UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF IDAHO

UNITED STATES OF AMERICA,	)	
Plaintiff,	)	
vs.	)	Case No. CR-07-023-N-EJL
JOSEPH EDWARD DUNCAN, III,	)	
Defendant.	)	
_____	)	

EXCERPT OF JURY TRIAL

OPENING STATEMENTS

HELD BEFORE THE HONORABLE EDWARD J. LODGE

AT BOISE, IDAHO

AUGUST 13, 2008

Reported by: Lisa K. Yant, CSR, RPR, CFRR
Official Court Reporter

1 P R O C E E D I N G S
2 August 13, 2008
3
4 THE COURT: Ladies and gentlemen of the jury,
5 this is the time set for the opening statements. You
6 were previously instructed that an opening statement is
7 not evidence. All the evidence cannot come in in one
8 swift blow, so the parties are given the opportunity to
9 make an outline to present what they believe their
10 evidence will show. That is the purpose of an opening
11 statement.
12 We will begin with the Government, Mr. Moss.
13 MR. MOSS: May it please the Court,
14 Mr. Duncan, may it please you, ladies and gentlemen of
15 the jury.
16 At this point it is my privilege to give you,
17 as His Honor has advised you, what's called an opening
18 statement, which will be kind of an outline of some of
19 the important evidence that I think we will present. I
20 will not even pretend to cover all of it, but I will
21 hit the things that are important.
22 One of the things that happens in a trial is
23 all of the evidence doesn't always come in in a nice,
24 orderly fashion where there can be a sequence.
25 Sometimes the facts themselves are not given to that

1 opportunity. In this case we will have approximately
2 90 witnesses, and unusually, only one of those
3 witnesses lives in the Treasure Valley. So they are
4 coming from different places, different locations,
5 several from north Idaho. So getting people here
6 precisely when we want them to be here is a little bit
7 of a logistical nightmare. And for that reason, it is
8 good for you to hear kind of an outline of what I am
9 presenting so when you hear these various pieces of
10 evidence, you will know where they fit in this puzzle.
11 Now, in this case you have been told over and
12 over again that we have the eligibility phase and the
13 selection phase. My statement relates only to the
14 eligibility phase of this case, which is to determine
15 whether the facts of this case are such that Mr. Duncan
16 is eligible to receive a death sentence, not whether he
17 gets it. That will be decided later if we reach that
18 phase. We will not reach it unless certain things are
19 proved.
20 What do we have to prove? Some time ago in
21 Coeur d'Alene, Idaho, a grand jury indicted Mr. Duncan
22 on ten counts, ten felony counts. And they are: The
23 first is kidnapping resulting in death of D.G.; two,
24 kidnapping of S.G. Now, we refer to these children by
25 their initials. We certainly do not intend to somehow

1 minimize them or to diminish them by not calling them
2 by name, but the law requires it that way. So please
3 understand even though we use initials, we're talking
4 about real live, who were live, living, breathing human
5 beings. And D.G. is a little boy who was nine years
6 old and S.G. at the time in question was eight years
7 old.
8 Count Three: Aggravated sexual abuse of D.G.,
9 a minor. Count Four, same thing as to S.G. Count
10 Five, sexual exploitation of a child resulting in
11 death, referring to D.G.
12 Six, a felon in possession of a firearm.
13 Seven, using a firearm during and in relation to a
14 crime of violence resulting in death. Again, referring
15 to D.G. Count Eight, transporting a stolen firearm.
16 Nine, possession of an unregistered firearm. And Ten,
17 transportation of a stolen vehicle.
18 Now, Mr. Duncan pled guilty to all ten of
19 those counts. So in this trial we are only dealing
20 with the three that you have been referred to before.
21 And they are: Count One, kidnapping resulting in
22 death; and Count Five, sexual exploitation of a child
23 resulting in death; and then Count Seven, using a
24 firearm during and in relation to a crime of violence
25 resulting in death.

1 You will notice all three of these counts
2 refer to D.G. The focus of this case is going to be on
3 this little boy. Now, there is going to be other
4 evidence that will come in that interchanges with this
5 that relates to the little girl, but primarily we are
6 focusing on what happened to this child.
7 Now, as a preliminary matter -- now, His
8 Honor -- well, as a preliminary matter in this case,
9 His Honor has told you, and in the instructions this
10 morning he talked about the fact that there are certain
11 threshold intent things that the United States must
12 prove. It's Instruction No. 3. And there were four of
13 them, if you will recall. One of them was that
14 Mr. Duncan intentionally killed D.G. And the second
15 one is Mr. Duncan intentionally inflicted serious
16 bodily injury that resulted in the death of D.G.
17 Now, there are two others that are longer.
18 I'm not going to recite them, but suffice it to say in
19 this case we intend to present proof on all four of
20 these theories, only one of which must exist, as the
21 Court has instructed you. There is an "or" between
22 each one of these. The one that I would suggest that
23 we will focus in on a great deal is the first one, that
24 Mr. Duncan intentionally killed this little boy.
25 It is noteworthy at this point that he pled

1 guilty to killing this little boy. He also admitted
2 during the plea procedures, and you will receive the
3 transcript of what was agreed to as the facts, that he
4 did it intentionally. That will be part of our proof
5 in this case. And there will be other evidence
6 concerning that.
7 We also must prove that Mr. Duncan is at least
8 18 years old. Not too difficult a task.
9 And then we must prove the existence of at
10 least one aggravating factor. His Honor this morning
11 instructed you on those, I am going to quickly run
12 through them. No. 1 is that D.G.'s death occurred
13 during the commission of an offense. And that is,
14 kidnapping. And the second aggravating factor, the
15 Defendant committed the offense in an especially
16 heinous, cruel or depraved manner in that it involved
17 torture or serious physical abuse of D.G.
18 The third one, that the Defendant committed
19 the offense after substantial planning and
20 premeditation to cause the death of D.G. And No. 4,
21 there is a previous conviction of an offense for which
22 a sentence of death or life imprisonment is authorized.
23 We will talk about that. In other words, if the person
24 had a previous conviction and the penalty of that
25 conviction is life imprisonment or death, then that is

1 an aggravator that we must prove beyond a reasonable
2 doubt and would satisfy that requirement.
3 And No. 5, that D.G. was a vulnerable victim,
4 age nine. The reason that is in the law, "vulnerable
5 victim" doesn't just refer to people that are young, it
6 can refer to people who are older, it can refer to
7 people who are handicapped physically or mentally and
8 thus unable to protect themselves or escape or to
9 defend themselves. We contend this little
10 nine-year-old boy fits that requirement and we will
11 present proof that would show that.
12 The last aggravators, and His Honor broke them
13 into two separate things, all five of those that I have
14 just recited relate to all three counts that you have
15 before you.
16 Now, the sixth one, that there is a prior
17 conviction punishable by more than one year in prison
18 involving the use of a firearm against another person.
19 This count relates to two of the counts only, and that
20 is One and Seven. And you will have this in front of
21 you when you go to deliberate, in the instructions, so
22 you will be able to keep this straight then.
23 And then the second one, B, there is a
24 previous conviction of a crime of sexual assault. That
25 only relates to Count Five. So there is basically six

aggravators relating to each of the counts.

Now, this case, we are going to start out on May the 16th, 2005. Deputy Sheriff Dale Moyer, and he will be here in the morning to testify, he had worked as a deputy sheriff for the Kootenai County Sheriff's office. Kootenai County is the county where Coeur d'Alene is up in north Idaho. He received a call asking him to go to the Brenda Groene residence, which is located at a place they call Wolf Lodge.

The reason this place is referred to as the Wolf Lodge area is because fairly close to where they live, about a quarter of a mile on the frontage road to the west, is a restaurant that is quite well-known around that region and it is called Wolf Lodge. And that is why we will often refer to this place as the Wolf Lodge crime scene, because that is the way it was identified.

But Officer Moyer knew the place well. He had been a patrol officer for the sheriff's office, he had patrolled that section of the county. In fact, he knew the Groene family. He knew Brenda, he knew her boyfriend Mark McKenzie, and he knew all three of the children, Sl.G., D.G. and S.G., and he knew them by name. So when he went to the house, it was not as though he was going to a stranger's house.

And he goes to the house, it was in the afternoon of May the 16th, early evening. It is a rainy day. He goes, drives into the driveway off of the frontage road, and there is a picture up there. In the center of that photograph is the home we are talking about. And he drove off -- and the line, the highway at the bottom is Interstate 90 that runs between Missoula, Montana and Coeur d'Alene. This location is about 9 or 10 miles east of Coeur d'Alene. As you can see, it is right by the freeway.

Deputy Moyer went to the house, drove in to the driveway and went up to the front door. The front door as you face the photograph is the one on the left. He knocked on the door and received no reply. The only response he received, you will hear, there were two dogs that lived there and they were barking.

So he called out Mark McKenzie's name, called out for him and received no reply. But as he is standing there, he looks on the front door and there is what appears to be a smudge of blood on the front of the house, and then he notices the same thing on the ground near the front door, that it looks like someone had bled there.

He backs off and calls for backup. Shortly thereafter two other officers arrived at the scene. So

1 Deputy Moyer goes in the house and he goes through --
2 the front door is locked and he noted that when he was
3 there, the front door going in -- that is the door on
4 the left side of the house as you face it -- was
5 locked. He goes around to the back door, which is on
6 the east side of the house, and it is not locked. So
7 he opens the door and enters. He sees a rather grisly
8 scene.
9 A little ways inside the house he sees a human
10 body lying facedown, hands behind back. He doesn't
11 move the body, so he isn't quick to say who they are,
12 but he made some assumptions, but this person is laying
13 facedown, the head is bloody, shoulders are bloody and,
14 as I said, the hands are bound behind his back. It was
15 a male individual, it looked like a teenager.
16 Right next to him, his upper body was by the
17 feet of another individual, and this was an adult
18 female. She was lying facedown and there was blood
19 matted in her hair and blood on the floor around her
20 head. Her hands were also bound behind her back and
21 they were bound with zip ties and her ankles were bound
22 together. That wasn't the case with the first person
23 he saw, the ankles were not bound, but the hands were
24 bound with zip ties.
25 For those of you who don't know, zip ties are

1 things you can buy at a hardware store that carpenters
2 and people in the contracting business use in various
3 capacities, plumbers. They are to bind things
4 together. They are made out of nylon and they loop
5 together and there is a locking mechanism on the one
6 end. You can loop through that and pull it and it will
7 snug up and it won't loosen, it will hold firm. Her
8 hands were bound together with one of those, as was the
9 first victim on the scene.
10 He goes on into the living room and there is a
11 third body. Again, facedown. Again, hands behind back
12 and feet bound together. This person, Officer Moyer
13 recognized, not from the face because the face, again,
14 was covered with blood and blood on the head, but he
15 saw there was a tattoo on his arm, a little dagger
16 tattoo, and he recognizes the tattoo that he has seen
17 before on Mark McKenzie's arm. So he immediately
18 assumed that was Mark McKenzie, who he knew was one of
19 the residents of the house. Mark McKenzie's ankles
20 were bound together with zip ties, as were his wrists,
21 which is a little different than the other two.
22 Of course, the police immediately do a major
23 investigation. Well, first Mark goes -- excuse me,
24 Dale Moyer goes through the rest of the house. He is
25 looking for the kids, the little kids. He knows they

are there, they are supposed to be there. So he goes through all the bedrooms, the two bedrooms downstairs, he goes upstairs, there is an upstairs area, and he goes through that, he finds no sign of the children. The area is searched, no sign of the children.

So a major investigation takes place. But one of the first things that happens is the word is put out that there are these two children that have gone missing. So pictures are circulated and posters are created and this information is put out throughout the area around Coeur d'Alene.

The bodies that were found when they were eventually removed were taken for autopsy. It was noted that they had died from blows to the head, blunt force. It was noted that the patterns on the striking face of the instrument that had been used to strike them had left a distinct pattern, kind of a waffle pattern, which is somewhat unique.

They noted that the three were all bound with their hands behind their back with zip ties and that the zip ties were removed and taken into evidence. And you will see that evidence.

They continued to investigate. This happened on the 16th of May of 2005. Throughout the rest of the month of May the investigation goes forward, throughout

1 the entire month of June the investigation is
2 continuing. And on July the 2nd, almost seven weeks
3 after these folks had gone missing, a significant thing
4 happened in Coeur d'Alene at Denny's Restaurant at 1:15
5 a.m. in the morning, 1:15, shortly after midnight. A
6 lady by the name of Linda Barker, who was the manager
7 of the restaurant at that time, and another waitress
8 see a man come into the restaurant and he has this
9 little girl with him. And that got their attention
10 because it is 1:15 in the morning. So they were paying
11 attention and they, they and also some of the patrons
12 in the place, thought they recognized that little girl
13 from posters they had seen earlier.
14 So Linda Barker goes back into the back of the
15 restaurant. There had been a poster up in the
16 restaurant. She found it. It was now back in the
17 back. She opens it up and now she is convinced that
18 that little girl out there is, in fact, little S.G. So
19 she calls 911. The police come quickly and they go in
20 and it is one of the booths to the far right in the
21 restaurant as you look at it from where we are at. And
22 back in that area was this man and this little girl
23 sitting in the booth. They go up and they remove the
24 man from the booth. They ask the little girl who she
25 is, she starts crying, and identifies herself as S.G.

1 The Defendant is arrested. In the parking
2 lot -- there were patrons in the restaurant that helped
3 the police identify the fact that these folks had come
4 in in a red 2005 Jeep Grand Cherokee. So they go out
5 and they impound that vehicle. But they soon learn one
6 thing, that the plates on the vehicle were not the
7 plates that should have been on the vehicle. The
8 vehicle was an Enterprise rental car that had been
9 reported stolen several weeks earlier. It had been
10 rented and never returned. The plates that were on it
11 were plates that had been stolen in Joplin, Missouri,
12 several weeks earlier. They were plates that belonged
13 to a fellow named Ricky Lodgston (sic) and he had
14 reported them stolen. Those were the plates that were
15 on the vehicle.
16 They processed that vehicle and it had a lot
17 of stuff in it. They went through and they, of course,
18 identified everything that was in the vehicle. I am
19 going to go through it and just list some of the things
20 that are more significant for our purposes here this
21 afternoon.
22 There was Mr. Duncan's green Tommy Jeans
23 jacket was in the vehicle. The thing that made it
24 significant is when it was tested, it was found to have
25 both D.G.'s and S.G.'s blood on it.

1 There were maps and pamphlets from -- a lot of
2 them. Road maps I am talking about. And pamphlets
3 that talk about different things along the way like
4 parks and places like that. And they were from
5 Missouri, North Dakota, Minnesota, Illinois, Wyoming,
6 Montana, Idaho, and Washington. They also found K-Y
7 Jelly, which is a personal lubricant. They found a
8 4-gigabyte microdrive, which is a computerized thing
9 that is used to store digital images of photographs.
10 They found a laptop computer. They found a Magellan
11 GPS, global positioning systems, device. They found a
12 digital video camcorder. They found a media camera.
13 There was very good computer and camera equipment in
14 that vehicle.
15 Mark McKenzie's wallet and checkbook were in
16 that vehicle. There was a letter in the vehicle from
17 D.G. addressed to his sister, S.G., that was found in
18 the vehicle. There were letters that each of the
19 children had written to their father found in the
20 vehicle. Obviously, never sent.
21 There was a set of Vanguard binoculars. There
22 were silver-colored keyed-alike padlocks. There was a
23 12-gauge automatic shotgun and 12-gauge shotgun shells.
24 The shotgun had been altered, however. The barrel had
25 been sawed off and the stock had been cut off. So it

was what the police often refer to as a sawed-off shotgun.

There was a hacksaw and three hacksaw blades. There were files, both metal and wood. There was an empty Gardner Bender zip tie bag that had been purchased from Lowe's, the same place that the files had been purchased from.

There was a shotgun cleaning kit. There was a night scope, which is the kind of a scope that the military uses at night to see in the dark. There was one of those in the vehicle. There were black leather gloves and a black Serius hood that you pull over your head. And there were a set of license plates that belonged on the vehicle, that had been on the vehicle when it was rented from Enterprise Rental.

The police took the microdrive and, of course, they checked everything out they could find to see how it relates to what is going on here. But the investigation concerning the microdrive was quite revealing. On the microdrive they found videos of these two children in the Lolo Forest of Montana. Their pictures had been taken up on those mountains. They found many still photographs involving the children. They found journal entries that had been entered by Mr. Duncan into his computer. They found an

Excel spreadsheet, which is significant, and I will talk about that here in a moment. They also found a blog that belonged to Joseph Duncan.

Now, some of you that know computers know what blogs are. I take it that anybody who wants to can create a blog on the Internet and put out whatever your beliefs are or your attitudes or whatever you want to put out there and that anybody that wants to can read it. Well, Mr. Duncan had one of these and there was stuff on his blog that we will be talking about during this trial.

After searching the vehicle and getting the benefit of that information, they had multiple interviews with this little girl. She was the one they had to look to to find out what had gone on. She was interviewed several times. Her testimony, what she said, will be presented to you mostly through Detective Dan Mattos or we will play the tapes or the videos of those interviews for you. During this phase of the trial she will not be called as a witness, but we will present to you the information that she was able to bring to the police.

In fact, on one occasion she agreed to go back to the mountains and go back up there and show at the scenes what she recalled about what went on up there in

1 the Lolo Forest of Montana.
2 She also told them about what happened on May
3 the 16th, that early morning of May the 16th when she
4 and her brother were taken. She told the police what
5 she saw and what she heard. But she also told them
6 what Mr. Joseph Duncan had told her and her brother had
7 happened. He explained to them what he had done to
8 their mother and their older brother and to Mark
9 McKenzie. So she had a lot of information that she was
10 able to pass on to the police.
11 Mr. Duncan was charged in Kootenai County with
12 three counts of premeditated murder, first degree
13 murder, and three counts of kidnapping. Some may ask:
14 How is it kidnapping? This all had to do with the
15 three victims up at the Wolf Lodge crime scene. But
16 under the law, when someone confines someone and takes
17 away their ability to move, that can qualify as
18 kidnapping, as it did in that case. So Mr. Duncan was
19 charged with all of those things.
20 On October the 16th, now, this is a year,
21 about a year and three months after he was arrested, he
22 pleads guilty to those charges in the state of Idaho.
23 Those charges and that guilty plea, that conviction
24 refers to aggravating factor No. 2 on the list the
25 Judge told you about a little while ago, and that is

1 previous conviction of a crime for which life or death
2 can be the sentence. For the kidnapping charges the
3 sentence can be life in prison and for the murder
4 charges it can be death. So he had three life's and
5 three deaths. He pled guilty to them. We will submit
6 that and satisfy aggravating factor No. 2 in the list.
7 Following his guilty plea, on October the
8 20th, which is just four days after he pled guilty,
9 Mr. Duncan submitted to an interview concerning what
10 happened at Wolf Lodge. Present at that interview were
11 Detective Brad Maskell of the Kootenai County Sheriff's
12 office and Detective Fred Swanson of the Idaho State
13 Police. Also present at his interview was Mr. Duncan's
14 state defense attorney and one of his federal defense
15 attorneys. So the five of them met and Mr. Duncan
16 answered questions and told about what had happened at
17 Wolf Lodge. And in there he reveals quite a bit about
18 the level of planning and preparation and what his
19 intent was relative to this little boy.
20 He says that -- the information the police had
21 was that he had surveilled this house for two days
22 before he went in. Mr. Duncan told them, confirmed
23 that he had -- and the way he put it, he said he had a
24 lot of intel on that place. He knew the lay of the
25 land. He knew how far other homes were from there. He

1 knew who occupied the house. He knew there were two
2 adults who he thought were the parents, a teenage-
3 looking boy and the two little kids that he was
4 interested in. He also said there were two dogs in the
5 house. One looked like kind of a bulldog, the other
6 looked like more of a mixed blood dog.
7 He knew all that. He knew there were guns in
8 the house. He knew where the two small children slept
9 at night. That was the intel he had.
10 And he talked about the preparation he made
11 before going to the house on that early morning of May
12 the 16th. He says that he knew how the police operate.
13 He says: I know how you solve these crimes. The way
14 you solve them is you count on the fact that the
15 perpetrator will leave some of himself at the scene or
16 that he will take some of the scene with him.
17 In this case there was no question that
18 Mr. Duncan was going to take some of the scene with
19 him, but he explained that he was very determined not
20 to leave any of himself at that scene. He said:
21 Usually what they find are fingerprints or footprints
22 or hair, DNA.
23 He says that before he even came here he had
24 bought a pair of tennis shoes at a thrift store that
25 were larger than his feet so that if footprints were

1 found, they would not match him. He said that he had
2 tight-fitting leather gloves that had elastic between
3 the fingers that he wore. And he says: I used those
4 gloves a lot. He said: Before I even went there I was
5 using those gloves. I took the shotgun and bought a
6 shotgun cleaning kit and I cleaned that shotgun down
7 real good so that none of my fingerprints would be on
8 it and I did it wearing those gloves. He said: I
9 wiped down the shotgun shells I took with me because I
10 didn't want my prints left on them. He said: I didn't
11 even handle the zip tie packages with my bare hands for
12 fear that there might be prints left on something that
13 would be at the scene.
14 He wore a hood over his head. He wore a mask
15 over his face. He explained the reason why. You know,
16 why would somebody need to be worried about
17 fingerprints on the things he had? He explained, he
18 said: In case I have to break and run, I may have to
19 leave things behind and I do not want anything left
20 behind that would identify with me. A lot of planning
21 and preparation went into this.
22 In the early morning of May the 16th he drove
23 to the shed that is located at the top of the
24 photograph in the red Jeep Grand Cherokee. He left it
25 there and his approach to the house was coming across

the field. He explained that he had, in fact, a little pen flashlight he would use and it had a red bulb in it, a special bulb in it. He says that would give him enough light to manipulate and manage to get through the bushes without being seen from a distance. He said: With a red light, no one can see it from over 100 yards away.

When he left his car there he took with him a picnic chair bag that had in it various things. He had with him the shotgun, the sawed-off shotgun. He had a hammer. This hammer was a Fat Max black-handled hammer, framing hammer. If you know what a framing hammer is, it is a claw hammer that is quite large. It is a heavy-duty big hammer. It has a waffle pattern on the striking face of that hammer. And that was in the bag as he came across that field.

He had also loaded the shotgun a special way, and he told the officers this. He said: The first round to be fired from the shotgun would be the one with BBs in it, the bird shot. That was for the dogs. I didn't necessarily want to kill them, I wanted to subdue them. The next round had a slug in it and that was for the man.

He had the shotgun, the hammer, the duct tape, he had duct tape and zip ties all with him as he comes

1 across the field. He gets to the house and the first
2 thing he does, and this is significant, the first thing
3 he does when he gets to the house is go to the window
4 where the kids are sleeping. It is a window on the
5 left side, on the back side of the house, back on the
6 northwest corner of the house. He said: There was an
7 old picnic chair there and I climbed up on it where
8 there was a tear in the plastic over the window and I
9 could peer in. And I peered in and saw the two kids
10 lying in there on the bed together, they had a light on
11 in that room. And while I am looking in there, a dog
12 comes into the room, one of the dogs. He described it
13 as not the bulldog, the other one. And it started
14 sniffing around and then it looked up at him and
15 growled. And his reply was: I'd been made. So I
16 jumped down and I ran over to the fence line to the
17 east of the house and waited in case the dog woke
18 anybody up.
19 He said he waited there for about an hour.
20 While he was there he was thinking about what he was
21 going to do. And he decided -- now, the front door of
22 the house is on the left, the back door is on the side
23 where he was. He made a decision that if that back is
24 locked, I am going to abort. I'm not going to do this.
25 Then takes the shotgun, the zip ties, the duct tape and

1 goes to the back door. Leaves the hammer there with
2 the bag. The back door was not locked.
3 He enters expecting the dogs. He explained
4 that he was very, very quiet. Expecting the dogs and
5 the shotgun at ready, the dogs didn't show. But he
6 looks in the front room and he sees a female laying on
7 the couch and the lamp was on and she is asleep. And
8 he looks things over. He then backs off, goes back out
9 to this fence line, and as he described it: "To build
10 up my courage."
11 He then comes back to the house and this time
12 he again says he was very quiet, he goes down the hall
13 to where the kids' bedroom is. And he said next to the
14 kids' bedroom there was another room that was dark and
15 while he was in the hall the dogs came at him out of
16 that dark bedroom. He whirled and pointed the shotgun
17 at them expecting to shoot them, but they scurried
18 away. And he told the officers: I realized they knew
19 about guns and they didn't want any part of it. So the
20 dogs were out of the picture from then on.
21 He then -- but when the dog made noise, the
22 lady on the couch sat up and he could see her from
23 where he was down that dark hall. He dropped into a
24 crouched position and waited and eventually, apparently
25 she did not see him, she laid down, turned off the

1 light and laid back down. Then he approaches her, puts
2 the shotgun in her face, wakes her up and asks where
3 the man is. She says: Upstairs. Take me to him.
4 She takes him up the stairs where Mark
5 McKenzie is sleeping up there on a bed, puts the
6 shotgun on Mark and orders him to lay on his stomach
7 and gives Brenda what he calls "preloaded zip ties
8 police style." They were preloaded police style, which
9 means he had taken them out of the package, he had
10 looped -- so one is in a loop, then he looped the other
11 one through that one. I understand the police
12 sometimes use that practice when they don't have --
13 they are making multiple arrests and they don't have
14 enough handcuffs, they will use zip ties and they will
15 prepare them that way. So he had prepared two of them
16 that way.
17 He had her slide one on to Mark McKenzie's
18 wrists behind his back and then do the same with his
19 ankles. He then checked to make sure it was tight
20 enough. During the time he is doing all this, he asks
21 where the money is. McKenzie says: I don't have any
22 money. My wallet is over there. You will see I don't
23 have any money. He then asks: Do you have guns? And
24 McKenzie said: No.
25 Now, Duncan at this point told the police: I

1 knew he was lying, but that's all right. I wanted them
2 to think I was there to steal their guns, because if
3 they knew I was there to take the kids, they would
4 probably fight me in spite of the gun I had. So he let
5 that pass when McKenzie told him there were no guns in
6 the house.
7 At this point he tells McKenzie he needs him
8 downstairs. He is wondering how he was going to get
9 him downstairs because he was a big guy. McKenzie
10 accommodated him by rolling over on to his butt and
11 sliding himself out of the room, down the steps and
12 into the living room where Duncan indicated he wanted
13 him to lay, had him lay facedown on the floor by the
14 couch in the living room.
15 He then tells Brenda: Take me to the kids.
16 She goes down the hall. She wakes up Sl.G. She then
17 goes into the next room, wakes up the two little kids.
18 He brings all four of them back down to the living room
19 where Mark McKenzie lays bound, has them all lay
20 facedown, and he puts zip ties on their wrists to tie
21 their wrists behind their back. He also puts duct tape
22 around all three of their ankles -- or all four of
23 them, around their ankles so their feet are bound
24 together, their hands are bound behind their back. He
25 makes an interesting comment at this point. He stands

1 back and looks and he told the officers: "The thought
2 I had was how easy this has been."
3 He then proceeds to remove the kids from the
4 house. He carries them out of the house and puts them
5 on the lawn by a swing set, he took them out the back
6 door and laid them down. He took one of them out, then
7 came back and took the other one out.
8 When he did this is probably at this time he
9 makes a switch of his tools. He trades the shotgun for
10 the hammer. He goes back in the house and he tells
11 Sl.G.: I want you to get up, I am taking you outside.
12 Well, he said he started to try and carry him out, but
13 he was just a little too heavy. So he said: I took
14 the wrapping, the duct tape off of his ankles and had
15 him walk outside. I took him out on the side of the
16 house away from where the little kids are. And as he's
17 standing facing away from me, I took the hammer and I
18 hit him on the crown of the head and he dropped to his
19 knees. But surprisingly he didn't go all the way down.
20 So Duncan says: I hit him again. This time he went
21 down on his face in the yard.
22 Duncan goes back into the house. He tells
23 Brenda Groene he wants her to stand up. She has a hard
24 time, so he helps her to her feet. She is standing up
25 and he realizes: I cannot get her outside with that

1 duct tape on her ankles, but instead of unwrapping it,
2 he takes the hammer, this hammer, he takes the claw of
3 the hammer, reaches down between her ankles thinking he
4 can rip through the duct tape with the hammer. So he
5 hooks the duct tape between the ankles, jerks and with
6 her hands bind behind her back, her feet come out from
7 under her and she crashes to the floor. Duncan said
8 she was hurt, so I took the hammer and hit her on the
9 back of the head, and he hit her multiple times.
10 He then explained that one of the things he
11 wanted to do, he didn't want the older ones to know
12 what he was doing until he got to them. But now Mark
13 McKenzie, who is in the next room right around the
14 corner, is starting -- he is worried that he's figuring
15 out what's going on, so he said: As soon as I did
16 that, he said he went straight to Mark McKenzie and hit
17 him on the head multiple times with the hammer.
18 He then goes back outside to where he had left
19 Sl.G. and Sl.G. was not there, he was gone. He goes
20 around to where the little kids are and from the looks
21 of the little kids, he knows they have seen Sl.G.
22 Anyway, he finally finds him around the house and he is
23 on his feet. "And when I saw him and he saw me, he had
24 terror in his eyes." And it looked like, according to
25 Duncan, it looked like he was trying to run, but his

1 legs would not work. So Duncan said: I went up to him
2 and I hit him again, and this time I hit him on the
3 shoulders and on the neck because I was having trouble
4 killing him by hitting him on the head. And I hit him
5 multiple times. In fact, he said: "I hit him more
6 than I hit anybody else." And now he is laying on the
7 ground and again Duncan assumes he's dead.
8 He goes back in the house to see what is going
9 on in the house and he can hear Mark McKenzie
10 breathing. He is making a "snoring sound" is the way
11 he describes it. So he goes to Mark and hits him some
12 more, and then he hears Brenda McKenzie -- excuse me,
13 Brenda Groene and she is kind of mumbling. So he goes
14 to her and he hits her some more. Then he goes to the
15 sink and rinses the hammer off.
16 He goes outside and takes the kids. Earlier
17 when he was upstairs in the house subduing Mark
18 McKenzie, he asked where the keys to the old white Ford
19 pickup -- there was an old white Ford pickup outside --
20 where they were and McKenzie told him and says: You
21 don't need a key, it works without a key. And Brenda
22 confirmed that fact.
23 So what he did after he washed off the hammer,
24 rinses it off, he goes and puts the kids in the back of
25 the old white Ford pickup that's there in the driveway.

1 He also gathers up his stuff and he drives out of the
2 driveway and amazingly as he is leaving the driveway,
3 he looks back and Sl.G. is on his feet again, but
4 Duncan explains: "I knew he was dead. And it was
5 going to be light pretty soon and I need to get out of
6 here."
7 So he drives over to the shed where the red
8 vehicle is, switches vehicles, moves the kids into the
9 Jeep, takes his stuff and drives back out on the
10 freeway and heads east toward Montana, toward Missoula.
11 I am going to break into the sequence a little
12 bit right here and go back a little bit -- well, no,
13 first, one of the questions that was raised some time
14 after Mr. Duncan was arrested on July the 2nd, as I
15 indicated, he was in a meeting with FBI Special Agent
16 Mike Sotka and Special Agent Will Long, and they were
17 talking to him.
18 At one point in that conversation he explained
19 why he told the kids what he had done or why he told
20 the kids bad things about himself. They were like:
21 Why did you tell these kids? And here is what he
22 said -- because Shasta is telling them what he said.
23 He says: "You have to understand though, Shasta
24 was" -- excuse me, "S.G. was dead." And then he says:
25 "She was a dead girl and I knew it." That is

1 explaining why he is telling her things negative about
2 himself. He says: "That's the profound part of it is
3 because here I knew that here's a secret that I kept so
4 buried that I wouldn't even whisper it to myself, and
5 yet I told these children because I -- that's how
6 convinced I was that, you know, that -- that they were
7 history."
8 During that same time he talks about his
9 planning. And he says: "I planned it that way. I
10 knew, I read books on investigation techniques, I read
11 books on Amber, the Amber Alert." He says: "And it
12 was boring long drawn-out stuff and what the tactics
13 were and what notices got sent out. And I read through
14 it all and I, you know, and I studied it, you know, so
15 that when I did what I wanted to do, you know, I would
16 do it and would just walk right through any type of net
17 you guys threw up. That's the reason why I dumped my
18 Grand Am, my '92 Grand Am, and got a brand-new '05 Jeep
19 Cherokee, because I know the police don't pay attention
20 to new SUVs, you know. As long as they're abiding the
21 law, even if it's an out-of-state plate, they're never
22 going to run the plates, you know."
23 He goes on to say: "As long as I'm just
24 driving down the road and looking like a clean-cut
25 guy," he says, "in an SUV, they're not going to pay

1 attention to me." And he talked about how he usually
2 would drive through small towns. And he just said for
3 different reasons.
4 And then finally in this same interview he
5 says: "I knew you had no tire prints, you had no
6 fingerprints, you had not even so much as a hair in the
7 house from my head because I was wearing a hat and a
8 mask and there is the whole nine yards, you know. This
9 is how methodical I was." That is Mr. Duncan's
10 account.
11 Now, after he drives out of that driveway and
12 heads east with these two little children still bound
13 in his car, I am going to pick up from there later on
14 and we will talk about what happened after that. At
15 this point in our evidence, we are going to hopefully
16 keep it in order, we are going to back up, we are going
17 to back up to January of 1980, quite a few years ago.
18 At that time a crime occurred in Pierce County,
19 Washington. Mr. Duncan was convicted on October 2,
20 1980, of raping a little 14-year-old boy at gunpoint.
21 That conviction relates to those two aggravating
22 factors the Judge talked about that were the last two,
23 the one that relates only to Count One and Seven and
24 the one to Count Five. That conviction, we will
25 contend and present it to you, as qualifying for those

aggravating factors.

Then we are going to jump ahead to Detroit Lakes, Minnesota. Now, at the time preceding, Mr. Duncan's last address, last residence was in Fargo, North Dakota. He worked there, he worked in the computer business. He had been a student at North Dakota State University just a few credits shy of having a bachelor's degree in computer science. He knows computers. But he lived in Fargo, which is not very far from Detroit Lakes.

On the 23rd of July, 2004, a little six-year-old boy reported that he had been sexually molested by a person. There was an extensive investigation that followed and several months later, on March 21, 2005, Joseph Duncan was charged with that crime. He was delivered a summons to appear in court and he did appear. He was required to post a $15,000 bond.

Now, you see March 21 up there. That was the date he was charged. It was April the 6th when he posted the bond of $15,000. And then May the 4th following that a fugitive warrant was issued in that case. But that case is significant here. Now, keep in mind, Mr. Duncan was never convicted of that incident. But that incident helps explain some things.

1 On his computer, as I indicated earlier,
2 Mr. Duncan had a spreadsheet, an Excel spreadsheet.
3 That spreadsheet seems quite clearly to relate to this
4 charge arising from Detroit Lakes, Minnesota, the one
5 where he was charged on March 21. He opened this
6 spreadsheet during that investigation, which would have
7 been -- he opened it on January 30th of '05. He
8 revisited the spreadsheet on April the 8th, '05, which
9 was just two days after he posted the bond in that
10 case. And then he revisited the last time on April the
11 15th of '05.
12 But the document itself speaks a lot about
13 this Defendant's mental processes. This Defendant
14 doesn't do anything by accident. He thinks it through.
15 This spreadsheets says up in the upper-left-hand
16 corner, it says: "Should I throw everything away and
17 run with $25,000?" And then across the page there is a
18 chart set up and it has got columns for numbers. The
19 one column says "practical weight," "emotional weight,"
20 "odds," "practical analysis," "emotional analysis."
21 And then under that heading "Should I throw everything
22 away and run" is a heading: "It will hurt my family
23 and friends." And then he has got "mom" and then he
24 has got numbers across the page, putting values as to
25 how it will affect him. And then "dad" and numbers

1 across the page. Then "Rich" and "Joe," a couple of
2 his friends. It even has his cats and numbers across
3 the page.
4 The next heading: "I could be arrested while
5 on bail and lose chance to decide." The next heading
6 goes: "The case might not be strong enough to
7 prosecute." And then he lists some subheadings: "The
8 victims contradict each other. I have moderate
9 argument against this type of behavior. Bail is
10 suspiciously low." He sees himself, he is a prior sex
11 offender and a $15,000 bond, he sees that as apparently
12 a weakness in the case, so he lists that.
13 "The victim ID'd me based primarily on my lip.
14 The victim who ID'd me is only six years old. I was
15 not arrested." Again, a procedure in the case, to him
16 that must be a weakness in the case.
17 Then he has the next heading: "The case might
18 be unwinnable." So now we are going to get the other
19 side of the coin. He lists: "I am a registered sex
20 offender with criminal history." And remember, there
21 is numbers all across the page on each one of these
22 items. "I was in DL," and I assume that means Detroit
23 Lakes, "near the time when the incident occurred. I
24 was driving a red Grand Am," which had been identified
25 as the vehicle driven by the perpetrator, a red

vehicle. "The victim has ID'd me as the perp."

Then the next heading: "I have a chance to live out my fantasies" and the subheading is "Revenge." And you will hear a lot about that revenge thing as we go through this case. The second item is: "Sex" under the heading of "I have a chance to live out my fantasies." The next item is: "No more cares."

The next item says as another heading: "I could go to prison for the rest of my life and never know what could have been." And then he says on the next heading: "If I do go to prison," two subheadings: "I will have Joe's support while there," that is a friend of his, "I will be able to study and write."

Then I will skip down, the last item at the bottom of his chart is: "I may eventually be found out."

So the question arises when you see that spreadsheet: How did he resolve that conflict? How did he solve that dilemma? Well, we get a hint by what he did around that time. He made a flurry of purchases on April the 2nd from Fargo, North Dakota's K-Mart. He bought camera equipment, tripod and tapes. On April the 13th he bought at Best Buy in Fargo, he bought almost $1,800 worth of stuff and most of it was camera and computer equipment.

1 April 14 in Walgreen's in Moorhead, Minnesota,
2 which is not too far from Fargo, he bought the
3 following items: 33-gallon trash bags, keyed-alike
4 padlocks, personal lubricant, men's hair color, blonde,
5 36 lubricated condoms.
6 Now, if that doesn't give us a hint of what
7 his plan was in response to the dilemma of his Excel
8 spreadsheet, in his journal -- now, he made journal
9 entries at various times. Now, the computer people can
10 say when he went into the thing and so sometimes the
11 dates he put on his journal entries were put in later
12 after the fact, but he dated them as of that date as to
13 what he was doing on that date.
14 The journal entry that he made on April 14,
15 2005, "conversation topic," he fills it in, and the
16 word is "absconded." Then he says in relation to that:
17 "Left Fargo in Grand Am around noon. Headed for
18 Minneapolis. Arrived Minneapolis and tried to rent SUV
19 at airport, but card was denied. Panicked thinking
20 they were on to me already, but then realized that my
21 limit was not high enough for the number of days I was
22 asking. So I went to a nonairport rental the next day,
23 Enterprise and rented an '05 Jeep Grand Cherokee for
24 five days, including weekends, due back next Wednesday.
25 Spent night at Hotel 6 on I-494 in Minneapolis."

1 Then, of course, to conform with that, he did,
2 in fact, the record will show, he did, in fact, rent
3 that Jeep Grand Cherokee from Enterprise Rental on
4 April 15.
5 On April 17, two days later, in his journal,
6 conversation topic, "Minnesota. Roadside hotel with a
7 cute small boy playing in the parking lot, but he had
8 his head shaved funny and that turned me off."
9 Next day, April 18, 2005 journal entry,
10 conversation topic: "Minnesota-Nebraska. Started
11 driving towards Lincoln, Nebraska, where there's a sex
12 shop. Stayed at hotel. Checked out room for three
13 days." Three days later, journal entry, conversation
14 topic: "Nebraska-Missouri. Saw a pretty flower, tried
15 to pick it, but it got away. Followed red classic Jeep
16 with two flowers. Somehow they picked me up and drove
17 to a police station. Decided that method was too
18 risky. Headed back to I-29 and then south. Found
19 deserted campground. Slept in car there. God told me
20 what he wanted me to do."
21 On April 22, this April 22 date is a
22 significant date because various things happen. His
23 conversation topic is: "Missouri. Explored area
24 around campground and spent the night." On April 22 a
25 shotgun owned by a man named Robert Hall, a 12-gauge

automatic shotgun was stolen from a turkey shack on his property. He reported it stolen the next day. That shotgun turns out to be the sawed-off shotgun that Mr. Duncan had in the Jeep when he was arrested on July the 2nd.

Same date, April 22: "Purchased at Lowe's" -- and by the way, Robert Hall's home is near St. Joseph, Missouri, out in the country. April 22, again, another entry on April 22: "Purchased at Lowe's, St. Joseph, Missouri, files, 8-inch round, 8-inch four-in- one file, Fat Max framing hammer, zip ties."

May the 6th, sometime later, journal entry, conversation topic: "Montana. Drove to Missoula looking for flowers. Spent night in hidden spot near freeway. Slept in car."

May 17 journal entry, conversation topic: "Montana. Found good target. Surveilled in morning. Stole bike." Remember that "stole bike," we are going to come back to that in a minute. "Returned to camp with supplies to make preparations."

May the 8th, this is the next day, "Montana," conversation topic: "Montana. Stayed in camp organizing."

May the 9th journal entry, conversation topic: "Montana. Saw Forest Service people spraying for weeds

1 near my camp while exploring the area. Thought today
2 was Saturday." You're going to hear from a Forest
3 Service person who was there and saw Mr. Duncan and it
4 was, indeed, near a camp that Mr. Duncan had set up.
5 This is near Stryker, Montana. We will refer to it as
6 the Stryker Camp. Stryker, Montana, if you go out of
7 Missoula due north and you don't mind driving a lot,
8 you drive almost to the Canadian border, you're going
9 to come to a wide spot in the highway in the forested,
10 mountainous area called Stryker. And Mr. Duncan had
11 set up a camp there, at least this is the camp I expect
12 he is talking about.
13 But he had left stuff there and the police
14 eventually found that spot. They found things there
15 like three swimming pools, little kids plastic swimming
16 pools, three of them. A little girl's bicycle, a
17 tripod, a brand-new shovel, and newspapers from
18 various -- from locations that we can put Mr. Duncan at
19 a few days earlier. Also, the GPS device was able to
20 take them back to that same spot. We will talk about
21 that later.
22 On the 11th of May, two days after that last
23 journal entry, Mr. Duncan on his blog writes the
24 following, this is on his blog on the computer: "My
25 reaction is to strike out against the perceived sources

of my misery, society. My intent is to harm society as much as I can and then die. All those years I dreamed of getting out and getting even. Instead I got out and got even, but did not get caught. So I got even again, and again, I did not get caught."

Now, one of the things found in his vehicle was a GPS device, global positioning system, device. Some of you know about those, but I will talk about it just a little bit. There are two features of that device that are important in this case. One is called auto tracking system. That is when that system is turned on in the Jeep, it will tell wherever that thing goes. And if it stops, it will record the date and time it stopped and then when it started again. So when that thing is on, you can tell where this vehicle has been.

Perhaps one of the best explanations is Mr. Duncan himself, after he was arrested on March the 29th in 2007, he wrote a letter to a friend of his named Dawn Hoff. Here is what he said, he says: "Okay, I'll tell you even though I shouldn't. My attorneys and the FBI might get jealous. There was a GPS unit in the Jeep I was driving that was on constantly from the time I left Fargo until my arrest at Denny's. So the police have a very detailed map of

1 everywhere I was or at least where the Jeep was during
2 almost this entire time. I was only in the Coeur
3 d'Alene area for less than a few hours and the police
4 can track my whereabouts down to within a few meters
5 that entire time."
6 The second feature of that GPS device is a
7 waypoint feature. That is where you can manipulate,
8 the person that has the device can identify locations
9 they may want to come back to. Hunters use it. They
10 bag game, they might want to come back the next day and
11 get the game or they won't be able to find it. Well,
12 the GPS will take them right to it. Or a fisherman may
13 have his favorite fishing hole. Whatever. But you can
14 identify locations and that device will take you back
15 to the places you identify.
16 Mr. Duncan identified multiple locations as he
17 was traveling across the country. And a lot of them up
18 in Montana. I will point out, a lot of them were
19 residences, mostly in rural areas. Now, I don't know
20 what Mr. Duncan saw when he was there making that
21 waypoint, but when the police go back and take pictures
22 of those residences, you will see the pictures, these
23 are children-friendly places. You will see swing sets.
24 You will see trampolines and trikes and bicycles at
25 those residences. The one thing that is clear, none of

1 them are places that are connected to this Defendant
2 that can be determined; not family, not friends. These
3 are just places he identified as waypoints.
4 Here is some of them. One of them is his home
5 in Fargo. On April the 10th, the Gadberry residence in
6 Hillsboro, North Dakota. April 29th, the Hampton
7 residence in Lovell, Wyoming. May the 5th, the Segwon
8 (sic) residence in Polson, Montana. May the 5th, the
9 Smyth residence in St. Ignatius, Montana. Another one
10 on May the 5th, Learn and Grow Day Care Center at St.
11 Ignatius. This is rural day care center. May the 5th,
12 another one, the Brazill residence in Arlee, Montana.
13 Now, the reason I -- significant of that, I
14 told you earlier to remember this one journal entry he
15 made when he says: "Found a good target. Surveilled
16 in morning. Stole bike." Well, that was his journal
17 entry on May the 7th. On that May the 5th, he set the
18 Brazill residence up as a waypoint and a bicycle, there
19 was a little six-year-old girl's bicycle was stolen,
20 and it turned out it was found at the Stryker camp.
21 On May 5th, another waypoint was a school bus
22 stop at Missoula, Montana. Another one, and this is
23 significant, May the 13th, remember, May the 16th is
24 when in the wee morning hours -- May the 16th -- or May
25 the 13th he is now in Spokane, Washington. He has

1 traveled from Montana through Idaho and his waypoint
2 that he identifies on May the 13th is a place called
3 Kindermusik, which advertises on its sign: "Music
4 taught to children seven and under."
5 On the early morning of May the 16th when
6 Duncan drove out of that place at Wolf Lodge, he heads
7 east toward Missoula. He drives as far as St. Regis,
8 which is a small community in the mountains on the
9 Montana side of the border. It is on the eastern side
10 of the Divide. And he leaves the highway there and
11 goes south into the Lolo National Forest with these two
12 children with him. He takes them to a place, and you
13 will see the terrain, we will show you the kind of area
14 they were in, but he takes them to a place that we
15 refer to as campsite No. 1. And that campsite is at
16 the end of a spur road.
17 Now, when you start identifying these roads
18 out in that area, there is very little traffic and
19 there is -- and what has happened is this camp is just
20 a wide spot, it is not a public campground, it is just
21 a wide spot at the end of the road. It is right on the
22 edge of a very steep mountain. What he did, he moved
23 there and then he put a log across the road out near
24 where you turn off of the other road into there saying
25 that the camp in there was being used: Please don't

disturb us. We will be here until the end of June.

After arriving at that camp with these little children, one of the first things -- of course, he's not with them all the time. He leaves camp from time to time. Well, he had a chain, it's a little chain that usually you chain up dogs with, a small-gauge chain, and he would chain them up to a tree and he would use these padlocks, these keyed-alike padlocks that we have talked about. And then when he would leave the camp, he would chain them up and then he would come back.

Eventually they become more compliant and he would leave camp and leave them free. But when you see the terrain and the steepness, and consider the fact we are dealing with a little eight-year-old and a little nine-year-old, they are still pretty well captivated.

But he leaves them there, sometimes chaining them up, sometimes not. And you will hear about what goes on during this next six weeks and you will see pictures that were taken during that period of time and you will hear this little girl's account of what went on during that period of time.

On the 22nd of June, it's an important date. On that date he left little S.G. at camp by herself. He took D.G. to what we call a mining cabin or shack.

1 There is a picture of it. It is very difficult to
2 find. It is off the road. Somehow Mr. Duncan found
3 that place, perhaps in some of his scouting, I don't
4 know. But that's where he took this little boy.
5 He had this little boy at that cabin for 3
6 hours and 25 minutes. We don't know what went on
7 during that entire 3 hours and 25 minutes, but we do
8 know what went on during about 30 minutes of that time
9 because Mr. Duncan created a video. And actually,
10 there is three videos, three segments.
11 One is a video, we call it the bench video.
12 It happens right inside of the door. The cabin is one
13 room, but kind of a little bit of a porch on it, a
14 narrow porch on the near side. So you go in the door
15 and then there is another door going into the room of
16 the cabin. That's the only entrance to that cabin. It
17 is tilting, it is falling down. It is not much of a
18 place. As you go up, to the right as you go in that
19 outside door, there is a roughhewn thing we call a
20 bench. The first video takes place on that bench.
21 Now, I am going to forewarn you a little bit.
22 I'm not going to go into what is in those videos in
23 detail, but I'm going to tell you both Mr. Duncan and
24 this little boy are nude during these videos. The
25 bench video -- and he records it -- keep in mind, he

1 does not have a camera person with him. He sets the
2 camera up and then goes into the picture with the
3 little boy. And it is important to note how well he
4 choreographs what is going on so the camera gets the
5 full benefit of what is happening.
6 Anyway, the bench video shows some things that
7 happened. Also some still photographs will be
8 introduced that were taken of what happened on that
9 bench.
10 The next video is taken inside the cabin. We
11 call it the floor video. It takes place on the floor
12 inside the cabin. It is again about 10 minutes long.
13 And the final video also takes place inside
14 the cabin and it runs for about 20 minutes.
15 Now, the video shows a couple of things. One,
16 it shows that to Joseph Duncan the infliction of pain
17 and sexual gratification go together. It also goes to
18 satisfy the aggravator that says that the conduct was
19 especially heinous, cruel and depraved, and that it
20 involved torture or serious physical abuse of D.G.
21 This video all goes to that.
22 You know, heinous, cruel and depraved are
23 tough words in the English language. But the truth is,
24 none of these words or any other words in the English
25 language can truly express the outrage of what you will

1 see in these cabin videos. I tell you this so that you
2 will be prepared to fully evaluate this very important
3 evidence in this case.
4 When the video ends you will know that this
5 little boy was hurt. He had sustained some injuries.
6 How bad we don't know and we will never know. But he
7 was hurt and he was in pain, he was crying out.
8 Mr. Duncan promises to take him to the
9 hospital, promises him several times. Of course, that
10 was not his intent. He takes him and takes him back to
11 camp. The first thing he does when he gets out of the
12 vehicle back at camp is he shows S.G. the videos. She
13 was able to describe them to the police before they
14 were ever pulled off the computer.
15 Then a significant thing happens. This
16 happened on the 22nd. Sometime between then and the
17 26th of June something happens. We think that it
18 started on either the 22nd or 23rd, but they are in
19 campsite No. 1. This little girl -- a gunshot goes off
20 and she sees that her brother is injured. Again, we
21 don't know how bad this injury was, but he was
22 protecting his stomach with his hands because there was
23 an injury there from what appeared to be a gunshot
24 wound, and he is crying and he is saying: "Please
25 don't. Please don't," pleading for his life.

1 Joseph Duncan has the sawed-off shotgun in his
2 hand and she sees him go directly to D.G. with the
3 shotgun and put it point-blank range against his head
4 and pulls the trigger and it doesn't discharge. The
5 little girl thought it was jammed or something.
6 Perhaps it just didn't have anymore shells in it.
7 Duncan then goes to the Jeep, reloads the
8 vehicle, comes back to where this little boy is, again
9 puts the shotgun muzzle point-blank range to his head,
10 again he pulls the trigger and this little girl, the
11 way she describes it is that her brother's head
12 "exploded." Right up until he was shot he was talking
13 and he was pleading for his life.
14 Then what happens is Duncan wraps that little
15 boy's remains in a tarp and puts him on the campfire.
16 And this process would take a lot of time because what
17 happens during those next hours, days is that little
18 boy's body is cremated and everything else that relates
19 to him was burned in that fire. Also the clothes the
20 little girl was wearing when her brother's head
21 exploded were burned because some of his tissue was on
22 her. She was close enough that it blasted on her, too.
23 And those clothes were burned in that fire.
24 On the 26th of June, after the body has had to
25 be cremated and after these ashes have cooled down

enough to do so, the remains of this little boy and the ashes of that fire are scooped up and put in plastic bags. It took four plastic bags for that stuff. Mr. Duncan then loads the rest of the stuff and this little girl up in the car and they head down the road, and they go to a spot where there is a little culvert going under the road, this mountain road. The culvert is small, water going through it, runoff water. At certain times of the year there's probably no water going through it, but at that time there was water and the culvert slopes downward under the road and there is a very steep mountainside on the other side and the water shoots down the mountain. He dumped the contents of those plastic bags in front of that culvert so all those things would wash through and down.

It is interesting to note that before this little boy was killed, Duncan had that car with that GPS device activated, had stopped at that culvert two times. It is not a place you see as you drive down the road. It is very concealed, but he had been there twice. This man plans everything.

After the arrest the police go back up there. They are able to find a few pieces of this little boy's remains at the fire location, small pieces. They find some in front of the culvert in the gravel in that

1 area, some behind the culvert. They gathered up every
2 piece they could find. They found teeth and bone
3 fragments primarily. They also found rivets that were
4 probably part of his jeans that he had. They found
5 metal things that would not burn, they found them, that
6 would relate to this little boy's clothing and such.
7 Later they were up there looking and searching
8 the area. At campsite No. 1, Officer Mike Sotka,
9 Special Agent for the FBI Mike Sotka, and a lot of
10 other people were searching the area around the camp
11 for anything that might relate to anything. He is some
12 distance away from where the camp area is and where the
13 campfire was. He's crawling through the bushes and he
14 sees something and it is furry.
15 Well, it turns out to be a piece, DNA shows it
16 is a piece of that little boy's head, the skull cap
17 with the skull and the hair and scalp attached to it.
18 It was about three to four inches in diameter. That is
19 the largest remains of that little boy. But it was the
20 one piece that DNA could be done on. The other stuff
21 was too cremated.
22 Now, ladies and gentlemen, at the close of
23 this case, of this part of the case, we are going to
24 stand here and we are going to urge you to find the
25 prerequisite intent factors exist in this case, and we

1 are going to ask you to find that every one of those
2 aggravating factors that you have been told about exist
3 and that you need to move into the next segment of this
4 case to determine whether or not this man should
5 receive a death sentence.
6 And I am going to make it very clear. This
7 case is about D.G. That is who we are focused on. He
8 is a little boy whose last days on this earth were
9 filled with experiences that no child should ever have
10 to endure, and he deserves the justice that only you
11 can provide.
12 Thank you.
13 THE COURT: Mr. Duncan, do you intend to make
14 an opening statement?
15 MR. DUNCAN: Can I think about it during a
16 recess?
17 THE COURT: We are going to recess, ladies and
18 gentlemen, for about 15 minutes and then you will be
19 brought back in.
20 (Whereupon, recess taken.)
21 THE COURT: Mr. Duncan, do you desire to make
22 an opening statement or reserve the same?
23 MR. DUNCAN: I think I would like to make a
24 short statement, but it won't take about one or two
25 minutes. Do you want me to do it here or at the

podium?

THE COURT: You can do it from there. Keep the mike close to you so the jury can clearly hear you. Again, an opening statement is for the purpose of outlining what your evidence will show and not argument.

MR. DUNCAN: I debated whether or not to do an opening statement simply because I didn't want to get into an argument with the Government about what happened. However, while Mr. Moss's depiction of the events that brought us all here were fair and accurate up to the point of what occurred at the campground, which is really the only part that I haven't been interviewed by the police about, which is why I presume that it wasn't completely accurate.

Therefore, I think it is best if I do testify. Not now. I am just announcing that I will testify and I will try to answer any questions about what happened at the campground just to clarify things. And also give you guys an opportunity to ask any other questions you might have about what happened that might help you guys make your decision, whatever you are going to do. That is all. Thank you.

THE COURT: Thank you.

Ladies and gentlemen of the jury, we are going

to recess until 9:00. I believe today was 9:30. Every day is going to be 9:00. So you have to be here a little ahead of that, of course. Keep in mind the admonition of the Court previously given. Each morning I am going to ask you if anything has happened to affect your qualifications to serve as jurors. You are under oath. So make sure you do not embarrass yourself or the Court.

Relax, have a good evening and be here at possibly 8:30. You may step down.

(Outside the presence of the jury.)

THE COURT: I just want to make sure that we are clear on the record one or two things.

Mr. Duncan, again, unless the Court orders otherwise, you are in charge of your defense. So objections, if any, come from you. If during a recess or any other time when the jury is not present, if you feel more comfortable having your standby counsel make a legal argument, you are free to make that request. But during the trial itself you are in charge of your defense unless the Court orders otherwise.

Now, the Court has a no-surprise rule. So if there is anything that is going to come up that you know is going to take a little thought, you notify the bailiff on the evening before not only of the fact that

there is going to be a legal issue brought to the Court's attention, but what it is so that I am in a position to hopefully rule and give guidance that would be helpful to you as well.

I want the Government particularly to have the witnesses available. Today we are going to recess early, but we are starting tomorrow at 9:00. Even if we don't get to a witness, I want those witnesses available so we can move this along as quickly as possible? Okay?

MS. WHELAN: Yes, Your Honor.

THE COURT: Have a good evening.

(Whereupon, evening recess taken.)