

THE COURT: All right, members of the jury. We again apologize for keeping you waiting a bit; but here again, there were things that it was necessary to take the time to discuss with counsel and we hope we can appreciate your indulgence in that. So we're sorry to keep you waiting, but we're not going to keep you long so . . . we'll go for the next witness.

MR. MACKEY: And our final witness, your Honor, would be Mr. Kerry Kitchener.

THE COURT: Thank you.

THE COURTROOM DEPUTY: Would you raise your right hand, please.

(Kerry Kitchener affirmed.)

THE COURTROOM DEPUTY: Would you have a seat, please.

Would you state your full name for the record and spell your last name.

THE WITNESS: Kerry L. Kitchener, spelled K-I-T-C-H-E-N-E-R.

THE COURTROOM DEPUTY: Thank you.

THE COURT: Mr. Mearns.

DIRECT EXAMINATION

BY MR. MEARNS:

Q. Good afternoon, Mr. Kitchener. How old are you, sir?

A. 28.

Kerry Kitchener - Direct

Q. And where do you live?

A. Wakefield, Kansas.

Q. I'm going to ask you to keep your voice up and also try to slow down a little bit so everybody can hear you and the court reporter can take down your testimony.

You live in Wakefield, Kansas?

A. Uh-huh.

Q. How long have you lived in Wakefield, Kansas?

A. About 28 years.

Q. Where is Wakefield in relation to Junction City?

A. It's northwest of Junction City.

Q. About how far?

A. About 18 miles.

Q. And where did you go to high school?

A. At Wakefield High School.

Q. And after graduating from high school, did you attend any college?

A. I attended Cloud County Community College.

Q. You're going to have to slow down. Where did you go to college?

A. Cloud County Community College.

Q. How many years did you attend that institution?

A. Three years.

Q. Where do you work right now?

A. I work for a CDP Landscaping out of Milford, Kansas.

Kerry Kitchener - Direct

Q. Where do you live?

Q. Where is Milford in relation to Wakefield?
A. It's southeast of Wakefield about 8 miles.
Q. And how long have you been working for that landscaping company?
A. About six months.
Q. And what do you do for them?
A. Mainly do residential landscaping, mowing grass, planting trees, and building gardens and stuff.
Q. Did you ever work for the Kansas Department of Wildlife and Parks?
A. Yes.
Q. And when did you work for the Parks Department?
A. From the summer of 1989 to about September, October of '95.
Q. So a little over six years?
A. Uh-huh.
Q. And what did you do for the Parks Department?
A. I worked at a state park for a while and mainly did maintenance on the park itself with mowing grass, picking up trash, cleaning rest rooms.
Q. What park was that that you're referring to?
A. Milford State Park.
Q. I'd like to show you what has been introduced in evidence as Government Exhibit 2045. And, Mr. Kitchener, do you see that on your screen?
A. Uh-huh.

Kerry Kitchener - Direct

Q. And do you recognize that as a map of central Kansas?
A. Yes.
Q. Now, you have a black pen on -- that's attached to a wire. Do you see that there?
A. Uh-huh.
Q. Okay. Could you first indicate for us on that map where Wakefield, Kansas, is, where you live.
A. It's about --
Q. You have to go -- I'm sorry. You have to go underneath. There you go.
A. Right in here.
Q. That's where Wakefield is?
A. Uh-huh.
Q. Okay. And where is Milford then? Where would Milford be on that map?
A. Right in there.
Q. And how long was it that you had maintenance responsibilities at Milford Lake?
A. Three years. Three to four years.
Q. And during the six years that you worked for the Parks Department, did you have any maintenance responsibilities at any other lakes?
A. I did at Geary County State Fishing Lake.
Q. And do you see Geary Lake on -- on this map?
A. Yes.

Kerry Kitchener - Direct

Q. And could you put a circle around Geary Lake for us.

A. Right in there.

Q. Okay. And that's the blue dot that's just to the west there of the highway?

A. Uh-huh. Yes.

Q. During what years did you do maintenance work at Geary Lake?

A. From -- 1992 to about '95.

Q. And during those three or four years, 1992 to 1995, what seasons or months of the year would you do maintenance work at Geary Lake?

A. Mainly the spring and the summer.

Q. And so what months would that be? From what to what?

A. From usually March to about September, October.

Q. And what kind of maintenance work would you do at Geary Lake?

A. Do cleaning the rest rooms, picking up trash, painting on the rest rooms, building picnic shelters, just general maintenance.

Q. About how many times a week during those -- the spring and summer seasons, about how many times a week would you go to Geary Lake during 1992 to 1995 to do maintenance work?

A. Right around three or four days -- sometimes more -- usually, depending on what the boss wanted us to do.

Q. Three or four times a week?

Kerry Kitchener - Direct

A. Uh-huh.

Q. What I'd like you to do now is to look at what is in evidence as Government Exhibit 1982A. And if you could clear your pen by clicking the button there.

Okay. Do you recognize that as an aerial photograph of Geary Lake?

A. Yes.

Q. Using that pen to indicate where on the aerial photograph you're speaking, could you show us what you would do -- excuse me -- tell us what you would do when you would do maintenance work at Geary Lake between 1992 and 1995.

A. I'd usually come down Highway 77, which runs right through here.

Q. Is that coming from the north?

A. Coming from the north, running south. And I'd usually come up and start at the very first turn which is off of Highway 77, would go back to the west and follow that road back and usually run through there and follow the road back around and check over the rest rooms there, and usually follow and pick up the trash all the way around until I got clear back over to the -- the intersection.

Q. Let me just stop you there. Is there a rest room facility up where you were just indicating a moment ago?

A. Yes.

Q. Okay. Could you just put an X where -- approximately where

Kerry Kitchener - Direct

on that aerial photograph there is a rest room facility?

A. Somewhere right in there.

Q. And then you told us you would continue -- after you finished maintaining that rest room, you'd come back to Highway 77?

A. Uh-huh.

Q. What would -- what would you do at that point?

A. I'd follow the road that runs to the east of the rest room and it weaves all the way back and around through here. I'd usually start here, stop here, and then travel on down the highway.

Q. And what would you do then?

A. Go into the next turn -- turnoff off of Highway 77 and usually go down in the lower end of this area and check it over and come back out and go back over here toward -- there's another rest room right in there and check it over. And then just kind of make -- mainly make a sweep of the whole area.

Q. And along the way, as you were making this sweep or checking over the area, what would you be doing during that time?

A. Mainly picking up the trash along the roadsides; and, you know, it could be a couch or whatever.

Q. Okay. About how long would it take you on a typical day to do that maintenance routine when you were given that assignment?

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A. Probably three to four hours.

Q. Did you ever have to -- to do other kinds of maintenance work at Geary Lake between 1992 and 1995?

A. Yeah.

Q. What other kind of maintenance work would you do at Geary Lake?

A. Mowing grass, cutting down -- cutting limbs off of trees, painting, building things. That was mainly the main just (sic) of it.

Q. Did there come a time when you were working for the Parks Department where you were assigned the responsibility of doing a creel survey?

A. Uh-huh.

Q. Tell us what a creel survey is.

A. It's a survey that looks at what kind of fish are being

taken off -- out of a lake and what -- what kinds, what types or what size and weights.

Q. When was it that it was your responsibility to do creel surveys at Geary Lake?

A. Around March of '95.

Q. March of '95 until what month and year?

A. September, October of '95.

Q. Did you conduct the creel surveys pursuant to any kind of a

schedule?

A. Uh-huh.

Kerry Kitchener - Direct

Q. Explain how you would do it pursuant to a schedule.

A. I had a schedule that was given to me by the fisheries biologist, and he would hand that out at the beginning of the year or at the beginning of the survey season; and it would show what times and what days we would have to be there to do the survey.

Q. Now, when you say "we," were you doing -- were you the person who was assigned to do creel surveys at Geary Lake from March of '95 to September or October of '95?

A. Yeah.

Q. Explain to us what you would do when you were -- had the responsibility of doing a creel survey at Geary Lake, again using this photograph, 1982A.

A. I would like go on a maintenance run. I would start and go around the north end of the lake and follow that road around. And if there was fishermen that were either along the bank of the dam, fishing there, I'd usually walk down and try to talk to them and --

Q. And what was the purpose of talking to the fishermen who might be fishing at that area of the lake?

A. To see what kind of fish they were catching, what kinds of -- what lengths, weights, different types of species that were there.

Q. And did you count the fish that the fishermen had caught?

A. Yes.

Kerry Kitchener - Direct

Q. And did you measure the fish?

A. Yeah.

Q. And did you record that information?

A. Uh-huh.

Q. And what did you do with the information after you recorded it?

A. I turned it in to the supervisor or the fisheries biologist, and he would send it on down to somebody else.

Q. Now, continue then. Using the aerial photograph, tell us what your routine would be when you conducted a creel survey.

A. I would drive on around the lake and follow the roads all the way around till I got back to Highway 77. And then I'd come back in and I'd go down Highway 77, pull in; and usually, if there was fishermen fishing along the banks here and along here, I'd usually get out and talk to them and ask them the same questions that "What kind of fish were you catching, how long, how big," just a general type of question.

Q. Did you park in any particular area at the lake for any extended period of time when you would do a creel survey?

A. Yeah. I'd park right around in here by the boat ramp. There's a pretty good boat ramp there.

Q. Why would you pick this location to park while you were

Q. Why would you pick this location to park while you were doing your creel survey?

A. Because it was the only one that was halfway decent that would show any -- that would -- where most of the fishermen

Kerry Kitchener - Direct

would park at.

Q. Was that the only modern boat ramp at Geary Lake in 1995?

A. Yeah. But there was another one that was all grown up with weeds, and it was silted in pretty good, so nobody used it.

Q. So in your experience, the boat ramp that was used in 1995 was the one just to the north of that?

A. Uh-huh. This right around in here.

Q. What was the most popular area for you to come upon fishermen in 1995?

A. Most popular was right around the boat ramp area and the parking area, and that's right where the blue dot is right here.

Q. If you saw a vehicle that was parked there but had not a fisherman out on the lake or boat ramp associated with that vehicle, what would you do?

MR. TIGAR: Object to what he would have done, your Honor, without a time frame.

BY MR. MEARNS:

Q. Let's focus, then, on April of 1995. If you came upon a vehicle parked in that area in 19 -- in April of 1995, what did you do?

A. If the vehicle was parked there, I'd get out and if -- and make sure -- you know, see if there was -- if the fishermen or the person who drove that car -- or if there was anybody near it, I'd usually go over and talk to them and ask them -- you

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know, do my little survey.

Q. And you, again, would count the fish?

A. Uh-huh.

Q. And you would measure the fish?

A. Uh-huh.

Q. Was there any set length of time on a given day -- was there any set length of time that you were supposed to conduct the creel survey?

A. Yeah.

Q. What was that length of time?

A. About two hours.

Q. And was it -- was the creel survey required to be two hours?

A. Yeah.

Q. I want you to look now on your -- there's a document on -- on the witness stand before you. It's marked Government Exhibit 1985 for identification. Do you see that?

A. Uh-huh.

Q. And do you recognize that document?

A. Yeah.

Q. What is it?

A. It's a state fishing lake creel survey schedule.

Q. And is that a copy of the creel survey schedule that you followed in April of 1995?

A. Yeah.

Kerry Kitchener - Direct

Q. And was that a schedule that was provided to you so that you could conduct the business of the Parks Department?

A. Uh-huh.

Q. And was that schedule then maintained by the Park Department --

A. Yeah.

Q. -- as a record to show when you conducted creel surveys in April of '95?

A. Yeah.

MR. MEARNS: Your Honor, we would offer Government Exhibit 1985.

MR. TIGAR: I -- we've agreed about this, but I'll just look at the exhibit.

THE COURT: Sure, you may.

MR. TIGAR: Thank you, your Honor.

No objection, your Honor.

THE COURT: 1985 received.

MR. MEARNS: If we may publish it on the computer?

THE COURT: Yes.

MR. MEARNS: Is it possible to go back and view the whole document? Thank you.

BY MR. MEARNS:

Q. Beginning at the top of the document, it says, "1995, State Fishing Lake, Creel Survey Schedule for April"; is that right?

A. Uh-huh.

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Q. And was this the April, '95, schedule that you followed?

A. Yeah.

Q. Beginning now just below that where there are three columns, one titled "day," one titled "sample period," and one titled "start" -- do you see that?

A. Uh-huh.

Q. And if we could focus in on that area and the first entry where it says "one." Explain to us what the "day" column signifies.

A. This column here signifies the day of the 1st day of April.

Q. Okay. Beginning then, going over to the right, it says, "sample period." What does that reflect?

A. That re -- that's the -- probably the best time to take the survey. And it really reflects what time to start, like at 3:30 in the afternoon to 7:00 that night, or 7:30.

Q. So those -- those numbers reflect military time?

A. Uh-huh.

Q. And so that's 2:30 p.m. to approximately 7:30 p.m.?

A. 3:30 to 7:30.

Q. Excuse me, 3:30. Thank you. And does that -- who determined that time frame, 3:30 to 7:30, that sample period?

A. The biologist or people that were higher up that had more -- knew more about the surveys.

Q. Now, going to the third column, the last column on the right, it indicates "start" and "1700." Tell us what that

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means.

A. That was the time I would start -- approximate time I would start the survey, and that was at 5:00 in the afternoon.

Q. And so on April 1 of 1995, what time period did you conduct a creel survey at Geary Lake?

A. Approximately 5:00 in the evening to 7:00 that night.

Q. Now, when you say "approximately," how much time variation from 5:00 to 7:00 are we talking about?

A. 5 to 10 minutes.

Q. Now, if we could focus on the days in the center of the schedule beginning with April 10. What time on April 10, 1995, did you conduct a creel survey at Geary Lake?

A. At 1:30 in the afternoon.

Q. Until what time?

A. Till 3:30 that same afternoon.

Q. And between 1:30 and 3:30 on April 10, did you see a yellow Ryder truck parked at Geary State Lake?

A. No.

Q. And if we could go to the 11th. What time on April 11, 1995, did you start your creel survey at Geary Lake?

A. Around 8:00 in the morning to 10:00 that same morning.

Q. And during those two hours, 8 a.m. to 10 a.m., on April 11, 1995, did you see a yellow Ryder truck parked at Geary Lake?

A. No.

Q. If I could have the next entry, please. What's the date

Kerry Kitchener - Direct

that's reflected there?

A. April 13.

Q. What time did you start your creel survey on April 13, 1995?

A. Around 4:00 in the afternoon.

Q. How long did you conduct that creel survey?

A. For two hours, until 6:00 that same day.

Q. Between 4 and 6 p.m. on April 13th, 1995, did you see a yellow Ryder truck parked at Geary Lake?

A. No. No.

Q. Turning to the next entry for Sunday, April -- Easter Sunday, April 16, 1995, did you conduct a creel survey on that day?

A. Yes.

Q. At what time did you start your creel survey on Easter Sunday?

A. At 4:00 in the afternoon.

A. At 4:00 in the afternoon.

Q. And how long on that Easter Sunday did you stay at Geary Lake to do your creel survey?

A. Around an hour and a half or so.

Q. That day, you didn't stay the full two hours?

A. No.

Q. And during that hour and a half on Easter Sunday, April 16, 1995, did you see a yellow Ryder truck parked at Geary Lake?

A. No.

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Q. Turning to the next entry, which is -- what is the date for that entry?

A. April 17th.

Q. And what time did you conduct your creel survey on Monday, April 17th?

A. At 7:30 in the morning.

Q. And how long did you do it that day?

A. Two hours.

Q. Till what time?

A. 9:30.

Q. And from 7:30 to 9:30 in the morning on April 17th, did you see a yellow Ryder truck parked at Geary State Lake?

A. No.

Q. Okay. Now, if we could go back to -- to the middle of -- several columns there in the middle. Did you conduct a creel survey at Geary Lake on Tuesday, April 18th, as reflected in the schedule?

A. I can't -- no.

Q. Did you -- do you know whether or not you did a creel survey that day?

A. No.

Q. On April 19th, did you conduct a creel survey at Geary Lake?

A. Yes.

Q. What time did you start your creel survey on Wednesday,

Kerry Kitchener - Direct

April 19th?

A. Around 5:00 in the evening.

Q. And how long were you there?

A. For two hours.

Q. And did you --

A. Till 7.

Q. I'm sorry?

A. Till 7:00 that same night.

Q. Did you see a yellow Ryder truck parked at Geary Lake during those two hours?

A. No.

Q. On any of the times that you were at Geary Lake in April, 1995, doing your creel survey, did you see a yellow Ryder truck parked anywhere on the grounds at Geary State Lake?

A. No.

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Q. On any of the times that you did a creel survey at all during 1995 from March to September or October, did you ever see a yellow Ryder truck parked anywhere on the grounds at Geary Lake?

A. No.

Q. Now, how many years, again, did you do maintenance work at Geary State Lake?

A. For -- around almost three years. Three for four years.

Q. That was 1992 to 1995?

A. '5.

Kerry Kitchener - Direct

Q. During the -- any of the times that you were at Geary Lake during those years to do maintenance work, did you ever see a yellow Ryder truck parked at Geary Lake?

A. No.

Q. During all of the times that you've worked at Geary Lake or ever been there for personal reasons, have you ever seen a yellow Ryder truck at Geary State Lake?

A. No.

MR. MEARNS: No further questions, your Honor.

THE COURT: Cross-examination?

MR. TIGAR: May I retrieve the exhibit, your Honor?

THE COURT: Yes.

CROSS-EXAMINATION

BY MR. TIGAR:

Q. Good afternoon, sir. I'm Michael Tigar, one of the lawyers appointed to help Terry Nichols.

This creel survey schedule that we've been looking at here, that's a record that was made by the -- your -- your boss?

A. Well, it's through the Department of Wildlife and Parks.

Q. And do you know when this was made?

A. I sure don't.

Q. Okay. Well, let me -- let me start by asking, when's the first time that you started working up there at Geary State Fishing Lake?

Kerry Kitchener - Cross

A. The very first time?

Q. Yes, sir.

A. Probably in the summer of '92.

Q. And when did you start doing the creel surveys?

A. In 1995.

Q. Well, let's just look at April, 1995. Okay? During that time, what -- did you have jobs other than doing the creel survey?

A. Uh-huh.

Q. All right. Did you have jobs at more than one lake?

A. Mainly at the wildlife area which is north of Wakefield, Kansas, and Geary County State Fishing Lake.

Q. Were those the two areas that you were working in at that

time?

A. Yes.

Q. Okay. And you worked a regular eight-hour day?

A. Uh-huh.

Q. And a 40-hour week?

A. Uh-huh.

Q. Now, when were you first -- do you remember when you were first contacted by the FBI about the work that you did out there and what you'd seen?

A. No.

Q. Well, was it back in 1995?

A. Yeah.

Kerry Kitchener - Cross

Q. Okay. Back about in April, 1995, shortly after the Oklahoma City bombing?

A. Yeah. I guess so.

Q. I mean, you remember that; right?

A. Yeah.

Q. Okay. And you were asked then whether you'd seen any trucks on the 17th of April; do you remember that?

A. No.

Q. Okay. Well, let's talk about this creel survey. When you did the survey, what were you supposed to do? Make out cards?

A. Uh-huh.

Q. And in April of 1995, would there be good fishing at that lake?

A. Yeah. It's early spring. The fish are biting. People are actually getting cabin fever and they want to get out on the lake and have a good time.

Q. So when does that fish-are-biting-early-spring thing of fishermen coming to the lake start?

A. I don't know. Whenever they get the first itch to get outside, I guess.

Q. I mean, there are certain days when you didn't see many fishermen and there's days when you did see more?

A. Right.

Q. And did you see many in January?

A. No.

Kerry Kitchener - Cross

Q. Didn't have many fish to count; right?

A. Because I wasn't even around down there in January.

Q. You weren't. When did you start doing that? In March?

A. Started doing it March of 1995.

Q. Did you see many people around the 1st of March?

A. A handful.

Q. And when you say "a handful," about how many folks would you run into the first week in March up there?

A. Two or three. They were the diehards.

Q. Okay. And -- and then when -- getting on towards April, would you start seeing more?

- .. ,

A. Yeah.

Q. How many would you run into, let's say, the first week of April on a day when you were out counting?

A. Two or three or four, depending.

Q. Started to be more; right?

A. Uh-huh.

Q. Now, the leaves weren't on the trees yet, were they, early April?

A. They were just starting to bud then.

Q. Just starting. In the city where you live, there would be more leaves on the trees, but out in the country, there would be fewer; right?

A. Because I live in a small town, so it really doesn't have anything --

Kerry Kitchener - Cross

Q. Not like the big city; right?

A. Right.

Q. So it pretty much hasn't started to bud up.

A. Right.

Q. So you could see pretty well as you were standing all the way around the lake; correct?

A. Uh-huh.

Q. And when you would see fisherpeople out there, you would go up and ask them what they had caught and count them and measure them; correct?

A. Right.

Q. And then would you make a card?

A. Yes.

Q. What would you do with the card?

A. I would turn it in to the fishery biologist.

Q. Did the card show the times that you'd been there and how many people you'd spoken to?

A. They would show the -- they have a time and a name and what the weather was like for that day.

Q. All right. Well, what was the weather like on the 17th?

A. It was cloudy and rainy.

Q. Did you work the 18th?

A. No. Not at Geary County I didn't. I worked at the wildlife area.

Q. But you didn't go to Geary Lake on the 18th?

Kerry Kitchener - Cross

A. Not that I can remember.

Q. Now, where is the wildlife area? Up north of Junction City?

A. Yeah.

Q. So to get to Geary Lake from where you were living and working, you would arrive from north; is that correct?

A. Uh-huh.

Q. And on Easter Sunday, what kind of a shift did you work?

A. Just mainly a two-hour creel survey.

Q. You didn't do any of the maintenance or other work that you

Q. You didn't do any of the maintenance or other work that you were doing; correct?

A. No.

Q. Now, let's take a look at the 11th. What -- how many hours did you spend at Geary Lake on the 11th?

A. Two hours.

Q. And did you do anything other than a creel survey on the 11th at Geary Lake?

A. Not that I can remember.

Q. Did you do any maintenance on the rest rooms?

A. Not that I can remember.

Q. Did you remember -- do you remember picking up any trash?

A. No.

Q. All right. Well, how about on the 13th? Well, on the 12th, did you go to Geary Lake on the 12th at all?

A. For the survey?

Kerry Kitchener - Cross

Q. No. For any purpose.

A. No. For the survey, I did.

Q. On the 12th? Okay. Well, let me put this back up here and refresh your memory. It doesn't --

A. It doesn't have a 12 on there.

Q. Pardon?

A. There's no 12 there.

Q. There's no 12, but that's not your paper, I understand.

Just tell us what you remember. Do you remember going there and counting fish on the 12th?

A. No.

Q. Okay. Do you remember being assigned to do any other work on the 12th, picking up trash or the other things, the important things to keep the park going?

A. No. Because the -- I could have been working on the north end of the lake, Milford Lake, with my other boss -- with my boss.

Q. You say "could have been." What I'm asking you, sir -- I know it's a long time ago -- can you remember whether you went to Geary Lake at all on the 12th?

A. No.

Q. Now, your responsibilities during this time did include more than the creel survey; correct?

A. Uh-huh.

Q. Were you the only person that was having to do the

Kerry Kitchener - Cross

maintenance of the rest rooms and the -- you know, getting the trash and keeping the place cleaned up during this time?

A. At that time, yeah.

Q. So during April, 1995, you had the job of creel survey and keeping Geary Lake, you know, clean for the campers, plus you had the other job up north; right?

A. Right.

Q. Okay. Well, on the 17th, do you remember what time -- did

you work on the 17th? That would be a Monday, on doing any of the picking up trash or cleaning the rest rooms at Geary Lake?

A. On the 17th?

Q. Yes. A Monday.

A. That was -- I can't think right now.

Q. Okay. Are you a little nervous?

A. Uh-huh.

Q. I'm sorry. Is it -- don't worry about it. Just do the best you can remember. That's all -- that's all we can ask for.

Now, on the 18th, was that a day you had off, or was it just a day you had off from creel survey?

A. That was just a day I had off from the creel survey.

Q. All right. Did -- on the 18th, do you remember going to the lake, to Geary Lake at all?

A. No.

Q. Okay. And do you remember that you didn't, or you don't

Kerry Kitchener - Cross

remember whether or not you did?

A. Don't know if I did, or not.

Q. Okay. Now, when you would go and work at Geary Lake to get the -- you know, the trash done, the rest rooms and so on, would you have any particular time of day that you would try to get that done during April of 1995?

A. Well, I'd usually try and get all the rest rooms and trash picked up in the morning because most of the afternoon was spent mowing and trimming everything else.

Q. So if you had gone on the 18th, you would have gone there in the morning; right?

A. Right.

Q. Now, can you remember seeing any Ryder trucks at Geary Lake on the 18th?

A. No. Because I wasn't -- I don't know if I was there, or not.

Q. Okay. I understand. Your testimony is you have never seen a Ryder truck at Geary Lake; is that right?

A. Right.

Q. All right. So -- and you don't remember whether you were there on the 18th; right?

A. Right.

Q. And if -- if it did -- if it did happen you were there, you never saw a Ryder truck; right?

A. No.

MR. TIGAR: Okay. I have no further questions.

THE COURT: Mr. Mearns.

MR. MEARNS: Very briefly, your Honor.

REDIRECT EXAMINATION

BY MR. MEARNS:

Q. If you could look at 1985 on the computer.

April, 1995, was about two-and-a-half years ago; right, Mr. Kitchener?

A. Uh-huh.

Q. Do you know that with respect to creel surveys in April of

'95 that you followed this schedule to the letter?

A. Yeah. Pretty much.

Q. Was your maintenance responsibilities at Geary Lake coordinated in any way with respect to your creel-survey responsibilities?

A. Depending on the times of the survey, my day usually started at 8:00 in the morning, and it was usually an 8-hour day, 8 to 5; but if my survey would start at 5:00 in the afternoon, I would stay for the next two hours, which would be till 7:00, and finish out the survey, and I'd get an extra two hours of overtime.

Q. Was it -- did your supervisor try to coordinate your maintenance responsibilities with your creel-survey responsibilities on the same days?

A. Uh-huh.

Kerry Kitchener - Redirect

MR. TIGAR: Objection. If he knows what his supervisor did.

THE COURT: Well, of course. This is based on what you know. That's how you've answered?

THE WITNESS: Uh-huh.

THE COURT: All right.

BY MR. MEARNS:

Q. Now, based upon this schedule, you know you did not do a creel survey on April 18th, 1995?

MR. TIGAR: Objection to leading, your Honor.

THE COURT: Sustained.

BY MR. MEARNS:

Q. Do you do a creel survey on April 18, 1995?

A. No.

Q. Based upon the fact that you didn't do a creel survey on April 18th, is it likely or unlikely that you did maintenance at Geary Lake on April 18th?

MR. TIGAR: Object to leading, your Honor.

THE COURT: Overruled.

THE WITNESS: I can't remember. It's too far back.

BY MR. MEARNS:

Q. Do you have any recollection of being at Geary Lake on April 18th?

A. No.

MR. MEARNS: No questions, your Honor.

Kerry Kitchener - Recross

MR. TIGAR: Just one thing, your Honor, if I can, your Honor.

THE COURT: Sure.

RECROSS-EXAMINATION

BY MR. TIGAR:

Q. The -- on days when you wouldn't do the creel, is your -- well, how many days a week would you have to go to Geary Lake to work on, you know, keeping it clean and the rest rooms and

SO ON:

A. Usually about three times a week.

Q. Okay. And if you didn't have creel-survey duties during April -- on a particular day during April, 1995, were there times when your supervisor would say, "You've got to go down to Geary Lake anyway, and just clean it up"?

A. Yeah.

MR. TIGAR: Okay. Thank you. No further questions.

MR. MEARNS: He may be excused, your Honor.

THE COURT: All right. I take it you agree.

MR. TIGAR: Yes, your Honor, of course.

THE COURT: You may step down. You're excused.

Mr. Mackey?

MR. MACKEY: Yes, your Honor.

Finally, your Honor. Pursuant to agreement, we would move to admit Government Exhibit 2135.

MR. TIGAR: May I just stand at the lectern?

THE COURT: Yes, you can be there together.

MR. MACKEY: And 2136.

MR. TIGAR: No objection, your Honor.

THE COURT: All right. 2135, 2136 are received.

MR. MACKEY: And for the record, I will describe Government Exhibit 2135 to be records of Roger Moore's credit card use, telephone credit card use for the day 11-5, 1994, reflecting two credit card calls, one placed to Louisiana and one placed to Florida, both those calls placed from a number Area Code (501) 767-6185, which is reflected in Government Exhibit 2137 -- 2136, to be that of Mr. Walt Powell in Hot Springs -- or Royal, Arkansas.

Also and finally for the record, your Honor, we'd move to admit Government Exhibit 2149, which is a calendar of dates for the years 1994 and 1995.

MR. TIGAR: No objection, your Honor.

THE COURT: All right. 2149 is received as a calendar.

MR. MACKEY: United States rests, your Honor.

THE COURT: Government rests. Is there any surrebuttal?

MR. TIGAR: No, your Honor.

THE COURT: Very well.

Members of the jury, that means you've now heard all of the testimony in this case that you will hear and all of the exhibits that have been received, of course, as a part of the evidence. So you have the evidence, but you don't have the case. And as I have told you earlier, we will recess now so that we're not going to be in a position of hurrying with respect to the remaining parts of the trial, those remaining parts being the opportunity for the lawyers on each side to present their arguments to you, during which, of course, they will be expected to review what you have heard and to point out to you what each side suggests you to consider with respect to the significance or insignificance of the evidence, to state, really, the positions of both sides in the case -- that's a very important part of the case -- and of course, what I have to tell you about the law, the instructions on the law, which will be quite detailed, and which, when you hear me give you these instructions, you will also have written copies of. So

you will know that.

And this is a rather long gap here between now and Monday morning when we expect to present these parts of the trial, and it is very important for you to recognize your responsibility during this time, which is, of course, just as I've said at all earlier times but now must underscore it because you know you've heard the evidence, and that is to keep open minds. I know how difficult that can be. Recognizing the responsibilities that you have with respect to the case, it is only a natural human reaction to at least in your own minds think, "Well, what do I think?" Please don't do that.

Also, you must be very careful as you come into contact with other people to not only, of course, avoid discussing with anyone, including other jurors, family members, all other persons, anything about this case and, of course, avoiding anyone who would seek to talk with you about the case. I'm not suggesting that anyone would make that attempt; but you must, of course, resist that if it should happen.

And as a part of the instructions that I give you now, you must consider that even though we're not going to be in this courtroom tomorrow or Saturday or Sunday, you must consider that you're on duty during those times, and that means you should not report to your employers that you're available for employment during that time. You're still in the Court's employment. And I emphasize that because I want to avoid the possibility that if you were with your fellow workers at any time, they know you've been gone and probably why, and I don't want anything to happen here with conversation with any of them where, you know, they ask you about the trial or suggest to you how -- what you ought to do.

If I were, you know, not trusting of you, I would send you off to a hotel now and sequester you. I have the power to do that. I don't want to do that. But you've got to be also worthy of my trust, our trust, and be very careful during this entire time. I'm going to worry about you, so, you know -- it isn't because I don't trust you, but I just know the nature of human beings and what other people might -- might want to do. So that's why I'm telling you stay away from your workplace, your colleagues that you ordinarily work with, and that includes -- this is the time of year when a lot of workplaces have holiday events or parties or the like. You're not going to go to those because that's an even worse environment. Sometimes there are lubrication of tongues at such parties, and we don't want anybody to fall afoul of these instructions even accidentally.

So, you know, what I'm really saying to you is I'm trying to do everything in your favor, but you've got to favor us and comply with these instructions and these requirements, recognizing the importance of this case, of course, and of your responsibility in it. The best thing for you in this time is to, you know, stay healthy and rest and be able to come to your job here, your primary job now, on Monday morning.

So we trust you to do that. And of course, with -- you probably have a lot of questions in your mind right now. If I said, "Any questions," we'd probably be here a good part of the afternoon. I'll be answering those questions. I'll

give you detailed instructions next week on the deliberating jury, what is required, and how we're going to proceed. So I know that you'd like to have all of the questions that you have now answered. They will be answered in due time. Please wait.

Trust me on that.

So with all of that, members of the jury, I'm going to excuse you now until 8:45 on -- next Monday morning. You're excused.

(Jury out at 2:01 p.m.)

THE COURT: Mr. Tigar.

DEFENDANT'S RULE 29 MOTION

MR. TIGAR: At this time, your Honor, Mr. Nichols moves under Federal Rule of Criminal Procedure 29 for a judgment of acquittal and reurges all the grounds previously urged as well as the other bases, insufficiency of the evidence and so on. I won't argue it in detail, your Honor. The Court has heard our position before.

RULING ON DEFENDANT'S RULE 29 MOTION

THE COURT: Very well. The Rule 29 motion is denied.

Now I'm going to be meeting with the lawyers. We're not giving them until Monday morning because, obviously, as I think those who are in attendance here well know, the attorneys in the case have an opportunity to participate in the Court's development of the instructions on the law to be given to the jury, and they will have a full opportunity to do that. I suggest that we meet in chambers yet this afternoon to begin that process, at any rate.

And do counsel want to have a little time before you do that? Like 2:30 or something?

MR. MACKEY: 2:30 is fine, your Honor.

MR. TIGAR: Yes, your Honor. Thank you.

THE COURT: We'll be meeting at 2:30. The trial will be in recess until Monday at 8:45.

(Recess at 2:03 p.m.)

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PLAINTIFF'S EXHIBITS

Exhibit	Offered	Received	Refused	Reserved	Withdrawn
1985	14126	14126			
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2149	14144	14144			

* * * * *

REPORTER'S CERTIFICATE

I certify that the foregoing is a correct transcript of the proceedings in the above captioned case.

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter. Dated at Denver, Colorado, this 11th day of December, 1997.

Bonnie Carpenter

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