally how that  
 4 property was maintained at the time you leased it in  
 5 terms of it looks like it's trimmed, it's well kept,  
 6 that sort of thing?  
 7 A. Yes.  
 8 Q. Is that how it was kept at the time you leased  
 9 the premises?  
 10 A. Yes.  
 11 Q. How many bedrooms and baths did it have?  
 12 A. Three bedrooms, two bathrooms, or one and a  
 13 half you would call it.  
 14 Q. And you had a kitchen to share?  
 15 A. Yes.  
 16 Q. How did it come about that you came to be a  
 17 tenant at that location?  
 18 A. Through Roger. I had a friend that got ahold  
 19 of him and letting me know about him having a room  
 20 possibly for rent.  
 21 Q. Did you go look at the place before you signed  
 22 up on the lease?  
 23 A. Yes.  
 24 Q. Was your viewing favorable? I'm taking --  
 25 since you went ahead and rented a room.

1 A. Yes.  
 2 Q. Do you recall about when you rented a room at  
 3 this residence?  
 4 A. No, I don't. I don't remember. It's been  
 5 quite some time.  
 6 Q. Sure. This accident happened in July of 2011.  
 7 Does that date give you any time frame about how long  
 8 before that you began as a tenant there; in other words,  
 9 was it a year before, two years, was it a few months?  
 10 A. I would say a few months.  
 11 Q. Were there already tenants in the residence at  
 12 the time you moved in?  
 13 A. Roger and then myself and shortly after that  
 14 another tenant, Wayne, moved in.  
 15 Q. Do you remember Wayne's last name?  
 16 A. Jenkins.  
 17 Q. Do you know where Wayne is located currently?  
 18 A. I think he lives with his parents.  
 19 Q. Do you know where?  
 20 A. I want to say Amity and Five Mile.  
 21 Q. Do you know where Roger is?  
 22 A. No.  
 23 Q. When you lived with these two other people,  
 24 did you consider them friends or were you just -- that  
 25 is the question.

1 A. Yes.  
 2 Q. Did you get along with them?  
 3 A. Yes.  
 4 Q. Was there times during your tenancy that you  
 5 didn't get along with them?  
 6 A. Yes.  
 7 Q. With respect to -- let's take first Wayne.  
 8 Did you have any issues one way or the other, negative  
 9 with Wayne while you were living there?  
 10 A. Yes.  
 11 Q. What type of problems did you have with Wayne?  
 12 A. The fact that he would just blast music in his  
 13 room, drinking, and he would sometimes stumble out of  
 14 his room naked when I had company over and making a fool  
 15 of himself.  
 16 Q. I can see how that might be bothersome.  
 17 A. Yes.  
 18 Q. How many occasions did that happen?  
 19 A. He drank every night, still [ph] reserve  
 20 stuff, nasty crap, every night.  
 21 Q. Was the comment "nasty crap"?  
 22 A. Yes.  
 23 Q. I thought that may be another flavor of beer.  
 24 So he drank most every day is what you say?  
 25 A. Yes.

1 Q. Any other problems with Wayne other than what  
 2 you've described?  
 3 A. He just wasn't my type of character, so I  
 4 didn't spend a lot of time with him.  
 5 Q. Were you cordial with each other?  
 6 A. Yes.  
 7 Q. Tried to get along together?  
 8 A. Yes.  
 9 Q. Any altercations with him, for example?  
 10 A. No.  
 11 Q. What problems, if any, did you have with  
 12 Roger?  
 13 A. None.  
 14 Q. How did you know Roger before this?  
 15 A. I can't remember who exactly re-introduced him  
 16 to me, but I had met him years and years ago. We have  
 17 mutual friends that we grew up together with. I want to  
 18 say Mike Tromberg.  
 19 Q. Did you and Roger hang out together before you  
 20 became a tenant at that place?  
 21 A. No, not recently. Like I said, when we  
 22 crossed paths it was years and years ago.  
 23 Q. Did you have any discussions with -- well, you  
 24 found out about the room through Roger; is that right?  
 25 A. Yes.

1 Q. And then did you at some time talk to Walter  
 2 about renting the place?  
 3 A. Yes. I believe -- I think it was a  
 4 month-to-month, some sort of a basic, a real basic lease  
 5 deal.  
 6 Q. As best as you can recall, do you recall other  
 7 than a month-to-month what the terms were, for example,  
 8 the amount of money you had to pay, whether utilities  
 9 were involved?  
 10 A. I honestly don't even remember what I was  
 11 paying there.  
 12 Q. As a tenant did you have any responsibilities  
 13 with respect to the upkeep of the premises?  
 14 A. Well, just a mutual respect type of deal, try  
 15 to clean up after yourself.  
 16 Q. The landlord here that you dealt with was  
 17 Walter Amundson; is that right?  
 18 A. Yes.  
 19 Q. And did you pay your rent to Walter?  
 20 A. No.  
 21 Q. Who did you pay it to?  
 22 A. Roger.  
 23 Q. And then Roger gave it to him?  
 24 A. Yes.  
 25 Q. Was there ever a time when Walter had to come

1 and collect it from you one way or the other?  
 2 A. I honestly don't remember.  
 3 Q. What dealings do you -- let's talk about  
 4 before this accident. So if you had rented it for a few  
 5 months before this accident, what dealings, if any, did  
 6 you have with Walter?  
 7 A. Nothing really. I helped him frame in the  
 8 garage when they took out the window.  
 9 Q. Did you pay your rent in cash?  
 10 A. Yes.  
 11 Q. Did you ever write a check?  
 12 A. No.  
 13 Q. Other than helping frame in the garage, do you  
 14 recall having other conversations with Walter about the  
 15 leased premises?  
 16 A. No.  
 17 Q. Did you know what terms between Walter and the  
 18 other two tenants -- bad question, sorry.  
 19 I'm curious as to whether you knew what the  
 20 terms of the lease was between, for example, Wayne and  
 21 Walter.  
 22 A. I don't know. I would assume it was the same,  
 23 but I don't know.  
 24 Q. What about the terms of the tenancy between  
 25 Roger and Walter?

1 A. Don't know.  
 2 Q. Do you know what duties with respect to the  
 3 upkeep of the premises Roger or Walter had -- or Roger  
 4 or Wayne had, if any?  
 5 A. Roger, he was very into maintaining the yard  
 6 and flowers. He's a very clean person. He took really  
 7 good care of everything. He was always doing something.  
 8 Q. Did you help out with that?  
 9 A. Yeah, occasionally.  
 10 Q. What kind of things did you do?  
 11 A. Mowing, working on weeders and mowers, helped  
 12 dig out a fire pit in the backyard.  
 13 Q. Did you help dig that fire pit?  
 14 A. Yes.  
 15 Q. Did you talk to anybody about whether it was  
 16 okay to dig a fire pit?  
 17 A. Yes.  
 18 Q. Who did you talk with?  
 19 A. Roger. It was already existing. It just had  
 20 rocks, big rocks in the middle of it, so pretty much we  
 21 just pulled the rocks out.  
 22 Q. Did you have any understanding as to whether  
 23 Roger talked with Walter about the fire pit?  
 24 A. No.  
 25 Q. Did you have any issue come up before this

1 accident where there was a problem that needed to be  
 2 repaired on the premises that you recall?  
 3 A. Not that I recall, no.  
 4 Q. How about after this accident, was there ever  
 5 a time when you felt like something needed to be  
 6 repaired?  
 7 A. Not at all.  
 8 Q. If there was a something that you thought  
 9 needed to be repaired, would your procedure have been to  
 10 contact Walter and tell him about it?  
 11 MR. GILES: Object to the question as  
 12 speculative.  
 13 THE WITNESS: No. If I would have seen  
 14 something that caught my attention, I would have just  
 15 told Roger.  
 16 Q. (BY MR. STEFANIC) Is that because Roger was  
 17 his son?  
 18 A. Yes.  
 19 Q. And you assumed that Roger speaks with his  
 20 dad.  
 21 A. Yes.  
 22 Q. Was Walter involved in taking out the bay  
 23 window?  
 24 A. Yes.  
 25 (Exhibit 3 marked.)

1 where the window was placed after it was taken out; is  
 2 that fair?  
 3 A. Yes.  
 4 Q. While you were a tenant there did you have the  
 5 occasion to access the backyard?  
 6 A. Yes.  
 7 Q. Generally how would you access the backyard?  
 8 A. Personally, if I was in the house I would go  
 9 through the garage and out the backdoor.  
 10 Q. So there is a door that goes from the back of  
 11 the garage to the backyard?  
 12 A. Yes.  
 13 Q. From time to time when you had people come  
 14 over for a fire or whatever, what was generally the way  
 15 that they came in to access the backyard?  
 16 A. Through the garage or through the side.  
 17 Q. This side of the thing has a gate back here as  
 18 I understand it?  
 19 A. Yes.  
 20 Q. Was there any problems with the gate?  
 21 A. Not that I recall.  
 22 Q. Was there any problems with, for example, the  
 23 latch on the gate or it being difficult to open,  
 24 anything like that to your recollection while you were a  
 25 tenant there?

1 Q. (BY MR. STEFANIC) Handing you what has been  
 2 marked as Exhibit No. 3. As you are facing this  
 3 property that is depicted in Exhibit No. 2, do you  
 4 recognize this as being the right side of the property?  
 5 A. Yes.  
 6 Q. I cannot represent to you when this picture  
 7 was taken. I don't even know who took this picture.  
 8 But is that the basic area on the right-hand side of  
 9 this property leading to the, I suppose to the backyard?  
 10 A. Yes.  
 11 Q. There is a wood structure of something laying  
 12 there in that area. Do you know what that is?  
 13 A. No.  
 14 Q. Have you ever seen that before?  
 15 A. No.  
 16 Q. I'll represent to you that I don't think it  
 17 has anything to do with this accident, and I'm sure it  
 18 wasn't even there at the time. It was just in this  
 19 picture when the picture was taken. Okay?  
 20 A. Okay.  
 21 Q. So without that piece of wood being there, is  
 22 that generally how that side of the house looked during  
 23 your tenancy?  
 24 A. Yes.  
 25 Q. And that is the area that we are talking about

1 A. Not to my recollection.  
 2 Q. How did it come about that the bay window was  
 3 taken out? I guess what I'm driving at is, do you know  
 4 why that was done?  
 5 A. I assume so they could return it back into a  
 6 garage and have access to use it as such, work on cars  
 7 or whatever needed to be done, park vehicles in there.  
 8 Q. Did making that into a garage have anything to  
 9 do with storing any of your stuff, for example?  
 10 A. No.  
 11 Q. Any of the other tenant's stuff, to your  
 12 knowledge?  
 13 A. Roger just had basic lawn stuff in there and  
 14 his dirt bike, and I would park my motorcycle in there  
 15 too sometimes, actually all the time.  
 16 Q. What kind of a motorcycle do you have?  
 17 A. The one that I had during that time was a  
 18 Harley-Davidson.  
 19 Q. Are you a typical Harley owner where you are  
 20 proud of your Harley?  
 21 A. Yes.  
 22 Q. Where did you park it before that was a  
 23 garage?  
 24 A. I believe I had it at a friend's around the  
 25 corner in their garage. I wasn't big on leaving it out

1 overnight.  
 2 Q. Did you help remove the window at all?  
 3 A. No.  
 4 Q. Who helped, if you know?  
 5 A. Roger and Walter.  
 6 Q. Do you know approximately when they removed  
 7 this window?  
 8 A. No. If I remember it was in the morning.  
 9 Q. What I was getting at is that if this accident  
 10 occurred July 8, 2011, do you know whether the window  
 11 was removed sometime in June, sometime in May, sometime  
 12 in July? That is what I was getting at.  
 13 A. I honestly don't remember. I would have to  
 14 give you a guesstimation. It wasn't out too awful long.  
 15 Q. Do you think that the window was out a couple  
 16 weeks before the accident, more or less?  
 17 A. Somewhere around there. Like I said, I mean,  
 18 it's a guesstimation.  
 19 Q. Understood. Did you observe Roger and Walter  
 20 taking out this window at all?  
 21 A. After the aftermath, more or less.  
 22 Q. What do you recall about the aftermath?  
 23 A. Coming out, and that is when I began to help  
 24 with the wood and the framing, getting it ready for a  
 25 garage door.

1 what you just said.  
 2 So on Exhibit No. 3 there is two fences that  
 3 are shown there. One is sort of a white picket fence  
 4 for a length of time that goes alongside of the  
 5 driveway; correct?  
 6 A. Yes.  
 7 Q. And then behind that as you go further from  
 8 the street to the back of the property, there is a cedar  
 9 fence.  
 10 A. Yes.  
 11 Q. Is that right?  
 12 A. Yes.  
 13 Q. And your testimony is that when they initially  
 14 took the window out that is depicted in 2, where the  
 15 garage is going to be, they set it up against which  
 16 fence?  
 17 A. The white picket fence.  
 18 Q. And how was the window -- I'm sure it came out  
 19 framed; right?  
 20 A. Yes.  
 21 Q. In one piece.  
 22 A. Yes.  
 23 Q. So they leaned it up against the white picket  
 24 fence. Did they just lean it up against or did they use  
 25 anything to prop it up at that point?

1 Q. Do you have some background in that, like  
 2 framing?  
 3 A. Construction, yes.  
 4 Q. When you say what you just said, I almost  
 5 think that you woke up one morning, came out and the  
 6 window has been taken out, Let me help. Did you know  
 7 that this was going to happen?  
 8 A. No. I remember him talking about it, but I  
 9 didn't know it was going to happen when it happened.  
 10 Q. So the first that you knew it was actually  
 11 happening was when you probably got out of bed and heard  
 12 some banging or something?  
 13 A. Yes.  
 14 Q. You came out, and at that point was the window  
 15 out when you came out?  
 16 A. Yes.  
 17 Q. Do you have any recollection as to where  
 18 the -- after the window was taken out where it was set?  
 19 A. Yes.  
 20 Q. Where would that be?  
 21 A. Right here is the driveway and this fence runs  
 22 all the way along the driveway out to the end of the  
 23 property, and it was on the driveway against this fence.  
 24 Q. Okay. So it's difficult when we don't have --  
 25 when we are reading this later, trying to figure out

1 A. It just leaned up. It was a pretty big sturdy  
 2 window. But it was kind of leaned on the window -- or  
 3 excuse me, on the fence.  
 4 Q. Okay. Is that where you found it when you  
 5 came out to help them frame the garage?  
 6 A. Yes.  
 7 Q. Tell me about what transpired after you saw  
 8 that window where you have indicated, and what did you  
 9 do to help them frame the garage?  
 10 A. We ripped some existing wood out and put new  
 11 wood in to get ready for the garage door to be  
 12 installed.  
 13 Q. Did that all transpire on the same day?  
 14 A. Yes.  
 15 Q. Did you complete the task of framing in the  
 16 garage that day?  
 17 A. Yes.  
 18 Q. The next step in the process I'm assuming was  
 19 to install the garage door?  
 20 A. Yes.  
 21 Q. Did that happen on that day?  
 22 A. No.  
 23 Q. That happened when?  
 24 A. I don't recall for sure.  
 25 Q. Did you help in that at all?

1 A. No, I did not.

2 Q. Is there a way that you can show me generally,  
3 using Exhibit No. 3, where the window was -- you can use  
4 an X on this diagram -- generally where the window was  
5 when it was leaned up against the white picket fence?

6 A. It's hard to do such because, like you said,  
7 we don't have the whole entire picture, so it makes it  
8 difficult.

9 But this white picket fence obviously runs  
10 from where you can see it starting out to the end of the  
11 property.

12 Q. Would it be helpful for you to draw a diagram  
13 to help better understand?

14 A. Yeah. Like this driveway here, it goes out;  
15 right? Here's the street and the picket fence comes  
16 along here. And it was leaned up right about here,  
17 right in the middle of this driveway, right there  
18 originally (indicating).

19 Q. You've drawn on Exhibit No. 2, which is okay.  
20 I should have told you not to, but that's okay.

21 Can you label that window where you've drawn  
22 that scratch.

23 A. (Complies.)

24 Q. From the time of the original positioning of  
25 that window to the time of this accident, when it

1 Q. Do you know in relationship to when the window  
2 was originally placed against the picket fence, how much  
3 time had elapsed from the placement of the window to the  
4 time it fell against the vehicle?

5 A. Right after that happened it wasn't very long  
6 before it was moved out of the way.

7 Q. What I'm saying is, is that the window was  
8 originally placed up against the white picket fence;  
9 correct?

10 A. Yes.

11 Q. How long from that point until it blew over  
12 and hit Wayne's truck; a week, two weeks, more or less?

13 A. I would guess a week, about a week, something  
14 like that.

15 Q. Did you observe the window leaning up against  
16 Wayne's truck?

17 A. Yes.

18 Q. And did you observe when the glass was --

19 A. Excuse me. No, I did not see it leaning up  
20 against Wayne's truck. I heard what happened and seen  
21 some glass laying on the ground after it happened. But  
22 it was still in the position, just not leaning on his  
23 truck.

24 Q. It was back up against the fence.

25 A. Yes.

1 occurred, did that window move?

2 A. Yes.

3 Q. I want to talk about that a little bit more.  
4 What do you know about the window moving from when it  
5 was leaning up against the white picket fence as you  
6 observed when you framed the garage? I want to know  
7 about every move it made up until the time of this  
8 accident.

9 A. Okay. It was originally right there  
10 (indicating).

11 Q. That is on Exhibit 2 where you've written  
12 "window"?

13 A. Yes. And Wayne, the other tenant at that  
14 time, his truck was parked right there (indicating).

15 Q. Right where?

16 A. In this driveway right along, right next to  
17 where the window was on the driveway.

18 Q. On Exhibit No. 2.

19 A. Yes. And I believe it was wind that blew and  
20 caused the window to fall over, and his mirror on his  
21 truck door broke out one of the panel windows.

22 Q. On Wayne's truck.

23 A. Yes.

24 Q. Did it damage Wayne's truck?

25 A. I don't recall. I don't think it did.

1 Q. Who did you hear from that it had fallen  
2 against his truck; was that Wayne or --

3 A. Roger.

4 Q. What do you know about the window being moved  
5 from that position to a different position?

6 A. Not much at all.

7 Q. Was the window moved from leaning up against  
8 the white picket fence somewhere else at some point?

9 A. Yes. It was moved from where it was leaning  
10 on the white picket fence back to the side of the house  
11 on the walkway up against the wood cedar fence.

12 Q. And would you be able to -- understanding that  
13 we can't really tell the depth here. Is there a way  
14 that you could on Exhibit 3 at least point to where the  
15 window was moved to?

16 A. (Indicating.) About right in here.  
17 Approximately like 6 feet from the edge of the concrete  
18 back along the -- up against the wood fence.

19 Q. When you say "6 feet" -- and you seem to have  
20 a recollection about that and I appreciate that. Do you  
21 know why you have that recollection?

22 A. Well, it stuck in my head when it's covered  
23 with blood.

24 Q. So if I were to go out there, if I took a  
25 measurer from the edge of this pavement and went back

1 along this fence about 6 feet, that's about where it  
2 was.

3 A. Yes.

4 Q. Was that the center of the window at the 6  
5 foot mark or would that have been the edge of it?

6 A. I honestly couldn't tell you.

7 Q. Somewhere in there. That's fair.

8 Now, how long after -- you heard about the  
9 glass breaking and you saw glass on the ground, so you  
10 knew something happened with the truck; right?

11 A. Yes.

12 Q. How long from that point until it was moved to  
13 the position where you indicate 6 feet?

14 A. Again, I can't give you an exact time frame,  
15 but not long.

16 Q. Who moved it?

17 A. I want to say Roger, but I didn't see it.

18 Q. Do you have any knowledge that Walter moved  
19 the window from the point on the white picket fence back  
20 to the cedar fence?

21 A. No.

22 Q. Do you know how long -- was that the final  
23 position of that window?

24 A. Yes.

25 Q. So just for purposes of our record here, if

1 A. No.

2 Q. Did you observe it at that location 6 feet  
3 from the cement?

4 A. Yes.

5 Q. How was it -- I guess the best way I can ask  
6 you: Was it also leaning up against the fence at that  
7 point?

8 A. Yes.

9 Q. Were there any props used to lean the window  
10 or to set the window on prior to this accident, to your  
11 recollection?

12 A. I want to say I remember something, but I  
13 honestly can't. I remember it up against the fence. I  
14 don't know if it was propped there or leaned there. I  
15 don't remember that part. I just remember it being up  
16 against that fence.

17 Q. So what you are saying is whether it was  
18 propped or not, the window was physically laying up  
19 against the fence.

20 A. It was on the wood fence.

21 Q. How long was the -- I will ask you in terms of  
22 a week, or days, more or less. How long was that window  
23 in that position leaning up against the fence from the  
24 point where it was set there to the time of this  
25 accident, July 8, 2011?

1 you -- and I'll do this for you maybe. I hate to draw  
2 on it. But I'm going to draw -- from this edge of here  
3 I'm going to draw an arrow back and say "6 feet," and  
4 then you can put an X there as the position where you  
5 think that the window was; is that fair?

6 A. Okay.

7 MR. STEFANIC: Is that okay with you guys?

8 MR. MONTELEONE: That's fine.

9 THE WITNESS: When I say "6 feet," it's  
10 approximately, not exact obviously.

11 Q. (BY MR. STEFANIC) Sure. So I've drawn an  
12 arrow from the edge of the concrete on Exhibit 3, "6  
13 feet," and I'm going to put an X there. And that is  
14 approximately the area where that window was laying up  
15 against the cedar fence; is that right?

16 A. Yes. But in this picture it's a little  
17 farther back there.

18 Q. Sure.

19 A. It looks long in the picture.

20 Q. So whatever 6 feet is. It's just for  
21 illustrative purposes.

22 A. Approximately.

23 Q. Once it was moved from the white picket fence  
24 to the 6 feet from the cement, was it moved after that  
25 before this incident?

1 A. I would want to say a couple weeks.

2 Q. And every day when you came home did you  
3 observe that window there for two weeks before this  
4 accident?

5 A. Yes.

6 Q. And do you have a sense on how far -- do you  
7 know the distance between, in this walkway on the side  
8 of the house on Exhibit 3, what the distance is from the  
9 house to the cedar fence?

10 A. No.

11 Q. Do you have any sense on how far the window  
12 was, when it was leaning at that approximate 6 foot  
13 mark, encroached into the walkway?

14 A. It was a big -- it's a big window, so I want  
15 to say it probably left a small walk path between the  
16 edge of the window and the house, very small, maybe a  
17 couple feet.

18 Q. Did you ever measure it?

19 A. No.

20 Q. You could walk through there without a  
21 problem?

22 A. On the pathway, yes.

23 Q. While the window was there.

24 A. You would have to walk around it.

25 Q. I may have asked you this. I get confused.



1 Do you know who moved the window from the  
 2 picket fence to the cedar fence?  
 3 A. No.  
 4 Q. How often did Walter come by this property in  
 5 a month's time, if you know?  
 6 A. I don't know. I don't remember seeing him  
 7 very often at all.  
 8 Q. Do you know why the window was being kept on  
 9 the side of the house there?  
 10 A. No.  
 11 Q. Let's talk about before this accident. Did  
 12 you see any problems with storing that window where it  
 13 was stored, ultimately stored on Exhibit 3 prior to the  
 14 accident?  
 15 A. I didn't think it a very good place to put the  
 16 window, but --  
 17 Q. Why not?  
 18 A. Just because it's a walkway and it's a big  
 19 window and you have to walk around it, and it was broke.  
 20 Q. It was broke.  
 21 A. Uh-huh.  
 22 Q. Did you feel it was a hazard before this  
 23 accident?  
 24 A. I never really thought of it.  
 25 Q. Sure.

1 window?  
 2 A. No.  
 3 Q. So it was gravel just like it was here on  
 4 Exhibit 3?  
 5 A. Yes.  
 6 Q. Of course that wooden structure, whatever that  
 7 is, was not there; is that correct?  
 8 A. Yes.  
 9 Q. You said approximately two weeks before this  
 10 accident the window was leaning up against this fence.  
 11 During that two-week period that the window was in that  
 12 location, are you aware of any problems there being with  
 13 respect to that window?  
 14 A. I don't understand your question.  
 15 Q. That's fair.  
 16 For example, are you aware of whether the  
 17 window blew over at any time during that two weeks it  
 18 was there, 6 feet back, where the X is on Exhibit 3?  
 19 A. No.  
 20 Q. Are you aware of anybody tripping on the  
 21 window during that time frame?  
 22 A. No.  
 23 Q. Are you aware of problems whatsoever relating  
 24 to the window during that two-week time frame?  
 25 A. Other than it was taking up the walkway, space

1 A. But it's obviously a hazard if you are to sit  
 2 down and actually think about it, but it didn't cross my  
 3 mind.  
 4 Q. My question is: Did you contact -- did you  
 5 tell Roger, for example, or your other roommates that  
 6 you had any problem with the window sitting out here as  
 7 it stood up against the cedar fence?  
 8 A. I don't -- I don't really remember.  
 9 Q. Do you recall calling Walter and indicating  
 10 that that was a problem to have that window there?  
 11 A. No. I'm sure I said something to Roger or  
 12 Wayne when it broke initially. But other than that I  
 13 didn't say anything.  
 14 Q. Do you recall what you said to them when it  
 15 broke up against his window, or up against his mirror?  
 16 A. Not exactly. Probably something along the  
 17 lines of "dumb-ass."  
 18 Q. Anything else?  
 19 A. Not that I can remember.  
 20 Q. Other than the window being stored up against  
 21 this fence as depicted in Exhibit 3, at the time you  
 22 initially saw -- I want you to think back. At the time  
 23 you initially saw that window moved from the white  
 24 picket fence to approximately 6 feet back, do you recall  
 25 anything else being in this walkway other than that

1 of the walkway, and it had a pane broke out of it.  
 2 Q. You mentioned that when the window was back at  
 3 the picket fence and it fell over and broke a window out  
 4 on Wayne's car, you may have said something to your  
 5 roommates like "dumb-ass," something like that; correct?  
 6 A. Yes.  
 7 Q. When it was moved to the X here, did you have  
 8 any discussions with your roommates about whether that  
 9 was a problem or not?  
 10 A. I'm sure, knowing myself, I said something,  
 11 but I honestly can't recall exactly what I said, if  
 12 anything. I'm sure I did.  
 13 Q. None of us want speculation here. We don't  
 14 want you to guess. We want to know what you did. My  
 15 question to you is: Do you recall saying anything to  
 16 your roommates or to anybody about the location of that  
 17 window at the X on Exhibit 3?  
 18 A. No.  
 19 MR. STEFANIC: Why don't we take a little  
 20 break, five-minutes.  
 21 (Recess taken.)  
 22 (Glenda Amundson left the proceedings.)  
 23 Q. (BY MR. STEFANIC) Going back on the record.  
 24 I want you to focus now from the time frame of when the  
 25 window was placed on Exhibit 3 at about 6 foot in on the

1 cedar fence, you say there was about two weeks between  
2 then and the time of the accident. That is what I want  
3 you to focus on right now. Okay?

4 A. Okay.

5 Q. What, if anything, after that window was  
6 placed there was stored in this area alongside the  
7 garage?

8 A. Nothing that I recall, until the night of the  
9 accident there was some sort of a chunk of a root or a  
10 tree stump or --

11 Q. So if I understand your testimony, the only  
12 thing that was in this walkway up until the night of  
13 this accident was the window?

14 A. Yes.

15 Q. It was well maintained gravel in there?

16 A. Yes.

17 Q. And then you say nothing was in there until  
18 the night of the incident; correct? The incident  
19 happened in the wee hours of the morning, right, after  
20 midnight?

21 A. Yes.

22 Q. Was it a party or was it a social gathering?

23 A. Whatever way you want to call it, having  
24 people over, having a fire, drinking beers, talking and  
25 enjoying the fire.

1 learned that there was something other than the window  
2 in that area alongside the garage. When would you have  
3 first known that?

4 A. When the accident happened.

5 Q. The morning of July 8?

6 A. Yes.

7 Q. And what were you able to observe in that area  
8 other than the window at that time?

9 A. There was some sort of a root or tree stump  
10 or -- I don't know which one it was.

11 Q. Do you know how it got there?

12 A. No.

13 Q. Do you know who brought it?

14 A. No.

15 Q. Did you check with your roommates, did you  
16 talk with your roommates about this root?

17 A. No.

18 Q. Ask them if they brought it?

19 A. No.

20 Q. Again, I make no representation about these  
21 photographs, but I will -- I'm not going to mark this  
22 yet until I show you.

23 This is a photograph, I do not know when it  
24 was taken. I'm cautioning you that the way this window  
25 is set up doesn't mean anything. It could have been

1 Q. That's cool. So you were having a fire and  
2 you had people over.

3 A. Yes.

4 Q. So when you actually had people over, am I  
5 getting this right, that that would have actually been  
6 on July 7, 2011 and that the accident didn't occur until  
7 after midnight, which would have been July 8?

8 A. Yes.

9 Q. So what you are telling me is on July 7 when  
10 you were having this fire and people get together,  
11 before that night there was nothing in this area, and  
12 then that night there was some sort of a root or  
13 something placed there?

14 A. I didn't notice anything until the accident.

15 Q. Let me see how I'll go about this. Let's do  
16 it this way: When you had people over, before the first  
17 person arrived on July 7, the only thing that was in  
18 this area was the window, nothing else; fair?

19 A. That I noticed, I didn't notice anything other  
20 than the window there.

21 Q. And then after people came over you came to  
22 understand that there was something placed there by  
23 somebody.

24 A. I didn't know of it until that happened.

25 Q. So let's kind of fast forward to when you

1 staged by somebody that was trying to photograph this.  
2 I don't know.

3 But my question is: As you see next to it,  
4 there is some sort of a piece of wood or something. My  
5 question is simply: Is that what you were referring to  
6 as the root?

7 A. Yes.

8 Q. Do you know if that is the exact thing that  
9 you saw after this accident or --

10 A. That looks exactly like what it was.

11 MR. STEFANIC: Let's mark this as the next  
12 exhibit then.

13 (Exhibit 4 marked.)

14 Q. (BY MR. STEFANIC) So I'm handing you what has  
15 been marked as Exhibit No. 4. And in that photograph  
16 the piece of wood, or whatever you would call that, that  
17 is the piece of wood or the root that you were referring  
18 to that you saw that night after the accident; correct?

19 A. Yes.

20 Q. You had not noticed that before this accident?

21 A. No.

22 Q. The window that is in this photograph, do you  
23 see how it's being supported by some white slats?

24 A. Yes.

25 Q. You've testified earlier, and really I just

1 want to know, I want to clarify this. You testified  
2 earlier that the window was actually leaning up against  
3 the wood when you last saw it before this accident; is  
4 that correct?

5 A. Yes.

6 Q. So this is a different configuration than what  
7 you recall immediately before this accident with respect  
8 to this window; is that fair?

9 A. Yes.

10 Q. Do you know who put these wood supports on  
11 there?

12 A. No.

13 Q. Do you know from this photograph, do you see  
14 where the bottom of the window is in the walkway,  
15 whether that is where the bottom of the window was the  
16 night in question or could it have been closer to the  
17 fence?

18 A. I don't recall that.

19 Q. Where did you keep the wood for this bonfire  
20 that you were having?

21 A. In the back.

22 Q. So if you brought wood for the fire, it would  
23 be stored in the back?

24 A. Yes. We got the wood from a neighbor across  
25 the back fence, so we would just go and throw it over

1 accident, utilizing this area by this window to come  
2 into the backyard or go out of the backyard other than  
3 Mr. Stiles?

4 A. No.

5 Q. In other words, you are not aware of anybody;  
6 correct?

7 A. Correct.

8 Q. We know that this window was placed in this  
9 area at least two weeks before this incident happened.  
10 Do you have a recollection of walking past that window,  
11 either coming from the backyard to the street or the  
12 street to the backyard, while that window was in place?

13 A. Not that I remember.

14 Q. Do you remember anybody doing that in that  
15 two-week frame before this accident happened, of people  
16 coming in through that gate to the backyard or exiting  
17 from the gate to the street?

18 A. Not that I know of.

19 Q. So I take it you are not aware of any problems  
20 anybody had with this window prior to the accident?

21 A. No.

22 Q. Is that correct?

23 A. Yes.

24 Q. You have a recollection of seeing this piece  
25 of wood that is depicted in Exhibit 4 the night or the

1 the fence to the fire pit.

2 Q. Has anybody told you after this accident where  
3 this piece of wood in Exhibit 4 came from?

4 A. No.

5 Q. Now, when was the last time before this  
6 accident happened that you would have walked through  
7 this walkway and opened this gate, either coming or  
8 going from the backyard?

9 A. I don't recall. I usually just go right  
10 through the garage.

11 Q. Could it have been days that you or --

12 A. I don't remember honestly.

13 Q. Do you have a recollection of the day when  
14 your bonfire party started on July 7 utilizing the gate  
15 to get to the backyard for anything?

16 A. No. The garage door was open.

17 Q. What time did your party start?

18 A. I don't remember exactly what time it started,  
19 but it ended up going late.

20 Q. We know that Mr. Stiles exited the backyard  
21 through the gate and was walking out to the street at  
22 the time this thing happened; is that right?

23 A. Yes.

24 Q. Do you know of anybody other than Mr. Stiles,  
25 either the night of the party or the morning of the

1 wee morning when this thing happened; correct?

2 A. Yes.

3 Q. About what time was that?

4 A. I'm not sure. It was early morning hours,  
5 3:00, somewhere around in there. It was early.

6 Q. And do you have a recollection -- you see  
7 where this is located on this picture.

8 A. Uh-huh.

9 Q. And we don't know, because it's taken from --  
10 this picture is taken from roughly where the gate is. I  
11 don't know where it was taken.

12 Do you know if that wood is generally in the  
13 area that you observed it that night or whether it was  
14 in a different place?

15 A. A different place.

16 Q. Is there somewhere on this diagram, Exhibit  
17 No. 4 or Exhibit No. 3, that you could point to where it  
18 would have been?

19 A. Yes.

20 Q. Which one?

21 A. So you are saying this is taken approximately  
22 at the gate?

23 Q. I can't represent that. I'm just saying it's  
24 from that direction.

25 A. Well, on Exhibit 3 it was right, kind of in

1 front of this gate that you open.  
 2 Q. So can you put an X in the general location  
 3 where you believe that piece of wood that is depicted in  
 4 Exhibit 4 was the night or the early morning when this  
 5 accident happened?  
 6 A. Yes.  
 7 Q. And you've done that; right?  
 8 A. Yes.  
 9 Q. Would you say this is a root, is that how you  
 10 would prefer to say it, or a stump?  
 11 A. Yeah, I don't know which one it is. It's one  
 12 of the two. I can't really tell.  
 13 Q. Why don't you just write "root" by that.  
 14 A. (Complies.)  
 15 Q. Does the gate as depicted in Exhibit 3 open  
 16 towards the back of the backyard or does it open towards  
 17 the walkway?  
 18 A. I don't remember that.  
 19 Q. While you lived at this premises, did you have  
 20 any problems with Walter Amundson at all?  
 21 A. No.  
 22 Q. Did you get along with him?  
 23 A. Yes. He never really came around.  
 24 Q. Did you ever have a discussion with him about  
 25 parties that you were hosting at the place?

1 A. Yes.  
 2 Q. Was there any hard feelings with Walter at  
 3 all?  
 4 A. Not that I recall.  
 5 Q. You respect his ability to limit what goes on  
 6 on his property, I suppose?  
 7 A. Yes, that is his property.  
 8 Q. Of course you have the same right to do what  
 9 you want to do as well.  
 10 A. Yes.  
 11 Q. Was this the first bonfire that you had had  
 12 here?  
 13 A. No.  
 14 Q. How frequent were your bonfires?  
 15 A. Every weekend.  
 16 Q. How did it come about every weekend that you  
 17 would have a bonfire? Was it planned? Was it  
 18 spontaneous?  
 19 A. It was just usually what we did. We would  
 20 have the owners of the two bars across, when they would  
 21 get done closing down their facilities they would come  
 22 over and have some drinks and sit around the fire and  
 23 chitchat.  
 24 Q. It's your testimony that you did not store any  
 25 wood in this area?

1 A. Yes, after the accident.  
 2 Q. Tell me about that.  
 3 A. He came up with a new rental agreement; no  
 4 drinking or alcohol on the premises.  
 5 Q. Why was that?  
 6 A. I would imagine due to the accident, partying.  
 7 Q. If this accident happened July of 2011, how  
 8 long did you live there after that?  
 9 A. I don't remember exactly, but not long.  
 10 Q. A month, two, three?  
 11 A. Not even that, maybe a month.  
 12 Q. Why did you leave?  
 13 A. That is not, at that time of my life,  
 14 something I wanted to live by. I wanted to feel  
 15 comfortable wherever I lived to do as I choose.  
 16 Q. I see. So he wanted you to sign something  
 17 that said you would not drink alcohol on the premises?  
 18 A. Yes.  
 19 Q. And did you sign that?  
 20 A. I think -- I do believe so.  
 21 Q. But, again, that was something that you didn't  
 22 want that limitation on your -- you wanted to have  
 23 people over to have a beer or two or whatever.  
 24 A. Yes.  
 25 Q. And so you left the lease because of that.

1 A. No.  
 2 Q. Is that correct?  
 3 A. Yes.  
 4 Q. At any time?  
 5 A. No. I believe Roger, when I first moved in  
 6 there, he had some old boards up against the house. But  
 7 those got burned in the fire pit.  
 8 Q. Do you recall any of the people there that  
 9 were at your bonfire the night in question?  
 10 A. One I remember. There was a lot of people  
 11 there.  
 12 Q. I can only imagine. There is Creekside, there  
 13 is Cowgirls, those things go, what, until 2:00 in the  
 14 morning, something like that?  
 15 A. Yes.  
 16 Q. Was it a sort of an open invitation, after  
 17 those closed down if people wanted to come over to come  
 18 hang out, have a fire type of thing?  
 19 A. Yeah, people we knew.  
 20 Q. It wasn't open to everybody, just people you  
 21 knew.  
 22 A. Yes.  
 23 Q. Do you know about how many bonfires you had  
 24 before this incident; was it five, ten?  
 25 A. Several. I don't know exactly, but several.

1 Q. During any of those gatherings where you had a  
2 bonfire was there ever any neighbor complaints, to  
3 your knowledge?

4 A. No, the neighbors actually came over.

5 Q. Good. Was there ever any police involvement?

6 A. No.

7 Q. Was there ever any property destruction?

8 A. No.

9 Q. Was the bonfire, you said you had them every  
10 weekend, so I kind of get the idea it was just kind of  
11 common knowledge after the bar closed on a -- did you  
12 have them on a Friday or a Saturday night?

13 A. Usually Friday and Saturday.

14 Q. Both?

15 A. Sometimes.

16 Q. What I'm getting at is, was this a planned one  
17 where you had invited people and you knew people were  
18 going to come over that evening on the 7th, or is it  
19 something that just kind of evolves from the bar?

20 A. No, nobody would just come over and start a  
21 fire.

22 Q. Of course. What I'm getting at is: Did you  
23 call people up and say, Hey, are you going to come over  
24 for a bonfire after Cowgirls? Or is it something you  
25 were at the bar and just kind of word of mouth and you

1 still friends?

2 A. Yeah.

3 Q. How did Dave come about being at this party?

4 A. He cruised over after he got done playing  
5 cards, poker or something.

6 Q. I will have a chance to talk with Dave  
7 tomorrow. I don't know anything about him. Is he  
8 married and have kids?

9 A. Yes.

10 Q. Both?

11 A. Both.

12 Q. How did he know about this bonfire that you  
13 were having?

14 A. I called him.

15 Q. Do you know what time he showed up?

16 A. Not exactly; it was late.

17 Q. What is late?

18 A. Midnight, 1:00, somewhere in that area.

19 Q. The first time that you saw him you believe at  
20 that gathering was sometime around midnight or  
21 thereafter?

22 A. Yes.

23 Q. Was it a nice evening?

24 A. Yes.

25 Q. No storms, no rain?

1 said, I'll be over at my house?

2 A. It's happened both ways. But usually you  
3 would be talking on the phone with somebody, What are we  
4 doing tonight? Let's have a fire. Okay. Come over.

5 Q. Is that how you recall it on this night  
6 happening?

7 A. Yes.

8 Q. Do you recall who you were talking with to  
9 plan the bonfire?

10 A. No.

11 Q. When you say you recall, my question is: Do  
12 you know who was there that night?

13 A. There was a lot of people there. The only one  
14 that I know, other than Dave and myself, was my  
15 girlfriend at the time.

16 Q. Who was that?

17 A. Dee Dee.

18 Q. What is her last name?

19 A. White.

20 Q. Do you know where Dee Dee White is?

21 A. Yes, she's in Kuna.

22 Q. Is she married or still have that name?

23 A. She is married. So I don't know if she still  
24 has that name or not.

25 Q. Do you know how to get ahold of her? Are you

1 A. No.

2 Q. When did you start your fire?

3 A. I couldn't tell you. Probably, usually around  
4 10:00.

5 Q. So you would be there and people would come  
6 over from the bar; is that right?

7 A. Yes.

8 Q. Did you provide alcohol?

9 A. Yes, sometimes I would buy, and a lot of times  
10 people would bring.

11 Q. Do you recall what you provided this evening?

12 A. I don't remember.

13 Q. Was it just beer; was it hard alcohol?

14 A. It was beer.

15 Q. Other than the people you've described, can  
16 you remember anybody else that was there?

17 A. No.

18 Q. And that night where did you get the wood,  
19 where was the wood that you were using for the fire  
20 located?

21 A. In the neighbor's backyard.

22 Q. Which neighbor?

23 A. It was the one directly behind us if you were  
24 to go straight out the backyard over that fence.

25 Q. Do you remember their names?

1 A. No.  
 2 Q. So you were looking at Exhibit 3. And if we  
 3 were to go out the backyard, straight back, there was a  
 4 neighbor there that had wood.  
 5 A. Yes.  
 6 Q. Just construction-type wood or was it actually  
 7 logs?  
 8 A. A bunch of old wood laying around they were  
 9 more than happy for us to burn, because it got rid of  
 10 their junk pile.  
 11 Q. Was your party in the house at all?  
 12 A. No. Sometimes yeah, we would drink beers in  
 13 the living room and whatnot.  
 14 Q. Let's talk about this evening that this  
 15 happened. Was the party in the house at all?  
 16 A. No.  
 17 Q. You allowed people to go into the bathroom,  
 18 I'm assuming.  
 19 A. Yes.  
 20 Q. Access to the backyard that evening, and when  
 21 I'm talking about that I'm talking about the 7th from  
 22 10:00 to whenever and then after midnight on the 8th.  
 23 How did people get into your backyard?  
 24 A. Through the garage door.  
 25 Q. Any other way?

1 A. Not that I know of.  
 2 Q. I think your testimony was is that nobody came  
 3 into -- you did not see anybody go in the gate to the  
 4 side of the house or out of the gate to the side of the  
 5 house before this actual incident happened.  
 6 A. No.  
 7 Q. Is that correct?  
 8 A. That's correct.  
 9 Q. Did you actually see your cousin go out that  
 10 gate?  
 11 A. No.  
 12 Q. Tell me about what you recall about -- well,  
 13 let me ask you. When did you first see your cousin?  
 14 A. That night when he arrived real late, around  
 15 1:00.  
 16 Q. Up until that time how much had you had to  
 17 drink?  
 18 A. I don't know. Several beers.  
 19 Q. Not that there is anything wrong with it, were  
 20 you intoxicated?  
 21 A. Yes.  
 22 Q. Had you had any shots?  
 23 A. No.  
 24 Q. Any drugs going on at your party?  
 25 A. Not that I know of.

1 Q. But you had several beers and you felt  
 2 intoxicated?  
 3 A. Yes.  
 4 Q. Who do you recall being at the party when your  
 5 cousin showed up at about 1:00?  
 6 A. Like I said, I don't recall. It's been a long  
 7 time. I just remember my girlfriend at the time and my  
 8 cousin.  
 9 Q. Do you recall having conversations with your  
 10 cousin?  
 11 A. Yes.  
 12 Q. What do you recall?  
 13 A. I don't recall the actual conversations, just  
 14 chitchat.  
 15 Q. Sure. Did you have some music playing?  
 16 A. Probably. I can't give an honest yes or no  
 17 because I don't remember, but usually we would have a  
 18 little boom box out there playing the radio station.  
 19 Q. What alcohol, if any, did you observe David  
 20 Stiles consuming?  
 21 A. I don't recall him drinking anything. If  
 22 anything, it would have been beer; it was pretty late.  
 23 Q. Where was he coming from again?  
 24 A. Playing cards or poker or something.  
 25 Q. Do you know where?

1 A. No.  
 2 Q. Would it be fair to say that you were the host  
 3 of the party?  
 4 A. Yes.  
 5 Q. Your roommates, did they attend the party that  
 6 night?  
 7 A. I don't remember if they came out that night  
 8 or not, but they come out every once in a while and hang  
 9 out by the fire.  
 10 Q. You can't recall this time though.  
 11 A. No.  
 12 Q. The people that came to the party were your  
 13 guests?  
 14 A. Yes.  
 15 Q. I take it, you have testified you did not know  
 16 that David had gone out the gate alongside the house  
 17 that night.  
 18 A. No, I didn't.  
 19 Q. When did you first find out about the  
 20 accident?  
 21 A. Right after it happened he came banging on the  
 22 door, and I was laying down. He was out there putting  
 23 out the fire and cleaning everything up, and he went to  
 24 leave and that is when the accident happened. He came  
 25 around to the front door, banging on it, got me up, not

1 knowing what it was, and then he came in through the  
 2 garage entrance and into the house.  
 3 Q. Did you expect your guests to go out that gate  
 4 when they were leaving the party?  
 5 A. No.  
 6 Q. I'm assuming David did not ask you if he could  
 7 go out that gate when he was leaving the party?  
 8 A. No.  
 9 Q. You said you were laying down.  
 10 A. Yes.  
 11 Q. About what time was this?  
 12 A. I can't recall an exact time. It was late  
 13 though, 3:00, 4:00 in the morning, something like that.  
 14 Q. You were laying down because of why?  
 15 A. Ready to go to bed.  
 16 Q. Was the party kind of over at that point?  
 17 A. Oh, yeah.  
 18 Q. So tell me as best you recall, it sounds like  
 19 you went in and laid down. Was it in your bed or on the  
 20 couch or what?  
 21 A. My bed.  
 22 Q. Were you with your girlfriend?  
 23 A. Yes.  
 24 Q. Who was left in the backyard when you went and  
 25 did that?

1 previous fires before this incident happened?  
 2 A. Yes.  
 3 Q. Do you recall how many?  
 4 A. No.  
 5 Q. During those previous fires that you would  
 6 have, do you recall anybody accessing the backyard  
 7 through the gate?  
 8 A. I don't remember. They would either use the  
 9 gate or go right through the garage.  
 10 Q. So that's what I'm asking. Do you have a  
 11 recollection of people using the gate area to go out to  
 12 the street or into the backyard using the gate?  
 13 A. Roger would always use the gate, but I don't  
 14 remember specifically.  
 15 Q. I want you to think back. That night, do you  
 16 think that -- at 3:00 in the morning is when this  
 17 happened you think?  
 18 A. Somewhere around there.  
 19 Q. -- that it was safe for David to go out the  
 20 back gate and walk alongside the house to get out of the  
 21 backyard?  
 22 MR. GILES: Object to the form of the  
 23 question.  
 24 THE WITNESS: Can you redo it, please.  
 25 Q. (BY MR. STEFANIC) Do you think it was safe

1 A. Just Dave.  
 2 Q. Did you have a conversation with David as to  
 3 what -- Dude, I'm going to bed, see you later? How did  
 4 you just leave your cousin in the backyard?  
 5 A. I'm sure I said goodnight.  
 6 Q. So he was just by himself back there?  
 7 A. Yes.  
 8 Q. Do you know if the fire was still going?  
 9 A. Yeah, he was putting it out.  
 10 Q. Did you have a conversation with him asking  
 11 him to do that?  
 12 A. No.  
 13 Q. How did you know he was putting it out?  
 14 A. He always would. If he stopped by, he would  
 15 usually be the responsible one at the end of the night.  
 16 Q. Did this happen on a Friday or a Saturday  
 17 night, do you recall?  
 18 A. I don't recall.  
 19 Q. Do you remember having a fire the night  
 20 before?  
 21 A. I don't remember.  
 22 Q. Do you recall having a fire the week before?  
 23 A. Not that I remember. It was relatively every  
 24 weekend that we would try to get a fire.  
 25 Q. Do you recall your cousin coming to any of the

1 for David to leave the backyard through that gate  
 2 leaving the premises to the street?  
 3 A. As far as I knew, yes.  
 4 Q. Did you ever find out -- did he tell you what  
 5 happened?  
 6 A. Yes.  
 7 Q. What did he tell you happened?  
 8 A. He told me that he was coming -- leaving and  
 9 tripped over something and went through the window, and  
 10 it was bad. I called an ambulance and his wife.  
 11 Q. He banged on the front door to get your  
 12 attention that he was in trouble?  
 13 A. Yes.  
 14 Q. Did you answer it?  
 15 A. By the time I got up to investigate what the  
 16 noise was he had come around the back into the garage  
 17 into the house.  
 18 Q. He had gone through the garage --  
 19 A. And then into the house that way.  
 20 Q. So there is no direct access from the garage  
 21 into the house; you have to go into the backyard and  
 22 then take another door?  
 23 A. No, there is.  
 24 Q. There is. Okay.  
 25 So he had gone into the garage and into house

1 that way.  
 2 A. Yes.  
 3 Q. Did you go out and see what had caused him to  
 4 trip?  
 5 A. Yes.  
 6 Q. Did he show you?  
 7 A. I don't remember if he showed me or not, but  
 8 it was obvious what he tripped over.  
 9 Q. When it was obvious, was it the root that you  
 10 are depicting in Exhibit 4?  
 11 A. Yes.  
 12 Q. And that is where you've located it on  
 13 Exhibit 3 where the X is.  
 14 A. Yes.  
 15 Q. What do you recall happened after he showed  
 16 you what he had tripped on?  
 17 A. I called the ambulance, called his wife. The  
 18 police were there. They did some investigating, because  
 19 I don't think they were sold on the fact that it was an  
 20 accident. So the officer followed the blood trail, and  
 21 I told him, explained what happened and he investigated  
 22 it and found it to be obvious.  
 23 Q. It was obvious that he had gone into the  
 24 window?  
 25 A. Yes.

1 Q. I have some other photographs here. They are  
 2 not nearly as nice as Mr. Monteleone's. I was curious,  
 3 these windows show, they obviously show some blood on  
 4 the window. I'm going to hand you this as a group.  
 5 Do you know -- and there is some broken glass.  
 6 Do you know what window was broken as a result of the  
 7 window falling over onto the mirror?  
 8 A. It was one window broken. Everything else was  
 9 not broken.  
 10 Q. Here, why don't you -- I want you to look  
 11 through these, and we'll go off the record for just a  
 12 quick second. But what I would like you to think about  
 13 when you go through those, is I want you to distinguish  
 14 as to what you would identify as Mr. Stiles doing with  
 15 his, I guess, his hand or his arm breaking a window  
 16 versus what was broken by the mirror on the car.  
 17 A. Well --  
 18 MR. STEFANIC: Let's go off the record for a  
 19 second.  
 20 (Off the record.)  
 21 MR. STEFANIC: Let's mark this.  
 22 (Exhibit 5 marked.)  
 23 Q. (BY MR. STEFANIC) Handing you what has been  
 24 marked collectively as Exhibit No. 5. And I'm going to  
 25 just show you on -- I'm going to give you 5-A, and my

1 question is simply: There is a broken window in there.  
 2 Do you know whether that was caused by the accident or  
 3 whether that was caused by the mirror?  
 4 A. The mirror.  
 5 Q. And B?  
 6 A. It's the same window.  
 7 Q. So the mirror, that would be the upper left  
 8 one?  
 9 A. Yes.  
 10 Q. 5-C, that is the upper left one again; is that  
 11 the mirror?  
 12 A. Yes. That one window broke, and that's  
 13 what -- a jagged piece of that glass is obviously what  
 14 got his arm.  
 15 Q. I see. Well, that answers all the questions.  
 16 What you are saying is that the window that  
 17 had been broken out by the mirror was already broken  
 18 that way. And what you understood was, is that he,  
 19 somehow when he tripped, got his arm in that broken pane  
 20 and one of the jagged edges cut him.  
 21 A. Yeah, it was surrounded with jagged glass and  
 22 his arm went through it.  
 23 Q. I'm sorry. I get it. Thank you.  
 24 Did you take any photographs?  
 25 A. I did not.

1 Q. Do you know who took these photographs, by any  
 2 chance?  
 3 A. No, I don't.  
 4 Q. Did you look at it in the morning?  
 5 A. Well, technically it was the morning, and then  
 6 again when I got up I did as well.  
 7 Q. When you went out that night to see what he  
 8 had tripped on, did your girlfriend go with you?  
 9 A. I don't remember.  
 10 Q. You went by yourself?  
 11 A. Yeah.  
 12 Q. You were intoxicated?  
 13 A. Not the next day, but that night.  
 14 Q. I'm talking about that night when you --  
 15 A. Early in the morning, yeah.  
 16 Q. Early in the morning you said you got up and  
 17 you went out and saw what he had tripped on; is that  
 18 right?  
 19 A. Yes, and showed the officer.  
 20 Q. It was still dark; right?  
 21 A. Yes.  
 22 Q. I was not aware that the police had  
 23 investigated this. Do you remember who the officer was?  
 24 A. I don't know.  
 25 Q. Did you observe, did you go out and



1 investigate what he had tripped on before the police had  
2 arrived?

3 A. I don't think so, no. The cops were there --  
4 I called the ambulance and his wife and the police got  
5 there before the ambulance did.

6 Q. Were you able to see the root there?

7 A. Yes.

8 Q. I think there is a streetlight there. Do you  
9 know if there is any streetlight?

10 A. No, not that I recall.

11 Q. Do you know if there is any light around this  
12 area?

13 A. No.

14 Q. Were you able to see the root without any  
15 lighting?

16 A. Yes.

17 Q. That was in the wee morning?

18 A. You know what, because the officer had a  
19 flashlight out and he was looking at the glass, so that  
20 might have been how I seen it that night, early in the  
21 morning.

22 Q. In the morning when you saw it in the  
23 daylight, the only things that were there was the root  
24 where you've depicted in Exhibit 3 and the window.

25 A. Yes.

1 Q. I take it his wife came and picked him up or  
2 did he go in the ambulance?

3 A. He left in the ambulance. I called his wife  
4 after I called the paramedics.

5 Q. Did you go to the hospital at all?

6 A. No.

7 Q. So at the time of this accident everybody had  
8 left, you and your girlfriend were in your bedroom, and  
9 he was out putting out the fire.

10 A. Yes.

11 Q. Do you know what problems, if any, your cousin  
12 is still having with his injuries?

13 A. He doesn't have strength.

14 Q. It was his left --

15 A. Yeah, it's right here on his -- there's tendon  
16 and nerve damage. I know he complains not only of the  
17 strength, but numbness. And he showed me how much  
18 strength he had in it a while ago by squeezing me, and  
19 it was not a very good grip at all.

20 Q. Other than the strength -- and you saw him  
21 complete the task with the wrenches, but you observed  
22 less strength than you would think there would be; is  
23 that right?

24 A. Yes.

25 Q. Are you aware of other things that he can't do

1 Q. Other than what you've told me that your  
2 cousin told you of how this thing happened -- did he  
3 tell you he tripped on something and he fell into the  
4 window?

5 A. Yes.

6 Q. Did he tell you anything else?

7 A. No, other than it was really bad and to get  
8 help.

9 Q. Was there any delay in calling the ambulance?

10 A. No.

11 Q. Once you found out you called the ambulance?

12 A. Yes.

13 Q. How did the police come into play?

14 A. I don't know. They just showed up and  
15 investigated it. I don't know if they thought it might  
16 have been an act of violence or -- who knows. But he  
17 took a flashlight and walked around after I explained to  
18 him what happened, I guess to make sure the story was  
19 straight.

20 Q. Have you told me everything you can remember  
21 about that night with respect to how the accident  
22 occurred and your discussions with your cousin?

23 A. Yes.

24 Q. Did you go with him to get medical treatment?

25 A. No.

1 because of this injury or not do as well?

2 A. Anything you do with your hands.

3 MR. STEFANIC: Let's take a quick break. I'm  
4 about wrapped up.

5 (Recess taken.)

6 Q. (BY MR. STEFANIC) I was curious about when  
7 you went to bed that night, or the early morning when  
8 this thing happened. Was your garage door left open?

9 A. No.

10 Q. I was confused when you said that he  
11 ultimately came through the garage and into the house.  
12 How did he do that?

13 A. After the accident?

14 Q. Yes.

15 A. He went back around the side of the house and  
16 in the back door into the garage.

17 Q. Okay. I see. So you had closed the garage at  
18 that time.

19 A. Yes.

20 Q. Did you do that when you went to bed?

21 A. Yes.

22 Q. Do you think that you did anything wrong in  
23 causing this accident?

24 A. No.

25 Q. Do you think that Walter Amundson did anything

1 wrong in causing this accident?  
 2 A. No.  
 3 Q. Are you planning on -- your employment is  
 4 solid with where you are going, with where you are  
 5 working right now?  
 6 A. Yes.  
 7 Q. Do you plan on being in the Boise area for --  
 8 I mean, do you have any plans of leaving at all?  
 9 A. I don't know. Me and my wife have been  
 10 discussing Dallas, Texas, so she can finish her degree.  
 11 She needs a specialized school, but that's just talks  
 12 right now, thoughts.  
 13 MR. STEFANIC: I appreciate your time. Thank  
 14 you very much.  
 15 THE WITNESS: No problem.  
 16 MR. GILES: Just a few questions, Jon.

EXAMINATION

QUESTIONS BY MR. GILES:

19 Q. I would like to talk about that piece of wood  
 20 that was in the alley, Exhibit 4. You recall testifying  
 21 about that piece of wood we referred to as a root; is  
 22 that correct?  
 23 A. Yes.  
 24 Q. You testified earlier about getting some wood

1 personally. That would be my guess.  
 2 Q. While you were a resident there you testified  
 3 about Mr. Amundson coming to help with the removal of  
 4 the window; correct?  
 5 A. Yes.  
 6 Q. Was there any other remodeling or maintenance  
 7 that Mr. Amundson assisted with?  
 8 A. No, not that I remember.  
 9 Q. Was that the only big project that occurred  
 10 there at the residence while you lived there?  
 11 A. Yes.  
 12 Q. Mr. Amundson was present for the removal of  
 13 the window?  
 14 A. Yes.  
 15 Q. The night of the accident can you tell us why  
 16 David exited through the walkway?  
 17 A. Probably not to disturb me.  
 18 MR. STEFANIC: Object to form; speculation.  
 19 Q. (BY MR. GILES) Was there any other way for  
 20 David to exit that night?  
 21 A. Yes, he could have came in through the  
 22 backdoor and through the house or open up the garage and  
 23 go out that way.  
 24 Q. When he exited through the walkway, was the  
 25 garage door closed?

1 from the neighbor for the bonfire; is that correct?  
 2 A. Yes.  
 3 Q. What type of wood was used for the bonfire?  
 4 A. Chunks of old fence and just different random  
 5 pieces of wood.  
 6 Q. Did any of them resemble the root in this  
 7 picture?  
 8 A. No.  
 9 Q. They were more like old scrap lumber that had  
 10 been processed at some point?  
 11 A. Yes.  
 12 Q. And when you moved into the residence, what  
 13 was your understanding of who you went to when you had  
 14 issues with the house?  
 15 A. Roger. I never had any issues that I recall.  
 16 Q. If you wanted to clear something to occur at  
 17 the house, would you just talk to Roger?  
 18 A. Yes.  
 19 Q. Were you ever told to do anything differently?  
 20 A. No.  
 21 Q. Do you know why the window was saved; why it  
 22 wasn't scrapped?  
 23 A. I don't know, other than those are probably  
 24 worth a good penny, they are big windows. If it was  
 25 mine I would try to sell it instead of throw it,

1 A. Yes.  
 2 Q. If I could have you take a look at Exhibit 2.  
 3 Now, that is a photo of what is now the garage; correct?  
 4 A. Yes.  
 5 Q. And you testified the garage door was down  
 6 when David left the premises.  
 7 A. Yes.  
 8 Q. So in order to exit the backyard, his option  
 9 was to cut through the area in what has been marked as  
 10 Exhibit 3?  
 11 A. Yes.  
 12 Q. Or cut through the house.  
 13 A. Yes.  
 14 Q. And he chose to cut through the alleyway  
 15 obviously.  
 16 A. Yes.  
 17 Q. You had mentioned earlier that when the window  
 18 fell on your roommate's pickup, that you may have made a  
 19 comment, you may have called him a "dumb-ass"?  
 20 A. Yes.  
 21 Q. Can you explain what you would have meant by  
 22 that comment?  
 23 A. For putting it there, unstable.  
 24 Q. Did you mean by that comment that maybe that  
 25 was a dangerous situation he created?

1 MR. STEFANIC: Object to the form.  
 2 THE WITNESS: Yes.  
 3 Q. (BY MR. GILES) Now, we talked a little bit  
 4 earlier about the window and where it was stored. And  
 5 it was initially stored against the vinyl fence; is that  
 6 correct?  
 7 A. Yes.  
 8 Q. And do you recall what you testified to as to  
 9 who had placed it there?  
 10 A. Yes, I believe it was Roger and his father.  
 11 Q. And then you testified earlier at some point  
 12 the window was moved to a location on the cedar fence?  
 13 A. Yes.  
 14 Q. Do you know who moved it?  
 15 A. I believe Roger.  
 16 MR. GILES: I don't have any further  
 17 questions. Thank you.  
 18 MR. STEFANIC: I have one.

FURTHER EXAMINATION

QUESTIONS BY MR. STEFANIC:

22 Q. You testified that if anything was wrong you  
 23 would check with Roger, through counsel's questioning.  
 24 Did Walter specifically say that if you had a  
 25 problem you were to deal with Roger?

1 REPORTER'S CERTIFICATE  
 2 I, BEVERLY BENJAMIN CSR No. 710, Certified Shorthand  
 3 Reporter, certify: That the foregoing proceedings were  
 4 taken before me at the time and place therein set forth,  
 5 at which time the witness was put under oath by me;  
 6 That the testimony and all objections made were  
 7 recorded stenographically by me and transcribed by me or  
 8 under my direction;  
 9 That the foregoing is a true and correct record  
 10 of all testimony given, to the best of my ability;  
 11 I further certify that I am not a relative or  
 12 employee of any attorney or party, nor am I financially  
 13 interested in the action.  
 14 IN WITNESS WHEREOF, I set my hand and seal this  
 15 14th day of May 2014.

21 \_\_\_\_\_  
 22 BEVERLY A. BENJAMIN, CSR No. 710  
 23 Notary Public  
 24 P.O. Box 2636  
 25 Boise, Idaho 83701-2636  
 My commission expires May 28, 2019

1 A. No.  
 2 MR. STEFANIC: That is all I have.  
 3 (Deposition concluded at 4:04 p.m.)  
 4 (Signature waived.)  
 5  
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 25

**EXHIBIT 4**

000203

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

DAVID WAYNE STILES, )  
Plaintiff, )  
vs. ) Case No. CV-PI 1311963  
WALTER A. AMUNDSON, )  
Defendant. )  
\_\_\_\_\_ )

DEPOSITION OF DAVID WAYNE STILES  
MAY 7, 2014

REPORTED BY:

BEVERLY A. BENJAMIN, CSR No. 710, RPR

Notary Public

1 THE DEPOSITION OF DAVID WAYNE STILES was taken  
2 on behalf of the Defendant at the offices of Anderson  
3 Julian & Hull, 250 South Fifth Street, Boise, Idaho,  
4 commencing at 9:14 a.m. on May 7, 2014, before Beverly  
5 A. Benjamin, Certified Shorthand Reporter and Notary  
6 Public within and for the State of Idaho, in the  
7 above-entitled matter.

8 APPEARANCES:

9 For Plaintiff:

10 Yost Law, PLLC  
11 BY MR. CHIP GILES  
12 4 Ogden Avenue  
13 Nampa, Idaho 83653  
14 -and-  
15 Johnson & Monteleone, LLP  
16 BY MR. JASON R.N. MONTELEONE  
17 405 South Eighth Street, Suite 250  
18 Boise, Idaho 83702

19 For Defendant:

20 Anderson Julian & Hull, LLP  
21 BY MR. MICHAEL P. STEFANIC  
22 250 South Fifth Street, Suite 700  
23 P.O. Box 7426  
24 Boise, Idaho 83707  
25

1 DAVID WAYNE STILES,  
2 first duly sworn to tell the truth relating to said  
3 cause, testified as follows:  
4

5 MR. STEFANIC: Let the record reflect this is  
6 the time and place for the deposition of David Stiles.  
7 The deposition has been noticed and will be taken  
8 pursuant to the Idaho Rules of Civil Procedure.  
9

10 EXAMINATION

11 QUESTIONS BY MR. STEFANIC:

12 Q. Mr. Stiles, I represented myself before, my  
13 name is Mike Stefanic and I represent Walter Amundson.  
14 Could you please state your full name for the record,  
15 spelling your last.  
16 A. David Wayne Stiles, S-t-i-l-e-s.  
17 Q. Your date of birth?  
18 A. [REDACTED]  
19 Q. That makes you 45, 46?  
20 A. 46 years old.  
21 Q. Where were you born?  
22 A. I was born in Corona, California.  
23 Q. Where did you go to high school?  
24 A. Borah High.  
25 Q. When did your family come to Idaho?

1 ALSO PRESENT: Barry Trent, State Farm  
2 Walter Amundson  
3  
4

5 I N D E X

6 TESTIMONY OF DAVID WAYNE STILES PAGE  
7 Examination by Mr. Stefanic 4

9 E X H I B I T S

10 NO. DESCRIPTION PAGE  
11 6 - Notice of Deposition Duces Tecum of 5  
12 David Wayne Stiles  
13  
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24  
25

1 A. May of 1968.  
2 Q. Did you graduate from high school?  
3 A. Yes, I did.  
4 Q. What year?  
5 A. 1988.  
6 Q. You sat through the deposition of your cousin  
7 Jon Sullivan yesterday. Do you understand the rules  
8 that I explained to him?  
9 A. Yes.  
10 Q. Will you agree to abide by those same rules?  
11 A. Yes.  
12 Q. Again, I do not want you to answer a question  
13 you don't understand. So if you have an issue with the  
14 question or don't understand the question, will you  
15 please let me know?  
16 A. Yes, sir.  
17 Q. Are you under any medication today that would  
18 prevent your ability to understand the question or  
19 testify truthfully?  
20 A. No, sir.  
21 Q. Did you review anything in preparation for the  
22 deposition here today?  
23 A. Just the rules that my attorneys advised me,  
24 as far as my etiquette and such.  
25 (Exhibit 6 marked.)

1 Q. (BY MR. STEFANIC) I'm going to hand you what  
2 has been marked as Exhibit 6, which is just the notice  
3 to come here, and it asks for a variety of documents  
4 that you should bring with you, with the proviso that I  
5 didn't want anything already produced. It was any new  
6 information that is responsive to that notice.

7 So my question to you is: Is there any new  
8 information or documents that you brought with you  
9 pursuant to that notice?

10 A. I did have a picture that I brought yesterday,  
11 but it's only for the surgery. And I believe there is a  
12 police report that needs to be sent to you. So Chip  
13 said he would send both that picture and the police  
14 report.

15 Q. Do you have the photograph with you today?

16 A. I do not. I left it in the car.

17 Q. Okay. Maybe we can get that at a break.  
18 Would that be fair?

19 A. My wife dropped me off and she's at work, but  
20 she should be back here -- I should be able to meet up  
21 with her around lunchtime. She's in meetings today, so  
22 she didn't know if she would be back.

23 Q. How about if you just provide that to your  
24 counsel and he'll provide it to me.

25 MR. GILES: Mike, if it helps, it's a picture

1 A. No, I have not.

2 Q. Do you have children?

3 A. No, I do not. I have a stepdaughter.

4 Q. What is your stepdaughter's name?

5 A. Tori, T-o-r-i.

6 Q. How old is Tori?

7 A. She's 16.

8 Q. Does Tori live with you and Crystal?

9 A. Yes, she does.

10 Q. Are you currently employed?

11 A. No, I'm not.

12 Q. When is the last time that you were employed?

13 A. I was doing a business deal, taking over a  
14 business for the last four years, which that business  
15 fell through. We couldn't come to an agreement. My  
16 last paycheck, as far as a weekly or an annual income,  
17 was 2007.

18 Q. I note that you are not making a wage claim or  
19 a future wage claim in this case, and I understand that.

20 A. Yes.

21 Q. I just was wanting to get a little sense of  
22 your work history and what types of things you've done  
23 both before and after the accident. So I'll ask you a  
24 little bit about that.

25 A. Okay.

1 of the actual surgery procedure, just a picture of when  
2 they were doing the procedure.

3 MR. STEFANIC: That's fine. I appreciate  
4 that.

5 Q. (BY MR. STEFANIC) Are there any other  
6 documents other than that one that you have that is  
7 responsive to the notice?

8 A. No, sir.

9 Q. Do you have physical possession of the police  
10 report or are you in the process of getting that?

11 A. I do not have possession of it. I didn't  
12 learn about it until yesterday also.

13 Q. Where do you currently reside?

14 A. 1503 West Northgate Avenue, Northgate is one  
15 word, in Meridian, Idaho.

16 Q. How long have you resided there?

17 A. It will be 11 years this year.

18 Q. You are married to whom?

19 A. Crystal Bean, B-e-a-n.

20 Q. Crystal with a "K" or a "C"?

21 A. "C".

22 Q. How long have you been married to Ms. Bean?

23 A. I've been married to her for, it will be 11  
24 years October 26.

25 Q. Have you had previous marriages?

1 Q. 2007, the last time you received a paycheck,  
2 what were you doing?

3 A. I was the head machinist for Fiber-Pro.

4 Q. Where is Fiber-Pro located?

5 A. They were off of Gowen Road. They have since  
6 moved.

7 Q. Are they still a going concern?

8 A. As far as I know. They told me they were  
9 shutting the doors -- they let me go and then they  
10 restructured the company and were able to keep the doors  
11 open.

12 Q. So you left because the job ended?

13 A. Yeah, it felt like the company was closing, so  
14 they let me go.

15 Q. And what employment -- you say you got your  
16 last check then. Have you worked since 2007 earning  
17 money?

18 A. I do odd jobs, as far as I do auto mechanics  
19 out of my garage, work on people's ATVs, snowmobiles,  
20 motorcycles, lawnmowers. Pretty much anything with a  
21 motor I can usually fix.

22 Q. Since 2007 you would get paid for things like  
23 that?

24 A. Yes.

25 Q. Do you report that income on your tax return?

1 A. Yes.  
 2 Q. Have you applied for any jobs since 2007 other  
 3 than working outside of your garage?  
 4 A. Yes, I have.  
 5 Q. Have you been employed even for a brief time?  
 6 A. I worked for -- I worked on a forest fire with  
 7 a company out of Nampa, and it was through a friend.  
 8 The gentleman's name is Ray Pisca. And I can't remember  
 9 what the name of the company was, but I worked on one  
 10 fire two years ago, the Trinity Ridge fire.  
 11 Q. Was that after this accident?  
 12 A. I believe -- no.  
 13 Q. This accident happened July 8, 2011.  
 14 A. No, I did not, because I worked on the fire in  
 15 2012. I didn't work on last year's fire season. It was  
 16 the season before that.  
 17 Q. I think maybe you misunderstood. My question  
 18 was simply: Was that work on that fire after this  
 19 accident that occurred?  
 20 A. I cannot recall.  
 21 Q. You think it was 2012 is when you worked on  
 22 the fire?  
 23 A. I believe, so that would have been after the  
 24 accident, yes.  
 25 Q. Right. Did you get paid for that?

1 for you, what did you physically have to do?  
 2 A. Running a pressure washer.  
 3 Q. Are you right- or left-hand dominant?  
 4 A. I am ambidextrous, but I use my right hand as  
 5 dominant hand.  
 6 Q. And the pressure washer, it's a wand that you  
 7 have to press a trigger on?  
 8 A. Yes.  
 9 Q. Which hand would you use for the trigger?  
 10 A. I could use both. It's just awkward with this  
 11 one (indicating).  
 12 Q. With your left one?  
 13 A. Right.  
 14 Q. Why is it awkward with your left hand?  
 15 A. The tendon doesn't work anymore. It won't --  
 16 as you can see, I can't pull my finger in whatsoever  
 17 (indicating).  
 18 Q. Just so the record is clear because we can't  
 19 see that, what you are pointing to is your left pinky  
 20 finger?  
 21 A. And my ring finger does not move.  
 22 Q. And the tendon doesn't allow that to come  
 23 together with your middle finger?  
 24 A. Exactly.  
 25 Q. Other than you running the pressure machine,

1 A. Yes.  
 2 Q. Do you remember the company that paid you for  
 3 that?  
 4 A. That is what I can't remember, the company's  
 5 name.  
 6 Q. Your friend's name again was Ray --  
 7 A. Ray Pisca.  
 8 Q. How do you spell that?  
 9 A. P-i-s-c-a.  
 10 Q. Do you know where Ray is at?  
 11 A. Yes, I do.  
 12 Q. Where is he located at?  
 13 A. Chicago -- it's Chicago and the railroad  
 14 basically, it would be north of Chicago Road.  
 15 Q. What did you do while working that forest  
 16 fire?  
 17 A. It was called a weed wash station. When  
 18 vehicles would come in from out of state we would run a  
 19 pressure washer all over, underneath, blowing out  
 20 noxious weeds onto a tarp, which then are strained into  
 21 a big tub and then scooped out and kept separate and  
 22 then they are hauled off.  
 23 Q. How long did that job take place?  
 24 A. I was there for 21 days.  
 25 Q. And what were the manual aspects of that job

1 did you actually use the tarps and pull them places  
 2 and --  
 3 A. No. The tarp is a big, let's say it's 20 feet  
 4 wide by 40 to 60 feet long, and it has like Styrofoam  
 5 that goes into the end of it to hold the water into the  
 6 tarp, and then one corner would drain down into a  
 7 trough, which would go down into our draining buckets.  
 8 Q. So literally it was just spraying off machines  
 9 with water.  
 10 A. Yes, sir.  
 11 Q. Have you worked for any other places since  
 12 this accident, other than on that forest fire?  
 13 A. No, just the business opportunity, worked for  
 14 Dandelion Lawn and Tree and Shrub.  
 15 Q. Who is the principal of that business?  
 16 A. Dee Bittiker, Dennis Bittiker. He goes by  
 17 "Dec."  
 18 Q. How do you spell Bittiker?  
 19 A. B-i-t-t-i-k-e-r.  
 20 Q. Tell me generally what -- it was a lawn  
 21 business that you have worked with him on?  
 22 A. Yes, I was learning how to do weed and feed,  
 23 which is basically what his business is. He doesn't do  
 24 lawn mowing or trimming or anything like that.  
 25 Q. He just contracts with people, residences,



1 that sort of thing to apply fertilizer?  
 2 A. Correct.  
 3 Q. And how long have you done that with him?  
 4 A. I did it for two years.  
 5 Q. Would that be the last two years?  
 6 A. Yes.  
 7 Q. The manual aspects of that is, I would  
 8 imagine, being able to run a fertilizer, so is it a  
 9 sprayer, is it a push?  
 10 A. I would use the push one. He had a machine  
 11 that he rode around on to do the big yards. Little  
 12 yards we would use a manual one.  
 13 Q. You were able to grasp the lever device to  
 14 allow the fertilizer to go on the lawns.  
 15 A. Yes.  
 16 Q. That also entailed lifting probably bags of  
 17 fertilizer and that sort of thing?  
 18 A. Yes.  
 19 Q. Did you have any difficulty running the  
 20 fertilizer pusher?  
 21 A. No.  
 22 Q. Did you have any difficulty lifting the bags?  
 23 A. Once I figured out how to do it the way that  
 24 worked for me, then I didn't have any trouble at all.  
 25 Q. How did you have to modify what you would

1 Q. And what will you be doing for them?  
 2 A. Taking, receiving donations and processing.  
 3 Q. So that is a matter of taking somebody's goods  
 4 that they bring in and moving it, sorting it into  
 5 places.  
 6 A. Yes, sir.  
 7 Q. You feel you can do that?  
 8 A. Yes.  
 9 Q. I noticed when I shook your hand that you have  
 10 an injury on your right hand.  
 11 A. Yes.  
 12 Q. That is unrelated to this accident; correct?  
 13 A. Yes.  
 14 Q. When did that injury occur?  
 15 A. August 21st, 1996.  
 16 Q. And as a result of the injury it looks like  
 17 you have amputated your thumb and your pointer finger on  
 18 your right hand.  
 19 A. And my middle finger.  
 20 Q. And your middle finger, yes. Sorry.  
 21 Explain how that happened.  
 22 A. I was crushed in a thermal forming machine.  
 23 Q. Where did this industrial incident happen?  
 24 A. Republic Packaging.  
 25 Q. And where is that located?

1 normally have done?  
 2 A. I would lift the bag up, get my arm up  
 3 underneath it, and then cradle it (indicating).  
 4 Q. So you were lifting with your right hand,  
 5 getting your left arm underneath, and cradling it up  
 6 against your chest.  
 7 A. Yes, sir.  
 8 Q. You worked with Dennis for the last couple  
 9 years, and you say you wanted to take over that business  
 10 but it fell through.  
 11 A. Yes.  
 12 Q. Explain what happened.  
 13 A. The agreements that he wanted for me to take  
 14 the business over were too steep and something that I  
 15 was not comfortable with.  
 16 Q. So are you currently working anywhere?  
 17 A. No.  
 18 Q. Do you have any plan to work anywhere?  
 19 A. Yes. I have an opportunity to work with Saint  
 20 Vincent's de Paul in the donations portion of the  
 21 business.  
 22 Q. When are you going to begin that?  
 23 A. They say, they believe in the middle of May,  
 24 towards the end of May, they weren't sure yet. They had  
 25 to get it okayed through their board first.

1 A. The corner of --  
 2 Q. In Boise?  
 3 A. Yes.  
 4 Q. You were going to say corner of --  
 5 A. Franklin and Cloverdale.  
 6 Q. You were working there at the time?  
 7 A. Yes.  
 8 Q. What did you do for them?  
 9 A. Maintained the thermal forming machine, it had  
 10 not ran in over three years on any consistent basis. So  
 11 I was hired to go in, learn the machine, straighten all  
 12 the problems out with it and make the machine  
 13 functional.  
 14 Q. How long did you work for them?  
 15 A. It was a long time, a long time ago. I would  
 16 say a year and a half.  
 17 Q. After this injury with your hand did you go  
 18 back to work for them?  
 19 A. Yes.  
 20 Q. What was the reason for leaving that  
 21 employment?  
 22 A. They went through a mandatory layoff.  
 23 Q. Who treated you for your -- can you explain  
 24 exactly what happened to your hand? That is probably  
 25 the question.

1 A. It got crushed in the cutoff portion of the  
 2 machine, 160,000 pounds per square inch took them off.  
 3 Q. Were your digits amputated at that point or  
 4 did they have to be further removed at the hospital?  
 5 A. They had to be further removed.  
 6 Q. Who was the doctor that treated you for that?  
 7 A. Thomas Olivier.  
 8 Q. That was back in 1996. Is he still  
 9 practicing?  
 10 A. As far as I know he is. He was a -- what do  
 11 they call them when they come into a town? I can't  
 12 remember. Where they go into town and they focus on  
 13 certain areas and then they move on to a different  
 14 place. I forget what that is called.  
 15 Q. But your understanding is he's kind of settled  
 16 here?  
 17 A. He's not here anymore.  
 18 Q. He's not here anymore.  
 19 A. No, sir. I believe, last I heard he was back  
 20 in Minnesota or Minneapolis or something.  
 21 Q. What restrictions did he give you after you  
 22 saw him and he did the amputations? I'm assuming your  
 23 hand and your scars healed over time.  
 24 A. Yes.  
 25 Q. What permanent restrictions, if any, did you

1 A. I want to say 2004.  
 2 Q. What were the circumstances behind that?  
 3 A. Unloading chairs out of a van, a box van. The  
 4 ramp was a downhill ramp. So the trailer, once we get  
 5 the boxes onto the forklift, or onto the hand truck, you  
 6 turn around and you take off down the hill. The box,  
 7 the top one hit the top of the door and came over and  
 8 hit me in the side of the head, and my neck went prrrr,  
 9 it made that cracking noise.  
 10 Q. Were you coming down the ramp below it?  
 11 A. I was above it.  
 12 Q. And it just fell off and hit you in the head.  
 13 A. Yes. It was on a hand truck, and the top of  
 14 it, I couldn't reach the top of it, so my hand was on it  
 15 like this (indicating) and you go down. I had done it a  
 16 million times, but these chair boxes were taller than  
 17 the standard ones.  
 18 Q. You were working for who at the time?  
 19 A. Commercial Home Furnishings and Lazy Boy  
 20 Furniture Galleries.  
 21 Q. Do you remember who the worker's compensation  
 22 surety was for that?  
 23 A. I don't remember that one. It was similar to  
 24 the Fireman's Fund, but it wasn't the Fireman's Fund.  
 25 Q. And you actually had a disk surgery because of

1 receive for your right hand?  
 2 A. I was evaluated at 68 percent of the whole man  
 3 disability.  
 4 Q. You had a worker's comp claim obviously.  
 5 A. Yes.  
 6 Q. Do you remember who the surety was for the  
 7 worker's compensation claim?  
 8 A. Fireman's Fund.  
 9 Q. Did the doctor, after assessing your 68  
 10 percent disability, did he give you any restrictions as  
 11 to your activities with your right hand? You won't be  
 12 able to do this or I don't want you doing this with your  
 13 hand, that type of thing?  
 14 A. No. He said that I could do whatever I was  
 15 capable of doing.  
 16 Q. And that was an injury to your dominant hand?  
 17 A. Yes.  
 18 Q. And since that time you've learned to use your  
 19 left hand more?  
 20 A. I would say more, yes.  
 21 Q. Have you had any other worker's compensation  
 22 claims other than that one?  
 23 A. I had my neck fused together, C5-6, from an  
 24 accident.  
 25 Q. When did that take place?

1 that, or a fusion?  
 2 A. Yes.  
 3 Q. Who did that fusion for you?  
 4 A. Johans, Dr. Johans.  
 5 Q. Somehow I read Verska. Was it Johans?  
 6 A. Johans.  
 7 Q. That was back in 2005. Are you still having  
 8 problems with your neck?  
 9 A. They said that problem will never go away,  
 10 because I found out at that time that I have advanced  
 11 degenerative disk disease. Everyone has degenerative  
 12 disk disease, but at 33 years old I had the neck of a  
 13 90-year-old man.  
 14 Q. How does that manifest in your neck today?  
 15 A. I have one that is down in between my shoulder  
 16 blades that is inoperable.  
 17 Q. A disk?  
 18 A. Yes. And when I do have an episode, it  
 19 happens about every year and a half is what the track  
 20 record has been since then, it will pinch, and then my  
 21 left arm or my right arm, depending on which side it is,  
 22 it starts aching really bad.  
 23 Q. Are you seeing any particular doctor for that?  
 24 A. There is nothing they can do about it, so no.  
 25 Q. When is the last time you saw a doctor for

1 this neck injury?

2 A. I actually went to a Primary Health and  
3 explained what was going on. They took x-rays and told  
4 me that it was a different one, it wasn't up in my neck,  
5 and it was one that they could not operate on.

6 I have also been through the emergency room at  
7 St. Luke's out on Eagle Road. I always forget the names  
8 of them.

9 Q. You were treated by Dr. Johans, you believe,  
10 he did surgery in 2005. You eventually healed from the  
11 surgery, I mean, you progressed obviously. When was the  
12 last time you would have seen Dr Johans in relationship  
13 to the surgery?

14 A. The day of the surgery was the last -- well, I  
15 think I seen him a couple weeks after that for a  
16 follow-up appointment.

17 Q. Was that the last time you saw your surgeon  
18 for that issue?

19 A. Yes.

20 Q. Did you have some other doctor that followed  
21 you after that for that specific injury?

22 A. No.

23 Q. Were you given any restrictions as to what you  
24 could and couldn't do in terms of activities because of  
25 that injury?

1 A. Yes. Dr. Johans told me that I should never  
2 drive a race car again, because one side impact could be  
3 the end of my life.

4 Q. He told you that back in 2005?

5 A. 2005 or 2004.

6 Q. Somewhere in there.

7 A. Yes.

8 Q. Have you heeded that advice?

9 A. Yes. My last car, full-size car I drove was  
10 2003.

11 Q. Any other restrictions that he gave you other  
12 than that, lifting restrictions, any --

13 A. No. He just said that if I can't do it, don't  
14 do it. That's pretty much what he told me.

15 Q. What about working above your head with your  
16 arms?

17 A. As long as I'm not having one of my episodes,  
18 I can function normally.

19 Q. What is the manifestation of your episode;  
20 what happens when you have an episode?

21 A. I can feel -- you know how sometimes when you  
22 bend or move just right you can feel one of your  
23 vertebrae pop? Basically, they pop all the time, but  
24 there is a certain pop that I recognize, and then I know  
25 what is going to happen immediately after that.

1 Q. Have you been involved in any other workers'  
2 compensation claims?

3 A. No, sir.

4 Q. Have you been injured in an accident before,  
5 whether it was a car accident, a fall, anything like  
6 that where you have injured your body?

7 A. No, sir.

8 Q. Have you ever had a problem before this  
9 accident with your left hand or your left arm?

10 A. No, sir. Other than the degenerative disk  
11 disease when it would pinch, it would just make the  
12 right side ache or the left side ache, depending on  
13 which side it was going on.

14 Q. So before this accident you had episodes of  
15 both your right arm and your left arm aching because of  
16 your degenerative process.

17 A. Yes.

18 Q. Have you had any other serious injuries or  
19 illnesses other than what you've described?

20 A. No, sir.

21 Q. Have you ever been seen by a chiropractor, for  
22 example?

23 A. When this originally happened I did.

24 Q. With your neck?

25 A. Yes.

1 Q. Do you remember who you saw?

2 A. Yeah. Brian Schuler at Vista Chiropractic.

3 Q. In terms of hospitalizations -- obviously you  
4 were hospitalized for your neck surgery and for your  
5 amputation. Have you been hospitalized any other times  
6 in your life?

7 A. When I was 5 or 6 years old I had a double  
8 hernia.

9 Q. Other than that?

10 A. I don't believe so, not that I recall.

11 Q. Were you in the hospital overnight for this  
12 accident?

13 A. No.

14 Q. It was an outpatient surgery?

15 A. Yes.

16 Q. Where did you have your neck operation at,  
17 St. Luke's or Saint Al's?

18 A. At Saint Al's.

19 Q. Do you have a regular family doctor?

20 A. I've been using Dr. Weiss at Primary Health.

21 Q. What Primary Health is that?

22 A. The one on, I want to say it's Jericho and  
23 Fairview in Meridian.

24 Q. How long have you been using that clinic?

25 A. We've been using the short-term part of the

1 Primary Health for eight years.  
 2 Q. Other than what you've described with your  
 3 arms because of the disk issue, the aching, have you had  
 4 other times where you've had numbness or tingling in  
 5 either of your arms or hands?  
 6 A. No, other than this last accident, of course.  
 7 Q. Okay. We'll talk about that.  
 8 Other than with respect to your workers'  
 9 compensation issue where your back was fused, have you  
 10 ever had your back x-rayed? You've explained that one  
 11 time at Primary Health they x-rayed you. But other than  
 12 those couple of times have you had your back x-rayed  
 13 before?  
 14 A. One other time at St. Luke's on Eagle Road, I  
 15 went in there because I was just in such excruciating  
 16 pain. This was 2008. This was before we figured out  
 17 which vertebrae it was and that they couldn't operate on  
 18 it.  
 19 Q. Did they do anything for you other than take  
 20 x-rays?  
 21 A. They took x-rays and then gave me some muscle  
 22 relaxers.  
 23 Q. Are you currently under any medication?  
 24 A. No.  
 25 Q. As a result of this accident that we are here

1 schizophrenia, that type of thing.  
 2 Q. How long did you take Gabapentin?  
 3 A. I only take it when I have episodes, and it's  
 4 supposed to just alleviate nerve pain.  
 5 Q. What episodes do you take it for, the  
 6 neck issue?  
 7 A. Yes.  
 8 Q. Is that related to the fusion that you've  
 9 talked about before?  
 10 A. Yeah. The one they can't operate on, yes.  
 11 Q. Are you taking any medication after the  
 12 six-week -- let's focus. You have your accident with  
 13 your left hand, you take OxyContin and something else  
 14 for six weeks.  
 15 A. Yes.  
 16 Q. And then after that six-week period through  
 17 today are you taking any other medication for purposes  
 18 of your left hand that you hurt in this accident?  
 19 A. No, sir.  
 20 Q. Did you have any further education after high  
 21 school?  
 22 A. Yes.  
 23 Q. What did you have?  
 24 A. Two years of BSU, and I got my associate's of  
 25 science degree in machine tool technology.

1 for today, were you prescribed any medication?  
 2 A. For this accident?  
 3 Q. For the one involving your left hand.  
 4 A. Yes, it was some kind of Oxycodone.  
 5 Q. How long did you take that?  
 6 A. Six weeks, I want to say.  
 7 Q. After that you were off that?  
 8 A. I believe so.  
 9 Q. Any other medication as a result of this  
 10 accident, other than the OxyContin that you took for  
 11 about six weeks?  
 12 A. Yes, it was something that was added to that,  
 13 and I cannot remember for the life of me, but it more or  
 14 less amplifies the original medication.  
 15 Q. And were you off that in about six weeks?  
 16 A. The same amount of time, yes, sir.  
 17 Q. After the six-week cutoff, did you take any  
 18 further medication for your injury?  
 19 A. No. Every so often I take -- it's Gabapentin,  
 20 that is the one they added to it.  
 21 Q. And then you were testifying that every so  
 22 often since that six-week cutoff after the injury you  
 23 took what, you would take what?  
 24 A. That Gabapentin, it's a nerve agent. It's  
 25 supposed to help with nerve -- people with

1 Q. Any other further schooling?  
 2 A. No, sir.  
 3 Q. At the time of this accident -- did your wife  
 4 work outside the home at the time of this accident?  
 5 A. Yes.  
 6 Q. Where does she work?  
 7 A. Les Bois Credit Union.  
 8 Q. At the time of this accident were you earning  
 9 any income for your household?  
 10 A. No, I was not.  
 11 Q. Have you been involved in a previous lawsuit  
 12 other than this one? This one, we have the two workers'  
 13 compensation claims, have there been any other lawsuits  
 14 that you've been involved in?  
 15 A. No, sir.  
 16 Q. You have not been in the military?  
 17 A. No.  
 18 Q. Have you ever received disability payments for  
 19 any reason?  
 20 A. No, sir.  
 21 Q. I noted from your discovery responses that you  
 22 had filed for disability and then withdrew it.  
 23 A. Yes.  
 24 Q. Can you explain that to me.  
 25 A. Frustrated with the system, they wanted me to

1 go to a doctor that I couldn't afford and have more  
 2 documentation.  
 3 Q. Backing up. What was the ailment that  
 4 prompted you to file for Social Security Disability?  
 5 A. The degenerative disk disease.  
 6 Q. That was in about, the interrogatory answers  
 7 say about 2007?  
 8 A. Yes.  
 9 Q. And did you get examined for purposes of that  
 10 or they wanted you to get examined?  
 11 A. They wanted me to -- the attorney wanted me,  
 12 that was handling this case, wanted me to go and get  
 13 more documentation because I didn't have enough, even  
 14 with all of the doctors' stuff that had happened in the  
 15 past, that wasn't enough she said.  
 16 Q. Who handled that case for you?  
 17 A. Debra Irish.  
 18 Q. You were being treated by -- that was with  
 19 Dr. Johans?  
 20 A. When I did the neck surgery?  
 21 Q. Yes, that was Johans.  
 22 A. Yes.  
 23 Q. Did you have to see a doctor for this  
 24 disability issue?  
 25 A. I took in my documentation that I had is all.

1 right hand because I only have two digits.  
 2 Q. That would be your pinky and your ring finger.  
 3 A. Exactly. This hand was my only good hand.  
 4 Q. That would be your left hand.  
 5 A. My left hand. And turning bolts like this  
 6 does not work like it used to (indicating).  
 7 Q. Why?  
 8 A. You get into certain angles I just don't have  
 9 grip. The sensitivity, the strength is not the same as  
 10 it was.  
 11 Q. Would it be fair to say that you still have  
 12 grip, you still have some strength, you still have  
 13 dexterity, but it's not what it was before?  
 14 A. Yes, it's limited.  
 15 Q. I don't even know how you would do this. Do  
 16 you have a percentage in mind as to -- for example, my  
 17 son injured his ankle, he plays baseball. I asked him,  
 18 Where are you at? He said, I'm about 95 percent, Dad.  
 19 Do you have any type of thing in your mind as  
 20 to where you are at now with your dexterity and strength  
 21 in terms of turning a bolt versus where you were at?  
 22 A. After the accident I would say 5 percent. Now  
 23 I would say 30 percent of what it originally was.  
 24 One thing that I have learned since my hand  
 25 accident is that the body will adapt and you will figure

1 Q. And they wanted you to see somebody, but it  
 2 was too expensive.  
 3 A. They wanted me to keep seeing somebody on a  
 4 regular basis. When there is nothing that they can do  
 5 with it, then you learn how to fight through it.  
 6 Q. Any other reason for withdrawing the  
 7 disability application other than just fed up with the  
 8 bureaucracy?  
 9 MR. GILES: Object to the question on the  
 10 basis of attorney-client privilege.  
 11 Q. (BY MR. STEFANIC) I don't want to know what  
 12 you and your attorney said.  
 13 Just from your perspective, other than just  
 14 being frustrated with the system, was there any other  
 15 reason why you withdrew that application?  
 16 A. Financial, just wasn't able to go and get  
 17 those doctors.  
 18 Q. One of your claims in this case is that you're  
 19 having difficulty doing some car restoration?  
 20 A. Just mechanics in general.  
 21 Q. What problems are you having doing mechanics  
 22 in general?  
 23 A. Dexterity is the worst one.  
 24 Q. You are going to have to explain that to me.  
 25 A. Well, obviously I cannot turn a bolt with my

1 out ways to get things done.  
 2 After this accident I bought an RC plane, a  
 3 remote control plane, with little teeny-tiny bolts, nuts  
 4 and washers. And I laid it all out on the counter and I  
 5 said, I will build this plane and I will only use this  
 6 hand (indicating).  
 7 Q. Your right hand.  
 8 A. Yes. And I learned how to pick up each one of  
 9 those bolts, little teeny tiny nuts and washers with  
 10 these two fingers. Even though I had this hand, I  
 11 needed to learn how to make this hand work. The body  
 12 will adapt. And there was a lot of cussing, a lot of  
 13 frustration, but I figured out how to do it. Your body  
 14 will adapt to any situation it is put into.  
 15 Q. That's admirable.  
 16 A. Thank you.  
 17 Q. You were here for Mr. Sullivan's deposition  
 18 yesterday.  
 19 A. Yes.  
 20 Q. And he talked about rebuilding a, was it a  
 21 dirt bike?  
 22 A. Yes.  
 23 Q. Whose dirt bike was that?  
 24 A. It was mine.  
 25 Q. Tell me about that experience you had with

1 Mr. Sullivan. You had a dirt bike that you wanted to  
 2 rebuild. So what does that entail?  
 3 A. Basically what it was is an 80cc motorcycle,  
 4 and I bought it from a friend of mine the winter before,  
 5 so I had had it for a year. We were going to take that  
 6 motor off and put it on to a go-cart. That did not  
 7 happen. The motor ended up being not exactly what I  
 8 needed for this go-cart, so I ended up selling it to  
 9 Jon.  
 10 Jon was interested in it because his  
 11 stepchildren are growing up and wanted a motorcycle and  
 12 he wanted to get them started. So he bought it for them  
 13 for Christmas, and included in it I helped him get it so  
 14 it was going and functional.  
 15 So we just repaired any little problem that  
 16 was going on with it, such as little bushings, stuff  
 17 like that. I have a mill drill lathe in my garage where  
 18 I can build that kind of stuff, little tiny things.  
 19 Q. He described it yesterday that you had the  
 20 know-how and you worked the wrenches and that sort of  
 21 thing and he learned from you. Is that accurate, an  
 22 accurate way of portraying that?  
 23 A. Yes, sir.  
 24 Q. Do you have difficulty working a wrench?  
 25 A. After the accident it was very, very hard,

1 even trying to put pressure on a wrench. I mean, I have  
 2 terrible atrophy. This was never sunk in like this, and  
 3 it's better than it was.  
 4 Q. You are talking about your left hand in  
 5 between your thumb and your first finger?  
 6 A. Yes, sir. After this accident happened it  
 7 looked like a skeleton with skin on it, my left hand  
 8 did, and it is slowly starting to come back.  
 9 Q. Do you do exercises with it daily?  
 10 A. I just do my normal routine, which is whatever  
 11 needs done around the house, mowing the lawn or just --  
 12 I try to use it as much as possible.  
 13 Q. Do you squeeze a ball, anything like that?  
 14 A. No.  
 15 Q. Did they give you anything to do after your  
 16 last appointment with your surgeon about continuing home  
 17 exercise programs for your hand, anything like that?  
 18 A. No, sir. He gave me no physical therapy. He  
 19 just said, Do it until it hurts. If it hurts, stop  
 20 doing it, basically was his rules.  
 21 Q. That's your restriction.  
 22 A. Yes.  
 23 Q. Did your doctor give you any absolute no-nos,  
 24 I do not want you to do this type of thing?  
 25 A. No.

1 Q. Have you restored or rebuilt other machines  
 2 since this accident other than this dirt bike?  
 3 A. Yes, I did a snowmobile over this last winter  
 4 also after the bike.  
 5 Q. Did anybody help you do that?  
 6 A. No.  
 7 Q. What did you do to the snowmobile?  
 8 A. I completely went through the whole thing and  
 9 cleaned it up. It was really greasy and grimy, so I  
 10 just had to clean it up.  
 11 Q. Does that entail like taking apart the engine  
 12 and cleaning the parts of the engine?  
 13 A. Pulling the motor out of the sled was the  
 14 hardest part, and I did get help for that, for lifting  
 15 the motor out. But other than that it was basically  
 16 just tearing everything apart, cleaning it, making sure  
 17 it was right, putting it back together.  
 18 Q. So that's a little different than what I would  
 19 do. I would take a rag and wipe on the outside or  
 20 whatnot.  
 21 What you are talking about is actually taking  
 22 apart the engine, cleaning the parts and putting them  
 23 back together so that it's a clean engine.  
 24 A. The sled and the chassis part of it, yes, I  
 25 did take all of that apart.

1 Q. Did you have difficulty doing that?  
 2 A. Yes.  
 3 Q. What types of difficulty did you have?  
 4 A. That is when I realized how bad my dexterity  
 5 was, and it was not getting any better. It was better  
 6 than after it first happened, but it's still not back to  
 7 where it was at all.  
 8 Q. You made the comment that your body will adapt  
 9 or you'll figure out ways to do things, although they  
 10 are different than they were before.  
 11 A. Yes.  
 12 Q. I imagine they are not as efficient as before.  
 13 A. That is absolutely correct.  
 14 Q. But at the end of the day you get the job  
 15 done.  
 16 A. Yes. It's determination.  
 17 Q. Other than the dirt bike and the snowmobile,  
 18 have you rebuilt or refurbished other machinery since  
 19 the accident?  
 20 A. No.  
 21 Q. Is there anything around the home in terms  
 22 of housework, yard work, anything that you need to do  
 23 around the home to upkeep your home that you cannot do?  
 24 A. Then again, I do it, everything, as much as I  
 25 possibly can. If I require help lifting something, then

1 I get help. Pretty much my limitation is grip, so  
 2 lifting things, carrying things, those types of things  
 3 are more difficult.  
 4 Q. Do you have difficulty with a particular  
 5 weight or a particular bulk or --  
 6 A. It's usually a grip factor. Anything that I  
 7 need grip on is extremely hard. I did find some rubber  
 8 gloves that seem to be working really well for me. It  
 9 sticks to things so it doesn't slide off the hand,  
 10 doesn't require quite as much strength in order to hold  
 11 onto something.  
 12 Q. You've had to modify things that you do,  
 13 wearing a glove like that. I was going to ask if you  
 14 did that. But are there other modifications that you  
 15 have done to help you get along with these injuries?  
 16 A. No. Like I said before, I'm ambidextrous, so  
 17 I use my right hand. As far as my welding abilities,  
 18 that type of thing, I still use this hand. I still  
 19 write right-handed.  
 20 Q. Can you weld?  
 21 A. Yes.  
 22 Q. I apologize for this. Have you ever been  
 23 convicted of a felony?  
 24 A. No.  
 25 Q. Any alcohol-related crimes?

1 Q. Are you required to wear contacts or glasses?  
 2 A. No.  
 3 Q. Do you have difficulty seeing far or near?  
 4 A. I have a little bit of a blurriness, but we  
 5 are not sure what it is.  
 6 Q. With seeing far or near?  
 7 A. Reading like letters on the wall across the  
 8 room here.  
 9 Q. If you have a document in front of you, can  
 10 you read that without these reader glasses?  
 11 A. Yes.  
 12 MR. STEFANIC: Let's take a short break.  
 13 (Recess taken.)  
 14 Q. (BY MR. STEFANIC) What day of the week did  
 15 the accident happen on?  
 16 A. It was early Friday morning.  
 17 Q. Let's be clear about this. Was the party, or  
 18 this bonfire on a Thursday night and the accident  
 19 happened in the wee hours of Friday morning?  
 20 A. Yes.  
 21 Q. At that time you were living in that residence  
 22 in, is it Meridian?  
 23 A. Meridian, yes.  
 24 Q. And you lived with your wife and your  
 25 stepchild.

1 A. Yes.  
 2 Q. What are those?  
 3 A. DUI.  
 4 Q. When?  
 5 A. Shortly after the accident, and then I had  
 6 another one this last Christmas.  
 7 Q. So in December of 2013?  
 8 A. Yes.  
 9 Q. And shortly after this accident in July of  
 10 2011?  
 11 A. Yes, in September of 2011.  
 12 Q. Did you go to any like Alcoholics Anonymous or  
 13 anything like that?  
 14 A. No. I had to attend a men's group.  
 15 Q. What is the men's group for?  
 16 A. It's therapy for recovery, I guess.  
 17 Q. Recovery from what?  
 18 A. It was court-ordered classes, or group therapy  
 19 basically.  
 20 Q. Based upon your last DUI?  
 21 A. Yes.  
 22 Q. I see. Were both of those in Ada County?  
 23 A. Yes.  
 24 Q. Do you wear glasses?  
 25 A. No.

1 A. Yes.  
 2 Q. Were they home that evening?  
 3 A. Yes.  
 4 Q. How come they didn't go to that bonfire with  
 5 you?  
 6 A. My wife had to work the next day.  
 7 Q. So on Thursday, the day when this, at least  
 8 bonfire started, did you arrive at the place where this  
 9 accident occurred before midnight?  
 10 A. No.  
 11 Q. When did you arrive?  
 12 A. I want to say it was like 1:30 in the morning.  
 13 Q. How did you know about that this was going on?  
 14 A. I either texted or called Jon. I cannot  
 15 recall exactly.  
 16 Q. Where had you been previous to 1:30 in the  
 17 morning when you arrived at Jon's place?  
 18 A. At my home.  
 19 Q. What were you doing at your home?  
 20 A. Tried to go to sleep, but couldn't sleep.  
 21 Q. What time did you try to go to sleep?  
 22 A. I believe we were in bed by 10:30 to 11:00. I  
 23 believe we watched the news and my wife went to bed. I  
 24 went shortly thereafter, and I just laid there and  
 25 stared at the ceiling for two hours.

1 Q. Did you have a fight with your wife at all?  
 2 A. No.  
 3 Q. Did she know that you left and went to this  
 4 bonfire?  
 5 A. Yes, I always ask permission. I know better.  
 6 Q. So you are laying in bed for a couple hours  
 7 after going to bed at 10:30 or 11:00 at night on a  
 8 Thursday night. Why go to a place where there was a  
 9 party and a bonfire?  
 10 A. My cousin just asked if I wanted to or not.  
 11 Q. When did your cousin first ask you as to  
 12 whether --  
 13 A. We were at a poker game earlier that night,  
 14 and he originally sent the text then.  
 15 Q. Where was this poker game at?  
 16 A. The Buffalo Club, they have free cards on  
 17 Mondays, Tuesdays, Wednesdays, and Thursdays.  
 18 Q. Do you have a regular group that you play  
 19 with?  
 20 A. Yes.  
 21 Q. Do you remember some of the fellows that you  
 22 played with that night, Thursday night?  
 23 A. Specifically?  
 24 Q. Yes.  
 25 A. A few of them.

1 Q. Who?  
 2 A. Jason, Matt --  
 3 Q. His last name is Matt?  
 4 A. No. Jason Moreno, Matt Cole, C-o-l-e, and  
 5 various other ones. I can't recall that night exactly.  
 6 Q. So what nights do you generally -- is this  
 7 sort of a weekly thing that you do, go play cards on a  
 8 Thursday night?  
 9 A. Yes.  
 10 Q. Do you play cards on any other nights?  
 11 A. Me and my wife would go down twice a week,  
 12 usually on Tuesdays and Thursdays.  
 13 Q. And what are the time frames that you would  
 14 generally go to play cards?  
 15 A. We would head down there at 6:00, cards flew  
 16 at 7:00. And we aren't very good, we were out by 9:00.  
 17 Q. And at that time -- your stepdaughter is 16?  
 18 A. Yes.  
 19 Q. So at that time she would have been 13?  
 20 A. Yes.  
 21 Q. Something like that?  
 22 A. Yes.  
 23 Q. What would she do when you guys would go play  
 24 cards on Tuesday and Thursday nights?  
 25 MR. GILES: Objection; relevance.

1 THE WITNESS: Stay at home.  
 2 Q. (BY MR. STEFANIC) Anybody stay with her?  
 3 MR. GILES: Objection; relevance.  
 4 THE WITNESS: No. She's very responsible.  
 5 Q. (BY MR. STEFANIC) And then you and your wife  
 6 play regularly with Jason Moreno, Matt Cole and some  
 7 others?  
 8 A. Yes.  
 9 Q. Do you remember any of the other names?  
 10 A. Like I said, it was a long time ago. And I  
 11 don't recall a lot of the other people's last names  
 12 anyway.  
 13 Q. Do you still go down there and play?  
 14 A. No. I'm not allowed to be in a bar.  
 15 Q. Why not?  
 16 A. Because of my last DUI.  
 17 Q. How long had you been doing this routine of  
 18 playing cards Tuesday and Thursday nights with your wife  
 19 at the Buffalo Club around the time of this accident?  
 20 A. Four to six years.  
 21 Q. Before that.  
 22 A. Yes.  
 23 Q. Something you and your wife like to do  
 24 together?  
 25 A. Exactly.

1 Q. Did you ever go without her?  
 2 A. Yes, sometimes.  
 3 Q. Would that be an additional night or would it  
 4 just be on a Tuesday or Thursday when she couldn't go?  
 5 A. It would be a night that she didn't feel up to  
 6 playing cards.  
 7 Q. What do you remember about this Thursday night  
 8 that this accident happened on? Did you and your wife  
 9 go to the Buffalo Club?  
 10 A. Yes.  
 11 Q. Was it sort of your regular routine where you  
 12 were in at 6:00 and done at 9:00?  
 13 A. Yes.  
 14 Q. Do you eat food there?  
 15 A. No.  
 16 Q. Do you remember having dinner?  
 17 A. Yeah, we ate before we went down.  
 18 Q. Do you remember what you had?  
 19 A. I do not.  
 20 Q. She works until 5:00?  
 21 A. Yeah.  
 22 Q. And then you would have eaten between 5:00 and  
 23 6:00 and gone down to the Buffalo Club.  
 24 A. When she gets home about 5:30 we would just  
 25 have some -- we are very adamant about bachelor meals,



1 so something quick, throw a burrito in the microwave, a  
2 sandwich, something like that.

3 Q. Tell me about what alcohol you drank before  
4 going to the Buffalo Club on that Thursday, if any.

5 A. I had no drinks before I went to the Buffalo  
6 Club.

7 Q. On the Wednesday before that, do you recall  
8 having any alcoholic beverages?

9 MR. GILES: Objection; relevance.

10 THE WITNESS: No.

11 Q. (BY MR. STEFANIC) So you were at the Buffalo  
12 Club from about 6:00 to 9:00 you think?

13 A. Yes.

14 Q. Did you have any alcoholic beverages there?

15 A. Yes. My wife and I, we would show up about an  
16 hour early and we would order a drink and sit at the bar  
17 up front, socializing. That is how we ended up starting  
18 to go hang out at the Buffalo Club, that was our social  
19 circle for playing cards with everybody so long.

20 Q. Do you remember having, was it just one drink?

21 A. Yes.

22 Q. What was it?

23 A. I had a whiskey-Coke, well whiskey, and my  
24 wife has Rolling Rock normally.

25 Q. You said whiskey and Coke, then you said

1 your home?

2 A. Seven or eight miles, I would say.

3 Q. Did you drive?

4 A. No, my wife did.

5 Q. Did you drive to the Buffalo Club?

6 A. No, my wife did.

7 Q. Is there a reason why you did not drive?

8 A. We took her car, gets better gas mileage.

9 Q. So you get home at about 9:00. What did you  
10 do then?

11 A. We sat down, watched TV, said good night to  
12 the daughter, watched the news -- finished watching the  
13 news, then we went to bed.

14 Q. So you were in bed by 10:00, 10:30?

15 A. Yes, sir.

16 Q. You had testified, I think earlier, that while  
17 you were at the Buffalo Club you received a call or a  
18 text from Jon Sullivan?

19 A. Yes.

20 Q. What did he tell you?

21 A. That he was having a bonfire.

22 Q. Did he invite you or you and your wife or --

23 A. He just invited me.

24 Q. Had you gone to a bonfire at his house before?

25 A. Not at that house. His old house when he

1 something else.

2 A. Well whisky, it wasn't like Jack and Coke.

3 Q. Do you remember drinking with anybody before  
4 playing cards?

5 A. No. My wife.

6 Q. Did you have any more than one drink at that  
7 time?

8 A. No, sir.

9 Q. Did you have any more drinks while you were  
10 playing cards?

11 A. No.

12 Q. Who was your dealer, do you remember?

13 A. They rotate dealers.

14 Q. Do you remember who the rotation dealers were  
15 that night?

16 A. I do not. That's a long time ago. They go  
17 through dealers. What would happen is like every  
18 break -- they would have five tables, usually four to  
19 five tables on average, so five different dealers, and  
20 then they would rotate. So all of them were at a  
21 different table all the time.

22 Q. At 9:00 you left the Buffalo Club and went  
23 back to your house?

24 A. Yes.

25 Q. How far is it roughly in terms of miles to

1 lived in Star I would go to.

2 Q. Is that the first time you were at his house?

3 A. Yes.

4 Q. How far of a trip is it from your home to  
5 where you went for this bonfire in Kuna?

6 A. I want to say it's about 10 miles from  
7 Meridian to Kuna, straight down Ten Mile.

8 Q. So I think you said you went to bed at 10:30  
9 or 11:00, you stared at the ceiling for two hours?

10 A. Yes.

11 Q. Did you receive any text from Jon from the  
12 time you got home from the Buffalo Club to the time you  
13 decided to go?

14 A. No. I texted him when I couldn't sleep and  
15 asked him if they were still having the bonfire.

16 Q. Did he reply?

17 A. Yes.

18 Q. Affirmatively?

19 A. He said, Yes, come on out.

20 Q. Did he say how many people were there still?

21 A. He did not. I didn't ask though either.

22 Q. Other than the initial text at the -- you  
23 can't remember whether it was a text or a call at the  
24 Buffalo Club?

25 A. I do not.

1 Q. That communication at the Buffalo Club and  
2 then when you texted him saying, Are you still having a  
3 bonfire and he said, Yes, come on out, are those the  
4 only texts or communications with Jon that evening?

5 A. Yes, sir.

6 Q. And so what time did you leave your house to  
7 go to this bonfire?

8 A. I can't recall exactly. I can't remember if I  
9 left my house around 1:30 or if I got there at 1:30, but  
10 it was after 1:00, I know that.

11 Q. Is that unusual for you to leave your home at  
12 that hour to go somewhere without your wife?

13 A. No.

14 Q. That's something you do -- what other type of  
15 occasions would you have done that?

16 A. It's usually with Jon. That is why Jon and my  
17 wife don't get along so good. He's better now that he's  
18 married.

19 Q. Your wife did not appreciate you going out at  
20 1:00 in the morning?

21 A. Sometimes, yeah. It would just depend on her  
22 mood or whatever.

23 Q. And you specifically asked her if it was okay  
24 this time?

25 A. Yes, because of previous problems that we had

1 A. I believe we called the ambulance 3:30 to 4:00  
2 a.m.

3 Q. From the time that you actually injured your  
4 hand when was that in relationship to when the ambulance  
5 arrived?

6 A. I think it took them 20 minutes or so to get  
7 there. I don't know. I was freaking out.

8 Q. I'm just trying to understand. If I were to  
9 go to the -- I'll have an ambulance report that has a  
10 run time. What you are saying is, is that -- when you  
11 were injured how long did it take you to call the  
12 ambulance?

13 A. Let's say three minutes.

14 Q. You called yourself?

15 A. No. I had Jon call.

16 Q. So the accident happened, you go find Jon  
17 somehow. He calls within three minutes of you actually  
18 having the accident?

19 A. Yes.

20 Q. Then they take about 20 minutes to come out.

21 A. As far as I know.

22 Q. Something like that.

23 A. Yes. Like I said, I was freaking out. I  
24 thought I was going to die. I didn't know what vein I  
25 cut. All I knew is blood was squirting everywhere.

1 had with me. I mean, I would always let her know or  
2 leave a note, but somehow it would get twisted around  
3 and I would get in trouble. But my cousin was also one  
4 of those that liked to party until the sun came up, and  
5 I was married and old, and so she would get a little  
6 upset with me sometimes.

7 Q. I don't know quite how to ask you this. I'll  
8 kind of give you some parameters. When you asked her if  
9 you could go to this bonfire at 1:00 in the morning, she  
10 apparently told you it was okay that you go?

11 A. Yes.

12 Q. Did she say that lovingly or begrudgingly?

13 A. Lovingly, she gave me a kiss and said have a  
14 good time.

15 Q. You had not had any DUIs prior to that time?

16 A. No, sir.

17 Q. I think we left off, you got in your car, you  
18 drove the 10 miles to Kuna. Did he give you directions  
19 to the house or did you know where it was?

20 A. He gave me directions.

21 Q. So you arrived there -- you think you either  
22 left your house at 1:30 or you arrived at Kuna in 1:30,  
23 somewhere around there.

24 A. Right.

25 Q. About what time did this accident occur?

1 Q. When you arrived at whatever time to this  
2 residence, was the garage door open?

3 A. Yes, it was.

4 Q. Light on in the garage?

5 A. Yes. And you could see the bonfire out in the  
6 backyard.

7 Q. How many people were still there roughly?

8 A. Eight or ten people, I want to say. That  
9 sounds about right.

10 Q. Did you know any of them?

11 A. A couple of them.

12 Q. Do you remember their names?

13 A. No.

14 Q. Other than Jon, do you remember anybody's name  
15 that was there when you were present at the bonfire?

16 A. His girlfriend Dee Dee was the only one I had  
17 met before. Others he said that we played pool with, a  
18 couple of the guys, but I didn't know their names.

19 Q. Of the eight or ten people that were there,  
20 were they all guys, some girls?

21 A. There was the couple that owned the bar across  
22 the street, they were husband and wife and their  
23 daughter.

24 Q. Do you know what bar that was?

25 A. I don't know which one it was. He just said

1 they owned the bar across the street.  
 2 Q. And that couple's daughter.  
 3 A. Yeah. And I believe his daughter was, I don't  
 4 know, in her 20s or something like that. They were an  
 5 older couple.  
 6 Q. Were there other girls there other than this  
 7 daughter, this wife of the bar owner, and Dee Dee?  
 8 A. No, not that I can recall.  
 9 Q. The rest of them were guys?  
 10 A. Yeah, most of Jon's friends. And the two  
 11 roommates came out that night also. That was the first  
 12 time I had met Wayne. And I believe Roger, it was the  
 13 first time I met him.  
 14 Q. You met them that night?  
 15 A. Yes.  
 16 Q. Did you talk with them at all?  
 17 A. Shortly, he just introduced me as his cousin  
 18 and said that this was Wayne and this is Roger.  
 19 Q. As you walked up to the house did you park in  
 20 front of the house?  
 21 A. Yes.  
 22 Q. As you walked up did you notice the right side  
 23 of the house at all?  
 24 A. No.  
 25 Q. Where this window eventually you found?

1 A. Eventually I did.  
 2 Q. What did you have?  
 3 A. I had a Keystone Light, one complete one, and  
 4 then before I left we had just cracked one open. The  
 5 fire was still going. I'm a milker when it comes to  
 6 beer. Usually by the time I get through a 12 ounce can  
 7 the bottom half of it is always warm. I don't like  
 8 beer, but that's what there was there.  
 9 Q. So you consumed one can of Keystone Light  
 10 completely, and then you said you had just cracked  
 11 another Keystone Light?  
 12 A. Yeah, and possibly drank maybe a third of the  
 13 can. I poured most of it on the coals when I left,  
 14 along with all the other cans that were laying all over  
 15 the place.  
 16 Q. Tell me about while you were there from 1:30  
 17 in the morning until this accident happened, I want to  
 18 kind of find out what you recall about the party up  
 19 until the time you left.  
 20 A. I remember Jon introducing me to the couple  
 21 that owned the bar, and we had sat and talked about  
 22 everything, not really anything at all, just BS'ing.  
 23 But most of the time when I would go to Jon's functions  
 24 I would just spend it with Jon, he's my cousin so, you  
 25 know. I'm one of the only ones that look past his

1 A. No. I was looking in the garage where the  
 2 walkthrough was.  
 3 Q. Had you seen that window prior as you walked  
 4 in at all?  
 5 A. No.  
 6 Q. When was the first time you found out there  
 7 was a window there?  
 8 A. When I fell into it.  
 9 Q. Were you aware that there was a gate on the  
 10 right-hand side of the house as you are facing it?  
 11 A. I figured that out when Jon closed the garage  
 12 door on me.  
 13 Q. My question was: Were you aware that there  
 14 was a gate on the right-hand side as you entered the  
 15 premises?  
 16 A. No.  
 17 Q. When you were at home before you came to this  
 18 party, from that 9:00 to about 1:00-1:30 hour, did you  
 19 have any alcoholic beverages?  
 20 A. No.  
 21 Q. Did you have any drugs that night at all?  
 22 A. No.  
 23 Q. When you got to the fire at 1:30 in the  
 24 morning or whenever it was, did you consume any  
 25 alcoholic beverages while you were there?

1 mistakes in the family. There are a bunch of us  
 2 cousins, and I'm the only one that still holds him at a  
 3 high regard.  
 4 Q. His mistake, I think he told me that he was  
 5 convicted of some sort of a crime.  
 6 A. Yes.  
 7 Q. Is that what you are talking about or are  
 8 there other things?  
 9 A. That was it. Some of my family has zero  
 10 tolerance for things.  
 11 Q. So you talked to Jon, talked to the bar  
 12 owners, socialized for a period of time. How did the  
 13 party go; was it still going strong at 2:00 in the  
 14 morning?  
 15 A. Yeah, when I got there it was still going.  
 16 Everybody was just standing around BS'ing.  
 17 Q. Anything out of control?  
 18 A. No.  
 19 Q. Just enjoying the fire and having a beer.  
 20 A. Yes.  
 21 Q. Was the party still going at 2:30?  
 22 A. Yes.  
 23 Q. Same type of people, same amount of people?  
 24 A. Yes. I want to say everybody started clearing  
 25 out about 3:00 or so.

1 Q. What happened at 3:00; you say people started  
 2 clearing out?  
 3 A. Yes.  
 4 Q. Did everybody say, Let's call it a night,  
 5 that's enough?  
 6 A. There was a bunch of people there and then --  
 7 I wasn't paying attention to everybody, and then all of  
 8 a sudden there is fewer and fewer and fewer, and then it  
 9 was just me, Jon, and Dee Dee.  
 10 Q. That was around 3:00?  
 11 A. Yeah.  
 12 Q. It never got any bigger than eight or ten  
 13 people?  
 14 A. Not that I recall.  
 15 Q. What do you recall at 3:00 when people started  
 16 dwindling, when it was just you, Jon, and Dee Dee?  
 17 A. I was just siting there in the chairs that  
 18 were left out. Most of them were taken when I got  
 19 there, so I was just standing there talking to  
 20 everybody. Jon was in and out of the house. I don't  
 21 know if he was using the rest room or what he was doing.  
 22 So me and Dee Dee would sit there and talk.  
 23 Dee Dee had dated Jon before, so that is how I knew her,  
 24 so we kind of had a rapport. We were just talking. And  
 25 that is pretty much how the whole evening went. I'm not

1 A. Right.  
 2 Q. At about 3:00 in the morning, 3:30.  
 3 A. Yes.  
 4 Q. Somewhere in there.  
 5 A. Yes.  
 6 Q. What did you do, if anything, to extinguish  
 7 the fire?  
 8 A. I just stirred the coals. Most of the wood  
 9 that we were burning was really, really dry, so it was  
 10 burning quickly. But there were some really good coals  
 11 going, so I stirred the coals, did the best I could with  
 12 that, made sure it was calm. Poured the beers,  
 13 including the one that I was drinking, on it. Threw  
 14 most of the cans in there also, into the coals.  
 15 It was to a point where I thought it was safe  
 16 enough to -- there was no wind blowing or gustiness  
 17 going on, so I figured it would smolder itself out, and  
 18 headed towards the garage to go leave.  
 19 Q. You could still see the coals glowing?  
 20 A. Yes, they were.  
 21 Q. Did you use any water, a bucket of water or  
 22 anything?  
 23 A. No, no bucket of water.  
 24 Q. But you felt it was safe to leave at that  
 25 point.

1 one of those that has to fly around and know everybody  
 2 that is there and all that.  
 3 Q. At some point it's just the three of you  
 4 sitting there. What happened then?  
 5 A. Jon and his girlfriend were pretty tipsy and  
 6 they were getting friendly, so they went in the house.  
 7 I told them to get a room. He's like, I have to watch  
 8 this fire go out. I said, I will take care of it.  
 9 Q. So did he tell you how to extinguish the fire?  
 10 A. No.  
 11 Q. You probably know how to do that.  
 12 A. Yeah.  
 13 Q. Did he give you any indication of how you  
 14 should leave the premises?  
 15 A. No.  
 16 Q. So you said, Get a room. And he said, I have  
 17 a room, I'll go in there.  
 18 A. Yeah. He said, Okay, Cuz, good night. And he  
 19 went in the house.  
 20 Q. Is that the last time you saw him before this?  
 21 A. Yes.  
 22 Q. So that was the first time you were there.  
 23 Your cousin and his girlfriend with your blessing went  
 24 into the bedroom, and you are there with a fire by  
 25 yourself.

1 A. Yes.  
 2 Q. So tell me what happened after that.  
 3 A. I headed towards the garage and realized that  
 4 he closed the garage door, the front one, so --  
 5 Q. So there is a door to the backyard from the  
 6 garage; is that correct?  
 7 A. Yes, exactly.  
 8 Q. Then there is a garage door that leads out to  
 9 the front.  
 10 A. Yes.  
 11 Q. Did you know anything about there being sort  
 12 of a renovation at Jon's place where they actually took  
 13 out a window and renovated it into a garage before you  
 14 got there that night?  
 15 A. No. When I got there the garage door was open  
 16 and there was some motorcycles in there, and I  
 17 recognized Jon's. But somebody had like a dirt bike,  
 18 and I talked to Jon about that a little bit, and come to  
 19 find it was Roger's.  
 20 Q. Did you know that they had -- was it a topic  
 21 of conversation at the party that there had been a  
 22 renovation, that they got a garage and they had removed  
 23 a window?  
 24 A. No, I had no idea.  
 25 Q. So you went to walk into the garage to leave

1 through the garage door, and what did you find?  
 2 A. That the garage door had been shut. The  
 3 backdoor was still open, so that is why I figured the  
 4 front door was still open. And then I was going to go  
 5 straight through there and then close the garage for him  
 6 just in case, if they didn't. Because I know how Jon is  
 7 with his dumb old Harley Davidson. He is terrible about  
 8 that thing.

9 Q. He was protective of it.

10 A. Very protective, yes.

11 Q. So you wanted to go through the garage door  
 12 out and shut it for him, but it was already shut.

13 A. Right.

14 Q. Had you been in the house that night?

15 A. I used the rest room.

16 Q. Did you try the door to the house?

17 A. No, I did not.

18 Q. I'm assuming there is a door from the garage  
 19 into the house.

20 A. Exactly, yes.

21 Q. Did you try to go through that door that night  
 22 to leave?

23 A. No.

24 Q. Was there any reason why you did not do that?

25 A. First time there, barely knew his roommates,

1 didn't want to go in there. It's just not my place, so  
 2 it didn't feel right to go walking through somebody's  
 3 house. Common sense told me there would be a gate, so I  
 4 didn't even think twice about it. There has got to be a  
 5 way out of a backyard usually.

6 Q. Do you remember if there was a moon that  
 7 night?

8 A. Yes, there was, low.

9 Q. A low moon? Was it a full moon that night?

10 A. I'm thinking it was pretty close to full moon.

11 And what I mean by late moon or early moon, was at the  
 12 time that I left it was just barely over the fence  
 13 because I remember seeing it after I had fallen into the  
 14 window. I heard the noise, I lifted up my hand and the  
 15 moon was in the background, just one of these weird  
 16 things that I remember.

17 Q. While you were at the party did you see  
 18 anybody leave or come in through the gate that you  
 19 actually left through?

20 A. No. The garage door was open, so there was no  
 21 reason for anybody to walk around that.

22 Q. That was the first time that you used that  
 23 gate?

24 A. Yes.

25 Q. Tell me what happened when you were leaving.

1 Did you have anything in your hands?

2 A. No.

3 Q. Was it a warm night?

4 A. Yes.

5 Q. Have a coat?

6 A. No.

7 Q. Tell me what happened.

8 A. Shorts and T-shirt.

9 Went towards the garage, realized that the  
 10 door was shut. Ended up looking over to the left, I  
 11 figured there had to be a gate, just common sense told  
 12 me that. Seen the gate, pulled it open, went out,  
 13 behind me tried to close it. For some reason it  
 14 wouldn't latch, for one reason or another. And after  
 15 everything happened, I think it was Godsend that it  
 16 didn't.

17 Turned around after I realized I couldn't get  
 18 it to latch, took a couple steps, tripped on something  
 19 and fell. Reached out to grab myself, and I remember  
 20 hitting the pea gravel or the gravel, and I heard this  
 21 noise. It's going to be another one of those I'm not  
 22 going to be able to describe for you, but pfst, pfst,  
 23 pfst, and looked over and my arm was in this glass.

24 I pulled it off, and that is when I remember  
 25 the moonlight, and I could see a big V cut in my arm and

1 blood was squirting everywhere, squirting me in the  
 2 face, filled up my shoes, my socks.

3 Q. Do you remember actually busting out glass  
 4 through with your hand as you fell?

5 A. Excuse me.

6 Q. That's okay.

7 A. I didn't -- I don't recall busting any glass  
 8 out. My hand fell in the perfect, or not so perfect  
 9 place. I have never seen anything more bizarre happen  
 10 than what happened that night.

11 After my wife -- my wife is the one that took  
 12 most of these pictures the next day. And she said that  
 13 there was only one pane busted out. And when I fell,  
 14 reached out to catch myself, I just put my hand in the  
 15 wrong spot, absolutely the most wrong spot ever.

16 Q. Let's go back. I have a few questions to ask  
 17 you about --

18 A. Absolutely.

19 Q. You opened the gate. Did the gate push out or  
 20 did it swing into the backyard?

21 A. I want to say it pulled back into the yard.

22 Q. And then you successfully went through the  
 23 gate and were pulling it back behind you.

24 A. Exactly.

25 Q. So you had gone through the gate and then

1 turned towards the gate to pull it back towards you; is  
2 that fair?

3 A. Yes, sir.

4 Q. And then you had difficulty latching it.

5 A. Yes, for some reason it wouldn't latch. I  
6 would pull it and it wasn't clicking.

7 Q. Did you try several times and then give up on  
8 that?

9 A. Yes. I just made sure that it was pulled to  
10 as far as I could.

11 Q. At that time you are still facing the gate?

12 A. Yes.

13 Q. Which way did you turn then, to your left or  
14 to your right?

15 A. Left, towards the house.

16 Q. Towards the house. And at that point where  
17 were your eyes focused?

18 A. Going out towards the street.

19 Q. So your eyes were focused at the street.

20 A. Well, no, I don't walk staring. I usually  
21 walk with my head down, is normally how I do it, watch  
22 my feet.

23 Q. Where were you looking when you turned and  
24 began to walk?

25 A. Probably just like this (indicating), with my

1 head slightly down and forward.

2 Q. Okay. And you say you took two steps?

3 A. Yes, a step or two. I'm not sure how many.

4 Q. And then you tripped on something?

5 A. Yes.

6 Q. Do you know what you tripped on?

7 A. I learned the next day there was some kind of  
8 a tree limb or something like that out.

9 Q. Were you able to see what you tripped on that  
10 night?

11 A. No. I was not worried about what I tripped  
12 on. I was worried about stopping the blood gushing out  
13 of my arm.

14 Q. Yesterday we took a deposition, and I think it  
15 was Exhibit 4, and it showed some sort of a piece of  
16 wood there. Do you know one way or the other whether  
17 that is what you tripped on?

18 A. It was the only thing there, so I would  
19 imagine so.

20 Q. Did you go back the following day with your  
21 wife?

22 A. I did not. I didn't want to see it.

23 Q. Do you know who went with her to take those  
24 photographs?

25 A. Jon actually brought the car to her, because I

1 ended up in the ambulance. My wife met us at the  
2 hospital. And the next day Jon brought the car to my  
3 wife. And then this was after I had gotten home from  
4 the hospital.

5 I don't believe Jon was working at the time,  
6 so he was there all day. My wife took that day off.  
7 Jon came, picked her up, they both went out to the house  
8 to drop Jon off, and my wife took pictures of the glass.

9 Q. There is a photograph in Exhibit 5, I think  
10 it's like 5 -- strike that. It would be Exhibit 4, and  
11 it shows this window is propped up with some white wood?

12 A. Yes.

13 Q. Do you know whether it was propped up with  
14 white wood on the night when your hand went through it  
15 or not?

16 A. It was sitting just like that.

17 Q. In other words, it was not leaning up against  
18 the fence?

19 A. No.

20 Q. It was propped?

21 A. When I fell -- all I remember is when I fell,  
22 you know, you normally put your hands out in front of  
23 you, and stood up, my arm was up here and making noises.  
24 I didn't know what had happened. I looked over and that  
25 is when I seen it. So walking in between the house and

1 that, that's it. It was right there.

2 Q. But it was propped up with these white legs as  
3 opposed to leaning up against the fence is what you  
4 recall?

5 A. I don't recall. I don't know how it was --  
6 all I know is when I pulled my hand off the glass the  
7 window was right there.

8 Q. That is my question. I want to be clear about  
9 this as much as we can. In this photograph, Exhibit 4  
10 that your wife took, it shows this window, and it  
11 doesn't appear to be leaning up against the fence. It  
12 appears to be supported by these white sticks.

13 A. Yes.

14 Q. Do you see that?

15 A. Uh-huh.

16 Q. My question is: The night when you fell  
17 through this window, do you know whether it was propped  
18 up with these white sticks or do you know whether it was  
19 just leaning against the fence?

20 A. I do not know.

21 Q. That's fair.

22 So we understand that you were facing the  
23 gate, you turned to your left, you took a couple steps,  
24 you tripped on what you believe to be that piece of wood  
25 in Exhibit 4.

1 A. Something got in between my legs right here  
2 (indicating). It would be in front of my left foot,  
3 behind my right foot. So my right foot must have just  
4 stepped over it, and then I tripped on something.

5 Q. So you tripped with your left foot.

6 A. Exactly. And I had a scrape, it was either  
7 right here or right here (indicating) on my leg, from  
8 whatever got caught scraped.

9 Q. You are looking at the inside of your right  
10 knee?

11 A. Yes.

12 Q. And to be clear, I want to make sure we are  
13 clear about this, is that on Exhibit No. 4 you did not  
14 trip on the window; is that correct?

15 A. No, I did not.

16 Q. You tripped on something and you fell into the  
17 window.

18 A. Exactly.

19 Q. And when you described how you tripped, I  
20 appreciate that, you fell forward with your hands, you  
21 kind of had them above your head in kind of a Superman  
22 pose?

23 A. I just --

24 Q. Ahead of you.

25 A. I just went out ahead of me. If somebody was

1 A. Right.

2 Q. And you saw the blood at that point. What did  
3 you do?

4 A. I got up, said: Oh shit, oh shit, oh shit, oh  
5 shit. Grabbed my arm, squeezed it as tight as I could,  
6 ran out to the front porch, kicked the door like six  
7 times, tried to get somebody's attention, nobody  
8 answered. I ran around back by that, through that gate,  
9 pushed the gate open, into the backdoor of the garage  
10 and into the house and started yelling for Jon.

11 Q. Hold on right there. When you went back  
12 around from the front of the house, you went back  
13 through this same area; correct?

14 A. Yes, correct.

15 Q. Could you see the window as you went by?

16 A. I seen the window when I fell into it.

17 Q. When you were coming back around --

18 A. I was not looking for the window. I was  
19 looking for a way to get to a phone at the quickest,  
20 quickest time that I possibly could. I thought I was  
21 going to die.

22 Q. As you were coming back from the front of the  
23 house to go through that gate again -- right?

24 A. Uh-huh. Yes.

25 Q. -- did you see the window as you went by or

1 to -- you stand there and get pushed on the back, you  
2 reach out to stop yourself; correct?

3 Q. Do you remember -- for example, sometimes when  
4 you trip you take a couple of athletic steps to try to  
5 catch yourself. Do you know what I mean?

6 A. I was going down.

7 Q. That's what I'm saying. After you tripped, as  
8 you described, did you take any steps further along that  
9 walkway until you actually fell forward or did you start  
10 falling forward immediately?

11 A. I started falling forward immediately.

12 Q. That is when somehow your arm, your left arm  
13 went into that window?

14 A. Exactly, by reaching out to catch myself.

15 Q. All right. Did you fall down to the ground on  
16 your knees at all?

17 A. I believe so.

18 Q. And then you looked up and found that your arm  
19 was inside this window?

20 A. Yeah, I wasn't doing like a pushup position.

21 Q. So you were basically on your knees next to  
22 this window and your arm was in the window when you  
23 looked up.

24 A. Yes.

25 Q. And you saw that because the moon was there.

1 did you not?

2 A. I did not look at the window.

3 Q. Were you able to get by the window to the back  
4 gate without tripping on the window?

5 A. Obviously I made it to the gate and into the  
6 back of the house.

7 Q. When you were going past the window to the  
8 gate to try to get back into the house, did you tangle  
9 with this piece of wood again?

10 A. No.

11 Q. Did you see the piece of wood laying there?

12 A. I did not see what I tripped on.

13 Q. So you made it back into the gate.

14 A. Yes.

15 Q. You went back through the garage door and into  
16 the house through the garage.

17 A. Yes, sir.

18 Q. And tell me what happened after that.

19 A. I yelled for Jon's name.

20 Q. Did he come out?

21 A. Yes, he did. Him and Dee Dee both.

22 Q. What happened next?

23 A. I told Jon I cut myself, it's really bad, call  
24 an ambulance.

25 Q. Did he call an ambulance?

1 A. Yes, he did.  
 2 Q. Then they arrived in about 20 minutes?  
 3 A. I don't know exactly.  
 4 Q. What did you do -- did you just compress it or  
 5 what did you do?  
 6 A. Yes, I did. I had it squeezed from the time  
 7 it happened and I seen what it was. I squeezed it with  
 8 this hand, just like this (indicating), as hard as I  
 9 possibly could.  
 10 Q. Then the EMTs came and they treated you and  
 11 took you to the hospital?  
 12 A. Yes.  
 13 Q. Did you undergo surgery that same day?  
 14 A. No.  
 15 Q. When did that occur?  
 16 A. I want to say a couple days later.  
 17 Q. Did the police arrive?  
 18 A. They showed up right after the ambulance did.  
 19 Q. So you never talked to the police.  
 20 A. He came up to the backdoor and asked what had  
 21 happened and I told him.  
 22 Q. To the back of the ambulance.  
 23 A. Yes, while I was sitting in the gurney.  
 24 Q. Did anybody ever take a blood alcohol on you?  
 25 A. I believe so, yes.

1 Q. Who did that?  
 2 A. I don't know who did. My attorneys told me  
 3 that they gave me a nystagmus test or something like  
 4 that, is what some report says. Whether it was the  
 5 ambulance guys, I'm not sure. I do not recall. Like I  
 6 said, I was freaking out.  
 7 Q. Did they like draw your blood to do your blood  
 8 alcohol, anything like that?  
 9 A. I have no idea.  
 10 Q. Did you ever talk with the police other than  
 11 what you've told me?  
 12 A. I talked to the sheriff while I was laying in  
 13 the gurney, told him what had happened. Him and Jon  
 14 went back there. I want to say the police officer came  
 15 back, Everything checks out the way you said, looks like  
 16 that's what happened. And that was the last I remember  
 17 talking to the sheriff.  
 18 Q. Where was the firewood for this fire?  
 19 A. Over the fence of his backyard.  
 20 Q. Was there any wood -- did anybody get wood out  
 21 of the side of the house where this accident happened  
 22 that night?  
 23 A. No. Most of the wood we were burning was  
 24 lumber, like old -- it looked like an old deck or an old  
 25 porch or something like that. Some of them were like

1 2 by 12s, some of them were little skinny slats, like  
 2 the ones you put in a fence, like a cedar fence, that  
 3 size of wood.  
 4 Q. You have sued my client Walter Amundson, and  
 5 you've met today.  
 6 A. Yesterday.  
 7 Q. And I ask you this, and just factually, what  
 8 do you think Mr. Amundson did wrong to cause your  
 9 injury?  
 10 MR. GILES: Objection; calls for a legal  
 11 conclusion.  
 12 Q. (BY MR. STEFANIC) You can go ahead and  
 13 answer.  
 14 A. I can't answer that. I don't know. All I  
 15 know is I did not put a broken piece of glass next to a  
 16 walkway that is unlit.  
 17 Q. Was there any lighting in that area other than  
 18 the moon apparently?  
 19 A. No, sir.  
 20 Q. Do you think that any of the tenants did  
 21 anything wrong to cause your injury?  
 22 MR. GILES: Objection; calls for a legal  
 23 conclusion.  
 24 THE WITNESS: Like I said before, I have no  
 25 idea how that thing got there. All I know is it was

1 there and I tripped on something and I ended up in it.  
 2 Q. (BY MR. STEFANIC) Okay. Do you think you did  
 3 anything wrong?  
 4 A. I do not believe so. I thought I was using  
 5 etiquette by not going through somebody's house that I  
 6 don't know or opening up a garage door that I had no  
 7 idea where the button was or anything like that.  
 8 Q. You sat through some testimony with Jon  
 9 yesterday about the broken pane. And I'm just asking  
 10 you, did you know whether that window was broken out  
 11 before you went through it or not at the time it  
 12 happened?  
 13 A. No, sir, I did not know. Shock takes over  
 14 pretty quickly. I was definitely freaking out. It  
 15 should have hurt worse than it did, that is what I  
 16 think. But I don't recall any pain, I just remember  
 17 blood squirting everywhere and thinking I was going to  
 18 die.  
 19 If it would have been the other vein, it's  
 20 highly possible something bad could have happened out of  
 21 that. They would have just found a body out there  
 22 instead of some guy screaming and yelling in the  
 23 kitchen.  
 24 Q. When you opened that gate to leave, were you  
 25 aware that it was dark in that area?



1 A. Well, yeah, it was nighttime.  
 2 Q. What did you do, if anything, to -- you were  
 3 walking in an area that you had never been before; fair?  
 4 A. Correct.  
 5 Q. What did you do to make sure that you were  
 6 safe in walking through that area when it was dark?  
 7 A. Walk normal. I don't know. I don't  
 8 understand the question, I guess.  
 9 Q. You just walked normal.  
 10 A. Yeah, walked, just like I walked from the fire  
 11 pit to the back of the house.  
 12 Q. Did you have any like flashlight or did you  
 13 have, sometimes with cell phones they have an app that  
 14 has a flashlight these days?  
 15 A. No, sir.  
 16 Q. We wouldn't have been able to ask that  
 17 question about five or six years ago.  
 18 You didn't have anything like that?  
 19 A. No, sir. I had my phone, but it was an older  
 20 phone and it didn't have no backlight bright enough to  
 21 make any difference.  
 22 Q. The thing that you tripped over, I'm assuming,  
 23 because we kind of know what this looks like now, it  
 24 wasn't attached to the property like a bush or something  
 25 like that; is that right?

1 me a dishtowel or something, and I put it on there. And  
 2 when I got into the ambulance they put me on the gurney  
 3 and he said, Okay, you've got to take that off so I can  
 4 take a look. I was like, I'm telling you, it's serious,  
 5 it's going to gush blood all over the place. So he is  
 6 like, Okay, just pull it back real careful. And he  
 7 pulled it back real careful and he looked down there and  
 8 he's like, Okay, just keep pressure on it.  
 9 Q. Did you stay conscious the whole time?  
 10 A. Yes.  
 11 Q. Were you able to converse with the EMTs?  
 12 A. Yes.  
 13 Q. Do you think you made sense to them?  
 14 A. Yes. I did not start getting lightheaded  
 15 until I was at the hospital.  
 16 Q. Then they took you where, to which hospital?  
 17 A. Saint Al's off of Curtis.  
 18 Q. For some reason I have on the -- and this  
 19 could be, I'm not faulting you. But the Kuna Fire  
 20 District report it looks like it was dispatched at about  
 21 4:30 a.m. in the morning and arrived at 4:42, patient  
 22 contacted at 4:43. We had kind of been talking about in  
 23 that 3:30 time frame. It could have been 4:30?  
 24 A. Absolutely it could have.  
 25 Q. What I'm asking you is: Was there any delay

1 A. Not that I know of.  
 2 Q. To the best of your knowledge, it was a piece  
 3 of wood?  
 4 A. Random something or other, yeah.  
 5 Q. Do you know how that piece of wood got in that  
 6 area?  
 7 A. I do not.  
 8 Q. Do you know how long it had been there?  
 9 A. I do not.  
 10 Q. Have you talked to anybody since the accident  
 11 to try to figure out what that piece of wood was doing  
 12 there that you tripped on?  
 13 A. I did not know what I had tripped on at that  
 14 time. When Jon came over to pick my wife up and she was  
 15 getting ready to take him back, we talked briefly about  
 16 it. I asked him what I tripped on. He said he didn't  
 17 know either. And then I asked my wife to tell me what I  
 18 tripped on, and Jon both, so that they could figure it  
 19 out because I was still confused of why I fell.  
 20 Q. Sure.  
 21 A. It felt like, when I tripped on it, it felt  
 22 like a wire, is what it felt like.  
 23 Q. When did you feel at least that they had  
 24 stopped the bleeding on you?  
 25 A. When I got into the ambulance -- Jon had given

1 for any reason after your injury in calling the  
 2 ambulance?  
 3 A. Absolutely not.  
 4 Q. So you told me the time frame it happened.  
 5 It's just if that is when it happened, it's when it  
 6 happened.  
 7 A. Exactly, I don't know exactly what time it  
 8 was.  
 9 Q. Dr. Clauson was your surgeon?  
 10 A. Yes, he was.  
 11 Q. He's the one that followed you regarding this?  
 12 A. Yes.  
 13 Q. It looks like surgery took place about the  
 14 11th of July?  
 15 A. That sounds correct.  
 16 Q. You followed up with him on several increments  
 17 after that?  
 18 A. Yes, it was every -- I want to say it was  
 19 three months was the first one and then six months  
 20 thereafter.  
 21 Q. The last time I have you seeing him was July  
 22 18, 2013. So that is two years post-accident.  
 23 A. Yes.  
 24 Q. So it looks like you went to see him for a  
 25 period of time after this accident. You had a year

1 visit after the accident with him in July, and then you  
 2 had another year after that visit with him.  
 3 A. Yes.  
 4 Q. Is that about what you have in terms --  
 5 A. And it was every six months after that  
 6 first -- after the first one, which I believe was three  
 7 months afterwards, it was every six months after that.  
 8 Q. Have you treated with anybody else other than  
 9 Dr. Clauson for this injury?  
 10 A. No, sir.  
 11 Q. Are you pleased with Dr. Clauson's work?  
 12 A. Yes. He is a good guy.  
 13 Q. The last time you saw him was July of 2013,  
 14 that's at least the last record that I have; is that  
 15 accurate?  
 16 A. Yes.  
 17 Q. Do you have plans to see him any more?  
 18 A. I do not. He said there is nothing more he  
 19 can do for me.  
 20 Q. I think you told me what his restriction would  
 21 be to you.  
 22 A. Yes.  
 23 Q. Do whatever you want until it hurts, then quit  
 24 doing it essentially.  
 25 A. Exactly.

1 Q. Any other restrictions other than that?  
 2 A. No, sir. He says I can use it at full  
 3 function.  
 4 Q. Now, I want to talk about the current problems  
 5 you are having. Well, let me go about it this way:  
 6 In your answers to interrogatories when I  
 7 asked what problems you are having, those are in answer  
 8 to interrogatory No. 13, I kind of wanted to go through  
 9 these and see what the status of your injury was.  
 10 It says: As a result of these injuries, after  
 11 you have talked about them, Plaintiff has suffered a  
 12 loss of left arm function, pain, discomfort, and  
 13 numbness in his left hand and fingers, as well as a loss  
 14 of fine skills in his left hand.  
 15 So I kind of want to break that down and see  
 16 how you are doing, how those are progressing. The loss  
 17 of left arm function, you've described I think the loss  
 18 function. Is there anything else that you would add to  
 19 what you've already testified to about the loss of your  
 20 function?  
 21 A. The numbness, and it gets really cold. Even  
 22 right now you can tell the difference between the warmth  
 23 of these fingers and these fingers (indicating).  
 24 Q. So real quick, the record needs to reflect  
 25 that. Which fingers are cold?

1 A. My ring finger on my left hand and my pinky  
 2 finger on my left hand.  
 3 Q. There is a marked difference between the  
 4 temperature of that and the temperature of your middle  
 5 finger and your pointer finger.  
 6 A. Yes, sir.  
 7 Q. And you've talked about the dexterity.  
 8 Is there any other testimony you would add as  
 9 to the loss of left arm function?  
 10 A. It's not strong like it used to be. The  
 11 strength of my grip is not near what it used to be.  
 12 Q. Do you think, is it improving or is it staying  
 13 the same or is it getting worse?  
 14 A. It seems to be getting better. He told me  
 15 that the ulnar nerve, if it didn't grow back in two  
 16 years, that most likely it would not grow back. But it  
 17 seems to be, it's continuing to get a little bit more  
 18 feeling. I can feel like -- this feels like somebody  
 19 lightly tickling your foot or something like that  
 20 (indicating).  
 21 Q. You are rubbing your hand along your palm  
 22 underneath your left pinky.  
 23 A. Exactly. Just above the incision where the  
 24 glass cut me, not the doctor's incision, this is numb,  
 25 from about the center of my wrist all the way up --

1 Q. To the palm of your hand.  
 2 A. Yes. All the way up and halfway through this  
 3 finger.  
 4 Q. And that is your ring finger.  
 5 A. Yes, sir.  
 6 What the ulnar nerve is, is like everybody has  
 7 hit their funny bone. That's the ulnar nerve. And how  
 8 this finger and these fingers will go numb --  
 9 Q. That is the pinky and the ring finger?  
 10 A. Yes, sir. That is the nerve that was cut.  
 11 Q. You say there was pain associated with this.  
 12 Do you still have pain?  
 13 A. Occasionally.  
 14 Q. Anything that triggers your pain?  
 15 A. No.  
 16 Q. What type of pain is it?  
 17 A. It would be like a sharp shooting pain. I  
 18 don't know if that is the nerve growing or what it is,  
 19 but it will just be like somebody sticking me with a  
 20 pin.  
 21 Q. How often does that occur?  
 22 A. It just depends on the angle, if I've got my  
 23 arm at a certain angle or wrist at a certain angle. And  
 24 it doesn't happen all the time, just few and far between  
 25 I would say.

1 Q. You also said discomfort. Is that what you  
 2 are talking about or is there something different?  
 3 A. The numbness, the numbness is extremely weird  
 4 to deal with until your body gets used to it. When it  
 5 first happened it felt like somebody put an air hose in  
 6 my hand and blew it up to 100 pounds per square inch is  
 7 what it felt like.  
 8 Q. You also say numbness in your left hand and  
 9 fingers, and you've described that.  
 10 A. Yes, sir.  
 11 Q. The numbness that you feel is in your ring  
 12 finger and your left pinky finger.  
 13 A. Yes.  
 14 Q. Is that constant? Does it come and go?  
 15 A. It's constant.  
 16 Q. If you were to be stuck with a needle on  
 17 either one of those fingers, would you be able to feel  
 18 it?  
 19 A. You would have to go deep; you would have to  
 20 pierce the skin in order for me to feel it.  
 21 Q. And then the last item underneath that  
 22 sentence says: Loss of fine skills in his left hand.  
 23 You've described that with how you worked on that?  
 24 A. Exactly, the dexterity, or holding a little  
 25 tiny screw and trying to keep it in the right direction.

1 A. Yes.  
 2 Q. Although it's not as easy as it once was, you  
 3 can still get through it.  
 4 A. Yes, it's because I enjoy it, it's my therapy.  
 5 Q. Okay. We are wrapping this up.  
 6 A. Okay.  
 7 Q. I had a couple questions. Before this  
 8 accident there was some doctors that you had seen. I  
 9 wanted to know what you saw these people for.  
 10 A. Okay.  
 11 Q. Did you see Dr. Clauson before this accident?  
 12 A. Not that I know of.  
 13 Q. Dr. Weiss is the guy at the Primary Health?  
 14 A. Yes, sir.  
 15 Q. Did you ever see Dr. Verska for anything?  
 16 A. Not that I know of, unless he was the  
 17 emergency room physician. I don't remember what his  
 18 name was.  
 19 Q. In terms of your damages in this case, we have  
 20 your medical expenses, and I'll work with your counsel  
 21 on this. But I think there is almost 48 grand in  
 22 medical expenses?  
 23 A. Sounds correct.  
 24 Q. Has any insurance company paid for any of  
 25 those?

1 Let's say this is a screw, keeping it in the right  
 2 direction and feed it into a hole, a threaded hole, that  
 3 is what I have a hard time with. That is what I notice  
 4 the most anyway.  
 5 Q. It says that you have trouble with everyday  
 6 chores.  
 7 First of all, before we go to that, is there  
 8 any other problems you are having with your hand that we  
 9 haven't talked about?  
 10 A. Not that I can think of, no, sir.  
 11 Q. It says you are you having trouble with  
 12 everyday chores. We've talked about that a little bit.  
 13 You figure out a way to do them?  
 14 A. Yes.  
 15 Q. Are there particular chores that you have  
 16 difficulty with that you have to compensate for?  
 17 A. Not particular ones. It was a struggle  
 18 until -- I mean, we are almost 3 years, 34 months since  
 19 the accident, so I've learned how to do certain things  
 20 better. They are not as quick, but I can do them.  
 21 Q. We've talked about the snowmobile and the  
 22 motorbike that you worked on. Do you have any plans on  
 23 working on any machines in the future?  
 24 A. If a project comes up, absolutely.  
 25 Q. And you enjoy doing that.

1 A. No.  
 2 Q. Did you have health insurance?  
 3 A. We did not have health insurance either, not  
 4 on me. My wife had it, but it only covers her.  
 5 Q. So that's still owing?  
 6 A. Not all of it.  
 7 Q. Has some been paid?  
 8 A. We filed for an assistance program where they  
 9 actually write some of that off.  
 10 Q. Through the hospital?  
 11 A. Yes. I can't remember what it's called  
 12 exactly.  
 13 Q. Do you know how much is still owing of that 48  
 14 grand?  
 15 A. I don't, not off the top of my head.  
 16 Q. I'll follow up with your attorney on those  
 17 issues.  
 18 A. Okay.  
 19 Q. Has any doctor indicated that you'll need  
 20 future medical care for this?  
 21 A. There is nothing they can do about it. It's  
 22 just time for the nerve to do whatever it's going to do.  
 23 Q. So in addition to the medical expenses, are  
 24 there any other -- there is damages for pain and  
 25 suffering and that sort of thing, and I understand that.

1 But is there any other elements of damages that I'm  
2 missing?

3 A. Are you asking me --

4 Q. I'm asking you, but I'm kind of looking over  
5 at your counsel, because I'd like to ask about it if  
6 there is.

7 MR. GILES: No, you have covered it.

8 MR. STEFANIC: Let me just confer with my  
9 clients real quick and I think we are about done.

10 MR. GILES: Okay.

11 (Recess taken.)

12 MR. STEFANIC: I do not have any further  
13 questions.

14 MR. GILES: I don't have anything.  
15 (Deposition concluded at 11:27 a.m.)  
16 (Signature requested.)  
17  
18  
19  
20  
21  
22  
23  
24  
25

1 ERRATA SHEET FOR DAVID WAYNE STILES

2 Page \_\_\_ Line \_\_\_ Reason for Change \_\_\_\_\_  
Reads \_\_\_\_\_

3 Should Read \_\_\_\_\_  
4

Page \_\_\_ Line \_\_\_ Reason for Change \_\_\_\_\_

5 Reads \_\_\_\_\_  
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Should Read \_\_\_\_\_  
23

24 You may use another sheet if you need more room.  
25 WITNESS SIGNATURE

1 CERTIFICATE OF WITNESS

2 I, DAVID WAYNE STILES, being first duly sworn,  
3 depose and say:

4 That I am the witness named in the foregoing  
5 deposition, consisting of pages 1 through 93; that I  
6 have read said deposition and know the contents thereof;  
7 that the questions contained therein were propounded to  
8 me; and that the answers contained therein are true and  
9 correct, except for any changes that I may have listed  
10 on the Change Sheet attached hereto:

11 DATED this \_\_\_ day of \_\_\_\_\_, 20\_\_.

12  
13  
14 \_\_\_\_\_

15 DAVID WAYNE STILES

16  
17 SUBSCRIBED AND SWORN to before me this \_\_\_ day  
18 of \_\_\_\_\_, 20\_\_.

19  
20 \_\_\_\_\_

21 NAME OF NOTARY PUBLIC

22 NOTARY PUBLIC FOR \_\_\_\_\_

23 RESIDING AT \_\_\_\_\_

24 MY COMMISSION EXPIRES \_\_\_\_\_  
25

1 REPORTER'S CERTIFICATE

2 I, BEVERLY BENJAMIN CSR No. 710, Certified  
3 Shorthand Reporter, certify: That the foregoing  
4 proceedings were taken before me at the time and place  
5 therein set forth, at which time the witness was put  
6 under oath by me;

7 That the testimony and all objections made were  
8 recorded stenographically by me and transcribed by me or  
9 under my direction;

10 That the foregoing is a true and correct record  
11 of all testimony given, to the best of my ability;

12 I further certify that I am not a relative or  
13 employee of any attorney or party, nor am I financially  
14 interested in the action.

15 IN WITNESS WHEREOF, I set my hand and seal this  
16 15th day of May 2014.

17  
18  
19  
20 \_\_\_\_\_

21 BEVERLY A. BENJAMIN, CSR No. 710

22 Notary Public

23 P.O. Box 2636

24 Boise, Idaho 83701-2636

25 My commission expires May 28, 2019

**EXHIBIT 5**

000228

**DEPOSITION OF WAYNE JENKINS - AUGUST 14, 2014**

<p>IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA</p> <p>DAVID WAYNE STILES,        )   )                   Plaintiff,        ) CASE NO. CV PI 1311963 Vs                                    )   ) WALTER A. AMUNDSON,        )   )                   Defendants.        )</p>	<table border="0"> <tr> <td colspan="2"></td> <td align="center"><b>I N D E X</b></td> <td></td> </tr> <tr> <td><b>WITNESS</b></td> <td><b>EXAMINATION BY</b></td> <td></td> <td align="right"><b>PAGE</b></td> </tr> <tr> <td>WAYNE JENKINS</td> <td>MR. MONTELEONE</td> <td></td> <td align="right">4</td> </tr> <tr> <td></td> <td>MR. STEFANIC</td> <td></td> <td align="right">67</td> </tr> <tr> <td></td> <td>MR. MONTELEONE</td> <td></td> <td align="right">68</td> </tr> </table> <table border="0"> <tr> <td colspan="2"></td> <td align="center"><b>E X H I B I T S</b></td> <td></td> </tr> <tr> <td><b>DESCRIPTION</b></td> <td></td> <td></td> <td align="right"><b>PAGE</b></td> </tr> <tr> <td>2 -</td> <td>Photo</td> <td></td> <td align="right">17</td> </tr> <tr> <td>4 -</td> <td>Photo</td> <td></td> <td align="right">21</td> </tr> <tr> <td>5 -</td> <td>Photo</td> <td></td> <td align="right">9</td> </tr> </table>			<b>I N D E X</b>		<b>WITNESS</b>	<b>EXAMINATION BY</b>		<b>PAGE</b>	WAYNE JENKINS	MR. MONTELEONE		4		MR. STEFANIC		67		MR. MONTELEONE		68			<b>E X H I B I T S</b>		<b>DESCRIPTION</b>			<b>PAGE</b>	2 -	Photo		17	4 -	Photo		21	5 -	Photo		9
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<p align="center">August 14, 2014 1:00 p.m. 250 S. 5th St. Boise, Idaho</p>																																									
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<p>Reported by:           M.D. WILLIS, INC. M. DEAN WILLIS       Certified Shorthand Reporters CSR NO. 95            P.O. Box 1241 Prepared for:         Eagle, Idaho 83616 FOURTH JUDICIAL DISTRICT   (208) 855-9151 (ORIGINAL)</p>																																									
<p>DEPOSITION OF WAYNE JENKINS taken at the instance of the plaintiff at 250 S. 5th St., Suite 700, in the city of Boise, State of Idaho, commencing at 1:00 p.m., Thursday, August 14, 2014, before M. DEAN WILLIS, Certified Shorthand Reporter and Notary public in and for the State of Idaho, pursuant to notice, and in accordance with the Idaho Rules of Civil Procedure.</p>																																									
<p align="center"><b>A P P E A R A N C E S</b></p>																																									
<p>For the Plaintiff:    Jason R.N. Monteleone, Esq.                                   JOHNSON &amp; MONTELEONE                                   405 S. Eighth St., Ste 240                                   Boise, Idaho 83702</p>																																									
<p>For the Defendants: Michael Stefanic, Esq.                                   ANDERSON, JULIAN &amp; HULL                                   250 S. 5th St., Ste. 700                                   Boise, Idaho 83701</p>																																									
<p>Also Present:        Chip Giles</p>																																									

DEPOSITION OF WAYNE JENKINS - AUGUST 14, 2014

1 THURSDAY, AUGUST 14, 2014, 1:00 P.M., BOISE, IDAHO.

2  
3  
4  
5

6 WAYNE JENKINS,  
7 called as a witness herein, having been first duly sworn,  
8 was examined and testified as follows:

9

10 EXAMINATION

11 BY MR. MONTELEONE:

12 Q. Let the record reflect that this is the time  
13 and the place for the taking of the deposition of Wayne  
14 Jenkins. This deposition is being taken pursuant to  
15 notice and the Idaho Rules of Civil Procedure. This  
16 deposition will be used for all purposes allowed under  
17 those rules.

18 If you would, please, state your name for the  
19 record, sir?

20 A. Wayne Jenkins.

21 Q. And spell your last name.

22 A. J-e-n-k-i-n-s.

23 Q. Have you ever had your deposition taken before?

24 A. No.

25 Q. Have you ever provided testimony in any court

4

1 proceeding, whether it be trial, hearing --

2 A. No.

3 Q. -- administrative proceeding?

4 A. No.

5 Q. Have you had an opportunity to sit with Mr.  
6 Stefanic and go over some basic ground rules on what  
7 happens in a deposition?

8 A. Yes.

9 MR. STEFANIC: I have not sat with him. I have  
10 talked with him on the phone.

11 BY MR. MONTELEONE:

12 Q. That's -- thanks for the clarification,  
13 counsel. There is a couple of ground rules I just want  
14 to make sure we have in place and it will facilitate our  
15 conversation today. First, do you understand that you  
16 have been administered an oath and taken an oath such  
17 that your testimony today is sworn and any falsehoods are  
18 subject to punishment under pain of perjury?

19 A. Uh-huh.

20 Q. Is that a yes?

21 A. Yes.

22 Q. That takes me to my second housekeeping  
23 measure. Huh-uhs and uh-huhs won't work, because our  
24 court reporter Mr. Willis can't take those down. Just  
25 like shakes of the head won't work very well for a clear

5

1 record. So, could you, please, answer audibly and  
2 verbally for me today?

3 A. Yes.

4 Q. And, then, finally, if you will allow me to  
5 finish my question before you begin your answer, I will  
6 extend to you the same courtesy and allow you to finish  
7 your answer before I ask my next question. The reason we  
8 do that is we don't want to speak over one another,  
9 because that also muddies up the record. So, can you do  
10 that for me today, wait for me to complete my question  
11 before you begin your answer?

12 A. Yes.

13 Q. Thank you, Mr. Jenkins. How long -- over what  
14 period of time did you reside at 756 West 4th Street in  
15 Kuna?

16 A. About two years.

17 Q. And what was that two year period?

18 A. That was between 2004 to 2006.

19 Q. Okay. What brings us here today is an accident  
20 that happened in July of 2011. I understood that you  
21 were a tenant at that address in July of 2011?

22 A. Yes.

23 Q. Does that help jog your memory over what two  
24 year period you were a resident at that address in Kuna?

25 A. Those were the years I was actually in there.

6

1 Q. Okay. So, 2004 to 2006?

2 A. I wasn't in --

3 Q. Okay. What's your [REDACTED] Mr. Jenkins?

4 A. [REDACTED]

5 Q. You are a New Year's baby.

6 MR. STEFANIC: Did he clarify that he was not a  
7 tenant during that time? Hopefully.

8 BY MR. MONTELEONE:

9 Q. When he was a New Year's baby? Yeah. Mr.  
10 Jenkins, if it was a two year period and this accident  
11 happened in July of 2011, as best you can recall or  
12 estimate, when did you move into that property in Kuna  
13 owned by Walter Amundson prior to the accident?

14 A. It was -- I believe it was -- it was in the  
15 middle of May.

16 Q. Okay. May of 2011?

17 A. Uh-huh.

18 Q. Is that a yes?

19 A. Yes.

20 Q. Sorry. Don't mean to quibble. And, then, did  
21 you move out of that property in Kuna sometime around May  
22 of 2013?

23 A. More like August of '12.

24 Q. So, as best you can recall, you had been living  
25 at the premises at 756 West 4th Street in Kuna for

7

DEPOSITION OF WAYNE JENKINS - AUGUST 14, 2014

1 approximately two months before this accident involving  
2 David Stiles; is that correct?  
3 A. No.  
4 Q. Okay. How long had you been in that house  
5 before the accident with Mr. Stiles?  
6 A. At least a full year.  
7 Q. Okay. So, when you say you moved in in May of  
8 2011, could it be that you moved in in May of 2010?  
9 A. Yes.  
10 Q. And, then, that would be a full year and two  
11 months prior to Mr. Stiles' accident on the premises.  
12 A. Yes.  
13 Q. Okay. Were you on the premises on the date of  
14 the accident?  
15 A. Yes.  
16 Q. Were you asleep at the time of the accident or  
17 were you --  
18 A. Yes.  
19 Q. -- awake -- in back?  
20 A. I was asleep.  
21 Q. Okay. Now, Mr. Stiles cut his arm severely in  
22 the accident. Do you understand that?  
23 A. Uh-huh.  
24 Q. Is that a yes?  
25 A. Yes.

8

1 Q. And do you know on what he cut his arm?  
2 MR. STEFANIC: Objection calls for speculation.  
3 MR. MONTELEONE: You can answer, sir.  
4 THE WITNESS: I don't know.  
5 BY MR. MONTELEONE:  
6 Q. Have you discussed with anyone on what Mr.  
7 Stiles cut his arm?  
8 A. No.  
9 Q. All right. Did you ever see a bloody window --  
10 a bloody bay window on the side of the house where you  
11 were living after Mr. Stiles' accident?  
12 A. Yes.  
13 Q. Do you have any reason to think that maybe  
14 that's where Mr. Stiles cut his arm?  
15 A. I don't know.  
16 MR. MONTELEONE: Okay. Let's mark these as five.  
17 MR. STEFANIC: Hey, before we go on, I had I think  
18 marked -- we were kind of going consecutively one, two,  
19 three, four, five were in the first deposition --  
20 MR. MONTELEONE: We are off the record.  
21 (An off-the-record discussion ensued.)  
22 (Deposition Exhibit 5 marked.)  
23 BY MR. MONTELEONE:  
24 Q. Okay. Placed before you, Mr. -- we are back on  
25 the record -- Mr. Jenkins, is a deposition exhibit

9

1 previously used in these proceedings marked Deposition  
2 Exhibit 5 and you will see in the lower right corner  
3 letters is A through F. Do you have that exhibit before  
4 you, sir?  
5 A. Yes.  
6 Q. It's a total of six photographs. Can you  
7 identify what's depicted in those photographs for me,  
8 please, sir?  
9 A. A broken glass and stains of blood.  
10 Q. Okay. And feel free to flip through all of  
11 those photographs and I'm going to ask you a few  
12 questions.  
13 MR. STEFANIC: Can I interject something, counsel,  
14 please?  
15 MR. MONTELEONE: Sure.  
16 MR. STEFANIC: And I just want to be fair to this  
17 witness and this is a perfect example -- is that we all  
18 presume that that's blood on the window and I would just  
19 ask that if he has facts that he believes that it is  
20 blood, tell us, but if he doesn't know tell us that as  
21 well. In other words, if you know tell us.  
22 MR. MONTELEONE: Okay. Well, I'm going to get to  
23 all of that.  
24 MR. STEFANIC: Okay. Go ahead.  
25 BY MR. MONTELEONE:

10

1 Q. Now, in Exhibit 5 that's placed before you, Mr.  
2 Jenkins, what's the framing around the broken glass?  
3 What is that item?  
4 A. That would be a window.  
5 Q. Okay. Is that the bay window that was removed  
6 from the front of the premises where you were residing in  
7 July of 2011?  
8 A. Yes.  
9 Q. Did you have any involvement in the removal of  
10 that window from the front of the premises?  
11 A. No.  
12 Q. Who did remove it?  
13 A. That would be Walter and his son Roger.  
14 Q. Okay. Was anyone else involved in the removal  
15 of the windows?  
16 A. I don't know.  
17 Q. Did you ever see the removal of the window  
18 taking place?  
19 A. No.  
20 Q. Did anyone ever discuss with you the removal of  
21 the window --  
22 A. No.  
23 Q. -- and how it was done? You got to wait for me  
24 to finish.  
25 MR. STEFANIC: You guys are going fast, so both slow

11



DEPOSITION OF WAYNE JENKINS - AUGUST 14, 2014

1 down.  
2 BY MR. MONTELEONE:  
3 Q. Did you ever speak with anyone about how the  
4 window was removed?  
5 A. No.  
6 Q. There was apparently a garage renovation that  
7 was occurring. Are you aware of that?  
8 A. No.  
9 Q. Why was the window removed from the front of  
10 the premises?  
11 A. I don't know.  
12 Q. Has anyone ever discussed that with you?  
13 A. No.  
14 Q. Mr. Jenkins, during the two years you lived at  
15 this premises did you have any involvement in the  
16 maintenance of the premises?  
17 A. Only the maintenance in my room.  
18 Q. Okay. And what would that include?  
19 A. Keeping it clean.  
20 Q. Did you ever do any work on the premises at  
21 all?  
22 A. No.  
23 Q. Did you have an opportunity to prepare for this  
24 deposition today?  
25 A. No.

12

1 Q. Did you do anything to prepare for this  
2 deposition?  
3 A. No.  
4 Q. But you did speak with Mr. Amundson's lawyer?  
5 A. Only to tell me the date of today.  
6 Q. You didn't discuss anything about what was  
7 going to be covered today?  
8 A. No.  
9 Q. How long was the conversation you had with Mr.  
10 Stefanic?  
11 A. About ten seconds.  
12 Q. When did it occur?  
13 A. About two days ago.  
14 Q. Prior to that did you know that your deposition  
15 was in the process of being scheduled?  
16 A. No.  
17 Q. So, it's your testimony, sir, that until two  
18 days ago you had no idea that my office was seeking to  
19 take your deposition?  
20 A. No.  
21 Q. You realize we had scheduled it for a month  
22 ago; do you recall that?  
23 A. I received a letter, but, then, they called me  
24 and said they rescheduled.  
25 Q. Okay. So, a month ago you did get a letter

13

1 talking about you sitting for a deposition; correct?  
2 A. Uh-huh.  
3 Q. Is that a yes?  
4 A. Yes.  
5 Q. Okay. Do you have a copy of that letter with  
6 you?  
7 A. No, I don't.  
8 Q. Did you bring any documents with you today?  
9 A. No.  
10 Q. Originally your deposition was scheduled for  
11 July 31st, 2014. Do you recall that?  
12 A. Yes.  
13 Q. And who advised you of your deposition being  
14 taken on that date?  
15 A. No one.  
16 Q. Okay. But I thought you received a letter  
17 about that first deposition setting on July 31st?  
18 A. I received the letter, but no one called me or  
19 advised -- advised me about it.  
20 Q. Who wrote the letter?  
21 A. They did.  
22 Q. And by they you mean Mike Stefanic?  
23 A. Uh-huh.  
24 Q. Is that a yes?  
25 A. Yes.

14

1 MR. STEFANIC: Jason, I can't remember if I just  
2 sent him a notice of the deposition or --  
3 BY MR. MONTELEONE:  
4 Q. Well, that's fine. Just so I'm clear, two days  
5 ago is when you first found out that we were doing your  
6 deposition here today?  
7 A. Uh-huh.  
8 Q. That's a yes?  
9 A. Yes.  
10 Q. Okay. And have you ever seen this document  
11 entitled second amended notice of deposition duces tecum  
12 of Wayne Jenkins?  
13 A. No.  
14 Q. All right. It does ask you to bring certain  
15 documents on the second page of that notice -- that  
16 second amended notice. If you would read those to  
17 yourself and tell me if you have any documents responsive  
18 to that second amended deposition notice?  
19 A. No, I don't.  
20 Q. Okay. Now, do you have a cell phone?  
21 A. Yes.  
22 Q. Did you have a cell phone back in July of 2011?  
23 A. Yes.  
24 Q. And did it have a camera on it?  
25 A. Yes.

15

DEPOSITION OF WAYNE JENKINS - AUGUST 14, 2014

1 Q. Did you ever take any pictures of the bay  
2 window?  
3 A. No.  
4 Q. Have you ever used any camera or other device  
5 to take a picture of the bay window?  
6 A. No.  
7 Q. When did the glass that is broken and depicted  
8 in Exhibit 5 break?  
9 MR. STEFANIC: Object to the form. Speculation. Go  
10 ahead.  
11 THE WITNESS: I don't remember the exact date.  
12 BY MR. MONTELEONE:  
13 Q. Okay. But it was before Mr. Bean's accident --  
14 excuse me -- Mr. Stiles accident, wasn't it?  
15 A. Yes.  
16 Q. In fact, that window got blown down by the wind  
17 and hit your truck, didn't it?  
18 A. Yes.  
19 Q. And that was at a point in time a week prior to  
20 Mr. Stiles' accident?  
21 A. I believe so.  
22 Q. Is it fair to say, then, Mr. Jenkins, that when  
23 that bay window was placed along the side of the premises  
24 where you were living that glass was already broken?  
25 A. No.

16

1 Q. Why do you say no?  
2 A. Because as you said, the wind -- it was next to  
3 my truck, the wind blew it over and hit my truck and  
4 that's when the window was broken.  
5 Q. Did it leave any marks on your truck?  
6 A. No.  
7 Q. Did it hit the side mirror of your truck?  
8 A. Yes.  
9 Q. Now, I'm going to show you a photo that's  
10 previously been marked Exhibit 2.  
11 (Deposition Exhibit 2 marked.)  
12 Mr. Jenkins, placed before you is a photograph  
13 previously marked Exhibit 2 in the depositions we have  
14 been taking in this case. Can you identify what's  
15 depicted in Exhibit 2?  
16 A. It's the house with the window still installed.  
17 Q. Okay. And when you say the window, that's the  
18 bay window we are talking about?  
19 A. Uh-huh.  
20 Q. Is that a yes?  
21 A. Yes.  
22 Q. Thank you. I make that mistake all the time,  
23 too. Whose white Toyota two wheel drive pickup is that?  
24 A. I do not know.  
25 Q. At the time of this accident back in July of

17

1 2011 what type of motor vehicle did you have?  
2 A. It was a 2003 Sonoma GMC.  
3 Q. And was that the vehicle that the bay window  
4 fell on and broke one of the glass panels?  
5 A. Yes.  
6 Q. Where was the bay window originally placed?  
7 When did you first see it after it had been removed from  
8 the house?  
9 A. It was laid up against the white fence.  
10 Q. And when you say the white fence, as I  
11 understand this property, from some point close to the  
12 front road there is a white vinyl fence going back some  
13 stretch and, then, it turns into wooden cedar fence the  
14 rest of the fence run; is that correct?  
15 A. Correct.  
16 Q. So, the bay window was initially placed by the  
17 white vinyl fence near the front of the property?  
18 A. Correct.  
19 Q. Was that where it was located when the wind  
20 blew it over and broke the glass?  
21 A. Correct.  
22 Q. It was, then, moved farther back along the  
23 wooden cedar fence; is that correct?  
24 A. Correct.  
25 Q. Did you have any involvement in moving it back

18

1 there?  
2 A. No.  
3 Q. Who did move it back there?  
4 A. Walter and his son.  
5 Q. And when it was moved back there was that glass  
6 already broken?  
7 A. Yes.  
8 Q. How much before Mr. Stiles accident did Mr.  
9 Amundson and his son Roger move that window back to along  
10 the wooden cedar fencing?  
11 A. I don't remember.  
12 Q. Can you tell me if it was less than a week?  
13 A. I really don't remember. I was minding my own  
14 business at that time.  
15 Q. Okay. How do you know that Walter Amundson and  
16 his son Roger Amundson moved that bay window with the  
17 broken glass back to along the wooden cedar fence line?  
18 A. I don't know if Walter had, but all I know is  
19 that Roger moved it.  
20 Q. Okay. I may have misunderstood you, Mr.  
21 Jenkins. I thought you said earlier that Walter Amundson  
22 and his son Roger moved the bay window with the broken  
23 pane of glass back along the wooded cedar fence line.  
24 Did I misunderstand you?  
25 A. No. But I misinterpreted.

19

DEPOSITION OF WAYNE JENKINS - AUGUST 14, 2014

1 Q. Okay. Who moved that window after the glass  
2 had been broken from hitting your car to back along the  
3 wooden cedar fence line?  
4 A. If I remember correctly it was Roger.  
5 Q. Okay. Can one person move that window on their  
6 own?  
7 A. Yes.  
8 Q. Now, when Roger moved that the glass was  
9 already broken?  
10 A. Yes.  
11 Q. Was Walter trying to sell that bay window when  
12 it was up towards the white vinyl fence line?  
13 A. I don't know.  
14 Q. Was it -- did you ever see a sign saying for  
15 sale on the bay window?  
16 A. No.  
17 Q. Did anyone ever discuss with you that there  
18 were efforts undertaken to sell the bay window?  
19 A. No.  
20 Q. How is it that you know Roger had moved the bay  
21 window back to along the wooden cedar fence line?  
22 A. Because when it hit my truck I showed Roger to  
23 where, then, he lifted it and dragged it back.  
24 Q. So, you watched Roger do that?  
25 A. Uh-huh.

20

1 Q. Is that a yes?  
2 A. Yes.  
3 Q. And, then, he dragged it back to the wooden  
4 cedar fence line near the gate that exits the backyard?  
5 MR. STEFANIC: Object to form.  
6 MR. MONTELEONE: Is that correct?  
7 MR. STEFANIC: Object to form as to near the gate.  
8 Vague. But go ahead and answer.  
9 MR. MONTELEONE: You can answer, sir.  
10 THE WITNESS: No, it wasn't near the gate.  
11 BY MR. MONTELEONE:  
12 Q. Okay. How far from the gate was it?  
13 A. It was -- it was out at the very beginning of  
14 the house right when you -- right where the wall started.  
15 (Deposition Exhibit 4 marked.)  
16 Q. Placed before you, Mr. Jenkins, is a document  
17 -- a photograph that has been previously marked Exhibit 4  
18 in the depositions taken in this case. Can you identify  
19 what is depicted in Exhibit 4?  
20 A. It's the window standing and some kind of  
21 tree --  
22 Q. It looks like the bottom of a Christmas tree  
23 that's been cutoff, doesn't it?  
24 A. Yeah.  
25 Q. Okay. Speaking of which -- did you guys have a

21

1 Christmas tree?  
2 A. No.  
3 Q. Okay. And that would have been in Christmas of  
4 2010. You don't recall --  
5 A. Yes.  
6 Q. -- having a live Christmas tree in the house?  
7 A. No.  
8 Q. Now, in light of Exhibit 4, which is placed  
9 before you, did Roger drag the window back after the  
10 glass had broken to that location that's shown in Exhibit  
11 4?  
12 A. Yes.  
13 Q. And you watched Roger drag it?  
14 A. Yes.  
15 Q. Did he say anything while he was doing it?  
16 A. No.  
17 Q. At anytime did Roger say anything to the effect  
18 that his father would be upset about the window getting  
19 broken?  
20 A. No.  
21 Q. Have you ever heard anyone say that?  
22 A. No.  
23 Q. Have you ever heard anyone suggest that?  
24 A. No.  
25 Q. Roger was the only person that dragged that

22

1 window back after the glass had broken?  
2 A. Yes.  
3 Q. Who helped him put the wooden supports out, if  
4 anyone?  
5 MR. STEFANIC: Object to form. I will just object  
6 to the form.  
7 THE WITNESS: Those were already installed to the  
8 window itself.  
9 BY MR. MONTELEONE:  
10 Q. Okay. Were those supports that are shown in  
11 Exhibit 4 also attached to the bay window prior to it  
12 falling on your car?  
13 A. Yes.  
14 Q. Did you have any discussions with Roger as to  
15 where the bay window should be placed?  
16 A. No.  
17 Q. Did Roger mention anything to you about why  
18 that bay window should be placed there?  
19 A. No.  
20 Q. Why did it get moved from the white vinyl fence  
21 line back to the cedar fence line?  
22 A. So that it won't fall on my truck again.  
23 Q. Did you have any concern that anyone could get  
24 hurt on that window?  
25 A. Not at that time.

23

DEPOSITION OF WAYNE JENKINS - AUGUST 14, 2014

1 Q. At some point later in time did you?  
2 A. No.  
3 Q. How far is it from where the bay window is  
4 pieced in Exhibit 4 to the gate that's the egress on that  
5 side of the house?  
6 MR. STEFANIC: Object to the form. If you know.  
7 THE WITNESS: I don't know.  
8 BY MR. MONTELEONE:  
9 Q. Well, you see that gravel area? Do you see  
10 that in Exhibit 4?  
11 A. Uh-huh.  
12 Q. Is that a yes?  
13 A. Yes.  
14 Q. And you lived in this premises for two years;  
15 correct?  
16 A. Yes.  
17 Q. You can't give me an estimate for how long that  
18 gravel --  
19 A. No.  
20 Q. Okay. How wide is it from the cedar fence to  
21 the house?  
22 A. I don't know.  
23 Q. How wide was that bay window from where the  
24 support hits the ground to the bottom of the bay window?  
25 A. I don't know.

24

1 MR. STEFANIC: I'm going to object to the last form  
2 of the question. Go ahead.  
3 BY MR. MONTELEONE:  
4 Q. You can't give me any estimate as to how many  
5 feet any of those dimensions I just covered is?  
6 A. I don't --  
7 Q. Was there ever any conversation of which you  
8 were a party or which you overheard or which was  
9 described to you about that bay window and its busted  
10 pane of glass potentially being dangerous for people?  
11 A. No.  
12 Q. Were people coming in and out of the backyard  
13 on that side of the house?  
14 A. No.  
15 Q. Not even when you were having these bonfire  
16 parties?  
17 A. The garage door would normally be open 24/7  
18 during those times.  
19 Q. Was it open on the night of -- was the garage  
20 door open on the night of the accident?  
21 A. I don't remember.  
22 Q. How is your memory about the night of the  
23 accident?  
24 A. I was asleep, so I slept through the whole  
25 thing.

25

1 Q. What time had you gone to sleep that night?  
2 A. About 11:00.  
3 Q. And there was a party going on in the backyard,  
4 wasn't there?  
5 A. Uh-huh.  
6 Q. Is that a yes?  
7 A. Yes.  
8 Q. And there was a fire pit in the backyard?  
9 A. Yes.  
10 Q. And a number of people would come over and  
11 party back there?  
12 A. Yes.  
13 Q. And that happened on numerous occasions;  
14 correct?  
15 A. Almost every day.  
16 Q. Did Walter know about those parties?  
17 MR. STEFANIC: Object to the form. Speculation.  
18 THE WITNESS: I don't know.  
19 BY MR. MONTELEONE:  
20 Q. Did you ever discuss it with Walter?  
21 A. No.  
22 Q. To your knowledge did Roger ever discuss those  
23 parties with Walter?  
24 A. I don't know.  
25 Q. To your knowledge did anyone ever discuss those

26

1 parties with Walter?  
2 A. I don't know.  
3 Q. Now, at the time of the accident Roger Amundson  
4 was one roommate; correct?  
5 A. Correct.  
6 MR. STEFANIC: Did you say Walter or Roger?  
7 MR. MONTELEONE: Roger.  
8 MR. STEFANIC: Okay.  
9 BY MR. MONTELEONE:  
10 Q. And John Sullivan was a roommate; correct?  
11 A. Correct.  
12 Q. Okay. How did you and John Sullivan get along?  
13 A. We were okay for a while, but his constant  
14 blasting of his stereo at 2:00 or 3:00 in the morning  
15 definitely started getting annoying. Especially when I  
16 had to go to work at 8:00 in the morning.  
17 Q. Have you talked to John in the recent past?  
18 A. No.  
19 Q. Did you guys leave on bad terms?  
20 A. No.  
21 Q. Was there an issue involving you -- was there  
22 ever an issue with you drinking Steel Reserve and coming  
23 out of your room naked and offending people?  
24 MR. STEFANIC: Object to form. Relevance. Go  
25 ahead.

27

DEPOSITION OF WAYNE JENKINS - AUGUST 14, 2014

1 THE WITNESS: No.  
2 BY MR. MONTELEONE:  
3 Q. That's just something I heard in another  
4 deposition. I don't, frankly, know nor care whether it  
5 occurred. Did you ever have any altercations with Mr.  
6 Sullivan?  
7 A. No.  
8 MR. STEFANIC: Again objection. Relevance.  
9 MR. MONTELEONE: Counsel, you can make those  
10 objections --  
11 MR. STEFANIC: I am.  
12 MR. MONTELEONE: -- but as to depositions all  
13 objections are reserved for trial on the form of the  
14 question.  
15 MR. STEFANIC: Okay. Object to form. Relevance.  
16 MR. MONTELEONE: Well, that doesn't make any sense,  
17 but you can do whatever you want.  
18 MR. STEFANIC: Go ahead.  
19 MR. MONTELEONE: Mr. Jenkins, we don't have a judge  
20 here to rule on whether Mr. Stefanic's objections are  
21 proper or not, so he's going to make objections, but  
22 you're still going to answer. Can we do that?  
23 THE WITNESS: Uh-huh.  
24 MR. STEFANIC: We have been doing that.  
25 MR. MONTELEONE: Is that a yes?

28

1 THE WITNESS: Yes.  
2 BY MR. MONTELEONE:  
3 Q. Okay. How was -- how did you get along with  
4 Roger Amundson as a roommate?  
5 A. Good.  
6 Q. You guys leave on good terms?  
7 A. Yes.  
8 Q. Have you spoken with him in the recent past?  
9 A. Not of late.  
10 Q. But not because of any bad blood?  
11 A. Correct.  
12 Q. True? Did you ever have any conversations with  
13 John Sullivan about the busted bay window or the accident  
14 involving Mr. Stiles?  
15 MR. STEFANIC: Object to form.  
16 THE WITNESS: The next day when I saw the blood --  
17 the bloody window I asked John Sullivan what happened,  
18 why is there blood, and he told me what happened.  
19 BY MR. MONTELEONE:  
20 Q. And what did Mr. Sullivan describe for you?  
21 A. He said that his cousin came from Cowgirls,  
22 walked -- walked to the backyard, tripped over a piece of  
23 wood or something and cut himself.  
24 Q. And was Mr. Sullivan specific about, one, that  
25 Mr. Stiles was -- his cousin -- was coming from Cowgirls?

29

1 A. Yes.  
2 Q. And was he specific to -- that Mr. Stiles was  
3 actually moving into the backyard, as opposed to coming  
4 out of the backyard when the accident happened?  
5 A. Correct.  
6 Q. Any other conversations you had with Mr.  
7 Sullivan about the accident?  
8 A. No. That was the only one.  
9 Q. Did he share with you any opinion that he could  
10 get in trouble?  
11 A. No.  
12 Q. Did you share with him any opinion that he  
13 could get in trouble over this?  
14 A. No.  
15 Q. Has anyone ever suggested that?  
16 A. No.  
17 Q. Now, I know the police arrived on the scene the  
18 night of the accident. Do you know that?  
19 A. No.  
20 Q. What time did you get up that morning?  
21 A. I got up about 7:00.  
22 Q. And to address a concern raised by counsel, if  
23 you would turn to Exhibit 5, and the first one is marked  
24 5-A. Do you see the lettering in the lower right corner?  
25 You see those reddish colored stains on the pane of glass

30

1 below the broken pane?  
2 A. Uh-huh.  
3 Q. Is that a yes?  
4 A. Yes.  
5 Q. Is that blood?  
6 A. I don't know.  
7 Q. Okay. Well, when you talked to Mr. Sullivan on  
8 the day -- the morning of the accident I thought you said  
9 you had looked at the bloody window?  
10 A. Not the morning. Not the morning. After I --  
11 I talked to him that evening after I got off work.  
12 Q. Okay. Well, whenever you had had that  
13 conversation -- thank you for that clarification, Mr.  
14 Jenkins. But whenever you did have that conversation  
15 with Mr. Sullivan had you looked at the window and seen  
16 blood stains on it?  
17 A. Yes.  
18 Q. Now, as you look at Exhibit 5-A, on that pane  
19 of glass below the broke pane of glass are those blood  
20 stains?  
21 A. Yes.  
22 Q. And if you look at Exhibit 5-B, are those blood  
23 stains in the lower left part of the exhibit?  
24 A. Yes.  
25 Q. And if you look at 5-C -- Exhibit 5-C, are

31

DEPOSITION OF WAYNE JENKINS - AUGUST 14, 2014

1 those blood stains in the middle part of the photograph  
2 on the pane of glass below the busted out pane of glass?  
3 A. Yes.  
4 Q. Same question for Exhibit 5-D?  
5 A. Yes.  
6 Q. Same question for Exhibit 5-E?  
7 A. Yes.  
8 Q. Same question for Exhibit 5-F?  
9 A. Yes.  
10 Q. Thank you. To your knowledge was it ever  
11 raised to Walter Amundson that there were parties  
12 involving alcohol in the backyard of this premises in  
13 Kuna?  
14 A. I don't know.  
15 Q. Now, after Mr. Stiles' accident you had to sign  
16 a new lease -- or, actually, an addendum to a lease that  
17 said you wouldn't consume any alcohol on the premises.  
18 Do you recall that?  
19 MR. STEFANIC: Object to form.  
20 THE WITNESS: No, I don't.  
21 BY MR. MONTELEONE:  
22 Q. Do you recall being presented with that?  
23 A. No, I don't.  
24 Q. You were in the premises for over a year after  
25 the accident; correct?

32

1 A. Correct.  
2 Q. And you never signed any addendum that said  
3 there wouldn't be any alcohol consumed on the premises?  
4 A. I don't remember.  
5 Q. Did you consume alcohol on the premises up  
6 through the date of your departure in August of 2012?  
7 A. Yes.  
8 Q. Did other people consume alcohol on the  
9 premises all the way through your departure through -- in  
10 August of 2012?  
11 A. I don't know.  
12 Q. How would you describe these bonfire parties  
13 that were being conducted in the backyard?  
14 A. John would go to Cowgirls and, then, by 2:00 in  
15 the morning they -- pretty much all -- everyone that's at  
16 Cowgirls would head right over to the house to where,  
17 then, they would start a fire and have conversations with  
18 each other.  
19 Q. And was Roger Amundson involved in those same  
20 parties?  
21 A. No.  
22 Q. He would never be out back having a beer around  
23 the bonfire?  
24 A. No.  
25 Q. Did he ever consume alcohol on the premises?

33

1 A. No.  
2 Q. Is it your testimony, sir, that these parties  
3 were all of Mr. Sullivan's doing?  
4 A. Yes.  
5 Q. To your knowledge did anyone tell Mr. Sullivan  
6 to stop those parties?  
7 A. I don't know.  
8 Q. Did you ever tell Mr. Sullivan to stop those  
9 parties?  
10 A. No.  
11 Q. Did you ever participate in those parties that  
12 Mr. Sullivan had loosely organized?  
13 A. One or two.  
14 Q. Would there be quite a number of people in the  
15 backyard?  
16 A. Yes.  
17 Q. Could you give me an estimate as to the  
18 greatest number of people you ever saw at one of these  
19 bonfire get togethers?  
20 A. About ten to 15.  
21 Q. Did you ever see any of that number of people  
22 come into the backyard or leave the backyard on the side  
23 of the house which is depicted in Exhibit 4?  
24 A. No.  
25 Q. They would always come through the open garage

34

1 door?  
2 A. Correct.  
3 Q. But when you first moved into that house did it  
4 look like it was depicted in Exhibit 2?  
5 A. No.  
6 Q. So, when you moved into the house that bay  
7 window was already removed?  
8 A. Almost.  
9 Q. You moved into this premises in May of 2010.  
10 Was that bay window still installed in the house when you  
11 moved in?  
12 A. Yes.  
13 Q. How long did you reside at those -- that  
14 premises before that bay window was removed?  
15 A. I stayed there long after it was removed.  
16 Q. My -- that was probably an inartful question.  
17 How long had you lived at this house prior to the removal  
18 of the bay window?  
19 A. About a month.  
20 Q. So, that means that bay window was removed and  
21 set away from the house for over a year prior to Mr.  
22 Stiles' accident?  
23 MR. STEFANIC: Object to form.  
24 MR. MONTELEONE: Is that correct?  
25 THE WITNESS: I don't know.

35

DEPOSITION OF WAYNE JENKINS - AUGUST 14, 2014

1 MR. STEFANIC: I think it misstates his prior  
2 testimony.  
3 BY MR. MONTELEONE:  
4 Q. We know that you moved in in May of 2010;  
5 correct?  
6 A. Correct.  
7 Q. And you just said that you had been there about  
8 a month when the bay window was removed; is that correct?  
9 A. Yes.  
10 Q. And we know that accident happened in July of  
11 2011. So, if the window was removed a month after you  
12 moved in, that would be sometime in the June 2010 time  
13 frame.  
14 A. I don't know exactly when it was removed. I  
15 was at work during the time.  
16 Q. I'm not asking for exactly. I'm just trying to  
17 establish what year. Could it be that you actually  
18 resided at this premises for about a year before the  
19 window was removed?  
20 A. That would be correct.  
21 Q. Okay. Because that kind of makes sense in the  
22 timeline I have got going. You just threw me for a  
23 little bit of an unexpected left turn when you said it  
24 was removed a month after you moved in.  
25 A. Sorry.

36

1 Q. No problem. That's why we do these things.  
2 So, is it a fair estimate that that window had been  
3 removed from the house for somewhere between one and  
4 three months --  
5 A. I don't --  
6 Q. -- before the accident?  
7 A. I don't know.  
8 Q. Were you upset at all that the window fell down  
9 and hit your vehicle?  
10 A. No.  
11 Q. Because there was no damage?  
12 A. Yes.  
13 Q. Do you still drive that vehicle?  
14 A. No.  
15 Q. Do you know where that window went?  
16 A. No.  
17 Q. Have you ever had any discussions with anyone  
18 as to where that window went?  
19 A. No.  
20 Q. Do you have any personal information as to how  
21 this accident happened?  
22 A. No.  
23 Q. For these bonfire parties where would the wood  
24 that would be burned in the fire pit come from?  
25 MR. STEFANIC: Jason, you're taking all of my

37

1 questions.  
2 THE WITNESS: John would take pallets -- broken  
3 pallets on the other side of the railroad, then, bring  
4 them over and use them as firewood.  
5 BY MR. MONTELEONE:  
6 Q. When you say the other side of the railroad --  
7 A. A pallet business company that puts broken --  
8 their broke pallets inside the road for the dump truck to  
9 take them.  
10 Q. Okay. And would that be on the other side of  
11 the back fence line? Where were these pallets kept --  
12 these broken pallets?  
13 A. On the other side of town.  
14 Q. Oh. So, he would move them over with his  
15 car?  
16 A. Yes. Sometimes use -- sometimes use my truck  
17 to do it.  
18 Q. Okay. And, I'm sorry, I forget. Was it a GMC?  
19 What type of truck did you have at this time?  
20 A. 2003 GMC Sonoma.  
21 Q. Okay. And was it a regular size bed or a  
22 shorty bed?  
23 A. Regular size.  
24 Q. And a camper shell on it?  
25 A. No.

38

1 Q. And when John would bring back this wood was it  
2 always busted up pallets?  
3 A. Yes.  
4 Q. Would it ever be wood that looks like the wood  
5 that's depicted in Exhibit 4?  
6 A. No.  
7 Q. Do you know where the wood that's depicted in  
8 Exhibit 4 came from?  
9 A. No.  
10 Q. Did you ever see John burn wood that looks like  
11 that which is depicted in Exhibit 4?  
12 A. No.  
13 Q. After this accident do you recall Walter  
14 placing any additional requirements on you relative to  
15 being a tenant at this premises?  
16 A. I don't remember.  
17 Q. Why did you move out of the premises at 756  
18 West 4th Street in Kuna?  
19 A. I lost my job and couldn't pay the rent, so I  
20 had to leave.  
21 Q. Where were you working at the time?  
22 A. I was the head janitor at the Boise police  
23 station.  
24 Q. Why did you lose your job?  
25 A. I was late and they said no more.

39

DEPOSITION OF WAYNE JENKINS - AUGUST 14, 2014

1 Q. How did you come to live in the property in  
2 Kuna?  
3 A. I was hanging out with John on my weekends and  
4 we went over to Roger's to where I met Roger and I found  
5 out from Roger that he was looking for roommates and so I  
6 asked how much is the rent, he told me, and, then, I said  
7 give me a couple months and I will move in. He said  
8 okay.  
9 Q. How much was your rent?  
10 A. Two fifty a month.  
11 Q. To whom would you pay the rent?  
12 A. To his dad.  
13 Q. Would Walter come by and pick that up each  
14 month?  
15 A. Yes.  
16 Q. Did you ever give the rent to Roger to provide  
17 to his dad?  
18 A. No.  
19 Q. Was Roger the one that was responsible for  
20 keeping the premises overall in good condition?  
21 MR. STEFANIC: Object to form.  
22 THE WITNESS: I don't know  
23 BY MR. MONTELEONE:  
24 Q. Well, if you ever had an issue with the  
25 condition of the premises who would you go to?

40

1 A. I would go to Walter.  
2 Q. Did you ever bring any issues relative to the  
3 condition of the premises to Walter's attention?  
4 A. No.  
5 Q. Did you ever have any problem with any  
6 electrical outlets or fixtures?  
7 A. No.  
8 Q. Did you ever have any problem with the  
9 plumbing?  
10 A. No.  
11 Q. Did you ever have any problem with the HVAC?  
12 A. No.  
13 Q. Did you ever have any problem with the kitchen  
14 appliances?  
15 A. No.  
16 Q. Laundry facilities?  
17 A. No.  
18 Q. Any other aspect of the premises with which you  
19 had any difficulty at all?  
20 A. No.  
21 Q. So, in two years it was a very easy tenancy you  
22 were having?  
23 A. Yes.  
24 Q. Except for maybe a few problems with Mr.  
25 Sullivan?

41

1 A. Correct.  
2 Q. Did anyone ever discuss with you that the  
3 dishes weren't getting done?  
4 A. No.  
5 Q. Did anyone ever discuss with you the laundry  
6 was piling up?  
7 A. No.  
8 Q. Anyone ever discuss with you that the common  
9 area or the living room or other areas that were  
10 mutually occupied by the tenants were not being up kept  
11 properly?  
12 A. No.  
13 Q. Did you ever ask Roger to provide any  
14 information to his father for you?  
15 A. No.  
16 Q. Was there a sprinkler system on the property?  
17 A. Yes.  
18 Q. Was it automatic -- was it automatic?  
19 A. Yes.  
20 Q. Did that ever malfunction during the two years  
21 you lived there?  
22 A. Not that I know of.  
23 Q. Was the front -- if you'd turn to Exhibit 2.  
24 Can you see the walkway and the handrail and an elevated  
25 entry space -- do you see that?

42

1 A. Yes.  
2 Q. Was that ever rickety or was it always stable?  
3 A. Stable.  
4 Q. Anything in the house at all that required  
5 Walter's attention during the two years you lived  
6 there?  
7 A. Not that I know of.  
8 Q. Did you pay your rent in cash or check?  
9 A. Cash.  
10 Q. Now, my understanding was that bay window was  
11 removed as part of a renovation to the premises to make  
12 that a garage area again; is that correct?  
13 A. That's correct.  
14 Q. Did you have any involvement in the renovation?  
15 A. No.  
16 Q. Who did the framing in of the garage after the  
17 bay window had been removed?  
18 A. I don't know.  
19 Q. Now, it sounds like you were at work quite a  
20 bit during the period of time we have been discussing.  
21 What hours did you work for the Boise police?  
22 A. I worked from 8:00 a.m. to 5:00 p.m.  
23 Q. Now, if you look at Exhibit 4 and you see that  
24 gravel covered walkway in the middle of it?  
25 A. Uh-huh.

43



DEPOSITION OF WAYNE JENKINS - AUGUST 14, 2014

1 Q. Is that a yes?  
2 A. Yes.  
3 Q. Okay. Not depicted would be a gate that that  
4 gravel walkway would lead up to; is that correct?  
5 A. Correct.  
6 Q. Did that gate ever have any problems?  
7 A. I don't know.  
8 Q. Did you ever use that gate during the two years  
9 you lived there?  
10 A. No.  
11 Q. Was anything other than that bay window and,  
12 apparently, this piece of wood that's in Exhibit 4,  
13 stored over in that area -- the gravel covered walkway  
14 next to the house?  
15 MR. STEFANIC: Object to form. Incomplete  
16 hypothetical. Assumes facts not in evidence.  
17 THE WITNESS: I don't know.  
18 BY MR. MONTELEONE:  
19 Q. Okay. Well, I just asked whether you ever saw  
20 anything else stored there.  
21 A. No.  
22 Q. When you moved into the house was the white  
23 picket fence already installed?  
24 A. Yes.  
25 Q. Was the wooden cedar fence already installed?

44

1 A. Yes.  
2 Q. Who mowed the lawn?  
3 A. Roger.  
4 Q. Why did Roger do it and not John or you?  
5 A. I don't know. He never asked us to.  
6 Q. And that lawn equipment was kept in the garage  
7 area behind where that bay window had been removed; is  
8 that correct?  
9 A. Correct.  
10 Q. Was there ever any fertilizer put down on the  
11 lawn?  
12 A. I don't know.  
13 Q. Other than lawn maintenance, did Roger do any  
14 other upkeep on the premises?  
15 A. I don't know.  
16 Q. What type of heating was it? Was it forced  
17 air?  
18 A. I don't know. I never looked.  
19 Q. Do you know if it was gas or electric?  
20 A. No.  
21 Q. Did your rent payment include utilities or did  
22 you pay those separately?  
23 A. I paid those separately.  
24 Q. And would you, John, and Roger all chip in or  
25 were you responsible to pay for the electric and John

45

1 was responsible for the water or some arrangement like  
2 that?  
3 A. We would all chip in.  
4 Q. Do you recall -- excuse me -- if there was a  
5 large gas bill in the winter and a large electrical bill  
6 in the summer?  
7 A. I don't know. I would just pay my share and  
8 move on.  
9 Q. Was there central air in the home?  
10 A. Yes.  
11 Q. Was the heat electric or gas?  
12 A. Gas.  
13 Q. Was the water heater electric or gas?  
14 A. I don't know that.  
15 Q. With respect to any type of maintenance that  
16 would be required, who would take care of that?  
17 MR. STEFANIC: Objection. Vague.  
18 THE WITNESS: That would be Walter.  
19 BY MR. MONTELEONE:  
20 Q. And in Walter's absence would Roger do it?  
21 MR. STEFANIC: Object to form. Incomplete  
22 hypothetical. Assume facts not in evidence.  
23 THE WITNESS: I wouldn't know. I mostly stayed in  
24 my room while John and Roger did their own thing.  
25 BY MR. MONTELEONE:

46

1 Q. And we have -- did you -- asking a lot of  
2 questions. Did you play a lot of video games during this  
3 time?  
4 A. Yes.  
5 Q. Is that what you would typically do in your  
6 room?  
7 A. Yes.  
8 Q. Is it fair to say you pretty much kept to  
9 yourself and Roger and John were palling around a little  
10 bit more than you were?  
11 A. Yes.  
12 Q. When did you first notice that the bay window  
13 had fallen onto your truck and the pane of glass had  
14 broke?  
15 A. When I went out to have a smoke and it was  
16 about 8:00 during the evening.  
17 Q. Do you know what caused it to fall over?  
18 A. A big gust of wind blew it over onto my truck.  
19 Q. How do you know that? Did you see the window  
20 fall?  
21 A. No. I just --  
22 Q. Had it been a windy day?  
23 A. Yes.  
24 Q. Was the only thing holding up that bay window  
25 prior to the wind gust blowing it down those two supports

47

DEPOSITION OF WAYNE JENKINS - AUGUST 14, 2014

1 that are shown in Exhibit 4?  
2 A. Yes.  
3 Q. Now, when that window -- the bay window was  
4 placed next to the white vinyl fence prior to it blowing  
5 down onto your truck who had placed that window along the  
6 white vinyl fence?  
7 A. I don't know.  
8 Q. Who removed the window from the house?  
9 A. I don't know.  
10 Q. During this time that the garage was being  
11 renovated or the house was being renovated to return to a  
12 garage space, were any workmen involved that were not  
13 Walter, Roger, or John?  
14 MR. STEFANIC: Object to form.  
15 THE WITNESS: I don't know.  
16 BY MR. MONTELEONE:  
17 Q. Did you ever see a maintenance man's truck  
18 parked out in front of your house?  
19 A. No.  
20 Q. Did you ever see a carpenter's truck parked  
21 outside of your house?  
22 A. No.  
23 Q. Did you ever see any type of contractors or  
24 subcontractors' vehicle parked outside of your house?  
25 A. No.

48

1 Q. How often would Walter come by the property  
2 on 4th Street in Kuna during the two years you lived  
3 there?  
4 A. Once a month.  
5 Q. To pick up the rent?  
6 A. Yes.  
7 Q. Any other times you noticed Roger at the -- or  
8 excuse me -- Walter at the house, other than to pick up  
9 the rent?  
10 A. No.  
11 Q. Did you ever hear anyone discuss that this  
12 walkway on the side of the house would not be a good  
13 place to put that broken window?  
14 A. No.  
15 Q. Following Mr. Stiles' accident -- you know that  
16 Mr. Stiles and John Sullivan were cousins?  
17 A. Uh-huh.  
18 Q. Is that a yes?  
19 A. Yes.  
20 Q. Thank you. After Mr. Stiles' accident was  
21 Walter on the premises more often?  
22 A. No.  
23 Q. Do you know Dee Dee White?  
24 A. No.  
25 Q. Do you know the names of any of the people that

49

1 were in the backyard --  
2 A. No.  
3 Q. -- on the day of the accident?  
4 A. No.  
5 Q. Okay.  
6 MR. STEFANIC: Thank you.  
7 BY MR. MONTELEONE:  
8 Q. Have you given a statement to anyone, whether  
9 it be police, an insurance adjuster, anyone at all about  
10 the events of this accident?  
11 A. I don't remember.  
12 Q. Can you recount for me, other than myself, with  
13 all whom you have discussed this broken window or the  
14 facts of this accident?  
15 A. The only person I remember is the insurance  
16 guy.  
17 Q. And when did the insurance guy talk to you?  
18 A. I don't know the exact date.  
19 Q. Well, not an exact date. If you could do that  
20 I'd think you were Albert Einstein if you could remember  
21 that. But was it within 30 days after the accident?  
22 MR. STEFANIC: Object to form.  
23 THE WITNESS: I don't know.  
24 BY MR. MONTELEONE:  
25 Q. Was it sometime shortly after the accident?

50

1 A. No.  
2 Q. It was months or possibly even a year or more  
3 after the accident; is that correct?  
4 A. Months.  
5 Q. And do you recall if that insurance person's  
6 name was Barry?  
7 A. No. I don't remember.  
8 Q. And what did you tell the insurance person?  
9 A. Exactly what John Sullivan told me.  
10 Q. Which, again, was --  
11 A. That his cousin came over and tripped and cut  
12 himself.  
13 Q. Did you share with this insurance person that  
14 you were asleep at the time of the accident?  
15 A. Yes.  
16 Q. Other than this -- did you share any other  
17 information with this insurance person?  
18 A. No.  
19 Q. Was it a conversation in person or over the  
20 phone?  
21 A. Person.  
22 Q. And was it -- did it occur at the house where  
23 you were living?  
24 A. Yes.  
25 Q. How long did the conversation last?

51

DEPOSITION OF WAYNE JENKINS - AUGUST 14, 2014

1 A. About five minutes.  
2 Q. Other than this insurance person, did -- or  
3 have you discussed this broken window or the facts of  
4 this accident with anyone else?  
5 A. No.  
6 Q. You haven't discussed it with any family or  
7 friends?  
8 A. No.  
9 Q. Have you discussed it with anyone with the Kuna  
10 fire department?  
11 A. No.  
12 Q. On this side of the house where the windows was  
13 placed, as depicted in Exhibit 4, is there any lighting  
14 on that side of the house?  
15 A. No.  
16 Q. So, during the evening and early morning hours  
17 it would be dark over there?  
18 A. Correct.  
19 MR. STEFANIC: Object to form.  
20 BY MR. MONTELEONE:  
21 Q. And, then, if you turn the corner in Exhibit 4  
22 to the front of the house what would be the first  
23 external artificial lighting you would run into?  
24 A. That would be the porch light.  
25 Q. And that's -- on Exhibit 2 -- on Exhibit 2 that

52

1 would be porch leading up to the front doorway?  
2 A. Correct.  
3 Q. Okay. In the two years you lived at this  
4 property was anyone else ever injured?  
5 A. No.  
6 Q. Did you ever have any need to report any  
7 concern or problem with the premises to Walter?  
8 A. No.  
9 Q. Do you know a gentleman named Jason Reno?  
10 A. No.  
11 Q. R-e-n-o.  
12 A. No.  
13 Q. Do you know a gentleman named Matt Cole?  
14 A. No.  
15 Q. Had you ever met Mr. Stiles at anytime prior to  
16 this accident?  
17 A. No.  
18 Q. Did you ever meet him anytime following the  
19 accident?  
20 A. No.  
21 Q. And, of course, you didn't meet him on the day  
22 of the accident; correct?  
23 A. Correct.  
24 Q. At the time of the accident do you know who all  
25 was still outside around the bonfire?

53

1 A. No.  
2 Q. Do you know the names of any people that  
3 regularly would attend these bonfire get togethers?  
4 A. No.  
5 Q. The evening of this bonfire get together that  
6 preceded the early morning hours when this accident  
7 happened, do you know if that garage door was up or  
8 down?  
9 A. No.  
10 Q. Do you recall how big the moon was on the night  
11 of this accident, July 11th?  
12 A. No.  
13 Q. Do you recall how much ambient light was  
14 outside on the night of the accident?  
15 A. No.  
16 Q. Where were the restrooms that people would  
17 use that were attending the -- these bonfire get  
18 togethers?  
19 A. Be next to the kitchen.  
20 Q. And how would it be accessed through the house?  
21 A. Go through the garage entrance, go straight  
22 through the kitchen and take a right and it will be on  
23 the right. Right there.  
24 Q. How many doors would go from the backyard area  
25 into the garage or the house?

54

1 A. One to the backyard and one -- and one into the  
2 house.  
3 Q. Okay. So, there would be one door that got you  
4 into the garage area and one door that got you into the  
5 house itself from the backyard?  
6 A. Yes.  
7 Q. So, to use the restroom you just described,  
8 would people coming through the door into the garage and,  
9 then, there was another door from the garage into the  
10 kitchen?  
11 A. Yes.  
12 Q. And, then, the bathroom was situated next to  
13 the kitchen?  
14 A. Yes.  
15 Q. Do you know when Exhibit 2 was taken?  
16 A. No.  
17 Q. And I understand you didn't take any of these  
18 photographs; correct?  
19 A. Correct.  
20 Q. When that insurance person came and spoke with  
21 you for about that five minute period, did that insurance  
22 person take photographs?  
23 A. I don't remember. It was too long ago.  
24 Q. After the accident was the window we have been  
25 discussing moved?

55

DEPOSITION OF WAYNE JENKINS - AUGUST 14, 2014

1 A. No.  
2 Q. It just stayed right where it was?  
3 A. Yes.  
4 Q. For how long?  
5 A. I don't know.  
6 Q. Was it there when you moved out in August of  
7 2012?  
8 A. No.  
9 Q. At what point in time was it moved?  
10 A. I don't know.  
11 Q. Who moved it?  
12 A. I don't know.  
13 Q. Where was it moved?  
14 A. I don't know.  
15 Q. Was it taken away from the property?  
16 A. I don't know.  
17 Q. I mean he may not know if it was moved, but he  
18 can tell me certainly whether it was still on the  
19 premises. You have no idea what happened with the  
20 window, where it went, who moved it, or when it was  
21 removed?  
22 A. Correct.  
23 Q. Was that window ever just leaning against the  
24 white vinyl fence or was it always propped up by the  
25 supports shown in Exhibit --

56

1 A. It was always propped up.  
2 Q. -- 4? With the supports shown in Exhibit 4?  
3 A. Yes.  
4 Q. And those supports, are they just pieces of  
5 scrap that are nailed to the side of the window?  
6 A. Yes.  
7 Q. And do you know who set that up?  
8 A. No.  
9 Q. Do you know where the slats, those pieces of  
10 scrap came from?  
11 A. No.  
12 Q. Now, that we have had a chance to talk about  
13 this at length, can you recall any other individuals with  
14 whom you have discussed this window or the facts of this  
15 accident, other than the insurance person you mentioned  
16 earlier?  
17 A. No.  
18 MR. MONTELEONE: We are just about done, Mr.  
19 Jenkins. Let's go off the record for a second.  
20 (An off-the-record discussion ensued.)  
21 BY MR. MONTELEONE:  
22 Q. All right. Let's go back on the record. Did  
23 you ever have any house guests over?  
24 A. No.  
25 Q. Did you ever have any family members over?

57

1 A. No.  
2 Q. Any friends?  
3 A. No.  
4 Q. Any girlfriend?  
5 A. No.  
6 Q. In today's day and age we have got to ask. Any  
7 boyfriends?  
8 A. No.  
9 Q. Did you sign a lease?  
10 A. Yes.  
11 Q. Do you still have a copy of the lease you  
12 signed?  
13 A. No.  
14 Q. How many leases did you sign?  
15 A. One.  
16 Q. Did you sign it before or after this accident?  
17 A. Before.  
18 Q. Did you sign it right when you moved into the  
19 property in -- near May of 2010?  
20 A. No.  
21 Q. When did you sign it?  
22 A. When Walter came down to get the first month of  
23 rent.  
24 Q. Do you recall if you moved in mid month?  
25 A. I don't remember exactly what day I moved in.

58

1 Q. Did anyone ever tell Walter about the window  
2 being broken?  
3 A. I don't know.  
4 Q. Do you know if Walter ever learned about the  
5 window being broken?  
6 A. I don't know.  
7 Q. Do you have any information or knowledge as to  
8 whether Roger ever told his dad about the window being  
9 broken?  
10 A. I do not.  
11 Q. Now, were bonfires -- get togethers occurring  
12 prior to this renovation on the premises installing the  
13 garage door?  
14 A. That I don't know.  
15 Q. Well, were bonfire get togethers occurring  
16 shortly after you moved in in May of 2010?  
17 A. I don't remember.  
18 Q. Was there ever a get together in the backyard  
19 prior to that window that we have been talking about  
20 being removed?  
21 A. Yes.  
22 Q. And how many get togethers were in the  
23 backyard, approximately, prior to the window being  
24 removed?  
25 A. About two or three.

59

DEPOSITION OF WAYNE JENKINS - AUGUST 14, 2014

1 Q. How would people get into the backyard for  
2 those get together?  
3 A. They would come in from the front door.  
4 Q. No one would ever come in through the side gate  
5 where that gravel walkway is?  
6 A. No. The front door was left unlocked, so  
7 people could just walk right in.  
8 Q. Did you have any problem with that?  
9 A. No. I had a lock on my door, so I -- it didn't  
10 bother me.  
11 Q. Was there ever an issue where Mr. Sullivan  
12 spoke with you about you blasting music too loudly?  
13 A. No.  
14 Q. Now, earlier we had talked before about there  
15 being a sprinkler system -- automated sprinkler system at  
16 the premises. Do you recall that?  
17 A. Yes.  
18 Q. Who blew out the sprinklers prior to winter  
19 coming on?  
20 A. That would be Roger. He would use his own air  
21 pressure.  
22 Q. His own air compressor?  
23 A. Yeah.  
24 Q. And did you see him do that both late fall  
25 seasons you were on the premises?

60

1 A. No.  
2 Q. How do you know that he was the one that blew  
3 out the sprinklers? Did he tell you?  
4 A. No.  
5 Q. Okay. How do you know that?  
6 A. I just assumed.  
7 Q. And why do you assume that?  
8 A. Because he had an air compressor, so I just  
9 figured in my head he probably does it himself.  
10 Q. Did you also presume that because Roger was  
11 involved in any project requiring maintenance or upkeep  
12 on the property when Walter wasn't there?  
13 MR. STEFANIC: Object to form. Misstates testimony.  
14 Assumes facts not in evidence. Go ahead.  
15 THE WITNESS: He was -- I always would see him  
16 planting his own flowers and stuff.  
17 BY MR. MONTELEONE:  
18 Q. Roger would plant flowers; correct?  
19 A. Correct.  
20 Q. Roger would blow out the sprinklers; correct?  
21 A. That's what I assumed. I don't know.  
22 Q. But Roger had the air compressor?  
23 A. Correct.  
24 Q. Roger would mow the lawn?  
25 A. Correct.

61

1 Q. Throughout the -- did leaves ever need to be  
2 removed from the gutters?  
3 A. I don't know.  
4 Q. Who did the spring cleanup on the premises?  
5 A. That I don't know.  
6 MR. STEFANIC: Object to form.  
7 BY MR. MONTELEONE:  
8 Q. It looks like there is some planters that are  
9 shown in Exhibit 2. Do you see those around the patio  
10 area and --  
11 A. Uh-huh.  
12 Q. Is that a yes?  
13 A. Yes.  
14 Q. And who would clean out those planters come  
15 spring?  
16 A. That I don't know. I was too busy with my job.  
17 Q. Was Roger working this time. You say you were  
18 busy with your job. Was Roger also at a job?  
19 A. That I don't know.  
20 Q. Who spent the most time around the premises?  
21 A. I don't know. I was mostly gone working.  
22 Q. Well, you could come home at 5:00, wouldn't  
23 you?  
24 A. But I would go through to my room and stay in  
25 there the whole time.

62

1 Q. Was Roger a bit of a neat freak?  
2 A. I don't know.  
3 Q. Was he there the whole two years you lived  
4 there?  
5 A. Yes.  
6 Q. And you don't have any opinion as to whether he  
7 was very cleanly?  
8 A. No.  
9 Q. Who would winterize the property, if there was  
10 any type of work needing to be done to get ready for  
11 snowfall?  
12 A. I don't know.  
13 Q. Who was -- did anyone shovel the walkways if  
14 snow fell?  
15 A. Not to my knowledge.  
16 Q. Did leaves ever need raked up?  
17 A. I don't know.  
18 Q. But you lived there. Did you ever see leaves  
19 in the yard in the fall?  
20 A. I never looked out the window. I just focused  
21 on my videogame.  
22 Q. Now, you testified earlier that on weekends you  
23 would hang out with John Sullivan. Do you recall that  
24 testimony?  
25 A. Yes.

63

DEPOSITION OF WAYNE JENKINS - AUGUST 14, 2014

1 Q. What would you guys do?  
2 A. During when I was living there or before?  
3 Q. Prior to -- let's divide that. Before you  
4 lived there what would you guys do?  
5 A. I would go to the Eight Pocket with him and  
6 play pool and -- either that or go play pool at one of  
7 the bars in Kuna.  
8 Q. So, playing pool was how you guys would  
9 socialize?  
10 A. Yes.  
11 Q. Any other activities you would do?  
12 A. No.  
13 Q. Then after you moved into the premises on 4th  
14 Street in Kuna, what type of things would John and you  
15 do?  
16 A. We would do our own things. I would play  
17 my videogames in my room and he would go out and play  
18 pool or do something else. It was -- it was his  
19 friends.  
20 Q. Is it fair to say that John and you didn't hang  
21 out very much together after you were both living at the  
22 premises on 4th Street?  
23 A. Yes.  
24 Q. Is there any reason for that?  
25 A. No. We just did our own thing.

64

1 Q. What was the period of time over which you  
2 worked for the Boise police?  
3 A. Four years.  
4 Q. And when did you depart from that employment?  
5 A. That would be -- it would be 2012.  
6 Q. And have you worked outside the home since that  
7 job?  
8 A. Yes.  
9 Q. Okay. Are you currently employed?  
10 A. Yes.  
11 Q. What type of work do you currently do, Mr.  
12 Jenkins?  
13 A. I -- I load up trucks with food supplies.  
14 Q. And who is your employer?  
15 A. At the temp agency called Express.  
16 Q. How long have you been doing that?  
17 A. About two years now.  
18 Q. So, was that the work you began doing after  
19 leaving your custodian position at -- custodian position  
20 at Boise police?  
21 A. No.  
22 Q. What other work did you do between the Boise  
23 police and loading the trucks for the temp agency?  
24 A. I worked for Pro Power Cleaning for about six  
25 months and I had to quit because they were paying me for

65

1 only eight hours and working me for 12 hours and then --  
2 Q. Good reason to get. I would, too.  
3 A. Yeah. And before that I had worked for  
4 Western Building Maintenance. Quit them. They were only  
5 working me five hours a night and between me and two  
6 other guys cleaning a four story building by ourselves  
7 and we had to clean it in five hours. So, I said bye to  
8 them as well.  
9 Q. So, after -- it went Boise police, then, those  
10 two professional cleaning positions and, then, did you  
11 begin the work doing loading for the temp agency?  
12 A. No. I have been doing different jobs since  
13 then. This loading one is just a summer job for this  
14 year.  
15 Q. Okay. Then there is a few questions I have got  
16 to ask that I ask in every deposition. It doesn't matter  
17 who the witness is. Have you ever been convicted of a  
18 felony?  
19 A. No.  
20 Q. Ever been charged with any crime?  
21 A. A DUI.  
22 Q. Have you understood all my questions or when  
23 they haven't been clear asked me to clarify them for you?  
24 A. No.  
25 Q. You have not understood all my questions?

66

1 A. Yes, I have understood.  
2 MR. STEFANIC: Except that one.  
3 BY MR. MONTELEONE:  
4 Q. Except that one. And, then, are you under the  
5 influence of any alcohol, drugs, or medications that  
6 would affect your ability to tell the truth today?  
7 A. No.  
8 Q. To understand my questions?  
9 A. No.  
10 Q. Okay. Have you consumed any alcoholic  
11 beverages in the prior 12 hours?  
12 A. No.  
13 Q. Have you taken any illegal or legal drugs in  
14 the last 48 hours?  
15 A. No.  
16 MR. MONTELEONE: I appreciate your time, Mr.  
17 Jenkins. Thanks for coming in.  
18 THE WITNESS: All right.  
19 MR. STEFANIC: Wait a second. I may have some  
20 questions, so --  
21 (A recess was had.)  
22  
23 EXAMINATION  
24 BY MR. STEFANIC:  
25 Q. The only question I have in terms of a

67

DEPOSITION OF WAYNE JENKINS - AUGUST 14, 2014

1 clarification is we talked about Exhibit 4 and you  
2 were asked a question as to what type of wood Mr.  
3 Sullivan burned at bonfires and I think you said it was  
4 pallets?

5 A. Correct.

6 Q. Were you present all the time that he burned  
7 wood?

8 A. No.

9 Q. Is it possible that he could have burned pieces  
10 of wood such as depicted in Exhibit No. 4?

11 A. I don't know.

12 Q. You wouldn't know one way or the other?

13 A. No.

14 MR. STEFANIC: That's all I have. And I will  
15 reserve the remainder of my questions for trial. Thank  
16 you. Okay.

17  
18 FURTHER EXAMINATION

19 BY MR. MONTELEONE:

20 Q. I have one other question here. A lawyer's  
21 biggest lie. I only have one more question. When you  
22 had said earlier that before the renovation placing a  
23 garage door on the premises that there were parties every  
24 night. Do you recall that testimony?

25 MR. STEFANIC: Object to form. Misstates

68

1 testimony.

2 THE WITNESS: I don't remember like --

3 BY MR. MONTELEONE:

4 Q. Okay. Were there frequent parties at the  
5 premises prior to the renovation where the garage door  
6 was installed?

7 A. When the garage door was installed, yes, there  
8 was constant parties.

9 Q. Okay. After the garage door was installed.

10 A. Yes.

11 Q. Prior to the garage door being installed were  
12 there frequent parties?

13 MR. STEFANIC: Object to form.

14 THE WITNESS: Only in the house. He would only  
15 invite a couple of people in the house.

16 BY MR. MONTELEONE:

17 Q. And who would he be?

18 A. John. And he would blast his music as loud as  
19 he could.

20 Q. And that's why you were saying until 2:00 or  
21 3:00 in the morning when you had to be up at 8:00 for  
22 work?

23 A. Yes.

24 Q. Did the people that came to those parties  
25 always enter the house through the front door?

69

1 A. Yes.

2 MR. MONTELEONE: That was four questions, but I'm  
3 all done. Thanks for your time, Mr. Jenkins.

4  
5 (Whereupon the deposition ended at 2:31 p.m.)

6 \*\*\*\*\*

7 (Signature waived.)  
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70

REPORTER'S CERTIFICATE

STATE OF IDAHO )  
 ) ss.  
County of Ada )

I, M. DEAN WILLIS, Certified Shorthand Reporter  
and Notary Public in and for the state of Idaho,  
DO HEREBY CERTIFY:

That prior to being examined, the witness named  
in the foregoing deposition was by me duly sworn to  
testify the truth, the whole truth and nothing but  
the truth;

That said deposition was taken down by me in  
shorthand at the time and place therein named and  
thereafter reduced to typewriting by myself, and  
that the foregoing transcript contains a full, true  
and verbatim record of said deposition.

I further certify that I have no interest in the  
event of this action.

WITNESS my hand and seal this \_\_\_\_ day of  
\_\_\_\_\_, 2014.

M. DEAN WILLIS, CSR NO. 95 and  
Notary Public, State of Idaho.  
My Commission expires: 9-15-16

**DEPOSITION OF WAYNE JENKINS - AUGUST 14, 2014**

1:00 - 4:1, 11:00 - 26:2, 11th - 54:11, 12 - 66:1, 67:11, 12/31/1984 - 7:4, 14 - 4:1, 15 - 34:20, 2 - 17:10, 17:11, 17:13, 17:15, 35:4, 42:23, 52:25, 52:25, 55:15, 62:9, 2:00 - 27:14, 33:14, 69:20, 2:31 - 70:5, 2003 - 18:2, 38:20, 2004 - 6:18, 7:1, 2006 - 6:18, 7:1, 2010 - 8:8, 22:4, 35:9, 36:4, 36:12, 58:19, 59:16, 2011 - 6:20, 6:21, 7:11, 7:16, 8:8, 11:7, 15:22, 18:1, 36:11, 2012 - 33:6, 33:10, 56:7, 65:5, 2013 - 7:22, 2014 - 4:1, 14:11, 24/7 - 25:17, 3:00 - 27:14, 69:21, 30 - 50:21, 31st - 14:11, 14:17, 4 - 21:15, 21:17, 21:19, 22:8, 22:11, 23:11, 24:4, 24:10, 34:23, 39:5, 39:8, 39:11, 43:23, 44:12, 48:1, 52:13, 52:21, 57:2, 57:2, 68:1, 68:10,	48 - 67:14, 4th - 6:14, 7:25, 39:18, 49:2, 64:13, 64:22, 5 - 9:22, 10:2, 11:1, 16:8, 30:23, 5-a - 30:24, 31:18, 5-b - 31:22, 5-c - 31:25, 31:25, 5-d - 32:4, 5-e - 32:6, 5-f - 32:8, 5:00 - 43:22, 62:22, 7:00 - 30:21, 756 - 6:14, 7:25, 39:17, 8:00 - 27:16, 43:22, 47:16, 69:21, a.m - 43:22, ability - 67:6, about - 6:16, 12:3, 13:6, 13:11, 13:13, 14:1, 14:17, 14:19, 17:18, 22:18, 23:17, 25:9, 25:22, 26:2, 26:16, 29:13, 29:24, 30:7, 30:21, 34:20, 35:19, 36:7, 36:18, 47:16, 50:9, 52:1, 55:21, 57:12, 57:18, 59:1, 59:4, 59:8, 59:19, 59:25, 60:12, 60:14, 65:17, 65:24, 68:1, absence - 46:20, accessed - 54:20, accident - 6:19, 7:10, 7:13, 8:1, 8:5, 8:11, 8:14, 8:16, 8:22, 9:11, 16:13, 16:14, 16:20, 17:25, 19:8, 25:20, 25:23, 27:3, 29:13, 30:4, 30:7, 30:18, 31:8, 32:15,	32:25, 35:22, 36:10, 37:6, 37:21, 39:13, 49:15, 49:20, 50:3, 50:10, 50:14, 50:21, 50:25, 51:3, 51:14, 52:4, 53:16, 53:19, 53:22, 53:24, 54:6, 54:11, 54:14, 55:24, 57:15, 58:16, activities - 64:11, actually - 6:25, 30:3, 32:16, 36:17, addendum - 32:16, 33:2, additional - 39:14, address - 6:21, 6:24, 30:22, adjuster - 50:9, administered - 5:16, administrative - 5:3, advised - 14:13, 14:19, 14:19, affect - 67:6, again - 23:22, 28:8, 43:12, 51:10, against - 18:9, 56:23, age - 58:6, agency - 65:15, 65:23, 66:11, ago - 13:13, 13:18, 13:22, 13:25, 15:5, 55:23, ahead - 10:24, 16:10, 21:8, 25:2, 27:25, 28:18, 61:14, air - 45:17, 46:9, 60:20, 60:22, 61:8, 61:22, albert - 50:20, alcohol - 32:12, 32:17, 33:3, 33:5, 33:8, 33:25, 67:5,	alcoholic - 67:10, all - 4:16, 9:9, 10:10, 10:17, 10:23, 12:21, 15:14, 17:22, 19:18, 28:12, 33:9, 33:15, 34:3, 37:8, 37:25, 41:19, 43:4, 45:24, 46:3, 50:9, 50:13, 53:24, 57:22, 66:22, 66:25, 67:18, 68:6, 68:14, 70:3, allow - 6:4, 6:6, allowed - 4:16, almost - 26:15, 35:8, along - 16:23, 18:22, 19:9, 19:17, 19:23, 20:2, 20:21, 27:12, 29:3, 48:5, already - 16:24, 19:6, 20:9, 23:7, 35:7, 44:23, 44:25, altercations - 28:5, always - 34:25, 39:2, 43:2, 56:24, 57:1, 61:15, 69:25, am - 28:11, ambient - 54:13, amended - 15:11, 15:16, 15:18, amundson - 7:13, 19:9, 19:15, 19:16, 19:21, 27:3, 29:4, 32:11, 33:19, amundson's - 13:4, an - 5:5, 5:16, 5:16, 6:19, 9:21, 12:23, 24:17, 27:21, 27:22, 32:16, 34:17, 35:16, 36:23, 40:24, 42:24, 50:9, 50:19, 57:20, 60:11, 61:8, annoying - 27:15, another - 6:8, 28:3, 55:9, answer - 6:1, 6:5,	6:7, 6:11, 9:3, 21:8, 21:9, 28:22, anyone - 9:6, 11:14, 11:20, 12:3, 12:12, 20:17, 22:21, 22:23, 23:4, 23:23, 26:25, 30:15, 34:5, 37:17, 42:2, 42:5, 42:8, 49:11, 50:8, 50:9, 52:4, 52:9, 53:4, 59:1, 63:13, anything - 13:1, 13:6, 22:15, 22:17, 23:17, 43:4, 44:11, 44:20, anytime - 22:17, 53:15, 53:18, apparently - 12:6, 44:12, appliances - 41:14, appreciate - 67:16, approximately - 8:1, 59:23, area - 24:9, 42:9, 43:12, 44:13, 45:7, 54:24, 55:4, 62:10, areas - 42:9, arm - 8:21, 9:1, 9:7, 9:14, around - 7:21, 11:2, 33:22, 47:9, 53:25, 62:9, 62:20, arrangement - 46:1, arrived - 30:17, artificial - 52:23, ask - 6:7, 10:11, 10:19, 15:14, 42:13, 58:6, 66:16, 66:16, asking - 36:16, 47:1, asleep - 8:16, 8:20, 25:24, 51:14, aspect - 41:18, assume - 46:22, 61:7,	assumed - 61:6, 61:21, assumes - 44:16, 61:14, attached - 23:11, attend - 54:3, attending - 54:17, attention - 41:3, 43:5, audibly - 6:1, august - 4:1, 7:23, 33:6, 33:10, 56:6, automated - 60:15, automatic - 42:18, 42:18, awake - 8:19, aware - 12:7, away - 35:21, 56:15, baby - 7:5, 7:9, back - 8:19, 9:24, 15:22, 17:25, 18:12, 18:22, 18:25, 19:3, 19:5, 19:9, 19:17, 19:23, 20:2, 20:21, 20:23, 21:3, 22:9, 23:1, 23:21, 26:11, 33:22, 38:11, 39:1, 57:22, backyard - 21:4, 25:12, 26:3, 26:8, 29:22, 30:3, 30:4, 32:12, 33:13, 34:15, 34:22, 34:22, 50:1, 54:24, 55:1, 55:5, 59:18, 59:23, 60:1, bad - 27:19, 29:10, barry - 51:6, bars - 64:7, basic - 5:6, bathroom - 55:12,
--	---	--	---	---	--



**DEPOSITION OF WAYNE JENKINS - AUGUST 14, 2014**

bay - 9:10, 11:5, 16:1, 16:5, 16:23, 17:18, 18:3, 18:6, 18:16, 19:16, 19:22, 20:11, 20:15, 20:18, 20:20, 23:11, 23:15, 23:18, 24:3, 24:23, 24:24, 25:9, 29:13, 35:6, 35:10, 35:14, 35:18, 35:20, 36:8, 43:10, 43:17, 44:11, 45:7, 47:12, 47:24, 48:3,	biggest - 68:21,	31:19, 38:8, 47:14,	caused - 47:17,	company - 38:7,	couldn't - 39:19,
bean's - 16:13,	bill - 46:5, 46:5,	broken - 10:9, 11:2, 16:7, 16:24, 17:4, 19:6, 19:17, 19:22, 20:2, 20:9, 22:10, 22:19, 23:1, 31:1, 38:2, 38:7, 38:12, 49:13, 50:13, 52:3, 59:2, 59:5, 59:9,	cedar - 18:13, 18:23, 19:10, 19:17, 19:23, 20:3, 20:21, 21:4, 23:21, 24:20, 44:25,	complete - 6:10,	counsel - 5:13, 10:13, 28:9, 30:22,
bed - 38:21, 38:22,	birth - 7:3,	building - 66:4, 66:6,	cell - 15:20, 15:22,	compressor - 60:22, 61:8, 61:22,	couple - 5:13, 40:7, 69:15,
beer - 33:22,	bit - 36:23, 43:20, 47:10, 63:1,	burn - 39:10,	central - 46:9,	concern - 23:23, 30:22, 53:7,	course - 53:21,
before - 4:23, 6:5, 6:7, 6:11, 8:1, 8:5, 9:17, 9:24, 10:3, 11:1, 16:13, 17:12, 19:8, 21:16, 22:9, 35:14, 36:18, 37:6, 58:16, 58:17, 60:14, 64:2, 64:3, 66:3, 68:22,	blast - 69:18,	burned - 37:24, 68:3, 68:6, 68:9,	certain - 15:14,	condition - 40:20, 40:25, 41:3,	court - 4:25, 5:24,
began - 65:18,	blasting - 27:14, 60:12,	business - 19:14, 38:7,	certainly - 56:18,	conducted - 33:13,	courtesy - 6:6,
begin - 6:5, 6:11, 66:11,	blew - 17:3, 18:20, 47:18, 60:18, 61:2,	busted - 25:9, 29:13, 32:2, 39:2,	chance - 57:12,	consecutively - 9:18,	cousin - 29:21, 29:25, 51:11,
beginning - 21:13,	blood - 10:9, 10:18, 10:20, 29:10, 29:16, 29:18, 31:5, 31:16, 31:19, 31:22, 32:1,	busy - 62:16, 62:18,	charged - 66:20,	constant - 27:13, 69:8,	cousins - 49:16,
behind - 45:7,	bloody - 9:9, 9:10, 29:17, 31:9,	bye - 66:7,	check - 43:8,	consume - 32:17, 33:5, 33:8, 33:25,	covered - 13:7, 25:5, 43:24, 44:13,
being - 4:14, 13:15, 14:13, 25:10, 32:22, 33:13, 39:15, 42:10, 48:10, 48:11, 59:2, 59:5, 59:8, 59:20, 59:23, 60:15, 69:11,	blow - 61:20,	called - 4:7, 13:23, 14:18, 65:15,	chip - 45:24, 46:3,	consumed - 33:3, 67:10,	cowgirls - 29:21, 29:25, 33:14, 33:16,
believe - 7:14, 16:21,	blowing - 47:25, 48:4,	calls - 9:2,	christmas - 21:22, 22:1, 22:3, 22:6,	contractors - 48:23,	crime - 66:20,
believes - 10:19,	blown - 16:16,	came - 29:21, 39:8, 51:11, 55:20, 57:10, 58:22, 69:24,	civil - 4:15,	conversation - 5:15, 13:9, 25:7, 31:13, 31:14, 51:19, 51:25,	currently - 65:9, 65:11,
below - 31:1, 31:19, 32:2,	boise - 4:1, 39:22, 43:21, 65:2, 65:20, 65:22, 66:9,	camera - 15:24, 16:4,	clarification - 5:12, 31:13, 68:1,	conversations - 29:12, 30:6, 33:17,	custodian - 65:19, 65:19,
best - 7:11, 7:24,	bonfire - 25:15, 33:12, 33:23, 34:19, 37:23, 53:25, 54:3, 54:5, 54:17, 59:15,	camper - 38:24,	clarify - 7:6, 66:23,	convicted - 66:17,	cut - 8:21, 9:1, 9:7, 9:14, 29:23, 51:11,
between - 6:18, 37:3, 65:22, 66:5,	bonfires - 59:11, 68:3,	can - 6:9, 7:11, 7:24, 9:3, 10:6, 10:13, 17:14, 19:12, 20:5, 21:9, 21:18, 28:9, 28:17, 28:22, 42:24, 50:12, 56:18, 57:13,	clean - 12:19, 62:14, 66:7,	copy - 14:5, 58:11,	cutoff - 21:23,
beverages - 67:11,	both - 11:25, 60:24, 64:21,	can't - 5:24, 15:1, 24:17, 25:4,	cleaning - 65:24, 66:6, 66:10,	corner - 10:2, 30:24, 52:21,	dad - 40:12, 40:17, 59:8,
big - 47:18, 54:10,	bother - 60:10,	car - 20:2, 23:12, 38:15,	cleanly - 63:7,	correct - 8:2, 14:1, 18:14, 18:15, 18:18, 18:21, 18:23, 18:24, 21:6, 24:15, 26:14, 27:4, 27:5, 27:10, 27:11, 29:11, 30:5, 32:25, 33:1, 35:2, 35:24, 36:5, 36:6, 36:8, 36:20, 42:1, 43:12, 43:13, 44:4, 44:5, 45:8, 45:9, 51:3, 52:18, 53:2, 53:22, 53:23, 55:18, 55:19, 56:22, 61:18, 61:19, 61:20, 61:23, 61:25, 68:5,	damage - 37:11,
	bottom - 21:22, 24:24,	care - 28:4, 46:16,	cleanup - 62:4,	correctly - 20:4,	dangerous - 25:10,
	boyfriends - 58:7,	carpenter's - 48:20,	clear - 5:25, 15:4, 66:23,		dark - 52:17,
	break - 16:8,	case - 17:14, 21:18,	close - 18:11,		date - 7:3, 8:13, 13:5, 14:14, 16:11, 33:6, 50:18, 50:19,
	bring - 14:8, 15:14, 38:3, 39:1, 41:2,	cash - 43:8, 43:9,	close - 18:11,		david - 8:2,
	brings - 6:19,		colored - 30:25,		day - 26:15, 29:16, 31:8, 47:22, 50:3, 53:21, 58:6, 58:25,
	broke - 18:4, 18:20,		come - 26:10, 34:22, 34:25, 37:24, 40:1, 40:13, 49:1, 60:3, 60:4, 62:14, 62:22,		days - 13:13, 13:18, 15:4, 50:21,
			coming - 25:12, 27:22, 29:25, 30:3, 55:8, 60:19, 67:17,		dee - 49:23, 49:23,
			common - 42:8,		

**DEPOSITION OF WAYNE JENKINS - AUGUST 14, 2014**

definitely - 27:15,	37:17,	16:16, 37:8, 45:10,	employed - 65:9,	68:23,	
depart - 65:4,	dishes - 42:3,	47:25, 48:5, 54:8,	employer - 65:14,	everyone - 33:15,	fair - 10:16, 16:22,
department - 52:10,	divide - 64:3,	58:22,	employment - 65:4,	evidence - 44:16,	37:2, 47:8, 64:20,
departure - 33:6,	document - 15:10,	drag - 22:9, 22:13,	ended - 70:5,	46:22, 61:14,	fall - 23:22, 47:17,
33:9,	21:16,	dragged - 20:23,	ensued. - 9:21,	50:19,	47:20, 60:24, 63:19,
depicted - 10:7, 16:7,	documents - 14:8,	21:3, 22:25,	57:20,	exact - 16:11, 50:18,	fallen - 47:13,
17:15, 21:19, 34:23,	15:15, 15:17,	drinking - 27:22,	enter - 69:25,	50:19,	falling - 23:12,
35:4, 39:5, 39:7,	doesn't - 10:20,	drive - 17:23, 37:13,	entitled - 15:11,	exactly - 36:14,	falsehoods - 5:17,
39:11, 44:3, 52:13,	21:23, 28:16, 66:16,	drugs - 67:5, 67:13,	entrance - 54:21,	36:16, 51:9, 58:25,	family - 52:6, 57:25,
68:10,	doing - 15:5, 22:15,	duces - 15:11,	entry - 42:25,	examination - 4:10,	far - 21:12, 24:3,
deposition - 4:13,	28:24, 34:3, 65:16,	dui - 66:21,	equipment - 45:6,	67:23, 68:18,	farther - 18:22,
4:14, 4:16, 4:23, 5:7,	65:18, 66:11, 66:12,	duly - 4:7,	especially - 27:15,	examined - 4:8,	fast - 11:25,
9:19, 9:22, 9:25,	don't - 6:8, 7:20, 9:4,	dump - 38:8,	establish - 36:17,	example - 10:17,	father - 22:18, 42:14,
10:1, 12:24, 13:2,	9:15, 11:16, 12:11,	during - 7:7, 12:14,	estimate - 7:12,	except - 41:24, 67:2,	feel - 10:10,
13:14, 13:19, 14:1,	14:7, 15:19, 16:11,	25:18, 36:15, 42:20,	24:17, 25:4, 34:17,	67:4,	feet - 25:5,
14:10, 14:13, 14:17,	19:11, 19:13, 19:18,	43:5, 43:20, 44:8,	37:2,	excuse - 16:14, 46:4,	fell - 18:4, 37:8,
15:2, 15:6, 15:11,	20:13, 22:4, 24:7,	47:2, 47:16, 48:10,	even - 25:15, 51:2,	49:8,	63:14,
15:18, 17:11, 21:15,	24:22, 24:25, 25:6,	49:2, 52:16, 64:2,	evening - 31:11,	exhibit - 9:22, 9:25,	felony - 66:18,
28:4, 66:16, 70:5,	25:21, 26:18, 26:24,	each - 33:18, 40:13,	47:16, 52:16, 54:5,	10:2, 10:3, 11:1,	fence - 18:9, 18:10,
depositions - 17:13,	27:2, 28:4, 28:19,	earlier - 19:21,	68:22,	16:8, 17:10, 17:11,	18:12, 18:13, 18:14,
21:18, 28:12,	31:6, 32:14, 32:20,	57:16, 60:14, 63:22,	events - 50:10,	17:13, 17:15, 21:15,	18:17, 18:23, 19:17,
describe - 29:20,	32:23, 33:4, 33:11,	68:22,	ever - 4:23, 4:25,	21:17, 21:19, 22:8,	19:23, 20:3, 20:12,
33:12,	34:7, 35:25, 36:14,	early - 52:16, 54:6,	9:9, 11:17, 11:20,	22:10, 23:11, 24:4,	20:21, 21:4, 23:20,
described - 25:9,	37:5, 37:7, 39:16,	easy - 41:21,	12:3, 12:12, 12:20,	24:10, 30:23, 31:18,	23:21, 24:20, 38:11,
55:7,	40:22, 43:18, 44:7,	effect - 22:17,	15:10, 16:1, 16:4,	31:22, 31:23, 31:25,	44:23, 44:25, 48:4,
device - 16:4,	44:17, 45:5, 45:12,	efforts - 20:18,	20:14, 20:17, 22:21,	32:4, 32:6, 32:8,	48:6, 56:24,
didn't - 13:6, 16:17,	45:15, 45:18, 46:7,	egress - 24:4,	22:23, 25:7, 26:20,	34:23, 35:4, 39:5,	fencing - 19:10,
53:21, 55:17, 60:9,	46:14, 48:7, 48:9,	eight - 64:5, 66:1,	26:22, 26:25, 27:22,	39:8, 39:11, 42:23,	fertilizer - 45:10,
64:20,	48:15, 50:11, 50:18,	einstein - 50:20,	28:5, 29:12, 30:15,	43:23, 44:12, 48:1,	few - 10:11, 41:24,
different - 66:12,	50:23, 51:7, 55:23,	either - 64:6,	32:10, 33:25, 34:8,	52:13, 52:21, 52:25,	66:15,
difficulty - 41:19,	56:5, 56:10, 56:12,	electric - 45:19,	34:11, 34:18, 34:21,	52:25, 55:15, 56:25,	fifty - 40:10,
dimensions - 25:5,	56:14, 56:16, 58:25,	45:25, 46:11, 46:13,	37:17, 39:4, 39:10,	57:2, 62:9, 68:1,	figured - 61:9,
discuss - 11:20, 13:6,	59:3, 59:6, 59:14,	electrical - 41:6,	40:16, 40:24, 41:2,	68:10,	finally - 6:4,
20:17, 26:20, 26:22,	59:17, 61:21, 62:3,	46:5,	41:5, 41:8, 41:11,	exits - 21:4,	fine - 15:4,
26:25, 42:2, 42:5,	62:5, 62:16, 62:19,	elevated - 42:24,	41:13, 42:2, 42:5,	express - 65:15,	finish - 6:5, 6:6,
42:8, 49:11,	62:21, 63:2, 63:6,	else - 11:14, 44:20,	42:8, 42:13, 42:20,	extend - 6:6,	11:24,
discussed - 9:6,	63:12, 63:17, 68:11,	52:4, 53:4, 64:18,	43:2, 44:6, 44:8,	external - 52:23,	fire - 26:8, 33:17,
12:12, 50:13, 52:3,	69:2,	every - 26:15, 66:16,	44:19, 45:10, 48:17,	f - 10:3,	37:24, 52:10,
52:6, 52:9, 57:14,	done - 11:23, 42:3,		48:20, 48:23, 49:11,	facilitate - 5:14,	
discussing - 43:20,	57:18, 63:10, 70:3,		53:4, 53:6, 53:15,	facilities - 41:16,	
55:25,	door - 25:17, 25:20,		53:18, 56:23, 57:23,	fact - 16:16,	
discussion - 9:21,	35:1, 54:7, 55:3,		57:25, 59:1, 59:4,	facts - 10:19, 44:16,	
57:20,	55:4, 55:8, 55:9,		59:8, 59:18, 60:4,	57:14, 61:14,	
discussions - 23:14,	59:13, 60:3, 60:6,		60:11, 62:1, 63:16,		
	60:9, 68:23, 69:5,		63:18, 66:17, 66:20,		
	69:7, 69:9, 69:11,				
	69:25,				
	doors - 54:24,				
	doorway - 53:1,				
	down - 5:24, 12:1,				

**DEPOSITION OF WAYNE JENKINS - AUGUST 14, 2014**

firewood - 38:4,	front - 11:6, 11:10, 12:9, 18:12, 18:17, 42:23, 48:18, 52:22, 53:1, 60:3, 60:6, 69:25,	go - 5:6, 9:17, 10:24, 16:9, 21:8, 25:2, 27:16, 27:24, 28:18, 33:14, 40:25, 41:1, 54:21, 54:21, 54:24, 57:19, 57:22, 61:14, 62:24, 64:5, 64:6, 64:17,	has - 10:19, 12:12, 21:17, 30:15,	48:21, 48:24, 49:8, 49:12, 51:22, 52:12, 52:14, 52:22, 54:20, 54:25, 55:2, 55:5, 57:23, 69:14, 69:15, 69:25,	42:14, 51:17, 59:7,
first - 4:7, 5:15, 9:19, 14:17, 15:5, 18:7, 30:23, 35:3, 47:12, 52:22, 58:22,	full - 8:6, 8:10,	going - 9:18, 10:11, 10:22, 11:25, 13:7, 17:9, 18:12, 25:1, 26:3, 28:21, 28:22, 36:22,	haven't - 52:6, 66:23,	housekeeping - 5:22,	initially - 18:16,
five - 9:16, 9:19, 52:1, 55:21, 66:5, 66:7,	further - 68:18,	gone - 26:1, 62:21,	he's - 28:21,	how - 6:13, 8:4, 11:23, 12:3, 13:9, 19:8, 19:15, 20:20, 21:12, 24:3, 24:17, 24:20, 24:23, 25:4, 25:22, 27:12, 29:3, 29:3, 33:12, 35:13, 35:17, 37:20, 40:1, 40:6, 40:9, 47:19, 49:1, 51:25, 54:10, 54:13, 54:20, 54:24, 56:4, 58:14, 59:22, 60:1, 61:2, 61:5, 64:8, 65:16,	injured - 53:4,
fixtures - 41:6,	games - 47:2,	got - 11:23, 16:16, 30:21, 31:11, 36:22, 55:3, 55:4, 58:6, 66:15,	head - 5:25, 33:16, 39:22, 61:9,	huh-uhs - 5:23,	inside - 38:8,
flip - 10:10,	garage - 12:6, 25:17, 25:19, 34:25, 43:12, 43:16, 45:6, 48:10, 48:12, 54:7, 54:21, 54:25, 55:4, 55:8, 55:9, 59:13, 68:23, 69:5, 69:7, 69:9, 69:11,	gravel - 24:9, 24:18, 43:24, 44:4, 44:13, 60:5,	hear - 49:11,	hurt - 23:24,	installed - 17:16, 23:7, 35:10, 44:23, 44:25, 69:6, 69:7, 69:9, 69:11,
flowers - 61:16, 61:18,	gate - 21:4, 21:7, 21:10, 21:12, 24:4, 44:3, 44:6, 44:8, 60:4,	greatest - 34:18,	heard - 22:21, 22:23, 28:3,	hvac - 41:11,	installing - 59:12,
focused - 63:20,	gentleman - 53:9, 53:13,	ground - 5:6, 5:13, 24:24,	hearing - 5:1,	hypothetical - 44:16, 46:22,	insurance - 50:9, 50:15, 50:17, 51:5, 51:8, 51:13, 51:17, 52:2, 55:20, 55:21, 57:15,
following - 49:15, 53:18,	get - 10:22, 13:25, 23:20, 23:23, 27:12, 29:3, 30:10, 30:13, 30:20, 34:19, 54:3, 54:5, 54:17, 58:22, 59:11, 59:15, 59:18, 59:22, 60:1, 60:2, 63:10, 66:2,	guests - 57:23,	heat - 46:11,	i'd - 50:20,	interject - 10:13,
follows - 4:8,	girlfriend - 58:4,	gust - 47:18, 47:25,	heater - 46:13,	i'm - 10:11, 10:22, 15:4, 17:9, 25:1, 36:16, 36:16, 38:18, 70:2,	into - 7:12, 18:13, 30:3, 34:22, 35:3, 35:6, 35:9, 44:22, 52:23, 54:25, 55:1, 55:4, 55:4, 55:8, 55:9, 58:18, 60:1, 64:13,
food - 65:13,	give - 24:17, 25:4, 34:17, 40:7, 40:16,	gutters - 62:2,	heating - 45:16,	idaho - 4:1, 4:15,	involve - 69:15,
forced - 45:16,	getting - 22:18, 27:15, 42:3,	guy - 50:16, 50:17,	help - 6:23,	idea - 13:18, 56:19,	involved - 11:14, 33:19, 48:12, 61:11,
forget - 38:18,	given - 50:8,	guys - 11:25, 21:25, 27:19, 29:6, 64:1, 64:4, 64:8, 66:6,	helped - 23:3,	identify - 10:7, 17:14, 21:18,	involvement - 11:9, 12:15, 18:25, 43:14,
form - 16:9, 21:5, 21:7, 23:5, 23:6, 24:6, 25:1, 26:17, 27:24, 28:13, 28:15, 29:15, 32:19, 35:23, 40:21, 44:15, 46:21, 48:14, 50:22, 52:19, 61:13, 62:6, 68:25, 69:13,	glass - 10:9, 11:2, 16:7, 16:24, 18:4, 18:20, 19:5, 19:17, 19:23, 20:1, 20:8, 22:10, 23:1, 25:10, 30:25, 31:19, 31:19, 32:2, 32:2, 47:13,	had. - 67:21,	here - 6:19, 15:6, 28:20, 68:20,	illegal - 67:13,	involving - 8:1, 27:21, 29:14, 32:12,
found - 15:5, 40:4,	gmc - 18:2, 38:18, 38:20,	handrail - 42:24,	hey - 9:17,	incomplete - 44:15, 46:21,	issue - 27:21, 27:22, 40:24, 60:11,
four - 9:19, 65:3, 66:6, 70:2,	hang - 63:23, 64:20,	hanging - 40:3,	himself - 29:23, 51:12, 61:9,	information - 37:20,	issues - 41:2,
frame - 36:13,	happened - 6:20, 7:11, 26:13, 29:17, 29:18, 30:4, 36:10, 37:21, 54:7, 56:19,	happens - 5:7,	hit - 16:17, 17:3, 17:7, 20:22, 37:9,	inartful - 35:16,	item - 11:3,
framing - 11:2, 43:16,	hang - 63:23, 64:20,	has - 10:19, 12:12, 21:17, 30:15,	hits - 24:24,	include - 12:18, 45:21,	its - 25:9,
frankly - 28:4,	happens - 5:7,	haven't - 52:6, 66:23,	holding - 47:24,	individuals - 57:13,	itself - 23:8, 55:5,
freak - 63:1,	has - 10:19, 12:12, 21:17, 30:15,	he's - 28:21,	home - 46:9, 62:22, 65:6,	influence - 67:5,	j-e-n-k-i-n-s - 4:22,
free - 10:10,	has - 10:19, 12:12, 21:17, 30:15,	head - 5:25, 33:16, 39:22, 61:9,	hopefully - 7:7,	information - 37:20,	janitor - 39:22,
frequent - 69:4, 69:12,	has - 10:19, 12:12, 21:17, 30:15,	heard - 22:21, 22:23, 28:3,	hours - 43:21, 52:16, 54:6, 66:1, 66:1, 66:5, 66:7, 67:11, 67:14,		jason - 15:1, 37:25, 53:9,
friends - 52:7, 58:2, 64:19,	has - 10:19, 12:12, 21:17, 30:15,	hearing - 5:1,	house - 8:4, 9:10, 17:16, 18:8, 21:14, 22:6, 24:5, 24:21, 25:13, 33:16, 34:23, 35:3, 35:6, 35:10, 35:17, 35:21, 37:3, 43:4, 44:14, 44:22, 48:8, 48:11, 48:18,		jenkins - 4:6, 4:14, 4:20, 6:13, 7:3, 7:10,

**DEPOSITION OF WAYNE JENKINS - AUGUST 14, 2014**

9:25, 11:2, 12:14, 15:12, 16:22, 17:12, 19:21, 21:16, 28:19, 31:14, 57:19, 65:12, 67:17, 70:3,	49:2, 52:9, 64:7, 64:14,	letter - 13:23, 13:25, 14:5, 14:16, 14:18, 14:20,	looking - 40:5,	11:23, 13:5, 13:23, 14:18, 14:19, 15:17, 16:14, 19:12, 24:17, 25:4, 29:18, 34:17, 36:22, 40:6, 40:7, 46:4, 49:8, 50:12, 51:9, 56:18, 60:10, 65:25, 66:1, 66:5, 66:5, 66:23,	5:11, 7:8, 9:3, 9:5, 9:16, 9:20, 9:23, 10:15, 10:22, 10:25, 12:2, 15:3, 16:12, 21:6, 21:9, 21:11, 23:9, 24:8, 25:3, 26:19, 27:7, 27:9, 28:2, 28:9, 28:12, 28:16, 28:19, 28:25, 29:2, 29:19, 32:21, 35:24, 36:3, 38:5, 40:23, 44:18, 46:19, 46:25, 48:16, 50:7, 50:24, 52:20, 57:18, 57:21, 61:17, 62:7, 67:3, 67:16, 68:19, 69:3, 69:16, 70:2,
job - 39:19, 39:24, 62:16, 62:18, 62:18, 65:7, 66:13,	laid - 18:9,	lettering - 30:24,	looks - 21:22, 39:4, 39:10, 62:8,	mean - 7:20, 14:22, 56:17,	month - 13:21, 13:25, 35:19, 36:8, 36:11, 36:24, 40:10, 40:14, 49:4, 58:22, 58:24,
jobs - 66:12,	large - 46:5, 46:5,	letters - 10:3,	loosely - 34:12,	means - 35:20,	months - 8:1, 8:11, 37:4, 40:7, 51:2, 51:4, 65:25,
jog - 6:23,	last - 4:21, 25:1, 51:25, 67:14,	lie - 68:21,	lose - 39:24,	measure - 5:23,	moon - 54:10,
john - 27:10, 27:12, 27:17, 29:13, 29:17, 33:14, 38:2, 39:1, 39:10, 40:3, 45:4, 45:24, 45:25, 46:24, 47:9, 48:13, 49:16, 51:9, 63:23, 64:14, 64:20, 69:18,	late - 29:9, 39:25, 60:24,	lifted - 20:23,	lost - 39:19,	medications - 67:5,	more - 7:23, 39:25, 47:10, 49:21, 51:2, 68:21,
judge - 28:19,	later - 24:1,	light - 22:8, 52:24, 54:13,	lot - 47:1, 47:2,	meet - 53:18, 53:21,	morning - 27:14, 27:16, 30:20, 31:8, 31:10, 31:10, 33:15, 52:16, 54:6, 69:21,
july - 6:20, 6:21, 7:11, 11:7, 14:11, 14:17, 15:22, 17:25, 36:10, 54:11,	laundry - 41:16, 42:5,	lighting - 52:13, 52:23,	loud - 69:18,	members - 57:25,	most - 62:20,
june - 36:12,	lawn - 45:2, 45:6, 45:11, 45:13, 61:24,	like - 5:25, 7:23, 21:22, 35:4, 39:4, 39:10, 43:19, 46:1, 62:8, 69:2,	loudly - 60:12,	memory - 6:23, 25:22,	mostly - 46:23, 62:21,
just - 5:13, 5:24, 10:16, 10:18, 15:1, 15:4, 23:5, 25:5, 28:3, 36:7, 36:16, 36:22, 44:19, 46:7, 47:21, 55:7, 56:2, 56:23, 57:4, 57:18, 60:7, 61:6, 61:8, 63:20, 64:25, 66:13,	lawyer - 13:4,	line - 19:17, 19:23, 20:3, 20:12, 20:21, 21:4, 23:21, 23:21, 38:11,	lower - 10:2, 30:24, 31:23,	mention - 23:17,	motor - 18:1,
keeping - 12:19, 40:20,	lawyer's - 68:20,	little - 36:23, 47:9,	maintenance - 12:16, 12:17, 45:13, 46:15, 48:17, 61:11, 66:4,	mentioned - 57:15,	move - 7:12, 7:21, 19:3, 19:9, 20:5, 38:14, 39:17, 40:7, 46:8,
kept - 38:11, 42:10, 45:6, 47:8,	lead - 44:4,	live - 22:6, 40:1,	make - 5:14, 17:22, 28:9, 28:16, 28:21, 43:11,	met - 40:4, 53:15,	misinterpreted - 19:25,
kind - 9:18, 21:20, 36:21,	leading - 53:1,	lived - 12:14, 24:14, 35:17, 42:21, 43:5, 44:9, 49:2, 53:3, 63:3, 63:18, 64:4,	man's - 48:17,	mid - 58:24,	misstates - 36:1, 61:13, 68:25,
kitchen - 41:13, 54:19, 54:22, 55:10, 55:13,	leaning - 56:23,	living - 7:24, 9:11, 16:24, 42:9, 51:23, 64:2, 64:21,	many - 25:4, 54:24, 58:14, 59:22,	middle - 7:15, 32:1, 43:24,	mistake - 17:22,
knowledge - 26:22, 26:25, 32:10, 34:5, 59:7, 63:15,	learned - 59:4,	load - 65:13,	mark - 9:16,	mike - 14:22,	misunderstand - 19:24,
kuna - 6:15, 6:24, 7:12, 7:21, 7:25, 32:13, 39:18, 40:2,	lease - 32:16, 32:16, 58:9, 58:11,	loading - 65:23, 66:11, 66:13,	marked - 9:18, 10:1, 17:10, 17:13, 21:17, 30:23,	mind - 19:13,	misunderstood - 19:20,
	leases - 58:14,	located - 18:19,	marked. - 9:22, 17:11, 21:15,	minute - 55:21,	monteleone - 4:11,
	least - 8:6,	location - 22:10,	marks - 17:5,	minutes - 52:1,	
	leave - 17:5, 27:19, 29:6, 34:22, 39:20,	lock - 60:9,	matt - 53:13,	mirror - 17:7,	
	leaves - 62:1, 63:16, 63:18,	long - 6:13, 8:4, 13:9, 24:17, 35:13, 35:15, 35:17, 51:25, 55:23, 56:4, 65:16,	matter - 66:16,	misinterpreted - 19:25,	
	leaving - 65:19,	look - 31:18, 31:22, 31:25, 35:4, 43:23,	may - 7:15, 7:16, 7:21, 8:7, 8:8, 19:20, 35:9, 36:4, 56:17, 58:19, 59:16, 67:19,	misinterpreted - 19:25,	
	left - 31:23, 36:23, 60:6,	looked - 31:9, 31:15, 45:18, 63:20,	maybe - 9:13, 41:24,	misinterpreted - 19:25,	
	legal - 67:13,		me - 5:22, 6:2, 6:4, 6:10, 6:10, 10:7,	misinterpreted - 19:25,	
	length - 57:13,			misinterpreted - 19:25,	
	less - 19:12,			misinterpreted - 19:25,	
	let - 4:12,			misinterpreted - 19:25,	
	let's - 9:16, 57:19, 57:22, 64:3,			misinterpreted - 19:25,	

**DEPOSITION OF WAYNE JENKINS - AUGUST 14, 2014**

moving - 18:25, 30:3,	44:16, 45:4, 46:22, 48:12, 49:12, 50:19, 56:17, 59:10, 61:14, 63:15, 66:25,	34:18, 37:3, 40:19, 55:1, 55:1, 55:1, 55:3, 55:4, 58:15, 60:4, 61:2, 64:6, 66:13, 67:2, 67:4, 68:12, 68:20, 68:21,	over - 5:6, 6:8, 6:13, 6:23, 17:3, 18:20, 26:10, 29:22, 30:13, 32:24, 33:16, 35:21, 38:4, 38:14, 40:4, 44:13, 47:17, 47:18, 51:11, 51:19, 52:17, 57:23, 57:25, 65:1,	26:11,	piece - 29:22, 44:12,
mow - 61:24,	notice - 4:15, 15:2, 15:11, 15:15, 15:16, 15:18, 47:12,	only - 12:17, 13:5, 22:25, 30:8, 47:24, 50:15, 66:1, 66:4, 67:25, 68:21, 69:14, 69:14,	overall - 40:20,	past - 27:17, 29:8,	pieced - 24:4,
mowed - 45:2,	noticed - 49:7,	onto - 47:13, 47:18, 48:5,	overheard - 25:8,	patio - 62:9,	pieces - 57:4, 57:9, 68:9,
much - 19:8, 33:15, 40:6, 40:9, 47:8, 54:13, 64:21,	number - 26:10, 34:14, 34:18, 34:21,	open - 25:17, 25:19, 25:20, 34:25,	own - 19:13, 20:6, 46:24, 60:20, 60:22, 61:16, 64:16, 64:25,	pay - 39:19, 40:11, 43:8, 45:22, 45:25, 46:7,	piling - 42:6,
muddies - 6:9,	numerous - 26:13,	opinion - 30:9, 30:12, 63:6,	owned - 7:13,	paying - 65:25,	pit - 26:8, 37:24,
music - 60:12, 69:18,	oath - 5:16, 5:16,	opportunity - 5:5, 12:23,	p.m - 43:22,	payment - 45:21,	place - 4:13, 5:14, 11:18, 49:13,
mutually - 42:10,	object - 16:9, 21:5, 21:7, 23:5, 23:5, 24:6, 25:1, 26:17, 27:24, 28:15, 29:15, 32:19, 35:23, 40:21, 44:15, 46:21, 48:14, 50:22, 52:19, 61:13, 62:6, 68:25, 69:13,	organized - 34:12,	p.m. - 4:1, 70:5,	people - 25:10, 25:12, 26:10, 27:23, 33:8, 34:14, 34:18, 34:21, 49:25, 54:2, 54:16, 55:8, 60:1, 60:7, 69:15, 69:24,	placed - 9:24, 11:1, 16:23, 17:12, 18:6, 18:16, 21:16, 22:8, 23:15, 23:18, 48:4, 48:5, 52:13,
myself - 50:12,	objection - 9:2, 28:8, 46:17,	originally - 14:10, 18:6,	page - 15:15,	perfect - 10:17,	placing - 39:14, 68:22,
nailed - 57:5,	objections - 28:10, 28:13, 28:20, 28:21,	other - 10:21, 16:4, 30:6, 33:8, 33:18, 38:3, 38:6, 38:10, 38:13, 41:18, 42:9, 44:11, 45:13, 45:14, 49:7, 49:8, 50:12, 51:16, 51:16, 52:2, 57:13, 57:15, 64:11, 65:22, 66:6, 68:12, 68:20,	paid - 45:23,	period - 6:14, 6:17, 6:24, 7:10, 43:20, 55:21, 65:1,	plant - 61:18,
naked - 27:23,	occasions - 26:13,	our - 5:14, 5:23, 64:16, 64:25,	pain - 5:18,	perjury - 5:18,	planters - 62:8, 62:14,
name - 4:18, 4:21, 51:6,	occupied - 42:10,	ourselves - 66:6,	pallet - 38:7,	person - 20:5, 22:25, 50:15, 51:8, 51:13, 51:17, 51:19, 51:21, 52:2, 55:20, 55:22, 57:15,	planting - 61:16,
named - 53:9, 53:13,	occur - 13:12, 51:22,	out - 7:21, 15:5, 21:13, 23:3, 25:12, 27:23, 30:4, 32:2, 33:22, 39:17, 40:3, 40:5, 47:15, 48:18, 56:6, 60:18, 61:3, 61:20, 62:14, 63:20, 63:23, 64:17, 64:21,	pallet - 38:7,	person's - 51:5,	play - 47:2, 64:6, 64:6, 64:16, 64:17,
names - 49:25, 54:2,	occurred - 28:5,	outlets - 41:6,	panels - 18:4,	personal - 37:20,	playing - 64:8,
near - 18:17, 21:4, 21:7, 21:10, 58:19,	occurring - 12:7, 59:11, 59:15,	outside - 48:21, 48:24, 53:25, 54:14, 65:6,	pallets - 38:2, 38:3, 38:8, 38:11, 38:12, 39:2, 68:4,	phone - 5:10, 15:20, 15:22, 51:20,	please - 4:18, 6:1, 10:8, 10:14,
neat - 63:1,	off - 9:20, 31:11, 57:19,	part - 31:23, 32:1, 43:11,	39:2, 68:4,	photo - 17:9,	plumbing - 41:9,
need - 53:6, 62:1, 63:16,	off-the-record - 9:21, 57:20,	participate - 34:11,	palling - 47:9,	photograph - 17:12, 21:17, 32:1,	pocket - 64:5,
needed - 63:10,	offending - 27:23,	parties - 25:16, 26:16, 26:23, 27:1, 32:11, 33:12, 33:20, 34:2, 34:6, 34:9, 34:11, 37:23, 68:23, 69:4, 69:8, 69:12, 69:24,	pane - 19:23, 25:10, 30:25, 31:1, 31:18, 31:19, 32:2, 32:2, 47:13,	photographs - 10:6, 10:7, 10:11, 55:18, 55:22,	point - 16:19, 18:11, 24:1, 56:9,
never - 33:2, 33:22, 45:5, 45:18, 63:20,	office - 13:18,	party - 25:8, 26:3,	paneled - 48:18, 48:20, 48:24,	pick - 40:13, 49:5, 49:8,	police - 30:17, 39:22, 43:21, 50:9, 65:2, 65:20, 65:23, 66:9,
new - 7:5, 7:9, 32:16,	often - 49:1, 49:21,		parked - 48:18, 48:20, 48:24,	pickup - 17:23,	pool - 64:6, 64:6, 64:8, 64:18,
next - 6:7, 17:2, 29:16, 44:14, 48:4, 54:19, 55:12,	once - 49:4,		part - 31:23, 32:1, 43:11,	picture - 16:5,	porch - 52:24, 53:1,
night - 25:19, 25:20, 25:22, 26:1, 30:18, 54:10, 54:14, 66:5, 68:24,	one - 6:8, 9:18, 14:15, 14:18, 18:4, 20:5, 27:4, 29:24, 30:8, 30:23, 34:13,		participate - 34:11,	pictures - 16:1,	position - 65:19, 65:19,
nor - 28:4,			parties - 25:16, 26:16, 26:23, 27:1, 32:11, 33:12, 33:20, 34:2, 34:6, 34:9, 34:11, 37:23, 68:23, 69:4, 69:8, 69:12, 69:24,	positions - 66:10,	possibly - 51:2,
normally - 25:17,			party - 25:8, 26:3,	possible - 68:9,	
not - 5:9, 7:6, 17:24, 23:25, 25:15, 28:21, 29:9, 29:10, 31:10, 31:10, 36:16, 42:10, 42:22, 43:7, 44:3,				possibly - 51:2,	

**DEPOSITION OF WAYNE JENKINS - AUGUST 14, 2014**

potentially - 25:10,	proceeding - 5:1, 5:3,	raked - 63:16,	remove - 11:12,	restrooms - 54:16,	sat - 5:9,
power - 65:24,	proceedings - 10:1,	read - 15:16,	removed - 11:5, 12:4, 12:9, 18:7, 35:7, 35:14, 35:15, 35:20, 36:8, 36:11, 36:14, 36:19, 36:24, 37:3, 43:11, 43:17, 45:7, 48:8, 56:21, 59:20, 59:24, 62:2,	return - 48:11,	saw - 29:16, 34:18, 44:19,
preceded - 54:6,	process - 13:15,	ready - 63:10,	reno - 53:9,	rickety - 43:2,	say - 8:7, 16:22, 17:1, 17:17, 18:10, 22:15, 22:17, 22:21, 27:6, 38:6, 47:8, 62:17, 64:20,
premises - 7:25, 8:11, 8:13, 11:6, 11:10, 12:10, 12:15, 12:16, 12:20, 16:23, 24:14, 32:12, 32:17, 32:24, 33:3, 33:5, 33:9, 33:25, 35:9, 35:14, 36:18, 39:15, 39:17, 40:20, 40:25, 41:3, 41:18, 43:11, 45:14, 49:21, 53:7, 56:19, 59:12, 60:16, 60:25, 62:4, 62:20, 64:13, 64:22, 68:23, 69:5,	professional - 66:10,	realize - 13:21,	renovated - 48:11, 48:11,	right - 9:9, 10:2, 15:14, 21:14, 21:14, 30:24, 33:16, 54:22, 54:23, 54:23, 56:2, 57:22, 58:18, 60:7, 67:18,	saying - 20:14, 69:20,
prepare - 12:23, 13:1,	project - 61:11,	really - 19:13,	renovation - 12:6, 43:11, 43:14, 59:12, 68:22, 69:5,	road - 18:12, 38:8,	scene - 30:17,
present - 68:6,	proper - 28:21,	reason - 6:7, 9:13, 64:24, 66:2,	rent - 39:19, 40:6, 40:9, 40:11, 40:16, 43:8, 45:21, 49:5, 49:9, 58:23,	roger - 11:13, 19:9, 19:16, 19:19, 19:22, 20:4, 20:8, 20:20, 20:22, 20:24, 22:9, 22:13, 22:17, 22:25, 23:14, 23:17, 26:22, 27:3, 27:6, 27:7, 29:4, 33:19, 40:4, 40:5, 40:16, 40:19, 42:13, 45:3, 45:4, 45:13, 45:24, 46:20, 46:24, 47:9, 48:13, 49:7, 59:8, 60:20, 61:10, 61:18, 61:20, 61:22, 61:24, 62:17, 62:18, 63:1,	scheduled - 13:15, 13:21, 14:10,
presented - 32:22,	properly - 42:11,	recall - 7:11, 7:24, 13:22, 14:11, 22:4, 32:18, 32:22, 39:13, 46:4, 51:5, 54:10, 54:13, 57:13, 58:24, 60:16, 63:23, 68:24,	report - 53:6,	roger's - 40:4,	scrap - 57:5, 57:10,
pressure - 60:21,	property - 7:12, 7:21, 18:11, 18:17, 40:1, 42:16, 49:1, 53:4, 56:15, 58:19, 61:12, 63:9,	received - 13:23, 14:16, 14:18,	reporter - 5:24,	room - 12:17, 27:23, 42:9, 46:24, 47:6, 62:24, 64:17,	seasons - 60:25,
presume - 10:18, 61:10,	propped - 56:24, 57:1,	recent - 27:17, 29:8,	required - 43:4, 46:16,	roommate - 27:4, 27:10, 29:4,	second - 5:22, 15:11, 15:15, 15:16, 15:18, 57:19, 67:19,
pretty - 33:15, 47:8,	provide - 40:16, 42:13,	recess - 67:21,	requirements - 39:14,	roommates - 40:5,	seconds - 13:11,
previously - 10:1, 17:10, 17:13, 21:17,	provided - 4:25,	record - 4:12, 4:19, 6:1, 6:9, 9:20, 9:25, 57:19, 57:22,	requiring - 61:11,	rule - 28:20,	see - 9:9, 10:2, 11:17, 18:7, 20:14, 24:9, 24:9, 30:24, 30:25, 34:21, 39:10, 42:24, 42:25, 43:23, 47:19, 48:17, 48:20, 48:23, 60:24, 61:15, 62:9, 63:18,
prior - 7:13, 8:11, 13:14, 16:19, 23:11, 35:17, 35:21, 36:1, 47:25, 48:4, 53:15, 59:12, 59:19, 59:23, 60:18, 64:3, 67:11, 69:5, 69:11,	purposes - 4:16,	recount - 50:12,	rescheduled - 13:24,	rules - 4:15, 4:17, 5:6, 5:13,	seeking - 13:18,
pro - 65:24,	pursuant - 4:14,	reddish - 30:25,	reserve - 27:22, 68:15,	run - 18:14, 52:23,	seen - 15:10, 31:15,
probably - 35:16, 61:9,	put - 23:3, 45:10, 49:13,	reflect - 4:12,	reserved - 28:13,	said - 13:24, 17:2, 19:21, 29:21, 31:8, 32:17, 33:2, 36:7, 36:23, 39:25, 40:6, 40:7, 66:7, 68:3, 68:22,	sell - 20:11, 20:18,
problem - 37:1, 41:5, 41:8, 41:11, 41:13, 53:7, 60:8,	puts - 38:7,	regular - 38:21, 38:23,	reside - 6:14, 35:13,	resided - 36:18,	sense - 28:16, 36:21,
problems - 41:24, 44:6,	question - 6:5, 6:7, 6:10, 25:2, 28:14, 32:4, 32:6, 32:8, 35:16, 67:25, 68:2, 68:20, 68:21,	regularly - 54:3,	resided - 36:18,	resident - 6:24,	sent - 15:2,
procedure - 4:15,	questions - 10:12, 38:1, 47:2, 66:15, 66:22, 66:25, 67:8, 67:20, 68:15, 70:2,	relative - 39:14, 41:2,	residing - 11:6,	responsible - 40:19, 45:25, 46:1,	separately - 45:22, 45:23,
	quibble - 7:20,	relevance - 27:24, 28:8, 28:15,	respect - 46:15,	responsive - 15:17,	set - 35:21, 57:7,
	quit - 65:25, 66:4,	remainder - 68:15,	rest - 18:14,	restroom - 55:7,	setting - 14:17,
	quite - 34:14, 43:19,	remember - 15:1, 16:11, 19:11, 19:13, 20:4, 25:21, 33:4, 39:16, 50:11, 50:15, 50:20, 51:7, 55:23, 58:25, 59:17, 69:2,			severely - 8:21,
	r-e-n-o - 53:11,	removal - 11:9, 11:14, 11:17, 11:20, 35:17,			shakes - 5:25,
	railroad - 38:3, 38:6,				share - 30:9, 30:12, 46:7, 51:13, 51:16,
	raised - 30:22, 32:11,				

**DEPOSITION OF WAYNE JENKINS - AUGUST 14, 2014**

shell - 38:24,	snow - 63:14,	stains - 10:9, 30:25, 31:16, 31:20, 31:23, 32:1,	story - 66:6,	taking - 4:13, 11:18, 17:14, 37:25,	61:21, 68:14, 69:20,
shortly - 50:25, 59:16,	snowfall - 63:11,	standing - 21:20,	straight - 54:21,	talk - 50:17, 57:12,	their - 20:5, 38:8, 46:24,
shorty - 38:22,	socialize - 64:9,	start - 33:17,	street - 6:14, 7:25, 39:18, 49:2, 64:14, 64:22,	talked - 5:10, 27:17, 31:7, 31:11, 60:14, 68:1,	them - 38:4, 38:4, 38:9, 38:14, 66:4, 66:8, 66:23,
should - 23:15, 23:18,	some - 5:6, 18:11, 18:12, 21:20, 24:1, 46:1, 62:8, 67:19,	started - 21:14, 27:15,	stretch - 18:13,	talking - 14:1, 17:18, 59:19,	then - 6:4, 7:20, 8:10, 13:23, 16:22, 18:13, 18:22, 20:23, 21:3, 33:14, 33:17, 38:3, 40:6, 52:21, 55:9, 55:12, 64:13, 66:1, 66:9, 66:10, 66:13, 66:15, 67:4,
shovel - 63:13,	something - 10:13, 28:3, 29:23, 64:18,	state - 4:18,	stuff - 61:16,	tecum - 15:11,	these - 9:16, 10:1, 25:15, 33:12, 34:2, 34:18, 37:1, 37:23, 38:11, 38:12, 54:3, 54:17, 55:17,
show - 17:9,	sometime - 7:21, 36:12, 50:25,	statement - 50:8,	subcontractors' - 48:24,	tell - 10:20, 10:20, 10:21, 13:5, 15:17, 19:12, 34:5, 34:8, 51:8, 56:18, 59:1, 61:3, 67:6,	they - 13:23, 13:24, 14:21, 14:22, 33:15, 33:17, 34:25, 39:25, 57:4, 60:3, 65:25, 66:4, 66:23,
showed - 20:22,	sometimes - 38:16, 38:16,	station - 39:23,	subject - 5:18,	temp - 65:15, 65:23, 66:11,	thing - 25:25, 46:24, 47:24, 64:25,
shown - 22:10, 23:10, 48:1, 56:25, 57:2, 62:9,	somewhere - 37:3,	stay - 62:24,	such - 5:16, 68:10,	ten - 13:11, 34:20,	things - 37:1, 64:14, 64:16,
side - 9:10, 16:23, 17:7, 24:5, 25:13, 34:22, 38:3, 38:6, 38:10, 38:13, 49:12, 52:12, 52:14, 57:5, 60:4,	son - 11:13, 19:4, 19:9, 19:16, 19:22,	stayed - 35:15, 46:23, 56:2,	suggest - 22:23,	tenant - 6:21, 7:7, 39:15,	think - 9:13, 9:17, 36:1, 50:20, 68:3,
sign - 20:14, 32:15, 58:9, 58:14, 58:16, 58:18, 58:21,	sonoma - 18:2, 38:20,	steel - 27:22,	suggested - 30:15,	tenants - 42:10,	thought - 14:16, 19:21, 31:8,
signature - 70:7,	sorry - 7:20, 36:25, 38:18,	stefanic - 5:6, 5:9, 7:6, 9:2, 9:17, 10:13, 10:16, 10:24, 11:25, 13:10, 14:22, 15:1, 16:9, 21:5, 21:7, 23:5, 24:6, 25:1, 26:17, 27:6, 27:8, 27:24, 28:8, 28:11, 28:15, 28:18, 28:24, 29:15, 32:19, 35:23, 36:1, 37:25, 40:21, 44:15, 46:17, 46:21, 48:14, 50:6, 50:22, 52:19, 61:13, 62:6, 67:2, 67:19, 67:24, 68:14, 68:25, 69:13,	sullivan - 27:10, 27:12, 28:6, 29:13, 29:17, 29:20, 29:24, 30:7, 31:7, 31:15, 34:5, 34:8, 34:12, 41:25, 49:16, 51:9, 60:11, 63:23, 68:3,	terms - 27:19, 29:6, 67:25,	three - 9:19, 37:4, 59:25,
signed - 33:2, 58:12,	sounds - 43:19,	stefanic's - 28:20,	sullivan's - 34:3,	testified - 4:8, 63:22,	threw - 36:22,
since - 65:6, 66:12,	space - 42:25, 48:12,	stereo - 27:14,	summer - 46:6, 66:13,	testimony - 4:25, 5:17, 13:17, 34:2, 36:2, 61:13, 63:24, 68:24, 69:1,	through - 10:3, 10:10, 25:24, 33:6, 33:9, 33:9, 34:25, 54:20, 54:21, 54:22, 55:8, 60:4, 62:24, 69:25,
sir - 4:19, 9:3, 10:4, 10:8, 13:17, 21:9, 34:2,	speak - 6:8, 12:3, 13:4,	stiles - 8:2, 8:5, 8:21, 9:7, 9:14, 16:14, 19:8, 29:14, 29:25, 30:2, 49:16, 53:15,	supplies - 65:13,	than - 19:12, 44:11, 45:13, 47:10, 49:8, 50:12, 51:16, 52:2, 57:15,	thurs - 36:22,
sit - 5:5,	speaking - 21:25,	stiles' - 8:11, 9:11, 16:20, 32:15, 35:22, 49:15, 49:20,	support - 24:24,	thank - 6:13, 17:22, 31:13, 32:10, 49:20, 50:6, 68:15,	throughout - 62:1,
sitting - 14:1,	specific - 29:24, 30:2,	stefanic's - 28:20,	supports - 23:3, 23:10, 47:25, 56:25, 57:2, 57:4,	thanks - 5:12, 67:17, 70:3,	thursday - 4:1,
situated - 55:12,	speculation - 9:2, 16:9, 26:17,	stereo - 27:14,	sure - 5:14, 10:15,	that's - 5:12, 9:14, 10:18, 11:1, 15:4, 15:8, 17:4, 17:9, 17:17, 21:23, 22:10, 24:4, 28:3, 33:15, 37:1, 39:5, 39:7, 43:13, 44:12, 52:25,	time - 4:12, 6:14, 7:7, 8:16, 16:19, 17:22, 17:25, 19:14, 23:25, 24:1, 26:1,
six - 10:6, 65:24,	spell - 4:21,	stiles - 8:2, 8:5, 8:21, 9:7, 9:14, 16:14, 19:8, 29:14, 29:25, 30:2, 49:16, 53:15,	sworn - 4:7, 5:17,	take - 5:24, 13:19, 16:1, 16:5, 38:2, 38:9, 46:16, 54:22, 55:17, 55:22,	
size - 38:21, 38:23,	spent - 62:20,	stiles' - 8:11, 9:11, 16:20, 32:15, 35:22, 49:15, 49:20,	system - 42:16, 60:15, 60:15,	taken - 4:14, 4:23, 5:16, 14:14, 21:18, 55:15, 56:15, 67:13,	
slats - 57:9,	spoke - 55:20, 60:12,	still - 17:16, 28:22, 35:10, 37:13, 53:25, 56:18, 58:11,	take - 5:24, 13:19, 16:1, 16:5, 38:2, 38:9, 46:16, 54:22, 55:17, 55:22,	takes - 5:22,	
sleep - 26:1,	spoken - 29:8,	stop - 34:6, 34:8,	take - 5:24, 13:19, 16:1, 16:5, 38:2, 38:9, 46:16, 54:22, 55:17, 55:22,		
slept - 25:24,	spring - 62:4, 62:15,	stored - 44:13, 44:20,	take - 5:24, 13:19, 16:1, 16:5, 38:2, 38:9, 46:16, 54:22, 55:17, 55:22,		
slow - 11:25,	sprinkler - 42:16, 60:15, 60:15,		take - 5:24, 13:19, 16:1, 16:5, 38:2, 38:9, 46:16, 54:22, 55:17, 55:22,		
smoke - 47:15,	sprinklers - 60:18, 61:3, 61:20,		take - 5:24, 13:19, 16:1, 16:5, 38:2, 38:9, 46:16, 54:22, 55:17, 55:22,		
	stable - 43:2, 43:3,		take - 5:24, 13:19, 16:1, 16:5, 38:2, 38:9, 46:16, 54:22, 55:17, 55:22,		

**DEPOSITION OF WAYNE JENKINS - AUGUST 14, 2014**

27:3, 30:20, 36:12, 36:15, 38:19, 39:21, 43:20, 47:3, 48:10, 51:14, 53:24, 56:9, 62:17, 62:20, 62:25, 65:1, 67:16, 68:6, 70:3,  timeline - 36:22,  times - 25:18, 49:7,  today - 5:15, 5:17, 6:2, 6:10, 6:19, 12:24, 13:5, 13:7, 14:8, 15:6, 67:6,  today's - 58:6,  together - 54:5, 59:18, 64:21,  togethers - 34:19, 54:3, 54:18, 59:11, 59:15, 59:22, 60:2,  told - 29:18, 40:6, 51:9, 59:8,  too - 17:23, 55:23, 60:12, 62:16, 66:2,  total - 10:6,  towards - 20:12,  town - 38:13,  toyota - 17:23,  tree - 21:21, 21:22, 22:1, 22:6,  trial - 5:1, 28:13, 68:15,  tripped - 29:22, 51:11,  trouble - 30:10, 30:13,  truck - 16:17, 17:3, 17:3, 17:5, 17:7, 20:22, 23:22, 38:8, 38:16, 38:19, 47:13, 47:18, 48:5, 48:17, 48:20,  trucks - 65:13, 65:23,  true - 29:12,	truth - 67:6,  trying - 20:11, 36:16,  turn - 30:23, 36:23, 42:23, 52:21,  turns - 18:13,  two - 6:16, 6:17, 6:23, 7:10, 8:1, 8:10, 9:18, 12:14, 13:13, 13:17, 15:4, 17:23, 24:14, 34:13, 40:10, 41:21, 42:20, 43:5, 44:8, 47:25, 49:2, 53:3, 59:25, 63:3, 65:17, 66:5, 66:10,  type - 18:1, 38:19, 45:16, 46:15, 48:23, 63:10, 64:14, 65:11, 68:2,  typically - 47:5,  uh-huh - 5:19, 7:17, 8:23, 14:2, 14:23, 15:7, 17:19, 20:25, 24:11, 26:5, 28:23, 31:2, 43:25, 49:17, 62:11,  uh-huhs - 5:23,  under - 4:16, 5:18, 67:4,  understand - 5:15, 8:22, 18:11, 55:17, 67:8,  understanding - 43:10,  understood - 6:20, 66:22, 66:25, 67:1,  undertaken - 20:18,  unexpected - 36:23,  unlocked - 60:6,  until - 13:17, 69:20,  up - 6:9, 18:9, 20:12, 30:20, 30:21, 33:5, 39:2, 40:13, 42:6, 42:10, 44:4, 47:24, 49:5, 49:8, 53:1,	54:7, 56:24, 57:1, 57:7, 63:16, 65:13, 69:21,  upkeep - 45:14, 61:11,  upset - 22:18, 37:8,  us - 6:19, 10:20, 10:20, 10:21, 45:5,  use - 38:4, 38:16, 38:16, 44:8, 54:17, 55:7, 60:20,  used - 4:16, 10:1, 16:4,  utilities - 45:21,  vague - 21:8, 46:17,  vehicle - 18:1, 18:3, 37:9, 37:13, 48:24,  verbally - 6:2,  very - 5:25, 21:13, 41:21, 63:7, 64:21,  video - 47:2,  videogame - 63:21,  videogames - 64:17,  vinyl - 18:12, 18:17, 20:12, 23:20, 48:4, 48:6, 56:24,  wait - 6:10, 11:23, 67:19,  waived. - 70:7,  walk - 60:7,  walked - 29:22, 29:22,  walkway - 42:24, 43:24, 44:4, 44:13, 49:12, 60:5,  walkways - 63:13,  wall - 21:14,  walter - 7:13, 11:13, 19:4, 19:15, 19:18, 19:21, 20:11, 26:16,	26:20, 26:23, 27:1, 27:6, 32:11, 39:13, 40:13, 41:1, 46:18, 48:13, 49:1, 49:8, 49:21, 53:7, 58:22, 59:1, 59:4, 61:12,  walter's - 41:3, 43:5, 46:20,  wasn't - 7:2, 16:14, 21:10, 26:4, 61:12,  watched - 20:24, 22:13,  water - 46:1, 46:13,  way - 33:9, 68:12,  wayne - 4:6, 4:13, 4:20, 15:12,  we - 5:14, 6:7, 6:8, 9:17, 9:18, 9:20, 9:24, 10:17, 13:21, 15:5, 17:13, 17:18, 27:13, 28:19, 28:22, 28:24, 36:4, 36:10, 37:1, 40:4, 43:20, 46:3, 47:1, 55:24, 57:12, 57:18, 58:6, 59:19, 60:14, 64:16, 64:25, 66:7, 68:1,  week - 16:19, 19:12,  weekends - 40:3, 63:22,  well - 5:25, 10:21, 10:22, 15:4, 24:9, 28:16, 31:7, 31:12, 40:24, 44:19, 50:19, 59:15, 62:22, 66:8,  went - 37:15, 37:18, 40:4, 47:15, 56:20, 66:9,  weren't - 42:3,  west - 6:14, 7:25, 39:18,  western - 66:4,  what's - 7:3, 10:7, 11:2, 17:14,  whatever - 28:17,	wheel - 17:23,  when - 7:9, 7:12, 8:7, 13:12, 15:5, 16:7, 16:22, 17:4, 17:17, 18:7, 18:10, 18:19, 19:5, 20:8, 20:11, 20:22, 21:14, 25:15, 27:15, 29:16, 30:4, 31:7, 35:3, 35:6, 35:10, 36:8, 36:14, 36:23, 38:6, 39:1, 44:22, 47:12, 47:15, 48:3, 50:17, 54:6, 55:15, 55:20, 56:6, 56:20, 58:18, 58:21, 58:22, 61:12, 64:2, 65:4, 66:22, 68:21, 69:7, 69:21,  whenever - 31:12, 31:14,  whereupon - 70:5,  whether - 5:1, 28:4, 28:20, 44:19, 50:8, 56:18, 59:8, 63:6,  which - 21:25, 22:8, 25:7, 25:8, 25:8, 34:23, 39:11, 41:18, 51:10, 65:1,  while - 22:15, 27:13, 46:24,  white - 17:23, 18:9, 18:10, 18:12, 18:17, 20:12, 23:20, 44:22, 48:4, 48:6, 49:23, 56:24,  who - 11:12, 14:13, 14:20, 19:3, 20:1, 23:3, 40:25, 43:16, 45:2, 46:16, 48:5, 48:8, 53:24, 56:11, 56:20, 57:7, 60:18, 62:4, 62:14, 62:20, 63:9, 63:13, 65:14, 66:17, 69:17,  whole - 25:24, 62:25, 63:3,  whom - 40:11, 50:13, 57:14,  whose - 17:23,  why - 12:9, 17:1,	23:17, 23:20, 29:18, 37:1, 39:17, 39:24, 45:4, 61:7, 69:20,  wide - 24:20, 24:23,  will - 4:16, 5:14, 6:4, 6:5, 10:2, 23:5, 40:7, 54:22, 68:14,  willis - 5:24,  wind - 16:16, 17:2, 17:3, 18:19, 47:18, 47:25,  window - 9:9, 9:10, 10:18, 11:4, 11:5, 11:10, 11:17, 11:21, 12:4, 12:9, 16:2, 16:5, 16:16, 16:23, 17:4, 17:16, 17:17, 17:18, 18:3, 18:6, 18:16, 19:9, 19:16, 19:22, 20:1, 20:5, 20:11, 20:15, 20:18, 20:21, 21:20, 22:9, 22:18, 23:1, 23:8, 23:11, 23:15, 23:18, 23:24, 24:3, 24:23, 24:24, 25:9, 29:13, 29:17, 31:9, 31:15, 35:7, 35:10, 35:14, 35:18, 35:20, 36:8, 36:11, 36:19, 37:2, 37:8, 37:15, 37:18, 43:10, 43:17, 44:11, 45:7, 47:12, 47:19, 47:24, 48:3, 48:3, 48:5, 48:8, 49:13, 50:13, 52:3, 55:24, 56:20, 56:23, 57:5, 57:14, 59:1, 59:5, 59:8, 59:19, 59:23, 63:20,  windows - 11:15, 52:12,  windy - 47:22,  winter - 46:5, 60:18,  winterize - 63:9,  within - 50:21,  witness - 4:7, 9:4, 10:17, 16:11, 21:10, 23:7, 24:7, 26:18, 28:1, 28:23, 29:1, 29:16, 32:20, 35:25,
--	--	---	---	---	--



DEPOSITION OF WAYNE JENKINS - AUGUST 14, 2014

38:2, 40:22, 44:17,  
46:18, 46:23, 48:15,  
50:23, 61:15, 66:17,  
67:18, 69:2, 69:14,

won't - 5:23, 5:25,  
23:22,

wood - 29:23, 37:23,  
39:1, 39:4, 39:4,  
39:7, 39:10, 44:12,  
68:2, 68:7, 68:10,

wooded - 19:23,

wooden - 18:13,  
18:23, 19:10, 19:17,  
20:3, 20:21, 21:3,  
23:3, 44:25,

words - 10:21,

work - 5:23, 5:25,  
12:20, 27:16, 31:11,  
36:15, 43:19, 43:21,  
63:10, 65:11, 65:18,  
65:22, 66:11, 69:22,

worked - 43:22, 65:2,  
65:6, 65:24, 66:3,

working - 39:21,  
62:17, 62:21, 66:1,  
66:5,

workmen - 48:12,

wouldn't - 32:17,  
33:3, 46:23, 62:22,  
68:12,

wrote - 14:20,

yard - 63:19,

yeah - 7:9, 21:24,  
60:23, 66:3,

year - 6:17, 6:24,  
7:10, 8:6, 8:10,  
32:24, 35:21, 36:17,  
36:18, 51:2, 66:14,

year's - 7:5, 7:9,

years - 6:16, 6:25,  
12:14, 24:14, 41:21,  
42:20, 43:5, 44:8,  
49:2, 53:3, 63:3,  
65:3, 65:17,

you'd - 42:23,

FEB 09 2015

CHRISTOPHER D. RICH, Clerk  
By SANTIAGO BARRIOS  
DEPUTY

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Attorneys for Plaintiff, David Wayne Stiles

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

DAVID WAYNE STILES,

Plaintiff,

v.

WALTER A. AMUNDSON,

Defendant.

Case No. CV PI 13-11963

**AFFIDAVIT OF DAN GEARRING**

Dan Gearing, being first duly sworn upon oath, deposes and says that:

ORIGINAL

203

1. I am over the age of 18 and competent to testify to the matters herein. The information contained herein is based upon personal knowledge, and is true and correct to the best of my knowledge and belief.

2. I own, and reside, at 722 West 4<sup>th</sup> Street, Kuna, Idaho 83634. I owned the property on July 8, 2011.

3. My property, 722 West 4th Street, is situated directly to the east of 756 West 4<sup>th</sup> Street, Kuna, Idaho 83634. The shared property line is divided by a wooden fence approximately four to six feet in height.

4. My property contains a large, double-bay shop/barn. There is a large flagpole located on the southwest corner of the shop. The top of the flagpole extends over the roof of the shop.

5. On July 8, 2011, there was no light mounted to the above-mentioned flagpole.

6. Prior to my purchase of the residence, and ever since I have owned the residence, the pole has been utilized as a flagpole. To my knowledge, there has never been a light of any kind mounted anywhere on the flagpole, either prior to my purchase of the residence or since.

DATED this \_\_\_\_ day of January, 2015.

Dan Gearing  
Dan Gearing

STATE OF IDAHO )  
County of Ada ) ss.

SUBSCRIBED AND SWORN to before me this 20<sup>th</sup> day of January, 2015.

(SEAL)



[Signature]  
Notary Public, State of Idaho  
My Commission Expires 2/3/2020

**CERTIFICATE OF MAILING, DELIVERY, OR FACSIMILE TRANSMISSION**

I CERTIFY that on February 9, 2015, I caused a true and correct copy of the foregoing document to be:

<input checked="" type="checkbox"/> Mailed <input type="checkbox"/> Hand Delivered <input type="checkbox"/> CM/ECF Electronic Filing <input type="checkbox"/> Transmitted Fax Machine to: (208) 344-5510 <input type="checkbox"/> Transmitted Via E-Mail to: mstefanic@ajhlaw.com	Michael Stefanic Anderson, Julian & Hull L.L.P. 250 South Fifth Street, Ste. 700 Boise, ID 83702
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BRADY LAW, CHARTERED



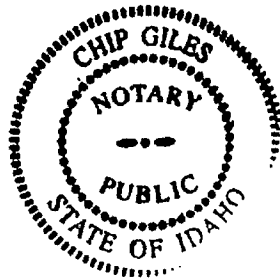
\_\_\_\_\_  
Chip D. Giles  
Attorneys for Plaintiff



1. I am over the age of eighteen years of age, am not one of the named parties, and make this affidavit upon my own personal knowledge and belief;
2. Attached hereto as Exhibit 1 are true and correct color photographs that I took of the bay window that my husband fell into causing his injuries on July 8, 2011. These photographs were taken later in the day after my husband was injured;
3. Further, your affiant sayeth naught.

Crystal Bean  
Crystal Stiles - Bean

Subscribed and sworn to before me, this 5<sup>th</sup> day of February, 2015.




[Signature]  
Notary Public for Idaho  
Residing at: Boise, ID  
My Commission Expires: 2/2/2020

**CERTIFICATE OF MAILING, DELIVERY, OR FACSIMILE TRANSMISSION**

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BRADY LAW, CHARTERED

  
\_\_\_\_\_  
Chip D. Giles  
Attorneys for Plaintiff

**EXHIBIT 1**

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000265



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**FEB 09 2015**

**CHRISTOPHER D. RICH, Clerk**  
By **SANTIAGO BARRIOS**  
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Attorneys for Plaintiff

ORIGINAL

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

DAVID WAYNE STILES,

Plaintiff

v.

WALTER A. AMUNDSON,

Defendant

**Case No. CV PI 13-11963**

**MEMORANDUM IN OPPOSITION TO  
DEFENDANT'S MOTION FOR  
SUMMARY JUDGMENT**

Plaintiff, David Wayne Stiles ("Plaintiff"), by and through his attorneys of record, Jason R.N. Monteleone of Johnson and Monteleone, L.L.P., and Chip Giles of Brady Law, Chtd., herewith submits his Memorandum in Opposition to Defendant's Motion for Summary Judgment with citation to the factual record demonstrating genuine issues of material fact requiring resolution by a jury and legal points and authorities as follows:

**MEMORANDUM IN OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY  
JUDGMENT - Page 1**

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## I. INTRODUCTION

This is a premises liability case arising from Defendant, Walter Amundson's ("Amundson"), creation and knowledge of a dangerous condition at his property, located at 756 West 4<sup>th</sup> Street, Kuna, Idaho 83634 ("the property"). Amundson purchased the property in 2007 and has utilized the property as a rental home ever since. *Affidavit of Counsel in Opposition to Defendant's Motion for Summary Judgment* (hereafter "*Affidavit of Counsel*"), filed herewith, Ex. 1 (Transcript of Deposition of Walter Amundson (hereafter "*Amundson Dep.*") at 12:10-13). Amundson's son, Roger Amundson ("Roger" or "R. Amundson") has been his father's tenant at the premises since his father purchased the property in 2007. (*Amundson Dep.* at 14:25-25). Amundson has always exercised authority and control over the property and has initiated, conducted, and/or supervised all repairs and renovations to the property. (*Amundson Dep.* at 23:2-25, 24:9-25 55:22-25, 56:1-24). Amundson traveled to the property at least twice a month to perform repairs and maintenance and also to collect monthly rent payments from his tenants. (*Amundson Dep.* at 22:10-25, 23:2-25).

Some time in June 2011, Amundson removed a large, four-foot by eight-foot, 200-300 pound bay window from the property's garage. (*Amundson Dep.* at 33:4-8), *Affidavit of Counsel* Ex. 2 (Transcript of Deposition of Roger Amundson (hereafter "*R. Amundson Dep.*") at 24:1-11. The window was eventually placed against a cedar fence in the house's adjacent walkway. (*R. Amundson Dep.* at 23:11-25). When the window was placed in this location, it contained a shattered pane, which exposed a jagged blade of glass. (*R. Amundson Dep.* at 15:24-16:25). The window was supported by two small wooden slats, and precariously leaned against a cedar fence directly adjacent to a wooden stump in the property's walkway. See *Affidavit of Crystal Stiles* (hereafter "*Stiles Aff.*") Ex. 1, (*Amundson Dep.* at 28:8-25; *R. Amundson Dep.* at 49:22-25, 50:1-12). On July 8, 2011 Plaintiff David Stiles ("Stiles") was a licensee on the property and was attending a social gathering in the backyard. As Stiles was exiting the property, he tripped on the wooden stump, and fell into the shattered windowpane. Stiles' left arm went through the shattered windowpane, being sliced by the jagged blade of glass and causing severe injuries. *Affidavit of Counsel* Ex. 4 (*Transcript of Deposition of David Stiles* (hereafter "*Stiles Dep.*"), at 57:17-25, 58: 1-15.

**MEMORANDUM IN OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY  
JUDGMENT - Page 2**

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Amundson, as owner of the property, and the individual exercising authority and control over the premises, owed Stiles a duty to share his knowledge of dangerous conditions or dangerous activities on the property and also a general duty of reasonable care. *See Plaintiff's First Amended Complaint and Demand for Jury Trial (Complaint ¶ 22)*. Amundson breached his duty to Stiles. As a direct and proximate cause of Amundson's breach, Stiles suffered severe injuries to his left arm. (*Stiles Dep. at 63: 11-16, 47: 23-25, 69: 16-23*).

Defendant filed the Affidavit of Walter Amundson In Support Of Defendant's Motion For Summary Judgment ("*Amundson Aff.*"). Nearly all the facts cited in Defendant's *Memorandum In Support Defendant's Motion For Summary Judgment*, filed previously in these proceedings, are from Amundson's affidavit. To date in this case, the following parties and lay witnesses have been deposed: Plaintiff Stiles; Defendant Amundson; and lay witnesses Roger Amundson, Jon Sullivan, Wayne Jenkins, and Crystal Stiles. The material facts at issue in this case are contained within these six depositions, not in Amundson's self-serving affidavit. As explained below, this case contains a number of disputed facts, which not only precludes the entry of summary judgment, but they also call into question the credibility of a number of witnesses.

## II. STATEMENT OF FACTS

Since purchase in 2007, Amundson has utilized the property as a rental. (*Amundson Dep. at 12:10-13*). At the time of the accident, there were three tenants residing at the property: Amundson's son, Roger; Wayne Jenkins ("Jenkins"); and Stiles' cousin Jon Sullivan ("Sullivan"). (*R. Amundson Dep. at 20:1-7*). Amundson has exercised complete authority and control over the property since he purchase it in 2007. Amundson maintained the property, performing all necessary maintenance and repair, only occasionally supervising maintenance and repair, if Roger or another tenant were present and willing to assist with a task. All decisions regarding maintenance, or projects on the property, were at the sole discretion of Amundson, and for Amundson's benefit as owner of the property. (*Amundson Dep. at 12:10-13, 55: 22-25, 56:1-24, 57:1-10*). Additionally, Amundson's tenants acted as his agent, and any maintenance or upkeep to the property performed by the tenants was at Amundson's direction and sole discretion and for Amundson's direct benefit. (*Amundson Dep. at 56:1-24*). Whenever Roger performed

any maintenance or upkeep on the property, he did so for and on behalf of his father, Defendant in the case at bar. (*R. Amundson Dep. at 63:21-24, 64:24-24: 65:1-11*).

Amundson traveled to the property at least twice monthly to perform maintenance on the property, complete repair and renovation projects, and collect rent. (*Amundson Dep. at 22:24-25, 23:1-14*). One such project initiated and conducted by Amundson was the removal and storage of the window that ultimately caused Stiles' injuries. (*Amundson Dep. at 28:19-22*). Since purchase in 2007 Amundson has managed the property directly, and never hired an independent property manager. Amundson stated in his affidavit "if there were any repairs or maintenance which was needed with respect to the property, I undertook the responsibility pursuant to the lease agreements with the tenants to conduct such repairs and maintenance." (*Amundson Aff. ¶ 4*).

Amundson testified that he was aware social gatherings occurred on the premises, which involved alcohol. (*Amundson Dep. at 26:17-22, see also Amundson Aff ¶ 8*). Amundson further testified that he was informed of these gatherings by his son Roger and another tenant, Jenkins. (*Amundson Dep. at 26:17-22*). However, Roger and Jenkins both testified they never informed Amundson that these social gatherings occurred. (*R. Amundson Dep. at 60:8-21, Affidavit of Counsel Ex. 5 (Transcript of Deposition of Wayne Jenkins (hereafter "Jenkins Dep. ")), at 26:15-25*). The social gatherings were held in the backyard and typically centered around a bonfire in the backyard's firepit. The gatherings were generally conducted by Sullivan. *Affidavit of Counsel Ex. 3 (Transcript of Deposition of Jon Sullivan (hereafter "Sullivan Dep. ")) at 46:21-25, 57:16-25*. Roger testified that he did not attend the social gatherings in the backyard. (*R. Amundson Dep. at 62:1-30*). Jenkins testified that he attended one or two. (*Jenkins Dep. at 34:11-12*). Sullivan testified however that both Roger and Jenkins would come out every once and awhile and "hang out" by the fire. (*Sullivan Dep. at 65:5-9*). Additionally, Stiles testified that on the date of the accident, both Roger and Jenkins attended the gathering in the backyard. Stiles further testified that was the first time he had met both Roger and Jenkins. *Affidavit of Counsel Ex. 4 (Transcript of Deposition of David Stiles (hereafter "Stiles Dep. ")) at 54:10-11*.

The large bay-window which ultimately caused Stiles' injuries was removed from the garage located on the property in mid-June 2011, and Stiles was injured approximately three

weeks later on July 8, 2011. It was Amundson's idea to remove the window. (*Amundson Dep. at 27:12-14*). The window was removed in order to install a garage door. (*Amundson Dep. at 27:13-25*). Amundson was in charge of the project, and Roger assisted. (*Amundson Dep. at 28:21-25*). Both Amundson and Sullivan testified that Sullivan assisted with the installation of the garage door once the window was removed. (*Amundson Dep. at 32:6-20, Sullivan Dep. at 30:23-25*). Roger however testified that Sullivan did not participate in any part of the project. (*R. Amundson Dep. at 18:7-21*). The large, heavy, window weighed between 200 and 300 pounds, and was eight-foot by four-foot in dimension (*Amundson Dep. at 33:4-9, R. Amundson Dep. at 24:6-10, Amundson Aff. ¶ 13*). Upon removal, the window was stored toward the front of the property's walkway, and leaned up against a white cedar fence. Amundson testified that since the window was "pretty heavy," that it was set down fairly soon next to the fence. (*Amundson Dep. at 28:12-18*). Amundson had placed the window for sale on Craigslist for \$200.00. (*Amundson Dep. at 29:4-12*).

At some point after the window was placed in this initial location, one of the window panes was shattered. According to Jenkins, approximately one week before the date of the accident, July 8, 2011, a gust of wind blew the window over, the window landed on his pickup truck, which was parked in the driveway, and the pane was shattered by the pickup truck's side, rear-view mirror. (*Jenkins Dep. at 16: 7-21, 17:2-8*). According to Roger, Jenkins opened his vehicle's door, and the door struck the window, shattering the glass pane. (*R. Amundson Dep. at 13:18-24*). Within 48 hours of the window being shattered, the window was moved to the walkway, near the walkway's gate to the backyard, and leaned up against the cedar fence on the east side of the walkway. (*R. Amundson Dep. at 23:12-24, 31:24-25, 32:1-15*). Roger testified that he moved the heavy, large window approximately 20 foot into walkway by himself. (*R. Amundson Dep. at 23:12-24*).

The window sat at its final location on the cedar fence, with the broken pane, for a long period of time before the date of the accident. (*R. Amundson Dep. at 31:16-18*). Sullivan testified the window was stored in the walkway against the cedar fence for approximately two weeks prior to the accident. (*Sullivan Dep. at 44:9-13, 45:23-24, 46:1-3*). At deposition, Jenkins initially testified that Amundson and Roger had moved the window. (*Jenkins Dep. at 19:2-5*).

**MEMORANDUM IN OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY  
JUDGMENT - Page 5**

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Jenkins later changed his testimony and testified that, if he remembered correctly, it was Roger who moved the window. (*Jenkins Dep. at 20:4-10*). Both Roger and Jenkins testified that when the window was moved into the walkway, the pane was already shattered. (*R. Amundson Dep. at 24:19-25, Jenkins Dep. at 20:7-10*). When the window was moved into the walkway, and placed against the cedar fence, the wooden stump Stiles tripped on was in the walkway. (*R. Amundson Dep. at 92:23-24, 93:1-23 100:23-25, 101:1-4*), (*See also Stiles Aff. Ex. 1*). Roger moved the window from the driveway, and up into the walkway, because he was worried about the window being further damaged by Jenkins. (*R. Amundson Dep. at 37:24-25*).

Roger testified that he should have removed the shattered glass from the window as soon as the window pane was shattered, and then there would not have been a hazard existing on the property. (*R. Amundson Dep. at 41:15-25*). Roger also testified that the stump presented a tripping hazard, and both the tripping hazard, and the hazard presented by the shattered window could have been eliminated. (*R. Amundson Dep. at 102:24-25, 101:1-4*).

Immediately prior to the accident, on either July 5 or 6, 2011, Amundson traveled to the property to pick up rent payments from his tenants. At deposition, Amundson was able to initially recall this visit since Sullivan usually got paid on the 5<sup>th</sup> of each month. (*Amundson Dep. at 31:1-7*). Amundson initially testified at deposition that when he traveled to the property during the day on either July 5 or 6, he saw the window. Amundson visited the property and saw the window either two or three day days prior to the date of the accident. (*Amundson Dep. at 31:17-25*). Amundson later testified at deposition that he did not know if he was at the property on July 5, 2011, or not. (*Amundson Dep. at 35:4-9*) Even though Amundson initially testified at deposition that he saw the window shortly before the accident, Amundson states in his affidavit, “prior to the accident, I was certainly not aware of the existence of a wooden stump or the bay window being relocated in that area at the time of the alleged accident.” (*Amundson Aff. ¶ 16*). Regardless, when Amundson visited the property two to three days prior to the accident, the window pane was shattered, and the window was located in the walkway leaning up against the cedar fence.” (*R. Amundson Dep. at 31:16-18, Sullivan Dep. at 44:9-13, 45:23-24, 46:1-3*).

Roger testified that on the night of the accident, the entire walkway was illuminated by a neighboring light, which existed on a giant pole extending skyward from the eave on the

neighbor's barn, and a separate light located on a telephone pole in front of the property. (*R. Amundson Dep. at 95:4-25, 96:1-12*) Roger testified that he believed the neighbor's light was on at the time of the accident. (*R. Amundson Dep. at 96: 12-25*). The property on the other side of the cedar fence is inhabited by Dan and Vicki Gearing. Dan Gearing ("Gearing") owned the property on the date of the accident. Gearing states in his affidavit there was never a light mounted on the pole, which exists on his barn, rather a previous owner of the house next door utilized the pole as a flagpole; Gearing further states in his affidavit that there has never been a light of any kind mounted anywhere on the flagpole, either prior to or since his purchase of the property. See *Affidavit of Dan Gearing* (hereafter "*Gearing Aff.*") (at ¶¶ 1-6).

In the early morning hours of July 8, 2011 Stiles was attending a social gathering at the property. (*Stiles Dep. at 41:3-25*). Sullivan invited Stiles to the gathering, and Stiles decided to attend since he was having trouble sleeping. (*Stiles Dep. at 41:18-21*). When Stiles arrived, there were approximately eight to ten people gathered around a bonfire in the backyard. When Stiles arrived the garage door was open, and the light was on in the garage. (*Stiles Dep. at 52:23-25, 53:1-2*). Stiles entered the backyard through the open garage door, and was unaware of the shattered window in the walkway. (*Stiles Dep. at 55:5-25*). Stiles consumed one beer at the gathering and had opened a second, of which he consumed approximately one-third. Stiles later poured the rest of the beer on the fire to extinguish the existing burning coals. (*Stiles Dep. at 56:3-15*).

Attendees at the gathering dispersed, and eventually only Stiles, Sullivan, and Sullivan's girlfriend remained. When Sullivan and his girlfriend went into the house, Stiles remained to make sure the fire was extinguished. (*Stiles Dep. at 59:3-8*). Once Stiles had extinguished the fire, he exited the backyard. (*Stiles Dep. at 60:1-25*). Stiles proceeded to the garage, to exit the premises as he had entered, however the garage door was shut. Rather than exit through the house, in the wee hours of the morning, which at the time was occupied by two of the tenants whom he had just met, and his cousin, Sullivan, and Sullivan's girlfriend, Stiles opted to be polite, and exit through the walkway through the gate from the backyard. (*Stiles Dep. at 62:11-25, 63:1-5*). Stiles opened the backyard gate to the walkway, entered the walkway, and turned around to close the gate. Stiles could not get the gate to latch behind him, so he pulled the gate as

far shut as he could. Stiles then turned around to proceed down the walkway, tripped over the stump, and as he reached out to brace himself he fell into the window. Stiles' left arm went through the broken pane of glass. Stiles suffered a severe laceration, and could hear the blood squirting from his arm. Stiles described the sound the squirting blood made as "pfst, pfst." (*Stiles Dep. at 64:17-24*). There was blood squirting everywhere, hitting Stiles in the face, drenching his socks, and filling his shoes. (*Stiles Dep. at 64:24-25, 65:1-2*). During the fall, Stiles did not break any additional glass from the windowpane. (*Stiles Dep. at 65:7-10*). After the fall, Stiles was transported by ambulance to St. Alphonsus Regional Medical Center in Boise. (*Stiles Dep. at 80:16-17*).

### III. STANDARD OF REVIEW

I.R.C.P. 56 provides that summary judgment is proper "if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." *See also Northwest Bec-Corp. v. Home Living Serv.*, 136 Idaho 835, 838, 41 P.3d 263, 166 (2002). The burden is upon the moving party to prove the absence of a genuine issue of material fact. *Petricevich v. Salmon River Canal Co.*, 92 Idaho 865, 868, 452 P.2d 362, 365 (1969). All controverted facts are liberally construed in favor of the nonmoving party. *See Tusch Enterprises v. Coffin*, 113 Idaho 37 (1987). Additionally, the non-moving party is entitled to have all reasonable inferences from the evidence drawn in its favor. *Earl v. Cryovac*, 115 Idaho 1087, 1093, 772 P.2d 725, 732 (Ct. App. 1989) citing *Anderson v. Ethington*, 103 Idaho 658, 651 P.2d 923 (1982). Summary judgment is proper if the evidence before the court would warrant a directed verdict if the case were to go to trial. *Jephson v. Ambuel*, 93 Idaho 790, 793, 473 P.2d 932, 935 (1970).

However, the party responding to summary judgment is not required to present evidence on every element of his or her case at that time of summary judgment. Instead, the non-moving party need only establish a genuine issue of material fact regarding the element or elements challenged by the moving party's motion. *See Thomson v. Idaho Ins. Agency*, 126 Idaho 527, 530, 887 P.2d 1034, 1037 (1994). Moreover, the burden upon the non-moving party "is not to persuade the judge that an issue will be decided in his favor at a trial. Rather, 'he simply must

present sufficient materials to show that there is a *triable* issue.” *Earl*, 115 Idaho at 1093, 772 P.2d at 732 quoting 6 J. MOORE, W. TAGGART, & J. WICKER, MOORE’S FEDERAL PRACTICE §56.11(3), at 56-243 (2d ed. 1988) (emphasis in original). Therefore, where a jury has been requested, even where there exists no direct conflict in the evidence, a summary judgment motion must be denied “if the evidence is such that conflicting inferences may be drawn therefrom, and if reasonable people might reach different conclusions.” *Olsen v. J.A. Freeman Co.*, 117 Idaho 706, 720, 791 P.2d 1285, 1299 (1990). *Land O’Lakes, Inc. v. Bray*, 138 Idaho 817, 818-19, 69 P.3d 1078, 1079-80 (Ct.App. 2003). The issue of whether an agency/principal relationship exists is a mixed question of law and fact. *Van Vranken v. Fence-Craft*, 91 Idaho 742, 745, 430 P.2d 488, 491 (1967).

#### IV. ARGUMENT

##### ***A. AMUNDSON OWED STILES A DUTY OF ORDINARY CARE, IN ADDITION TO A DUTY TO WARN OF ANY DANGEROUS CONDITION EXISTING ON THE PROPERTY THAT HE KNEW OF, OR SHOULD HAVE KNOWN OF, UPON REASONABLE INQUIRY.***

The elements required to prove negligence in Idaho are: “(1) a duty, recognized by law, requiring a defendant to conform to a certain standard of conduct; (2) a breach of that duty; (3) a causal connection between the defendant's conduct and the resulting injuries; and (4) actual loss or damage.” *Braese v. Stinker Stores, Inc.*, 157 Idaho 443, 445, 337 P.3d 602, 604 (2014) citing *Alegria v. Payonk*, 101 Idaho 617, 619, 619 P.2d 135, 137 (1980). See also, *Orthman v. Idaho Power Co.*, 126 Idaho 960, 962, 895 P.2d 561, 563 (1995).

Under the traditional common law standard, “a land owner’s duty to persons entering his land is dependent upon whether that person is an invitee, licensee or trespasser.” *Keller v. Holiday Inns*, 107 Idaho 593, 595, 691 P.2d 1208, 1210 (1984). It is undisputed that Stiles was a social guest on the property on the day of the accident. Accordingly, under the traditional common law Stiles is classified as a licensee. A licensee is a visitor who goes upon the premises of another with the consent of the landowner in pursuit of the visitor's purpose. See *Pincock v. McCoy*, 48 Idaho 227, 281 P. 371 (1929); *Evans v. Park*, 112 Idaho 400, 732 P.2d 369 (Ct.App.1987). Likewise, a social guest is also a licensee. *Wilson*, 81 Idaho at 545, 347 P.2d at

347. The duty owed to a licensee is narrow. A landowner is only required to share with the licensee knowledge of dangerous conditions or activities on the land. *Evans*, 112 Idaho at 401, 732 P.2d at 370. *Ball v. City of Blackfoot*, 152 Idaho 673, 677, 273 P.3d 1266, 1270 (2012).

Regardless of an entrant's status, in cases where the landowner has failed to warn an entrant of a dangerous condition, a claimant must be able to establish that the owner or occupier knew, or by the exercise of reasonable care should have known of the existence of the dangerous condition. The law is well settled in this state that, to hold an owner or possessor of land liable for injuries to an invitee caused by a dangerous condition existing on the land, it must be shown that the owner or occupier knew, or by the exercise of reasonable care should have known, of the existence of the dangerous condition. *Tommerup v. Albertsons*, 101 Idaho at 1,3-4, 607 P.2d at 1057 (1980). *See also Mann v. Safeway Stores, Inc.*, 95 Idaho 732, 738, 518 P.2d 1194, 1200 (1974); *Giles v. Montgomery Ward, Co.*, 94 Idaho 484, 485, 491 P.2d 1256, 1257 (1971). The *Tommerup* court went on to hold "that the superior knowledge of the owner or possessor of land regarding possible dangers on the land gives rise to liability for injuries which occur due to such dangers." *Tommerup*, 101 Idaho at 3-4, 607 P.2d at 1057-58. Thus, under the traditional premises liability analysis in Idaho, a landowner is liable, when a claimant can prove that the owner or occupier knew, or by the exercise of reasonable care should have known, of the existence of a dangerous condition, and a landowner is required to share with the licensee knowledge of dangerous conditions or activities on the land.

In 1984, Idaho abrogated the traditional common law premises liability standard as applied to landlords, holding that "a landlord is under a duty to exercise reasonable care in light of all the circumstances." *Stephens v. Stearns*, 106 Idaho 249, 258 678 P.2d 41, 50 (1984). The *Stephens* court held that "under the modern trend, landlords are simply under a duty to exercise reasonable care under the circumstances." *Id.* at 257. While the underlying facts of *Stephens* involved a tenant (Stephens) suing her landlord (Stearns) for negligence, the *Stephens* Court did not restrict its application of the standard of reasonable care to only landlord-tenant relationships.

The *Stephens* Court cited a New Hampshire case *Sargent v. Ross* case that held, "henceforth, landlords as other persons must exercise reasonable care not to subject others to an unreasonable risk of harm. A landlord must act as a reasonable person under the circumstances



including the likelihood of injury to others, the probable seriousness of such injuries, and the burden of reducing or avoiding the risk.” *Id.* at 258. The *Stephens* court found:

Rather than attempt to squeeze the facts of this case into one of the common-law exceptions, plaintiff instead has brought to our attention the modern trend of the law in this area. Under the modern trend, landlords are simply under a duty to exercise reasonable care under the circumstances. We believe that the energies of the courts of Idaho should be used in a more productive manner. Therefore, after examining both the common-law rule and the modern trend, we today decide to leave the common-law rule and its exceptions behind, and we adopt the rule that a landlord is under *a duty to exercise reasonable care in light of all circumstances.* *Id.* (emphasis added).

A landlord may, or may not, have regular contact with his tenant, or other social guests that visit a property the landlord either owns or manages. Additionally the varying factual scenarios presented by cases involving landlords, tenants and third parties presents courts and juries with the difficulty of trying to pigeonhole an entrant into one of the three traditional premises liability classifications, so that the landowner may be assigned their attendant liability. Thus, adoption of the reasonable care standard for landlords makes practical sense in application, while ensuring the safety of entrants on a property owned or controlled by a landlord.

***B. AMUNDSON BREACHED HIS DUTY OF ORDINARY CARE TO STILES.***

As established in *Stephens*, as landlord, Amundson was “under the duty to exercise reasonable care in light of all the circumstances.” *Id.* at 258. Based upon the depositions on file in this case, and Amundson’s affidavit, there are genuine issues as to the material facts surrounding Amundson’s breach of his duty of ordinary care to Stiles.

It was Amundson’s idea to remove the window. Both Amundson and Roger described the window as large and heavy (eight-foot by four-foot, 200-300 pounds). (*Amundson Dep. at 33:4-9, R. Amundson Dep. at 24:6-10, Amundson Aff. ¶ 13*). In fact Amundson testified the window was so heavy that upon removal, Amundson and Roger had to immediately put the window down. (*Amundson Dep. at 33:4-9*). Amundson, as supervisor of the project, precariously placed the window against a vinyl fence, which was shorter than the window, and supported the window with a few pieces of thin scrap material. (*Amundson Dep. at 33:4-9, see also Stiles Aff. Ex. “1”*).

**MEMORANDUM IN OPPOSITION TO DEFENDANT’S MOTION FOR SUMMARY JUDGMENT - Page 11**

1351.0001

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Amundson knew the walkway was used to enter and exit the backyard. Amundson testified at deposition that he constructed the fence, and gate to the backyard, and once the project was complete, tenants and non-tenants could access the backyard from the walkway. (*Amundson Dep. at 52:5-15*). Amundson was also aware that Sullivan hosted social gatherings on the property. (*Amundson Dep. at 26:17-25*). Based on these facts alone, it is foreseeable that someone could be injured by the placement of an eight-foot by four-foot, 200-300 pound glass bay window, against a fence in the middle of a walkway, on a premises where social gatherings are held at night. Thus, Amundson breached his duty to Stiles when he initially placed the window against the fence after removal.

Amundson further testified that he exercised authority and control over the property and that any maintenance or repair was performed under his direction and discretion. (*Amundson Dep. at 55:22-25, 56:1-25*). Based on his own testimony, Amundson is solely responsible for the removal and storage of the window. Amundson further testified that he traveled to the property at least twice a month to conduct maintenance and repair. As an exercise of not only his duty of reasonable care, but his self proclaimed authority and control over the property, and any maintenance or repair performed on the property, Amundson had a duty inspect the window during these visits.

There is a genuine issue of fact as to whether Amundson assisted his son in moving the window into the walkway, and where it rested when Stiles was injured. At deposition, Jenkins initially testified that Amundson assisted Roger in moving the window further down the walkway. One fact not in dispute is that the window was moved down the walkway immediately after it was broken, and remained there for some time prior to the accident on July 8, 2011. (*Sullivan Dep. at 44:9-13, 45:23-24, 46:1-3*). Amundson initially testified at deposition that he was at the property on either July 5 or 6, 2011, during daylight hours, and saw the window, but could not recall what location the window was in or whether the window pane was shattered. (*Amundson Dep. at 31:1-25, 32:1-5*). A reasonable inference is that it was located precisely where it caused Stiles' severe injuries.

It is difficult to believe that Amundson saw the window on either July 5 or 6, but cannot remember if the window was where he initially placed it, or whether the window was shattered.

Even if Amundson did see the window, but did not recognize the shattered pane, or the location of the window, he was still obligated under his duty of ordinary care to further inspect since the simple placement of the large window in a walkway utilized by social guests at night was a breach of his duty of care. Amundson had actively marketed the window for sale. (*Amundson Dep. at 29:4-12*). Thus, he also had a financial motivation to inspect the window. As explained above and pursuant to *Stephens v. Stearns*, Amundson owed Stiles a duty of reasonable care and Amundson breached that duty. There are certainly genuine issues as to material facts sufficient to support the denial of the instant motion.

***C. AMUNDSON BREACHED HIS DUTY TO WARN STILES OF A DANGEROUS CONDITION EXISTING ON THE PROPERTY THAT HE EITHER KNEW OF, OR SHOULD HAVE KNOWN OF UPON REASONABLE INQUIRY.***

If this Court chooses to follow the traditional common-law approach to premises liability, Amundson had a duty to warn Stiles of any dangerous condition on the property that he “knew, or should have known of.” *Tommerup* 101 Idaho at 3-4.

As mentioned above, Amundson either knew, or upon reasonable inquiry, should have known that the initial placement of the window upon removal created a hazardous condition. Amundson knew the walkway was utilized by tenants and non-tenants to access the property’s backyard. Amundson also knew there were social gatherings held at the property after dark. By placing the large, heavy window in a walkway traveled by social guests at night Amundson created a dangerous condition.

Again, as set for the above, there are disputed questions of fact as to whether Amundson knew the window was shattered, and later moved further up the walkway. However, based on the deposition testimony in this case, it is clear that if Amundson did not know the window was shattered and moved further up the walkway, he should have known. Amundson testified at deposition that he not only exercised complete authority and control over the property, and all maintenance and repair performed on the property, but that he visited the property at least twice monthly to collect rent, and perform such maintenance and repair. (*Amundson Dep. at 55:22-25, 56:1-24, 57:1-10, 22:24-25, 23:1-14*). Amundson also had financial motivation to inspect and

ensure the window was in good repair since he was actively marketing the window for sale. (*Amundson Dep. at 29:4-12*). Finally, at one point, Amundson testified that he visited the property either 48 or 72 hours before the accident, during the day, and saw the window. (*Amundson Dep. at 31:1-7*). Based on these facts, if Walter did not know the window was shattered and moved, and a dangerous condition had been created on his property, he should have known. There are genuine issues as to the material facts surrounding whether Amundson knew the window was shattered and moved up the walkway, or that Amundson should have known. The genuine issues regarding the material facts of this case are properly decided by a jury. Accordingly, Defendant's Motion for Summary Judgment should be denied.

Additionally, the Idaho Court of Appeals recently held that between a social guest and a landlord, "the landlord owes a duty only to the extent that, if the landlord voluntarily undertakes repairs on the premises, the landlord must exercise reasonable care in performing such repairs." *Robinson v. Mueller*, 156 Idaho 237, 241 322 P.3d 319 (Ct. App. 2014). Amundson initiated and conducted the window removal project. Under *Robinson*, Amundson had a duty of reasonable care in performing the repair. Amundson breached that duty by placing the large 200-300 pound window in a walkway accessed by social guests at night, and failing to follow up the condition of the window once it was shattered, and moved further up the walkway. Accordingly, Amundson's failure to place the window in a safe location, and his failure to follow up on the condition of window once it was moved is a breach of his duty as set forth in *Robinson*.

***D. AMUNDSON'S CREATION AND KNOWLEDGE OF A DANGEROUS CONDITION ON HIS PROPERTY WAS THE ACTUAL AND PROXIMATE CAUSE OF STILES' INJURY.***

In support of his Motion for Summary Judgment Defendant cites the holding in *Turpen v. Granieri* which provides that a landlord cannot be held personally liable for activities (and injuries or damages stemming therefrom) occurring on the landlords property. *Turpen v. Granieri*, 133 Idaho 244, 985 P.2d 669 (1999). The *Turpen* Court did find that "the only type of premises liability upon which a landlord's duty might potentially attach depending on the circumstances applies only to a 'condition of the land,' as opposed to activity taking place on the land." *Id.* at 244.

Defendant cited the above-referenced authority to support his argument that “the danger involved with the storage of the tree stump was directly related to activities taking place on the land, rather than a permanent-type condition existing on the land. As a result, Plaintiff is seeking liability against Defendant under a legal theory not supportable under Idaho law.” See *Defendant’s Memorandum in Support of Motion for Summary Judgment*, at 18.

Initially, based on the depositions and affidavits on file in this case, it is unclear how or exactly when the stump was placed in the walkway, and who was responsible for doing so. Thus, Defendant’s argument that the placement of the stump was attendant to a tenant activity on the land, and therefore Amundson is absolved of liability to Stiles, fails. No party to this action can demonstrate such facts.

It was Amundson’s idea to remove the bay window. It was Amundson that exercised complete authority, discretion, and control over any repair or maintenance conducted on the property, including the window removal. It was Amundson and Roger, under Amundson’s direction, discretion, authority and control, who placed the window in a walkway which was utilized to enter and exit the backyard of the property at night. As explained above, whether Amundson was involved with moving the window into the walkway or actually knew the window was shattered and moved to its final location further up the walkway when he visited the property shortly before the accident are disputed facts which should be properly decided by a jury. Amundson’s removal and placement of the bay window in its initial location created a dangerous condition on the land. Amundson’s further failure to determine that the window was shattered, and moved further up the walkway, and his failure to warn of this dangerous condition on the land is what led to Stiles, injuries, not a tenant social activity. Thus, Defendant’s Motion for summary judgment should be denied on these grounds as well.

***E. ROGER ACTED AS AN AGENT ON BEHALF OF AMUNDSON, AND THUS AMUNDSON IS LIABLE FOR ROGER’S ACTIONS.***

“Unless made so by specific agreement, a tenant is not the agent of his landlord for any purpose.” *Killinger v. Iest*, 91 Idaho 571, 575 (Idaho 1967) citing; *Denver Tramway Corp. v. Rumry*, 98 Colo. 24, 52 P.2d 396 (1935); *Shaver v. Bell*, 74 N.M. 700, 397 P.2d 723 (1964); *Coe*

*v. Esau*, 377 P.2d 815 (Okl.1963); 2 C.J.S. Agency § 2. “The alleged agent, however, should testify as to the existence of facts or conditions which establish the ultimate fact of agency.” *Killinger v. Iest*, 91 Idaho 571, 576 (Idaho 1967). “Once sufficient evidence is submitted to make the issue of agency disputable, the issue becomes a question of fact.” *Tri-Circle v. Brugger Corp.*, 121 Idaho 950, 954 (Idaho Ct. App. 1992).

Roger acted as an agent on behalf of Amundson. Amundson testified at deposition that he had authority over the maintenance and repair of the property. Amundson further testified that any work performed on the property was done at his direction and sole discretion. Amundson additionally testified that any repair or maintenance performed by his tenants was done so for the benefit of the property, and for his own benefit, as the owner of the property. (*Amundson Dep. at 55:22-25, 56:1-25*). Amundson testified that he had a verbal lease agreement with Roger, and that Roger would never make any alterations on the property without his approval. (*Amundson Dep. 44:13-20*). Roger’s deposition testimony likewise supported the fact that he was an agent for his father. Roger testified at deposition that he maintained the property, and performed upkeep for and on behalf of his father. (*R. Amundson Dep. 63:4-19, 65:7-23*).

There was a verbal agency relationship established between Amundson and Roger which provided that any work or repair performed by Roger was done so for the benefit of the property, and for Amundson’s benefit as the property owner. While there are disputed facts regarding whether Roger acted alone in moving the window further up the walkway, if he did in fact move the window further up the walkway, he was acting as Amundson’s agent at the time, and Amundson is responsible for the ultimate placement of the window in the location where Stiles was injured.

Finally, the above-cited Idaho case law provides that the question of agency is a mixed question of law and fact, and once sufficient evidence is submitted to bring the question of agency into dispute, the issue becomes a question of fact. Based upon the deposition testimony of both Amundson and Roger, there is sufficient evidence to bring the question of the existence an agency relationship between Amundson and Roger into dispute. The existence of this agency relationship is a question of fact for a jury. Since there is an issue as to whether an agency

**MEMORANDUM IN OPPOSITION TO DEFENDANT’S MOTION FOR SUMMARY  
JUDGMENT - Page 16**

1351.0001

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relationship existed between Amundson and Roger, Defendant's Motion for Summary Judgment should be denied.

***F. CREDIBILITY IS AN ISSUE FOR THE JURY AND THUS FURTHER PRECLUDES THE ENTRY OF SUMMARY JUDGMENT.***

In MOORE'S FEDERAL PRACTICE, 2d ed., Vol. 6, Summary Judgment, §56.15[4], p. 2139, the rule amply supported by authorities is stated as follows:

The general and well settled rule is that the court should not resolve a genuine issue of credibility at the hearing on the motion for summary judgment, whether the case be a jury or court case; and if such an issue is present the motion should be denied and the issue resolved at trial by the appropriate trier of the facts, where, to the extent that witnesses are available, he will have the opportunity to observe their demeanor.

*See also Merrill v. Duffy Reed Construction Co.*, 82 Idaho 410, 353 P.2d 657, *In re Killgore's Estate*, 84 Idaho 226, 235, 370 P.2d 512, 517-18 (1962).

The Idaho Court of Appeals has also ruled, "if the credibility of an affiant furnishing direct evidence is put at issue by other, circumstantial evidence, the credibility issue should not be resolved on summary judgment. Credibility determinations are best made when the trier of fact has an opportunity to observe the demeanor of the witnesses." *Blackmon v. Zufelt*, 108 Idaho 469, 471, 700 P.2d 91, 93 (Ct.App. 1985). Summary judgment is impermissible when there is a conflict in the evidence respecting material issues of fact or when the evidence raises a question of the credibility of witnesses. *Wait v. Leavell Cattle, Inc.*, 136 Idaho 792, 798, 41 P.3d 220, 226 (2001); *First Sec. Bank of Idaho, N.A. v. Murphy*, 131 Idaho 787, 792, 964 P.2d 654, 659 (1998);

As evidenced by the facts section above, this case is fraught with witness credibility issues. Amundson testified at deposition that he knew about the social gatherings which occurred on his property through his son Roger and Jenkins. (*Amundson Dep. at 26:21-22*). However, both Roger and Jenkins have testified that they never informed Amundson about the gatherings. (*R. Amundson Dep. at 60:8-21, Jenkins Dep. at 26:15-25*). At deposition, Roger was adamant on this subject, explaining that he did not inform his father of the gatherings since the noise problems created by the gatherings was something he thought he could address and handle on his own. (*R. Amundson Dep. at 60:8-25, See also, Jenkins Dep. at 26:15-25*). Roger also denied

**MEMORANDUM IN OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT - Page 17**

1351.0001

000286

attending any of the social gatherings hosted in the backyard. (*R. Amundson Dep. at 62:1-30*). However, both Stiles and Sullivan testified at deposition that Roger attended the gatherings, including the gathering conducted in the backyard on the date the accident occurred. Stiles testified at deposition that the date of the accident was the first time he met Roger, and he met him in the backyard of the property, at the social gathering. (*Stiles Dep. at 54:10-11, Sullivan Dep. 65:5-9*).

Roger additionally testified that Sullivan played absolutely no part in the removal of the bay window, or the installation of the garage door. (*R. Amundson Dep. at 33:4-9*). However, both Amundson and Sullivan testified that Sullivan assisted with the framing and installation of the garage door once the window was removed. (*Amundson Dep. at 18:7-21, Sullivan Dep. at 30:23-25*). There is conflicting testimony regarding how the windowpane was shattered. Roger maintains that Jenkins shattered the windowpane with his pickup's side rear-view mirror when he opened the pickup door into the window. Jenkins testified that wind blew the 200-300 pound window over, and it landed on his pickup's side rear-view mirror, and the pane was shattered. (*R. Amundson Dep. at 13:18-24, Jenkins Dep. at 16:7-21, 17:2-8*).

Roger's deposition testimony supported the existence of ambient light in the walkway at the time of the accident. Roger testified that on the night of the accident, the entire walkway was illuminated by a neighbor's light, which existed on a giant pole extending skyward from the eave on the neighbor's barn. (*R. Amundson Dep. at 95:4-25, 96:1-12*). The neighboring property owner, Gearing, has submitted an affidavit in support of Plaintiff's Opposition to Defendant's Motion for Summary Judgment, (*See Gearing Aff.*). Gearing owned the property on the date of the accident, and states specifically in his affidavit that there has never been a light of any kind mounted anywhere on the flagpole, either prior to, or since his purchase of the property. (*Gearing Aff.*).

The witness and party depositions, and affidavits on file in this case are contradictory on key factual issues including whether Mr. Amundson was informed of the social gatherings on his property, and if so, who informed Mr. Amundson of the social gatherings, whether Roger and Jenkins were present at any of these social gatherings, and the social gathering held on the date of the accident, who removed the window, how the window was broken, and whether the



walkway was lit by an ambient light affixed to a pole on the neighbors barn. The inconsistent testimony provided above calls into question the credibility of the parties and witnesses to this lawsuit. According to Idaho case precedent, witness credibility determinations should not be made on summary judgment if credibility can be tested in court before the trier of fact. Accordingly, the credibility of the witnesses testifying to the foregoing should be determined in court, by a jury, not at Summary Judgment. On this basis alone, Defendant's Motion for Summary Judgment should be denied.

#### V. CONCLUSION

Based on the foregoing arguments and authorities, there are genuine issues as to a number of material facts in this case. Accordingly, Defendant's *Motion for Summary Judgment* should be denied, and Plaintiff respectfully requests that the instant motion be denied.

DATED this 9th day of February, 2015.

BRADY LAW, CHARTERED



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By: Chip D. Giles  
Attorneys for Plaintiff  
David Wayne Stiles

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 9<sup>th</sup> day of February, 2015, I caused a true and correct copy of the foregoing document to be served upon the following person(s) in the following manner:

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Chip Giles

FEB 17 2015

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IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

DAVID WAYNE STILES,  
Plaintiff,

vs.

WALTER A. AMUNDSON,  
Defendant.

Case No. CV-PI 1311963

**REPLY MEMORANDUM IN  
SUPPORT OF DEFENDANT'S  
MOTION FOR SUMMARY  
JUDGMENT**

COMES NOW Defendant, Walter Amundson, by and through its counsel of record, Anderson, Julian & Hull, LLP, and hereby submits its *Reply Memorandum in Support of Motion for Summary Judgment* ("Motion") as follows:

**REPLY MEMORANDUM IN SUPPORT OF DEFENDANT'S MOTION FOR SUMMARY  
JUDGMENT - 1**

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## I. INTRODUCTION

In its Opposition to Defendant's Motion for Summary Judgment, Plaintiff attempts to raise a number of facts surrounding the accident at issue, presumably with the aim of creating a material issue of fact for trial. However, much of the factual record cited by Plaintiff is either superfluous or not relevant to the sole issue on summary judgment: **whether Walter Amundson owed a duty to Mr. Stiles to warn him of the potential danger of a tree stump resting in a walkway and a broken window propped up on a fence next to the walkway.** Plaintiff also attempts to confuse the factual record regarding the relevant events.

More importantly, the Plaintiff has failed to cite or apply the applicable law to the duty of care issue present in this particular case. Mistakenly, Plaintiff attempts to cast the issue as one of defective maintenance in order to implicate liability against Walter Amundson. However, it is clear from the undisputed facts of this case that the liability at issue was caused due to the existence of a hazard created exclusively by the tenants. Thus, summary judgment remains appropriate.

## II. ARGUMENT

### A. Correcting the Factual Record and Discussion of the Relevant Facts

There is no dispute between the parties that, at the time of the accident, the property at issue was being rented by John Sullivan, Wayne Jenkins and Walter's son, Roger Amundson. Plaintiff also raised no dispute to the contention that, while Walter Amundson took care of repairs needed to the property during the tenancy, the tenants were in charge of keeping the property in a well-kept and clean condition. See *Affidavit of Walter Amundson*, ¶ 3.

There is no dispute between the parties that Walter (with the help of his son Roger), removed the bay window at issue from the front of the property and placed it against a vinyl fence at the front of the property next to the driveway. However, the Plaintiff continues to highlight this fact, even going so far as to suggest that Walter Amundson created a hazard by placing the window in that location. See **Memorandum in Opposition to Defendant's Motion for Summary Judgment**, p. 12. Such an argument is a complete red herring, as there is no evidence in the record that the bay window placed along the vinyl fence at the front of the property would have represented a hazard to Mr. Stiles on the night of July 8, 2011.

It should be clear to everyone that this case involves a hazard that was created by the tenants, not Mr. Amundson. There is no evidence that Walter Amundson broke the window. The Plaintiff notes that there is disputed testimony as to whether Mr. Jenkins broke the window with the door to his vehicle or whether the window shattered when blown over by the wind. Again, however, the fact is immaterial to the duty of care issue that the court must decide on summary judgment.

There is no material dispute in the record that Walter moved the bay window to the back of the property along the cedar fence after it shattered. The Plaintiff tries to create a material issue of fact by representing that Mr. Jenkins has testified that both Walter and Roger Amundson moved the window back along the cedar fence, presumably in order to show that Walter Amundson knew about the existence of a hazard. However, the argument is a blatant mischaracterization of the record, as Mr. Jenkins testified that only Roger Amundson moved the window. See **Deposition of**

**Wayne Jenkins**, pp. 19:15 – 20:4. In fact, all witnesses agree that it was the tenant, Roger Amundson, that solely moved the window to the back of the property.

Plaintiff next tries to create a factual issue regarding Walter Amundson's potential knowledge of the broken window by highlighting Walter's deposition testimony whereby he could not recall if he had been to the property in the days before Mr. Stiles accident and could not recall whether he had seen the window at that time. See **Memorandum in Opposition to Defendant's Motion for Summary Judgment**, p. 6. Again, the Plaintiff is merely attempting to muddy the factual record here. It is not surprising that Mr. Amundson could not exactly recall dates when he visited the property when questioned about it three years later.

What is absolutely clear and undisputed from the record is that Walter Amundson did not know that the window had broken prior to the accident involving Mr. Stiles. See **Deposition of Walter Amundson**, pp. 29:16-24; 30:15-18; 32:2-5. It is also clear that none of the tenants had told Walter Amundson about the broken window prior to Mr. Stiles' accident. See **Deposition of Roger Amundson**, pp. 34:23 – 35:1; 35:2-11. Thus, the Defendant is not asking the Court to make credibility determinations on summary judgment. Instead, there is no evidence creating a material issue of fact that Walter Amundson knew about the broken window or its placement along the walkway at the back of the property along the cedar fence prior to Stiles' accident.<sup>1</sup>

It is also undisputed that Walter Amundson was not knowledgeable regarding the existence of the tree stump resting in the path of the walkway on the night of Mr. Stiles'

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<sup>1</sup> To the extent that the Plaintiff asserts that Walter Amundson owes a duty of care because he "should have known" about the broken window or tree stump, that is a legal determination which Defendant addresses below in its discussion of the Idaho Court of Appeals decision in **Robinson v. Mueller**.

accident. *Affidavit of Walter Amundson*, ¶ 16. Again, the Plaintiff attempts to create factual issues as to how long the stump may have rested in that location prior to the accident. However, the Plaintiff is not asserting that Mr. Amundson placed it there. The Plaintiff does not even argue that there are certain factual inferences to be drawn that Walter Amundson knew the stump was in the walkway prior to the accident.

Thus, from a pure factual perspective, there is no material evidence in the record indicating that Walter Amundson was aware of the hazards at issue prior to July 8, 2011. The Plaintiff discusses a number of other facts in his brief, including the nature of Mr. Stile's conduct and his intent just prior to the accident, testimony from neighbors regarding how well lit the walkway was at night, etc. Most of these facts touch on comparative fault issues which are not being litigated on summary judgment.

#### **B. The Source of a Duty of Care**

The sole issue the court has to decide is whether Walter Amundson, as the landlord of the property, not the person in day-to-day possession of the property, owed a duty of care to Mr. Stiles. In order to properly rule on the question as a matter of law, the court must determine the source of the duty. The Defendant asserts that the Plaintiff has not identified a source consistent with Idaho law. In its opposition brief, the Plaintiff asserts that Walter Amundson is liable either under a general duty of care or under general agency principles. Each argument will be addressed in turn.

##### **1. Duty of Ordinary Care**

The Plaintiff correctly notes that the duty owed to a social guest is narrow and compels the occupier of land to share with the guest knowledge of dangerous conditions on the land that the occupier knew, or by the exercise of reasonable care

should have known. However, when it comes to how Walter Amundson can be held liable under that standard, the Plaintiff devotes the most effort to arguing that he owed Mr. Stiles a general duty to exercise reasonable care under the circumstances, a position not supported under current Idaho law.

The Plaintiff also does not focus his argument on what that duty (if it in fact exists) should look like under the circumstances of this case. As an example, it isn't clear whether the Plaintiff contends that Walter Amundson should have inspected the entire property to identify potential hazards to guests created by the tenants every time he came to collect rent. Idaho appellate courts certainly have not supported such a strict standard, even in the context of a retail store's duty of care to an invitee customer.

For instance, in *Tommerup v. Albertson's Inc.*, 101 Idaho 1, 607 P.2d 1055 (1980), *overruled on other grounds by Harrison v. Taylor*, 115 Idaho 588, 768 P.2d 1321 (1989), a customer fell in a grocery store parking lot after slipping on a cupcake wrapper near the store's doorway and brought suit against the grocery store for negligence. At trial, no evidence was presented regarding who deposited the cupcake wrapper in the parking lot. It was also revealed that the store did not provide garbage cans outside its entrances and only scheduled inspections for debris in the parking lot between midnight and 6:00 a.m. The Idaho Supreme Court affirmed the jury's verdict for the grocery store. The store was not held under a duty to inspect for every potential hazard and there was no evidence that the store was responsible for the hazard itself.

Another point which must be highlighted from the Tommerup decision is the Idaho Supreme Court's note that the issue which gives rise to a premises liability duty of care regarding possible dangers on the land is the possessor's superior knowledge



of such conditions as compared to any other party. *Tommerup*, 101 Idaho at 3–4, 607 P.2d at 1057–58. Missing entirely from the premises liability analysis provided by the Plaintiff on summary judgment is how Walter Amundson fits into the role, under these circumstances (as the landlord not occupying the property), as having the superior knowledge that a broken window or tree stump lying in the walkway presents a danger to social guests of the tenants.

The Plaintiff's argument that Walter Amundson should be held liable under a general tort duty of care under the circumstances is belied by the Idaho Supreme Court's decision in *Robinson v. Mueller*, 156 Idaho 237, 322 P.3d 319 (Ct. App. 2014), a case cited extensively in the Defendant's summary judgment brief. The Plaintiff almost completely ignores the impact of that decision to this case. Defendant will not re-cite all of *Robinson's* legal principle's here, but a few points should be highlighted to address the Plaintiff's argument that Mr. Amundson should be held liable under the standard that he should have known, through the exercise of due care, about the hazards at issue and should have warned Mr. Stiles.

In *Robinson*, the landlord was fully aware that the apartment he rented contained a second story dormer without railings – no doubt a potential hazard to the tenant's guests. However, the Court in *Robinson* clarified that a landlord's general duty of care under Idaho's common law premises liability regime addressed duties only owed to invitees, not social guests. 156 Idaho at 240-241. A landlord is not responsible for injuries to social guests visiting the tenant which are caused by failure to keep or put the demised premises in good repair. *Id.*

The landlord's duty to warn exists only with respect to its tenant, due to the

tenant's status of an invitee. *Id.*, at 241. The Plaintiff cites extensively from **Stephens v. Stearns**, 106 Idaho 249, 678 P.2d 41 (1984), to support its liability argument in this case. But again, **Stephens** involved a landlord's duty to an invitee, not a tenant's social guest. **Robinson** is the correct law to be applied when analyzing a landlord's duty to warn a social guest of its tenant. The impact of **Robinson** is clear – a duty to warn does not exist between the landlord and a tenant's social guest.

Under **Robinson**, the landlord owes a duty only to the extent that, if the landlord voluntarily undertakes repairs on the premises, the landlord must exercise reasonable care in performing such repairs. **Robinson**, 156 Idaho at 241. "**However, the tenant essentially occupies the position of landowner with respect to guests of the tenant.** This is because the tenant is the individual in control of the premises during the lease and the tenant has control over the guests hosted in the apartment." *Id.* (emphasis added).

Ultimately, there is no legal support for Plaintiff's argument that Walter Amundson owed Mr. Stiles a general duty of care to provide warnings under the circumstances of the alleged hazards posed by the broken window or tree stump. That duty of care flowed solely between the tenants and Mr. Stiles.

## **2. Duty of Care Based on Principles of Agency**

Since the Plaintiff cannot find a source of duty to argue that Walter Amundson is directly liable for his injuries, he next argues that Walter is vicariously liable for Roger's actions under some type of agency theory. The Plaintiff implies that Roger could have been serving as Walter's property manager. The argument is not well developed in the briefing and it is difficult to follow the Plaintiff's logic as to how the theory applies in this

case. Certainly, the Plaintiff cites no legal authority to support the proposition that an owner is vicariously liable for a property manager's failure to warn a tenant's social guest of hazards existing on the land. Regardless of these flaws, there are also a number of problems with the Plaintiff's theory.

First, there is insufficient evidence to create a material issue of fact regarding the existence of an agency relationship between Roger and Walter. The parties appear to agree that, under Idaho law, unless there is a specific agreement proving otherwise, a tenant is not the agent of his landlord for any purpose. *Killinger v. Iest*, 91 Idaho 571, 428 P.2d 490 (1967). However, it is the Plaintiff's burden to prove that a specific agency agreement existed. See *Whalen v. Vallier*, 46 Idaho 181, 266 P. 1089 (1928) (burden of proving existence of agency relationship rests on party alleging it).

There is no evidence of a "specific agreement" between the parties in the record. For instance, there is no evidence of an agreement for Roger to act as the property manager for the Kuna property. At best, Plaintiff cites to evidence in the record that Roger would assist his father with maintenance issues or fix problems that arose with the property for his father. There is no evidence that Roger collected rent, signed rental agreements on behalf of his father, had the ability to evict tenants or exercised any other duties typically associated with a property manager. There is also no evidence that Roger was paid any consideration for serving as a property manager. Ultimately, there is no evidence of a specific agreement establishing an agency relationship.

Second, even if it were appropriate to analyze this matter in the context of Roger "wearing the hat" of a property manager, liability still cannot be established. Premises liability is a concept that creates a duty of care between an owner or occupier of land

and a third party visiting the property. There is no legal basis for a duty of a property manager to warn a social guest of a potential hazard on the property. Defendant's research could find no appellate authority for the dual proposition that, (1) a property manager may be held directly liable for a social guest's injuries occurring on the property being managed or, (2) that the owner of the property can be held vicariously liable for the property manager's negligence in that regard.


Finally, Defendant contends that Idaho law is clear that a landlord's duty to a tenant's social guest is limited to the parameters of the *Robinson* case. Idaho has not recognized any other source of a duty in this context. Thus, the Plaintiff's undeveloped agency theory argument is flawed both factually and legally.

### III. CONCLUSION

Once again, Defendant respectfully requests that the Court grant its motion for summary judgment.

DATED this 17<sup>th</sup> day of February, 2015.

ANDERSON, JULIAN & HULL LLP

By   
\_\_\_\_\_  
Michael P. Stefanic, Of the Firm  
Attorneys for Defendant, Walter A. Amundson

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 17<sup>th</sup> day of February, 2015, I served a true and correct copy of the foregoing **REPLY MEMORANDUM IN SUPPORT OF DEFENDANT'S MOTION FOR SUMMARY JUDGMENT** by delivering the same to each of the following attorneys of record, by the method indicated below, addressed as follows:

Jason R.N. Monteleone  
Johnson & Monteleone, LLP  
405 South Eighth Street, Ste. 250  
Boise, ID 83702  
Ph: 208-331-2100  
Fax: 208-947-2424  
Jason@treasurevalleylawyers.com  
*Attorneys for Plaintiff*

U.S. Mail, postage prepaid  
 Hand-Delivered  
 Overnight Mail  
 Facsimile

Chip Giles  
Brady Law, Chtd  
St. Mary's Crossing  
2537 W. State Street, Ste. 200  
Boise, ID 83702  
**Ph: 208-345-8400**  
Fax: 208-322-4486  
*Attorneys for Plaintiff*

U.S. Mail, postage prepaid  
 Hand-Delivered  
 Overnight Mail  
 Facsimile



---

Michael P. Stefanic

APR 13 2015

CHRISTOPHER D. RICH, Clerk  
By KATHY PATARO  
DEPUTY

Michael P. Stefanic, ISB No. 4029  
ANDERSON, JULIAN & HULL LLP  
C. W. Moore Plaza  
250 South Fifth Street, Suite 700  
P. O. Box 7426  
Boise, ID 83707-7426  
Telephone: (208) 344-5800  
Facsimile: (208) 344-5510  
E-mail: mstefanic@ajhlaw.com

Attorneys for Defendant,  
Walter A. Amundson

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

DAVID WAYNE STILES,

Plaintiff,

vs.

WALTER A. AMUNDSON,

Defendant.

Case No. CV-PI 1311963

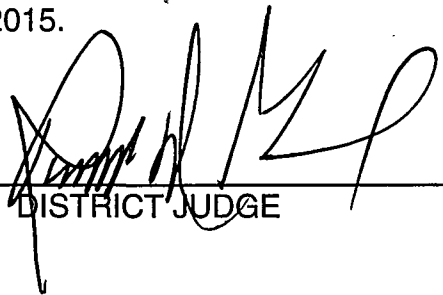
**ORDER ON DEFENDANT'S  
MOTION FOR SUMMARY  
JUDGMENT.**

Before this Court is Defendant's Motion for Summary Judgment. Oral argument for the Motion was heard on March 9, 2015, at the Ada County Courthouse in Boise, Idaho. The Plaintiff was represented by Jason Monteleone and Chip Giles. The Defendant was represented by Michael Stefanic. Pursuant to the findings of facts and

rulings of law issued from the bench on the record, the Court hereby orders and this does Order:

That Defendant Walter A. Amundson's Motion for Summary Judgment on Plaintiff's claims is granted in its entirety and that such claims be dismissed with prejudice.

DATED this 31 day of March, 2015.

By  \_\_\_\_\_  
DISTRICT JUDGE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15th April day of ~~March~~, 2015, I served a true and correct copy of the foregoing **ORDER ON DEFENDANT'S MOTION FOR SUMMARY JUDGMENT** by delivering the same to each of the following attorneys of record, by the method indicated below, addressed as follows:

Jason R.N. Monteleone  
Johnson & Monteleone, LLP  
405 South Eighth Street, Ste. 250  
Boise, ID 83702  
Ph: 208-331-2100  
Fax: 208-947-2424  
*Attorneys for Plaintiff*

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Chip Giles  
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St. Mary's Crossing  
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Ph: 208-345-8400  
Fax: 208-322-4486  
*Attorneys for Plaintiff*

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Michael P. Stefanic  
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250 South Fifth Street, Suite 700  
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Ph: (208) 344-5800  
Fax: (208) 344-5510  
*Attorneys for Defendant*

U.S. Mail, postage prepaid  
 Hand-Delivered  
 Overnight Mail  
 Facsimile



Clerk



A.M.

FILED  
P.M.

201

APR 13 2015

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADAMS

CHRISTOPHER D. RICH, Clerk  
By KATHY PATARO  
DEPUTY

DAVID WAYNE STILES,

Plaintiff,

vs.

WALTER A. AMUNDSON,

Defendant.

Case No. CV-PI 1311963

**JUDGMENT**

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that judgment is entered as follows:

Plaintiff's claims are DISMISSED with prejudice.

This shall be deemed as a final judgment pursuant to I.R.C.P. 54(a).

The Defendant may submit a motion for costs for consideration .

SO ORDERED this 31 day of March, 2015.

By   
DISTRICT JUDGE



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 13<sup>th</sup> day of April, 2015, I served a true and correct copy of the foregoing **ORDER ON DEFENDANT'S MOTION FOR SUMMARY JUDGMENT** by delivering the same to each of the following attorneys of record, by the method indicated below, addressed as follows:

Jason R.N. Monteleone  
Johnson & Monteleone, LLP  
405 South Eighth Street, Ste. 250  
Boise, ID 83702  
Ph: 208-331-2100  
Fax: 208-947-2424  
*Attorneys for Plaintiff*

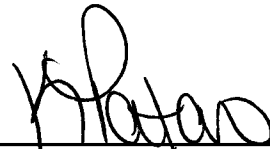
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Brady Law, Chtd  
St. Mary's Crossing  
2537 W. State Street, Ste. 200  
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Fax: 208-322-4486  
*Attorneys for Plaintiff*

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Ph: (208) 344-5800  
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*Attorneys for Defendant*

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 Hand-Delivered  
 Overnight Mail  
 Facsimile



Clerk

MAY 04 2015

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

CHRISTOPHER D. RICH, Clerk  
By KATHY PATARO  
DEPUTY

DAVID WAYNE STILES,

Plaintiff,

vs.

WALTER A. AMUNDSON,

Defendant.

Case No. CV-PI 1311963

**AMENDED JUDGMENT**

~~IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that~~ <sup>R26</sup> JUDGMENT IS


ENTERED AS FOLLOWS:

Plaintiff's claims are DISMISSED with prejudice.

~~This shall be deemed as a final judgment pursuant to I.R.C.P. 54(d).~~ <sup>AD74</sup>

That Defendant is entitled to Costs as a Matter of Right in the amount of \$1,706.67.

SO ORDERED this 21 day of April, 2015.

By   
DISTRICT JUDGE



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 4th day of May, 2015, I served a true and correct copy of the foregoing **AMENDED JUDGMENT** by delivering the same to each of the following attorneys of record, by the method indicated below, addressed as follows:

Jason R.N. Monteleone  
Johnson & Monteleone, LLP  
405 South Eighth Street, Ste. 250  
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Fax: 208-947-2424  
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Chip Giles  
Brady Law, Chtd  
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Boise, ID 83702  
Ph: 208-345-8400  
Fax: 208-322-4486  
*Attorneys for Plaintiff*

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Boise, ID 83707-7426  
Ph: (208) 344-5800  
Fax: (208) 344-5510  
*Attorneys for Defendant*

U.S. Mail, postage prepaid  
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 Overnight Mail  
 Facsimile



Clerk

MAY 20 2015

CHRISTOPHER D. RICH, Clerk  
By STACEY LAFFERTY  
DEPUTY

Jason R.N. Monteleone  
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Idaho State Bar No. 5441

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[chipg@bradylawoffice.com](mailto:chipg@bradylawoffice.com)  
Idaho State Bar No. 9135

Attorneys for Plaintiff

ORIGINAL

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT FOR THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

<p>David Wayne Stiles,  Plaintiff/Appellant</p> <p>v.</p> <p>Walter A. Amundson,  Defendant/Respondent</p>	<p>Case No. CV PI 1311963</p> <p><b>NOTICE OF APPEAL</b></p>
--	--

**TO: THE ABOVE-NAMED DEFENDANT/RESPONDENT, WALTER A. AMUNDSON, THAT PARTY'S ATTORNEY, MICHAEL STEFANIC, ESQ., AND THE CLERK OF THE ABOVE-ENTITLED COURT**

**NOTICE IS HEREBY GIVEN THAT:**

1. The above-named Plaintiff/Appellant, David Wayne Stiles, appeals against the above-named Defendant/Respondent, Walter A. Amundson, to

the Idaho Supreme Court from the orders and rulings made by the Honorable Richard D. Greenwood in granting Defendant's/Respondent's motion for summary judgment, on March 9, 2015, which judgment was initially entered on April 13, 2015, and served upon the parties on that date but which judgment was amended on May 4, 2015, and served upon the parties on that date.

2. The above-named Plaintiff/Appellant has a right to appeal to the Idaho Supreme Court, and the judgments or orders described in paragraph 1 above are appealable orders, under and pursuant to I.A.R. 11(a)(1).

3. PRELIMINARY STATEMENT OF ISSUES ON APPEAL:

These issues are intended solely as a preliminary statement of the issues on appeal which Plaintiff/Appellant intends to assert in this appeal; provided, of course, such list of preliminary issues on appeal shall not prevent Plaintiff/Appellant from asserting other issues on appeal as may be necessary and proper in the premises:

(a) Whether the District Court erred in granting summary judgment to Defendant/Respondent on Plaintiff's/Appellant's premises liability claim in that Defendant/Respondent owed Plaintiff/Appellant a duty of ordinary, reasonable care under the facts of this case;

(b) Whether the District Court erred in granting summary judgment to Defendant/Respondent on Plaintiff's/Appellant's claim that Defendant/Respondent owed Plaintiff/Appellant a duty to warn of any dangerous conditions existing on Defendant's/Respondent's

property of which Defendant/Respondent knew or should have known upon a reasonable inquiry, inspection, investigation, and/or examination;

- (c) Whether Defendant's/Respondent's status as a property owner and/or property manager of the premises created a duty to warn plaintiff of a dangerous condition existing on the property on the date of loss;
- (d) Whether Defendant's/Respondent's status as the individual with control over the premises created a duty to warn of any dangerous conditions existing on Defendant's/Respondent's property of which Defendant/Respondent knew or should have known upon a reasonable inquiry, inspection, investigation, and/or examination; and
- (e) Whether Defendant/Respondent should be liable to Plaintiff/Appellant for the claim of negligent repair of a leased, residential premises and whether summary judgment should have been denied, alternatively and/or additionally, on this basis.

4. No order has been entered which has sealed any portion of the record in these proceedings.

5. (a) Is a Reporter's Transcript requested? Yes.

(b) Plaintiff/Appellant requests the preparation of the following portions of the reporter's transcript: the entire transcript of the hearing on Defendant's *Motion for Summary Judgment* heard on March 9, 2015.

6. Appellant requests the following documents to be included in the Clerk's Record in addition to those automatically included under I.A.R. 28: Defendant's Motion for Summary Judgment; Defendant's Memorandum in Support of Motion for Summary Judgment; Affidavit of Michael P. Stefanic in Support of Motion for Summary Judgment; Affidavit of Walter Amundson; Plaintiff's Memorandum in Opposition for Defendant's Motion for Summary Judgment; Affidavit of Chip Giles in Opposition to Defendant's Motion for Summary Judgment; Affidavit of Crystal Stiles; Affidavit of Dan Gearing; Defendant's Reply Memorandum in Support of Defendant's Motion for Summary Judgment.

7. I certify:

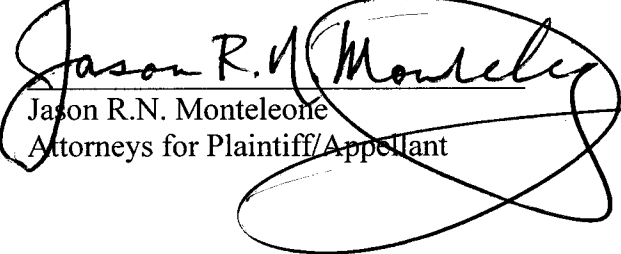
- (a) That a copy of this *Notice of Appeal* is being served on Fran Morris, the court reporter for the Honorable Richard Greenwood, as a Reporter's Transcript is being requested and ordered, so the court reporter may provide an estimate to Plaintiff/Appellant for the Reporter's Transcript requested above;
- (b) That the Clerk of the District Court has not yet been paid an estimated fee for preparation of the Reporter's Transcript, as Plaintiff/Appellant does not have an estimate for the preparation of that transcript;
- (c) That the appellate filing fee of \$129.00 for this *Notice of Appeal* has been paid to the Clerk of the District Court;



- (d) That the estimated fee for preparation of the Clerk's Record has been paid in the amount of \$100.00, as directed by the Clerk of the District Court; and
- (e) That service has been made upon all parties required to be served pursuant to I.A.R. 20.

DATED: This 20<sup>th</sup> day of May, 2015.

JOHNSON & MONTELEONE, L.L.P.

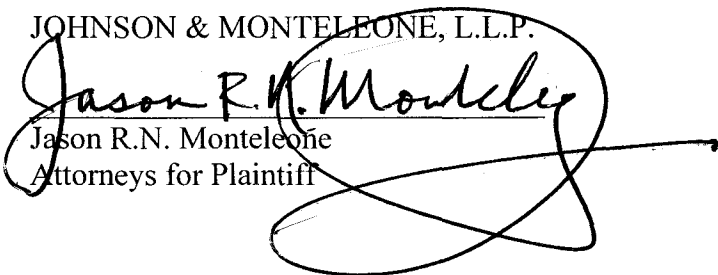
  
Jason R.N. Monteleone  
Attorneys for Plaintiff/Appellant

**CERTIFICATE OF MAILING, DELIVERY, OR FACSIMILE TRANSMISSION**

I CERTIFY that, on May 20, 2015, I caused a true and correct copy of the foregoing document to be:

<input checked="" type="checkbox"/> Mailed <input type="checkbox"/> Hand Delivered <input type="checkbox"/> CM/ECF Electronic Filing <input checked="" type="checkbox"/> Transmitted Fax Machine to: (208) 344-5510 <input type="checkbox"/> Transmitted Via E-Mail to: mstefanic@ajhlaw.com	Michael Stefanic, Esq. Anderson, Julian & Hull L.L.P. 250 South Fifth Street, Ste. 700 Boise, ID 83702
<input type="checkbox"/> Mailed <input type="checkbox"/> Hand Delivered <input type="checkbox"/> CM/ECF Electronic Filing <input checked="" type="checkbox"/> Transmitted Fax Machine to: (208) 322-4486 <input type="checkbox"/> Transmitted Via E-Mail to: chipg@bradylawoffice.com	Chip Giles, Esq. BRADY LAW CHARTERED 2537 W. State Street, Suite 200 Boise, ID 83702
<input type="checkbox"/> Mailed <input type="checkbox"/> Hand Delivered <input type="checkbox"/> CM/ECF Electronic Filing <input type="checkbox"/> Transmitted Fax Machine to: <input checked="" type="checkbox"/> Transmitted Via E-Mail to: fjzm@aol.com	Fran Morris Court Reporter for the Honorable Richard Greenwood 200 W. Front St. Boise, ID 83702

JOHNSON & MONTELEONE, L.L.P.

  
Jason R.N. Monteleone  
Attorneys for Plaintiff

NO. \_\_\_\_\_  
A.M. \_\_\_\_\_ FILED P.M. 2:39

JUL 30 2015  
CHRISTOPHER D. RICH, Clerk  
By KELLE WEGENER  
DEPUTY

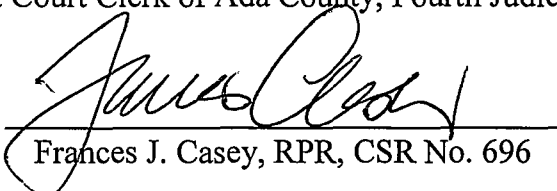
Fax: 334-2616

In the Supreme Court of the State of Idaho

David Wayne Stiles, ) Docket No. 43289-2015  
Plaintiff-Appellant, )  
v )  
Walter A. Amundson, )  
Defendant-Respondent. )

Notice of Transcript Lodged

Notice is hereby given that on July 23, 2015,  
I lodged one (1) original and three (3) copies of transcripts 43 pages in length,  
as listed below, for the above referenced appeal with  
the District Court Clerk of Ada County, Fourth Judicial District.

  
\_\_\_\_\_  
Frances J. Casey, RPR, CSR No. 696

**TRANSCRIPT LODGED**  
Hearing held – 3/9/15

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

DAVID WAYNE STILES,  
  
Plaintiff-Appellant,  
vs.  
  
WALTER A. AMUNDSON,  
  
Defendant-Respondent.

Supreme Court Case No. 43289

CERTIFICATE OF EXHIBITS

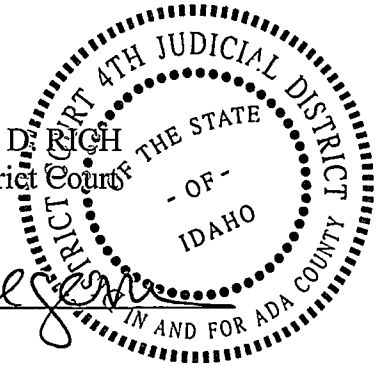
I, CHRISTOPHER D. RICH, Clerk of the District Court of the Fourth Judicial District of the State of Idaho in and for the County of Ada, do hereby certify:

There were no exhibits offered for identification or admitted into evidence during the course of this action.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said Court this 30th day of July, 2015.

CHRISTOPHER D. RICH  
Clerk of the District Court

By K. W. Jensen  
Deputy Clerk



IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

DAVID WAYNE STILES,  
  
Plaintiff-Appellant,  
  
vs.  
  
WALTER A. AMUNDSON,  
  
Defendant-Respondent.

Supreme Court Case No. 43289

CERTIFICATE OF SERVICE

I, CHRISTOPHER D. RICH, the undersigned authority, do hereby certify that I have personally served or mailed, by either United States Mail or Interdepartmental Mail, one copy of the following:

CLERK'S RECORD AND REPORTER'S TRANSCRIPT

to each of the Attorneys of Record in this cause as follows:

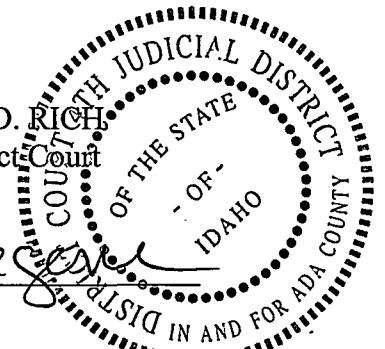
JASON R.N. MONTELEONE  
  
ATTORNEY FOR APPELLANT  
  
BOISE, IDAHO

MICHAEL P. STEFANIC  
CHIP D. GILES  
  
ATTORNEYS FOR RESPONDENT  
  
BOISE, IDAHO

Date of Service:                     JUL 30 2015                    

CHRISTOPHER D. RICH  
Clerk of the District Court

By                     KWesley                      
Deputy Clerk



IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

DAVID WAYNE STILES,  
  
Plaintiff-Appellant,  
vs.  
  
WALTER A. AMUNDSON,  
  
Defendant-Respondent.

Supreme Court Case No. 43289

CERTIFICATE TO RECORD

I, CHRISTOPHER D. RICH, Clerk of the District Court of the Fourth Judicial District of the State of Idaho, in and for the County of Ada, do hereby certify that the above and foregoing record in the above-entitled cause was compiled under my direction and is a true and correct record of the pleadings and documents that are automatically required under Rule 28 of the Idaho Appellate Rules, as well as those requested by Counsel.

I FURTHER CERTIFY, that the Notice of Appeal was filed in the District Court on the 20th day of May, 2015.

CHRISTOPHER D. RICH  
Clerk of the District Court

By KW Wegener  
Deputy Clerk

