

1 THE WITNESS: When I reviewed the contract, I
2 noticed that the payments, the payment schedule, it was not
3 based on amount of work done. It was based on time. So
4 every two weeks no matter what work was done or not done, he
5 got a payment. He also obtained \$10,000 as a down payment,
6 which far exceeds the law, which is 10 percent or a thousand
7 dollars, whichever is less.

8 BY MR. MAUTNER:

9 Q. When you say that the payments and the contract
10 were not tied to the work, what is the usual way of making
11 such a contract?

12 A. Well --

13 MR. MCENTEE: Objection. Relevance.

14 THE COURT: Overruled.

15 THE WITNESS: You would have your 10 percent or
16 thousand, whichever is less. Then you would have, say,
17 framing of the addition such and such amount. Tearing out
18 the kitchen such an such amount. Installing cabinets and
19 doing the remodel for the kitchen another amount. Bathroom.
20 I mean, you break it all out so if something happened to
21 either party no one is out a whole bunch of money.

22 BY MR. MAUTNER:

23 Q. When you say "if something happened to either
24 party," what do you mean?

25 A. The homeowner dies or the contractor, you know,
26 something happens to him, the homeowner is not as injured as
27 they would be if they had given a whole bunch of money, money
28 up front, and not gotten much out of it.

1 Q. Is what you've just described the usual meaning in
2 these contracts of the term "progress payments"?

3 A. Yes.

4 Q. Okay. What about these payments is described by
5 the term "progress"?

6 MR. MCENTEE: Objection. It's vague, "these
7 payments."

8 THE COURT: Overruled. These are general
9 foundational questions presumably.

10 MR. MAUTNER: Yes.

11 THE WITNESS: Well, progress is specifically
12 progress of the work, not progress of the month. It's
13 progress of specific work that the payments were supposed to
14 be tied to. They're supposed to be paying their material
15 suppliers as they're doing this certain work so people don't
16 get liens on their homes. There's very specific things that
17 are supposed to be happening when a homeowner gives money for
18 construction work, and it's supposed to be paying for
19 subcontractors, materials, and then the labor and expertise
20 of the contractor.

21 BY MR. MAUTNER:

22 Q. Is that the standard offered draw from a payment
23 received by a contractor from a homeowner?

24 A. It's the standard, and it's also the law. I mean,
25 that's what the contractors board says is supposed to happen.
26 It's in the Business & Professions Code.

27 Q. And where in that order is materials?

28 A. It's within 7159 of the Business & Professions

1 Code.

2 Q. Are contractors supposed to pay for materials
3 before they do anything else?

4 A. They're supposed to pay for their material
5 suppliers, absolutely, so a homeowner won't get liens put on
6 their house.

7 Q. With respect to the specific contract in this
8 case -- which you reviewed, correct, --

9 A. Yes.

10 Q. -- you've described a progress payment as progress
11 and time and that being unusual, correct?

12 A. Yes.

13 Q. Have you ever seen a contract that had a provision
14 like that?

15 MR. MCENTEE: Objection. Relevance.

16 THE COURT: Overruled.

17 THE WITNESS: I've seen it, but it was associated
18 with actions that were being taken against the contractor for
19 having done that.

20 Q. Okay. So is it standard in contracts in the
21 construction industry that you investigate to specify an
22 amount of money that's part of the contract plus the price
23 that is for materials?

24 A. Yes.

25 Q. What was ever discussed in your investigation of
26 this case either with the homeowner or the defendant?

27 A. As I recall, there was no discussions as to how
28 much money she had paid towards materials or where any of the

1 money she had paid had gone.

2 Q. Whose responsibility is it to see that that is
3 properly divided in such a contract?

4 A. It's the contractor's.

5 Q. With respect to a down payment in this particular
6 case, are you familiar from the contract and your interviews
7 what the price was?

8 A. Yes.

9 Q. What was it?

10 A. I believe it was \$46,000 or thereabouts.

11 Q. All right. What under the down payment law would
12 be the maximum permissible down payment?

13 A. A thousand dollars. It's 10 percent or a thousand,
14 whichever is least, so it would actually be 460.

15 MR. MAUTNER: I've no further questions. Thank
16 you.

17 THE COURT: Cross-examine.

18 CROSS-EXAMINATION

19 BY MR. MCENTEE:

20 Q. Actually, Ms. Caton, 10 percent of 46,000 would
21 be 4,600, right?

22 A. Yes. So it would be a thousand. That was the most
23 he could accept.

24 Q. When you were talking to Mr. Schultz over the phone
25 and asking for these receipts and other documents, isn't it
26 true that you told him you were going to be on vacation for a
27 certain period of time?

28 A. I don't know. What would that have to do with his

1 faxing the documents to me.

2 Q. Well, do you recall telling him that you wouldn't
3 be available to review the documents or discuss them with him
4 for a certain period of time?

5 A. No. I don't take vacation for longer than a week
6 so that wouldn't have been a problem.

7 MR. MCENTEE: No other questions. Thank you.

8 THE COURT: Thank you. Any redirect?

9 REDIRECT EXAMINATION

10 BY MR. MAUTNER:

11 Q. Do you recall when you began your investigation, or
12 if you don't, do you have something that might refresh your
13 recollection?

14 MR. MCENTEE: Your Honor, I object to this. It
15 exceeds the scope of cross-examine.

16 THE COURT: Sustained.

17 MR. MAUTNER: I thought that the question about
18 vacation was projecting some kind of responsibility on the
19 witness for delay. It's not relevant.

20 THE COURT: The question was whether she told the
21 defendant that she was going to be on vacation, I believe,
22 presumably to establish some reason why he didn't provide
23 documentation. So asking her about whether she started her
24 investigation is relevant to the cross-examination in what
25 respect?

26 MR. MAUTNER: With respect to a follow-up question
27 as to when the investigation ended of how much time the
28 defendant had to make good on his accounting obligation.

1 THE COURT: Okay. I will allow it in that respect.

2 BY MR. MAUTNER:

3 Q. Do you recall when the investigation started,
4 Ms. Caton?

5 A. I'd have to look at my report.

6 Q. Did you bring that with you today?

7 A. Yes.

8 Q. Would reviewing it refresh your recollection as to
9 the beginning of the investigation?

10 A. Yes.

11 Q. With leave of Court you may --

12 THE COURT: You may look at it to refresh your
13 memory.

14 THE WITNESS: Okay. I interviewed --

15 MR. MAUTNER: Why don't you review that silently
16 and then I'll ask the question.

17 THE WITNESS: Okay.

18 BY MR. MAUTNER:

19 Q. When did the Contractors State Licensing Board
20 begin its investigation or begin processing the complaint on
21 the 191 Chelsea project?

22 A. I'd have to look at the complaint form. Did you
23 want me to do that? I know when I interviewed Mrs. Petree.

24 Q. When did you interview Mrs. Petree?

25 A. July 19th of 2006, and I ended the investigation in
26 September of 2006.

27 Q. Approximately what date in September?

28 A. It was -- it was closed 9/19/06.

1 Q. All right. So during that two months how many
2 times did you ask the defendant to make an accounting for his
3 use of the money the victim had given him?

4 A. I called two or three times.

5 Q. And how many times did you actually talk to him?

6 A. Just the once.

7 MS. MAUTNER: Nothing further.

8 THE COURT: Any recross?

9 MR. MCENTEE: No. Thank you.

10 THE COURT: May this witness be excused?

11 MR. MAUTNER: Yes.

12 MR. MCENTEE: Yes.

13 THE COURT: Thank you.

14 THE WITNESS: Thank you, Your Honor.

15 THE COURT: Ms. Caton, you are excused.

16 THE BAILIFF: Stand here and face the clerk.

17 - - -

18 DAN KAVARIAN,

19 a witness called by the People, who, being first duly
20 administered an oath to tell the truth, the whole truth, and
21 nothing but the truth, was examined and testified as follows:

22 THE WITNESS: Yes.

23 THE JUDICIAL ASSISTANT: Please have a seat.

24 THE COURT: Sir, please state and spell your first
25 and last name.

26 THE WITNESS: Dan Kavarian, D-a-n, K-a-v-a-r-i-a-n.

27 DIRECT EXAMINATION

28 BY MR. MAUTNER:

1 Q. Mr. Kavarian, who do you work for?

2 A. City of Napa.

3 Q. In what capacity?

4 A. Senior building inspector.

5 Q. And how long have you been doing that?

6 A. In the city, three and a half years.

7 Q. How long have you been a building inspector
8 overall?

9 A. Thirteen years.

10 Q. And did you have any experience in the construction
11 industry prior to that?

12 A. Yes. I was a carpenter before that.

13 Q. How many years total experience do you have in the
14 construction industry?

15 A. If you count the inspection part of it, over 29.

16 Q. What does the building department for City of Napa
17 do specifically in regards to building inspections?

18 A. We inspect work for code compliance per plans and
19 per the codes of California.

20 Q. And are you familiar from the records on file with
21 the department with the Petree project on 191 Chelsea Avenue?

22 A. Yes, I am.

23 Q. Was that project permitted by your office on or
24 about January 2005?

25 A. I would have to check the date to find out, but I
26 believe that was the date it was issued.

27 Q. Okay. Just for evidentiary purposes, I'm going to
28 show you some exhibits. Showing them first to counsel.

1 Exhibit Number 28 is a subpoena duces tecum
2 response from the Napa City planning department. Exhibit
3 Number 29 is a subpoena duces tecum response from the city
4 building department.

5 Counsel is examining their contents.

6 Pursuant to stipulation copies were previously
7 provided. While counsel is looking at Exhibit 28, I'm going
8 to approach with Exhibit 29 and ask if you recognize its
9 contents?

10 A. Well this is a building permit that was issued for
11 the work done, so there's two permits here, one for a kitchen
12 addition and one is for a re-roof.

13 Q. All right. Who is the contractor on the kitchen
14 addition?

15 A. It's Dunne-Right Remodeling.

16 Q. And is the contents -- are the contents of People's
17 Exhibit Number 29 records you're already familiar with or
18 copies thereof?

19 A. Correct.

20 Q. Okay. Let me do the same with Exhibit 28. If you
21 would take a look at these and tell us if you recognize them
22 and what they are?

23 A. Well, the first ones are the subpoena for records.
24 The second part of this is the approval from the planning
25 department for the project to be done.

26 Q. What are those records that you're already familiar
27 with from looking at your file?

28 A. Okay. These are the plans for the work to be done.

1 Q. And are those plans that you previously reviewed?

2 A. I'm sorry. I've got to look at these again. Okay.
3 These are the plans that we sent over under the subpoena of
4 records that were for the permit copies --

5 Q. Okay.

6 A. -- of the job sets. Yes.

7 Q. Okay. And you reviewed all those --

8 A. Yes.

9 Q. -- and you're familiar with those?

10 A. Yes.

11 Q. Okay. Who was the contractor listed on the 191
12 Chelsea project?

13 A. For the room addition, it was Dunne-Right
14 Remodeling.

15 Q. When was the building permit for the job issued?

16 A. I don't have that anymore. You took it back.
17 Sorry.

18 Q. I'm sorry. The witness is referring to Exhibit
19 Number 29.

20 A. So the kitchen addition was issued on November 3rd
21 of 2005. I mean, I'm sorry, June 3, 2005.

22 Q. And did that include a set of plans with the
23 application for the permit?

24 A. Yes.

25 Q. Is that how it generally works?

26 A. Yes.

27 Q. Do the plans have to be approved?

28 A. Yes, they do.

1 Q. Are the plans on file with the department supposed
2 to accurately reflect the work that is to be done on the
3 project?

4 A. Yes, it is.

5 Q. Why is that?

6 A. For code compliance. That's how we inspect and
7 that's how we verify work to be done by work laws approved by
8 the planning department, building department, and any other
9 department that would be associated with the work.

10 Q. Where are copies of the plans, if anywhere,
11 supposed to be located while a project is ongoing?

12 A. Job copies are supposed to be on the site at all
13 times.

14 Q. Why is that?

15 A. So the inspector can look at them and review the
16 work being done for inspection purposes.

17 Q. Okay. Do your records -- do the city's records
18 show whether or not the contractor on the 191 Chelsea room
19 addition project was ever changed?

20 A. I'm sorry. Can you repeat the question?

21 Q. Do the records from the city in Exhibits 28 and/or
22 29 reflect whether or not the contractor on the 191 Chelsea
23 room addition project ever changed?

24 A. If the contractor changed, is that what you're
25 asking?

26 Q. Yes.

27 A. No. I don't have an additional updated building
28 permit notice saying that, no.

1 Q. What is an "updated building permit" that would say
2 *such a thing?*

3 A. What we would have -- when that happens, we strike
4 out the old contractor, issue the same permit with the new
5 contractor's name in, and then we staple the two together and
6 put them in the file.

7 Q. Why do you want that second piece of paper in the
8 file?

9 A. Just to verify who was the original contractor in
10 case something happens in the future.

11 Q. All right. Is there anybody on that permit other
12 than Dunne-Right Construction?

13 A. Just the owner.

14 Q. So there's no other contractor?

15 A. No other contractor, no.

16 Q. Whose responsibility is it to make sure such an
17 update is lodged with the city?

18 A. The contractor.

19 Q. What inspections, if any, were done on the 191
20 Chelsea room addition project?

21 A. Foundation inspection or footing inspection.

22 Q. When was that done?

23 A. That was done February 1st of 2006.

24 Q. By whom?

25 A. By Dan Plunkett (phonetic).

26 Q. And what was the results of that inspection?

27 A. It was approved.

28 Q. What was approved?

1 A. The footings.

2 Q. The work done so far on the footings had been
3 approved?

4 A. The work that was called for inspection, which were
5 the footings, were approved.

6 Q. What are footings?

7 A. Footings are the foundation of the house. They
8 support the -- they support the construction.

9 Q. And what does a footing inspection consist of?

10 A. It inspects and verifies the depth and widths of
11 the footings itself, the location setback of the footings to
12 make sure they meet the requirements of the code and of the
13 plans that were approved, and any steel requirements that
14 might be in there for reinforcing and any bolting that was
15 required to be done at the time of inspection.

16 Q. With respect to the 191 Chelsea project, how big a
17 project in terms of the room addition was approved or does
18 the permit or the other records say?

19 A. The permit doesn't say that. That would be on the
20 plans.

21 Q. Are the plans in there?

22 A. Yes, they are. It says a proposed 180 square foot
23 addition.

24 Q. Were there any amended plans filed? Are there any
25 plans in the record after that 180 square foot proposed
26 addition?

27 A. No, not to my recollection.

28 Q. Okay. Whose responsibility is it to file amended

1 plans?

2 A. The contractor or owner.

3 Q. Okay. That's a joint responsibility?

4 A. Yes, it is.

5 Q. Okay. What happens after a footing inspection is
6 completed? What has to be inspected next?

7 A. Underfloor framing.

8 Q. Then what?

9 A. Then the walls and the ceiling and the roof.

10 Q. All right. With respect --

11 A. I'm sorry. The insulation would be after the floor
12 framing and then the walls and the roof.

13 Q. All right. Did you ever visit personally the 191
14 Chelsea site?

15 A. Yes, I did.

16 Q. Were there any walls or roof to inspect?

17 A. No, there weren't.

18 Q. What was there to inspect?

19 A. There was a deck, a wood deck that had been built
20 with the floor framing and the insulation and the plywood
21 already put together without any inspections.

22 Q. When you say "without any inspections," what was
23 supposed to have happened and didn't according to the records
24 in comparison to your view of the site?

25 A. We should have been called out for the underfloor
26 inspection when we look at the floor joists.

27 Q. What are floor joists?

28 A. They're components that hold the floor of the house

1 up.

2 Q. Is there -- tell us what's a crawl space?

3 A. A crawl space is a section underneath the floor
4 joists that go down to the ground in the open space.

5 Q. What's a crawl space for in a foundation context?

6 A. It's for access to different parts of the house.

7 Underneath the -- underneath the house for different --

8 either for plumbing or for HVAC. Different things that would
9 be under the house to get to.

10 Q. Is the crawl space supposed to be vented?

11 A. Yes, it is.

12 Q. Is the area under the subfloor supposed to be
13 insulated?

14 A. Yes, it is.

15 Q. And what did you do to take a look at the property
16 when you went there?

17 A. I asked to have the subfloor pulled up so we could
18 verify what was under the subfloor and it was -- I saw floor
19 framing, bolting, insulation, and the concrete underneath on
20 top of the dirt, which we would call a rat slab, which
21 separates the dirt from the underfloor of the house. That's
22 what I witnessed when I was there.

23 Q. I'm going to show you a couple of pictures.

24 People's Exhibits 22A and B. Counsel is looking at them
25 first.

26 While they're looking at that, you said that you
27 asked for something to be torn out for inspection purposes.

28 What was that again?

1 A. It was the subfloor. The subfloor had been laid
2 without the inspection of the underfloor.

3 Q. Why is there supposed to be an inspection of the
4 underfloor before the subfloor is laid?

5 A. So we can verify that the correct floor joists were
6 installed. Correct girder was installed. The bolting was
7 done to the plates down on top of the footings, the stem wall
8 of the footings, and that there's insulation where there's
9 supposed to be.

10 Q. All right. I'm going to show you what's been
11 marked People's Exhibit 22A for identification. I'm going to
12 ask you first if you recognize it.

13 A. Yes.

14 Q. How do you recognize it?

15 A. Because I saw it underneath the house, and I stuck
16 my head under the floor joists.

17 Q. If you could hold that up for the Court to see and
18 describe what that picture depicts?

19 A. Well, this is a 2 by 6, if I remember correctly,
20 floor joist that is going into a joist hanger up against the
21 ledger, or the rim joist, of the floor around the house. And
22 then this is the insulation that was put in with netting so
23 that the insulation doesn't fall below the bottom of the
24 floor joists.

25 Q. Okay. How would you describe the quality of the
26 workmanship?

27 A. How would I describe it?

28 Q. Yes.

1 A. Well, it's not -- it's not industry standards.
2 It's -- there are no code violations in this picture, so
3 anything that I say would purely be my own opinion. So,
4 okay.

5 Q. How long have you been in the construction
6 business?

7 A. About 29 years.

8 Q. And you're a carpenter?

9 A. I was, yes.

10 Q. Did you ever make something like that yourself?

11 A. No, I did not.

12 Q. Okay. Have you ever inspected floor joists,
13 subflooring, and other things such as that depicted in the
14 exhibit you got in your hand?

15 A. Not until I saw this, no.

16 Q. Okay. I'm going to show you what's been marked
17 Exhibit -- wait a minute. When you saw this, as you've
18 described it, what was your reaction if any?

19 MR. MCENTEE: Objection. It's vague, irrelevant.

20 THE COURT: What's the relevance?

21 MR. MAUTNER: I think -- I think he can testify as
22 an expert here in terms of this particular kind of work. I
23 mean he's been doing this kind of inspection for a lot of
24 years.

25 THE COURT: I think he can testify as to not what
26 was in accordance with industry standards as he testified.

27 BY MR. MAUTNER:

28 Q. Okay. I'll rephrase the question. When you first

1 looked at that, what was your initial reaction --

2 MR. MCENTEE: Objection.

3 Q. -- in terms of your prior statement of it isn't up
4 to industry standards?

5 MR. MCENTEE: Objection. "Initial reaction" is
6 vague and it's irrelevant.

7 THE COURT: Sustained.

8 BY MR. MAUTNER:

9 Q. Okay. We'll move on to Exhibit 22B. Do you
10 recognize that?

11 A. Yes, I do.

12 Q. What is it?

13 A. That's the opening that was there for me to look
14 inside the underfloor area.

15 Q. Are there any code violations depicted in that
16 picture?

17 A. No code violations, no.

18 Q. Okay. Is there anything that's not industry
19 standard depicted in that picture?

20 MR. MCENTEE: Objection. Vague, industry standard,
21 and what relevance -- what's the relevance.

22 MR. MAUTNER: Well, the relevance goes to the
23 defendant's intent during the whole process of the job, and
24 the quality of the workmanship is relevant to that.

25 THE COURT: I'll allow it. You can answer, sir.
26 Do you remember the question?

27 THE WITNESS: No.

28 BY MR. MAUTNER:

1 Q. Let me back up. What is it we're looking at in
2 that exhibit?

3 A. We're looking at -- the picture was directed at the
4 rim joists that's on the sill plate of the foundation.

5 Q. What is the industry standard for constructing what
6 you just described?

7 A. Well, typically there would be a solid one piece of
8 rim joist the same thickness or same depth as the floor
9 joists. In this picture there's the -- there's a rim joist.
10 There's a block with another plate on top of that that makes
11 up the rim joist.

12 Q. Is there anything wrong with that in terms of the
13 industry standards?

14 A. Is there anything wrong with that?

15 Q. Let me rephrase. Why were -- why is that not
16 consistent with industry standards?

17 MR. MCENTEE: Objection. It's leading and assuming
18 facts not in evidence.

19 THE COURT: Sustained. He hasn't testified that it
20 was not in accordance with industry standards.

21 BY MR. MAUTNER:

22 Q. Okay. Is what you see in that picture in
23 accordance with industry standards?

24 A. No.

25 Q. Why not?

26 A. Because as I stated, industry standards -- let me
27 rephrase what I'm going to say here. I'm sorry. Each
28 industry standard would be one single rim joist around the

1 entire perimeter of the subfloor connecting the joists to the
2 foundation. So the reason this is not industry standards is
3 that it's two pieces made up of blocks and not solid members.

4 Q. The industry standard way of doing it, what's the
5 purpose of that way of doing it?

6 A. Strength.

7 Q. All right. Strength of what?

8 A. Strength of the subfloor.

9 Q. What, if anything, is the problem with the way this
10 was done in respect to industry standards?

11 A. Well, I'm not sure there would be a problem.

12 Q. Why not?

13 A. Because, as I stated, it doesn't meet industry
14 standards, but the way it's put together it might still work.
15 I'm not -- I can't say that it cannot work.

16 Q. But it's not the way it's usually done so that it
17 will work?

18 A. Yes.

19 Q. Okay. But you can't say anything beyond that in
20 terms of an opinion about the, say, structural integrity of
21 that subject?

22 MR. MCENTEE: Objection. Asked and answered and
23 leading.

24 THE COURT: Overruled.

25 THE WITNESS: Okay. Can you say it again?

26 BY MR. MAUTNER:

27 Q. Can you say anything further?

28 A. No.

1 MR. MAUTNER: No further questions.

2 THE COURT: Cross-examine.

3 CROSS-EXAMINATION

4 BY MR. MCENTEE:

5 Q. Mr. Kavarian, just to sum up after all these
6 pictures the prosecutor was showing you, you couldn't detect
7 any code violations; isn't that right?

8 A. Correct.

9 Q. And you are unable to say that the way Mr. Schultz
10 constructed the framing for this floor, you're unable to say
11 it would not work; isn't that right?

12 A. The way the floor was constructed?

13 Q. Yeah.

14 A. Is that the question? I'm sorry. Yeah, yes.

15 Q. Now, you have a photo there at the witness table.

16 A. Yes.

17 MR. MCENTEE: May I approach the witness, Your
18 Honor?

19 THE COURT: You may.

20 BY MR. MCENTEE:

21 Q. Mr. Kavarian, the members in Government's 22B that
22 I'm showing you here, aren't those 4 by 6s and not 2 by 6s?

23 A. Which ones, please?

24 Q. Well, the joists here with the hangers that are
25 attached to the header. The rim joists. These joists that
26 I'm pointing to in the picture.

27 A. M-hm.

28 Q. Those are 4 by 6s, aren't they?

1 A. I'm trying to -- I'm trying to remember what I saw.

2 Q. Maybe if I show you there in 22A it would help.

3 This is the same --

4 A. Oh, yeah. That's a 2 by 6.

5 Q. How can you tell?

6 A. Because of the joist hanger. The joist hanger is a
7 single joist hanger, and these are 2 by 6s not 4 by 6s, yes.

8 There was a 4 by 6 girder down the center of the floor. And
9 I know you didn't ask for that. There was one 4 by 6 there.

10 Q. Okay. So the span of these 2 by 6 -- were the 2 by
11 6s on 16-inch centers or 24-inch centers?

12 A. Looking at this, I'm going to say they're 16,
13 because I had a hard time sticking my shoulders down into the
14 underfloor.

15 Q. Okay. The total span from one side of this deck to
16 the other was 12 feet; isn't that right?

17 A. I don't remember, sorry.

18 Q. There was a girder that was placed at the center of
19 the span of these joists; isn't that right?

20 A. Correct. The long dimension.

21 Q. Right. So did you notice how much the joists were
22 spanning clear from one sill plate to the girder?

23 A. No. I don't think I measured that section.

24 Q. It was well within what the code allows, though,
25 isn't it?

26 A. For a 2 by 6?

27 Q. Yeah.

28 A. I believe so, yes.

1 Q. Yeah. In other words, there was, in fact, the
2 length that these 2 by 6s had to span was -- using a 2 by 6
3 in that situation was probably overengineering it; isn't that
4 right?

5 A. No. Because a 2 by 6 is the smallest member you
6 can use as a floor joist.

7 Q. In this instance they were only spanning six
8 possibly eight feet; isn't that right?

9 A. Possibly. But they would still be -- the minimum
10 size for a floor joist is 2 by 6.

11 Q. Okay. But isn't it typical that a 2 by 6 joist on
12 16-inch centers is allowed to span 12, even 14 feet; isn't
13 that right?

14 A. I'd have to look at the code book to see the
15 dimensions that are in there. I believe the number one can
16 go is 12 feet depending on what the load is, you know, off my
17 best recollection.

18 Q. These joists in this construction project were
19 spanning considerably less than 12 feet; isn't that right?

20 A. Yes.

21 Q. Now, somebody else from the Napa Building
22 Department inspected the footings before the concrete was
23 poured; isn't that right?

24 A. Correct.

25 Q. So in order to sign off on the permit before the
26 concrete could be poured that inspector had to be satisfied
27 that the footings were the proper size; isn't that right?

28 A. Yes.

1 Q. That they were -- there was enough of the footing
2 *in the ground to comply with the code; isn't that right?*

3 A. Yes.

4 Q. And that there was the proper amount of steel
5 reinforcing bar within the footings that were about to be
6 poured; isn't that right?

7 A. Yes.

8 Q. And that there were the proper number of foundation
9 bolts within the footing; isn't that right?

10 A. We allow foundation bolts to be set as long as
11 they're nonstructural bolts, so those might not have been
12 there at the time of the inspection.

13 Q. Did you notice the existence of foundation bolts
14 when you went back to look under the floor?

15 A. Yes, I did.

16 Q. They were there in their proper order?

17 A. From what I could see, yes.

18 Q. Were they spaced every four to six feet?

19 A. I would say they were spaced between some four to
20 six, yes.

21 Q. And the mudsill was properly bolted to the concrete
22 footing; isn't that right?

23 A. From what I could see, because we did not perform
24 an underfloor inspection, that's what we looked at on the
25 underfloor inspection, so as close as I could see, yes.

26 Q. And, of course, the person from your building
27 department who inspected the footings before the concrete was
28 poured would have looked at a set of plans on the job site in

1 order to sign off; isn't that right?

2 A. Yes.

3 MR. MCENTEE: Thank you, sir. I have no further
4 questions.

5 THE WITNESS: Thank you.

6 THE COURT: Redirect.

7 REDIRECT EXAMINATION

8 BY MR. MAUTNER:

9 Q. Why wasn't an underfloor inspection performed?

10 A. Because it wasn't called in.

11 Q. Whose responsibility is it to call it in?

12 A. The contractor.

13 Q. And you said a couple of times that you had some
14 difficulty seeing everything under there; is that right?

15 A. Yes.

16 Q. Okay. Were you alone?

17 A. I was with Ms. Hinshaw there at the time.

18 Q. Was there anybody else there who looked under the
19 flooring at that point?

20 A. When I was there, no.

21 MR. MAUTNER: Okay. I have no further questions.

22 THE COURT: Any recross?

23 MR. MCENTEE: Nothing further.

24 THE COURT: Thank you, sir. You're excused.

25 (Witness excused.)

26 THE COURT: Do you have a witness in reserve or --
27 it's a quarter to twelve right now.

28 MR. MAUTNER: I have several.

1 THE COURT: Waiting out there in the hallway?

2 MR. MAUTNER: I think so.

3 THE COURT: Why don't we take about ten minutes of
4 your next witness.

5 - - -

6 ROBIN SIMMONS,

7 a witness called by the People, who, being first duly
8 administered an oath to tell the truth, the whole truth, and
9 nothing but the truth, was examined and testified as follows:

10 THE WITNESS: Yes, I do.

11 THE JUDICIAL ASSISTANT: Thank you. Please have a
12 seat over here.

13 THE COURT: Please state and spell your first and
14 last name.

15 THE WITNESS: Robin Simmons, R-o-b-i-n,
16 S-i-m-m-o-n-s.

17 THE COURT: Thank you. You may begin.

18 DIRECT EXAMINATION

19 BY MR. MAUTNER:

20 Q. Ms. Simmons, where do you live?

21 A. 191 Chelsea, Napa, California.

22 Q. Are you familiar with the defendant in this case,
23 Mr. Schultz?

24 A. Yes, I am.

25 Q. How do you know him?

26 A. He was working on our house.

27 Q. I'm going to need you to talk into this microphone.
28 You have to pull it forward or scrunch up closer.

1 A. Okay.

2 Q. You're familiar with the kitchen and room addition
3 project at 191 Chelsea, correct?

4 A. Yes, I am.

5 Q. That occurred in 2005/2006, right?

6 A. Yes.

7 Q. What was your involvement if anything at the
8 beginning of that project with the defendant as the
9 contractor?

10 A. I was the signor, the witness signor on the
11 contract.

12 Q. All right. And what was supposed to be the size of
13 the project at that point?

14 A. I believe it was 9 by 12.

15 Q. Okay. Was that any different than what it had been
16 before?

17 A. Yes. It was half the size.

18 Q. And do you remember any discussions with the
19 defendant about that? Did you have any discussions with the
20 defendant about reducing the size and scope of the project?

21 A. I didn't.

22 Q. Your mom did that?

23 A. Yes, she did.

24 Q. And Luella Petree is your mother?

25 A. Yes, she is.

26 Q. All right. What part of the property do you live
27 in at 191 Chelsea?

28 A. I live in the garage.

1 Q. Okay. And you had some trouble with the law,
2 right?

3 A. Yes, I have.

4 Q. Okay. And you're currently on felony probation in
5 Napa County?

6 A. No, I'm not.

7 Q. You're not?

8 A. No, I'm not.

9 Q. You were until recently, correct?

10 A. Yes.

11 Q. Okay. What for?

12 A. It was for drugs.

13 Q. Do you recall what specific charge?

14 A. It was possession of a controlled substance.

15 Q. Did you go through the Prop 36 program?

16 A. I did the jail time instead.

17 Q. Okay. And did that take place before or after the
18 events of this particular case?

19 A. I did the jail time. It was after, after this
20 started. But, I mean, I just got out of jail September 26,
21 2008, so I did four months.

22 Q. All right. Did you have a security system in place
23 at the residence? Did you do that for your mom?

24 A. Yes, I did.

25 Q. When did you have that put in?

26 A. Probably 2005. The beginning of 2005 I had it
27 installed.

28 Q. All right. And is the part of town -- why would

1 you do that? Why would you put a security system in that
2 part of Napa?

3 A. I had just bought a new car and somebody had been
4 messing with it and so just because of my new car I wanted to
5 see if I could catch them on camera. They used a paintball
6 gun, and it had gotten egged. I was just hoping I could
7 catch them on camera.

8 Q. Is there a lot of that kind of thing that goes on
9 in Westwood?

10 MR. MCENTEE: Objection, relevance.

11 THE WITNESS: Yes. Yes.

12 THE COURT: Sustained.

13 BY MR. MAUTNER:

14 Q. Do you remember whose idea it was to shrink the
15 project?

16 A. It was Danny's idea.

17 Q. How do you know that?

18 A. Because when the signing of the contract happened,
19 I was there. And then he was explaining to her that he was
20 going to do it for the price and her having the appliances
21 included that was best to have -- he could do it for that
22 price.

23 Q. Did you live continuously there from December 15th
24 to March 11th, 2005/2006?

25 A. Yes.

26 Q. Okay. When did you have your security camera
27 system turned on?

28 A. When did I start it? I had it all the time. It

1 was on 24 hours.

2 Q. Okay. What kind of system is it that it can
3 continue to record?

4 A. It only records -- it switches cameras every three
5 seconds and it records ten seconds of movement, whichever
6 camera catches the movement, and it will record for ten
7 seconds where the movement is, you know.

8 Q. Okay. So what turns on the camera?

9 A. Movement. If there's something that...

10 Q. All right. In this particular case did you track
11 the defendant's comings and goings while he was working on
12 the house?

13 MR. MCENTEE: Objection. Foundation, hearsay.

14 THE COURT: Overruled. You can answer.

15 THE WITNESS: The camera did track it. It wasn't
16 for him that I had it there. It was on all the time, but,
17 yes, it did track it.

18 BY MR. MAUTNER:

19 Q. At some point the relationship among you all
20 soured, didn't it?

21 A. Yes, sir, it did.

22 Q. Okay. And that was in March, wasn't it?

23 A. Yes.

24 Q. Before March 11, 2006, had you looked at your
25 security camera tapes for tracking the defendant's movements?

26 A. No.

27 Q. Okay. Did you do that after March 11, 2006?

28 A. Yes.

1 Q. Why?

2 A. Because --

3 MR. MCENTEE: Your Honor, I object. This is going
4 to call for hearsay. The witness may be recounting something
5 she saw in a photo or some kind of video which would be
6 hearsay.

7 THE COURT: It would be hearsay to describe what
8 she saw in a video?

9 MR. MCENTEE: Yeah.

10 MR. MAUTNER: No. It's a text -- if there's any
11 evidentiary problem, it is a text, and we're laying the
12 foundation if I'm going to admit the tape.

13 THE COURT: Are you planning on offering the tape?

14 MR. MAUTNER: No, I wasn't. But that would be the
15 only grounds for objection at this point, and that's not what
16 I'm doing.

17 MR. MCENTEE: Well, to have any relevance there's
18 got to be some documentation of the tape or image that she's
19 going to describe, and that's an out-of-court statement and
20 it would be hearsay.

21 THE COURT: She would be describing what's on the
22 videotape that was prepared out of court and some kind of
23 documentary evidence. That would be hearsay if her statement
24 is being offered to prove the truth of what was depicted in
25 the video. So if that's what she's planning on doing and
26 you're offering it to prove the truth of what was on the
27 video, then I will sustain the hearsay objection.

28 MR. MAUTNER: Okay. We'll come back to this issue

1 after lunch, I suspect.

2 BY MR. MAUTNER:

3 Q. In terms of when the contract was formed, did
4 Mr. Schultz tell you anything about the plans in reducing the
5 project?

6 A. Him and I never discussed it. It was more him and
7 my mother. I was just mainly there for the signing of it,
8 you know. They did all the talking about the plans and
9 changing the size, I know that, but I wasn't there during
10 that.

11 Q. Okay.

12 MR. MCENTEE: Your Honor, given the testimony, I
13 believe earlier she described conversations as if she had
14 been there. If that were the case, I ask then that testimony
15 be stricken.

16 THE COURT: I believe her testimony was describing
17 the conversation at the time the contract was signed when she
18 was present.

19 MR. MAUTNER: Right.

20 THE COURT: Is that correct?

21 THE WITNESS: Yes. Yes.

22 THE COURT: Overruled then.

23 BY MR. MAUTNER:

24 Q. Okay. That was December 15th. Did you have any
25 personal direct contact with the defendant about the project
26 after December 15, 2005?

27 A. Just him and I?

28 Q. Yeah.

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A. No.

Q. Did you and other people at the same time have such contact?

A. Like a meeting?

Q. Yes.

A. No. No.

MR. MAUTNER: Okay. Your Honor, I have nothing further of this witness at this time. I'd like her subject to recall on the issue on which the objection was sustained.

THE COURT: Cross-examine.

CROSS-EXAMINATION

BY MR. MCENTEE:

Q. Just one question. Mrs. Simmons, it's also true, isn't it, that in 1993 you were convicted of a violation of Health & Safety Code Section 11379?

A. Yes.

Q. Sales of methamphetamine --

MR. MAUTNER: Objection. Misstates the nature of that charge.

MR. MCENTEE: It's sales or transportation.

THE COURT: And it was for?

BY MR. MCENTEE:

Q. What was it for?

A. It was for possession.

Q. Well, weren't you convicted of a violation of Section 11379?

A. No, I wasn't. It was -- no.

Q. Mrs. Simmons, while we're waiting I'll preface my