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Loretta L. Luman
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1 REX BELL
DISTRICT ATTORNEY
2 Nevada Bar #001799
200 S. Third Street
3 Las Vegas, Nevada 89155
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4 Attorney for Plaintiff
THE STATE OF NEVADA
5

DISTRICT COURT
CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,
10 Plaintiff,
11 vs.
12 MICHAEL DAMON RIPPO,
13 Defendant.

CASE NO. C106784
DEPT. NO. IV
DOCKET NO. C

STATE'S OPPOSITION TO DEFENDANT'S MOTION TO EXCLUDE
AUTOPSY AND CRIME SCENE PHOTOGRAPHS

DATE OF HEARING: 2-22-94
TIME OF HEARING: 9:00 A.M.

18 COMES NOW, the State of Nevada, by REX BELL, District
19 Attorney, through TERESA M. LOWRY, Deputy District Attorney, and
20 files this State's Opposition to Defendant's Motion To Exclude
21 Autopsy and Crime Scene Photographs.

22 This opposition is made and based upon all the papers and
23 pleadings on file herein, the attached points and authorities

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1 in support hereof, and oral argument at the time of hearing, if
2 deemed necessary by this Honorable Court.

3 DATED this 7th day of February, 1994.

4 Respectfully submitted,

5 REX BELL
6 DISTRICT ATTORNEY
7 Nevada Bar #001799
8 Nevada Bar #003901

9 BY

Teresa M. Lowry
10 TERESA M. LOWRY
11 Deputy District Attorney

12 STATEMENT OF FACTS

13 Defendant Michael Rippo was convicted of burglary and sexual
14 assault on March 30, 1982. Defendant is currently charged with two
15 counts of open murder, one count of robbery, one count of
16 possession of a stolen vehicle, one count of possession of a credit
17 card without cardholder's consent, and one count of unauthorized
18 signing of credit card transaction document. Defendant is
19 scheduled to proceed to trial on February 22, 1994.

20 ISSUE

21 Whether the autopsy and crime scene photographs are admissible
22 as relevant and probative evidence.

23 ARGUMENT

24 Defendant objects to the use of the autopsy and crime scene
25 photographs by the State. Specifically, he complains the photos
26 are gruesome, inflammatory, hideous, and have little or no
27 probative value. Defendant's contentions are only bare allegations
28 of prejudice to the Defendant and as such are meritless.

1 Photos of injuries and crime scenes are generally admissible
2 so long as their prejudicial value does not outweigh their
3 probative value. See Sipsas v. State, 102 Nev. 119, 716 P.2d 231
4 (1986); Ybarra v. State, 100 Nev. 167, 679 P.2d 797 (1984); Allen
5 v. State, 91 Nev. 78, 530 P.2d 1995 (1975).

6 A photograph which aids in the ascertainment of the truth may
7 be received into evidence, though it may be gruesome. Scott v.
8 State, 92 Nev. 552, 556, 554 P.2d 735 (1976); Thierault v. State,
9 92 Nev. 185, 193, 547 P.2d 668 (1976). The Nevada Supreme Court
10 has held that it will not subvert the purpose of a trial to
11 ascertain and disclose the truth by declaring relevant photograph
12 evidence inadmissible simply because it damages the defense.
13 Wallace v. State, 84 Nev. 603, 606, 447 P.2d 30 (1968), reversed on
14 other grounds, 88 Nev. 549, 501 P.2d 1036; Langley v. State, 84
15 Nev. 295, 297, 439 Nev. 986 (1968).

16 It is within the sound discretion of the trial court to admit
17 or exclude photographs and absent a showing of abuse of this
18 discretion, the decision will not be overturned. Aguilar v. State,
19 98 Nev. 18, 22, 639 P.2d 533 (1982); Turpen v. State, 94 Nev. 576,
20 577, 583 P.2d 1083 (1978), cert. denied, 419 U.S. 967, 95 S.Ct.
21 230; Dearman v. State, 93 Nev. 364, 369, 566 P.2d 407 (1977). The
22 test is whether the probative value of the proffered evidence
23 outweighs any prejudicial effect. Zessman v. State, 94 Nev. 28, 34,
24 573 P.2d 1174 (1978); Dearman, supra.

25 In the instant case, the State must prove beyond a reasonable
26 doubt that the victim's deaths were homicidal. To that end,
27 nothing is more relevant than photographs depicting the victims

1 bound and gagged. Similarly, photographs enable the jury members
2 to see the strangulations marks on the victims necks.
3 Additionally, the State must also show the autopsy was performed
4 upon the same persons that were found at the crime scene.
5 Consequently, photographs from both the crime scene and autopsy
6 depicting the same victims are essential to the State's case.

7 Moreover, the State is required to show the victim's death
8 occurred during the commission of a robbery. Photographs depicting
9 the victim's ransacked apartment is probative of that issue.

10 Accordingly, the district court should admit the autopsy and
11 crime scene photographs.

12 DATED this 7th day of February, 1994.

13

14

Respectfully submitted,

15

16

REX BELL
DISTRICT ATTORNEY
Nevada Bar #001799
Nevada Bar #003901

17

18

BY *Teresa M. Lowry*
TERESA M. LOWRY
Deputy District Attorney

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27 msr

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1 RECEIPT OF COPY of the above and foregoing is hereby
2 acknowledged this 7th day of February, 1994.

STEVEN WOLFSON, ESQ.
ATTORNEY FOR DEFENDANT

BY: Steven B. Wolfson
302 E. Carson #400
Las Vegas, Nevada 89101

8 RECEIPT OF COPY of the above and foregoing is hereby
9 acknowledged this 7th day of February, 1994.

PHILLIP DUNLEAVY, ESQ.
ATTORNEY FOR DEFENDANT

BY: Phillip Dunleavy
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4 Attorney for Plaintiff
THE STATE OF NEVADA

FILED

FEB 7 4 30 PM '94

Loretta L. Luman
CLERK

DISTRICT COURT
CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,
10 Plaintiff,
11 vs.
12 MICHAEL DAMON RIPPO,
13 Defendant.

CASE NO. C106784
DEPT. NO. IV
DOCKET NO. C

RESPONSE TO DEFENDANT'S MOTION FOR DISCOVERY
OF INSTITUTIONAL RECORDS AND FILES
NECESSARY TO HIS DEFENSE

DATE OF HEARING: 2-22-94
TIME OF HEARING: 9:00 A.M.

18 COMES NOW, the State of Nevada, by REX BELL, District
19 Attorney, through TERESA M. LOWRY, Deputy District Attorney, and
20 files this Response to Defendant's Motion For Discovery of
21 Institutional Records and Files Necessary To His Defense.

22 This response is made and based upon all the papers and
23 pleadings on file herein, the attached points and authorities

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CE06

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1 in support hereof, and oral argument at the time of hearing, if
2 deemed necessary by this Honorable Court.

3 DATED this 7th day of February, 1994.

4 Respectfully submitted,

5 REX BELL
6 DISTRICT ATTORNEY
7 Nevada Bar #001799
8 Nevada Bar #003901

9 BY *Teresa M. Lowry*
10 TERESA M. LOWRY
11 Deputy District Attorney

12 MEMORANDUM OF POINTS AND AUTHORITIES

13 STATEMENT OF FACTS

14 Defendant Michael Rippe was convicted of burglary and sexual
15 assault on March 30, 1982. Defendant is currently charged with two
16 counts of open murder, one count of robbery, one count of
17 possession of a stolen vehicle, one count of possession of a credit
18 card without cardholder's consent, and one count of unauthorized
19 signing of credit card transaction document. Defendant is
20 scheduled to proceed to trial on February 22, 1994.

21 ARGUMENT

22 I

23 It is the position of the Clark County District Attorney to
24 permit discovery and inspection of any relevant material pursuant
25 to NRS 174.235, et, seq., and any exculpatory material pursuant to
26 Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194 (1963). However, the
27 District Attorney will not permit discovery to be used as a vehicle
28 wherein the State is required to investigate and prepare the

1 defendant's case as well as it's own.

2 Accordingly, the following items of discovery, as requested by
3 the Defendant's Motion for Discovery, will be provided:

4 1. Any written or oral statements, admissions, or confessions
5 made by the Defendant.

6 2. Results or reports of physical or mental examinations, and
7 scientific tests or experiments made in connection with the
8 particular case, or copied thereof, within the possession, custody
9 or control of the State.

10 3. The opportunity for the Defendant and his attorney to
11 inspect and copy any books, documents, papers and tangible objects
12 which are in the possession, custody, or control of the State of
13 Nevada, which the State anticipates introducing into evidence at
14 trial.

15 Initially, it must be noted that there is no general
16 constitutional right to discovery in a criminal case. The rule of
17 Brady v. Maryland, supra, which requires the State to disclose to
18 the defendant, exculpatory evidence is founded on the
19 constitutional requirement of a fair trial. Brady is not a rule of
20 discovery, however. As the Supreme Court held in Weatherford v.
21 Bursy, 429 U.S. 545, 559, 97 S.Ct. 837, 846 (1977):

22 There is no general constitutional right to
23 discover in a criminal case, and Brady did not
24 create one . . . the Due Process Clause has
25 little to say regarding the amount of
discovery which the parties must be afforded.
. Wardius v. Oregon, 412 U.S. 479, 474, 93
S.Ct. 2208, 2212 (1973).

26 Thus, nonexculpatory evidence, such as the existence of any
27 criminal records of a prosecution witness and documents or papers

1 within the possession of the State, is obtainable in advance of
2 trial only by virtue of discovery statutes. United States v.
3 Kaplan, 554 F.2d 577 (3rd Cir. 1977); United States v. Agurs, 427
4 U.S. 97, 96 S.Ct. 2392 (1976).

5 After the current Nevada discovery statutes were enacted in
6 1967, the Supreme Court addressed them in the case of Franklin v.
7 District Court, 85 Nev. 401, 455 P.2d 919 (1969). In that case, a
8 defendant sought to discover, inspect and copy the statements of
9 all persons to be called by the prosecution as witnesses at trial.
10 This Court stated the statutes did not authorize this and there is
11 no constitutional right to discover them. This Court further
12 stated:

13 The new criminal code does deal with criminal
14 discovery. . . and those provision represent
15 the legislative intent with respect to the
scope of allowable pretrial discovery and are
not lightly to be disregarded.

16 84 Nev. at 402-403.

17 In United States v. Lasky, 548 F.2d 835 (9th Cir. 1977), the
18 Ninth Circuit addressed the issue of the prosecutor's discovery
19 responsibility when faced with a broad discovery request. In that
20 case, the defense requested "all Brady material including probation
21 reports, pre-sentence interviews and report, and all information
22 regarding police records, arrests, convictions, and any deals,
23 promises or communication with government witnesses regarding
24 benefits they may receive, or have already received for testifying
25 against the defendant." Id. at 839. The Ninth Circuit stated:

26 In seeking this information the defendant was
27 not willing to rely on the government's

1 judgment and requested that the government's
2 complete file be produced for examination by
the court and defense counsel.

3 Id. at 840.

4 The Court dismissed the defendant's claim that evidence was
5 suppressed by holding:

6 Such a general request places the government
7 in no better position than if no request had
8 been made. With broad requests any duty to
9 respond must derive from the obviously
10 exculpatory character of the certain evidence
11 in the hands of the prosecutor. United States
v. Agurs, supra, 96 S.Ct. at 2399. Therefore,
the proper standard of materiality is whether
the 'omitted evidence creates a reasonable
doubt' that did not otherwise exist.' Id. at
2401.

12 See also, United States v. Hearst, 435 F.Supp. 29, 30 (N.D.
13 Cal. 1977), where the court held that a discovery request for any
14 evidence regarding each potential trial witness "that may tend in
15 any respect to reflect adversely upon his credibility to observe
16 and comprehend the events about which the witness intends to
17 testify" constituted a vague request such that the prosecutor was
18 only obligated to disclose obviously exculpatory evidence.

19 NRS 174.245 adopted from Federal Rule of Criminal Procedure 16
20 (c) provides

21 Upon motion of a defendant the court may order
22 the district attorney to permit the defendant
23 to inspect and copy or photograph books,
24 papers, documents, tangible portions thereof,
25 which are within the possession, custody or
26 control of the state upon a showing of
materiality to the preparation of his defense
and that the request is reasonable. Except as
27 provided in subsection 2 of NRS 174.235 and
NRS 174.087, this section does not authorize
the discovery or inspection of reports,
memoranda or other internal state documents
made by state agents in connection with the

1 investigation or prosecution of the case, or
 2 of statements made by state witnesses or
 3 prospective state witnesses (other than the
 4 defendant) to agents of the state. (emphasis
 5 added).
 6 Therefore, the State of Nevada contends that the Defendant's
 7 request numbers 1-9 are overbroad and fail to meet the standard
 8 which requires the requests to be 1) material and 2) reasonable.
 9 NRS 174.245. The Defendant is requesting such an incredibly vast
 10 volume of information and documentation that he is essentially
 11 requiring the State to investigate and to prepare his case for him.
 12 Defendant can obtain any of this alleged information himself via a
 13 subpoena duces tecum.

14 The State has not made an exception to its "open file" policy
 15 for this case. In keeping with this policy, the State intends to
 16 comply with all reasonable requests that are required by statute.
 17 The State cannot and will not prepare Defendant's case for him.

18 DATED this 4th day of February, 1994.

19 Respectfully submitted,

20 REX BELL
 21 DISTRICT ATTORNEY
 22 Nevada Bar #001799
 23 Nevada Bar #003901

24 BY Teresa M. Lowry
 25 TERESA M. LOWRY
 26 Deputy District Attorney

27 msr

1 RECEIPT OF COPY of the above and foregoing is hereby
2 acknowledged this 7th day of February, 1994.

3 STEVEN WOLFSON, ESQ.
4 ATTORNEY FOR DEFENDANT

5 BY: Steven B. Wolfson
6 302 E. Carson #400
7 Las Vegas, Nevada 89101

8 RECEIPT OF COPY of the above and foregoing is hereby
9 acknowledged this 7th day of February, 1994.

10 PHILLIP DUNLEAVY, ESQ.
11 ATTORNEY FOR DEFENDANT

12 BY: Phillip Dunleavy
13 2810 W. Sahara Ave #G-67
14 Las Vegas, Nevada 89102

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1 REX BELL
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 7 Attorney for Plaintiff
 8 THE STATE OF NEVADA

FILED
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 CLERK

6 DISTRICT COURT
 7 CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,
 10 Plaintiff,
 11 vs.
 12 MICHAEL DAMON RIPPO,
 13 Defendant.

CASE NO. C106784X
 DEPT. NO. IV
 DOCKET NO. C

14 STATE'S RESPONSE TO MOTION TO DISQUALIFY THE
 15 DISTRICT ATTORNEY'S OFFICE AND STATE'S
 16 MOTION TO QUASH SUBPOENAS

17 DATE OF HEARING: 2-14-94
 18 TIME OF HEARING: 9:00 A.M.

19 COMES NOW, the State of Nevada, by REX BELL, District
 20 Attorney, through TERESA M. LOWRY, Deputy District Attorney, and
 21 files this Response To Defendant's Motion To Disqualify The
 22 District Attorney's Office and State's Motion To Quash Subpoenas.

23 This response and motion are made and based upon all the
 24 papers and pleadings on file herein, the attached points and

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1 authorities in support hereof, and oral argument at the time of
2 hearing, if deemed necessary by this Honorable Court.

3 DATED this 11th day of February, 1994.

4 Respectfully submitted,

5 REX BELL
6 DISTRICT ATTORNEY
7 Nevada Bar #001799
8 Nevada Bar #003901

9 BY Teresa M. Lowry
10 TERESA M. LOWRY
11 Deputy District Attorney

12 ARGUMENT

13 On September 30, 1993, Detectives Tom Thowsen and Roy Chandler
14 executed a search warrant at 3117 Whispering Willow, Las Vegas,
15 Nevada, the residence of Alice Starr. The search warrant was for
16 documents written by Defendant Rippo. Present at the execution of
17 the warrant were Chief Deputy John Lukens, and Deputy District
18 Attorney Teresa Lowry. D.A.'s Lukens and Lowry prepared the
19 warrant and were present during the execution. The D.A.'s provided
20 advice to Detectives Thowsen and Chandler as to which documents
21 were relevant and should be seized in addition to those items which
22 were not necessary and should be left.

23 During the course of the search Detective Chandler also
24 recovered evidence of illegal narcotics activity. Marijuana,
25 methamphetamine, owe sheets, and a recipe for methamphetamine
26 manufacture were recovered and impounded by the Detectives. All
27 evidence was impounded by Detectives Chandler and Thowsen. One of
28 the Detectives or the other remained with Starr during the search.
Therefore, any statements made by Starr were made in the presence
of a Detective.

1 The Defense implies that it was because Starr was named as
2 their alibi witness that D.A.s Lowry and Lukens thereafter visited
3 her home and ultimately executed a search warrant. D.A.s Lowry and
4 Lukens visited Starr as a State's witness not in response to the
5 filing of an alibi notice. The State subpoenaed Starr to the Grand
6 Jury in this case and has subsequently subpoenaed her as a witness
7 at each of the previous trial settings.

8 That witness Starr may have felt pressured and uncomfortable
9 after having been caught with illegal narcotics and volumes of love
10 letters to the Defendant whom she had professed was like a brother
11 to her is not surprising. The fact that witness Starr was caught
12 in numerous lies and felt pressured as a result does not lend
13 itself to the conclusion by the defense that she was intimidated
14 and harassed by the State.

15 The Defense asserts that Deputy D.A.s Lowry and Lukens are
16 necessary witnesses. In Tomlin v. State, 81 Nev. 620, 407 P.2d
17 1020 (1965), cert. denied 384 U.S. 990 (1966), cited by the
18 Defense, the Court held that a prosecutor may be compelled to
19 testify, but this is strictly limited by the peculiar and unusual
20 circumstances of the case.

21 The State would argue that those peculiar and unusual
22 circumstances do not exist in the case at bar. Certainly the
23 Defense has not shown the requisite factors to exclude the
24 prosecutors those being:

- 25 1) Mr. Lukens and Ms. Lowry are necessary and essential
26 witnesses.
- 27 2) The Defendant would be denied a fair trial without their
28 testimony.

1 3) Their testimony would not be cumulative to other
2 witnesses who were present.

3 The State would respectfully point out to this Court under the
4 reasoning by which defense seeks to disqualify D.A.s Lowry and
5 Lukens - any prosecutor who pre-trials or interviews his/her
6 witnesses prior to trial or provides advice to law enforcement
7 during the execution of a search warrant would be subject to
8 disqualification by any Defense attorney who would subpoena him/her
9 to testify concerning those actions.

10 To allow opposing counsel the unfettered option of removing
11 any prosecutor who has knowledge of any fact in the case might well
12 result in restricting the prosecution function to the ill-prepared.

13 General rules of law pertaining to the disqualification of
14 prosecutors or alternatively disqualification of an entire
15 prosecutor's office was addressed in the case entitled Collier v.
16 Legakes, 98 Nev. 307, 646 P.2d 1219 (1982). Therein, the Court
17 stated:

18 "The disqualification of a prosecutor's office
19 rests with the sound discretion of the
20 District Court. (Cit. omitted). In exercising
21 that discretion, the trial judge would
22 consider all the facts and circumstances and
determine whether the prosecutorial function
could be carried out impartially and without
breach of any privileged communication."

23 Initially it should be pointed out that whether to allow a
24 defendant to call a prosecutor to testify in his behalf is
25 committed to the discretion of the trial court. State v. Howard,
26 554 P.2d 1282 (Ariz. 1976). Where no compelling need for the
27 prosecutor's testimony is shown, where for example other witnesses
28 are available to testify, the defense request to call the

1 prosecutor as a witness may be denied. State v. Tuzon, 575 P.2d
2 1231 (Ariz. 1978). It has further been held that although a
3 prosecutor should withdraw upon finding it necessary to testify on
4 behalf of the State, he has no such duty when called as a defense
5 witness. State v. King, 256 N.W.2d 1 (Iowa 1977).

6 The fact that every prosecutor may potentially be witness for
7 the defense insofar as he has interviewed other witnesses and
8 investigated facts of the case cannot alone be sufficient basis to
9 prevent execution of his office as prosecutor since it would allow
10 prosecution only by unprepared counsel. People v. District Court
11 in and for Third Judicial District., 560 P.2d 463 (Colo. 1977).

12 In Riboni v. District Court, 586 P.2d 9 (Colo. 1978) the court
13 held that the mere fact that defense intended to call the
14 prosecutor as a witness, in view of prosecutor's on scene vehicle
15 accident and claimed knowledge of an inconsistent statement of a
16 prosecution witness, could not, without more, disqualify prosecutor
17 and require appointment of a special prosecutor, absent a showing
18 that the defendant would probably need a prosecutor's testimony for
19 impeachment purposes or that if he did call the prosecutor for that
20 purpose he would be denied a fair trial, since the contradictory
21 statements would probably be conceded at trial and, even if denied,
22 the investigator and deputy sheriff would presumably be available
23 to impeach such denial and the prosecutor's testimony would be
24 merely cumulative. Code of Professional Responsibility, Canon 5;
25 DR 5-101(B)(1), DR 5-102(B).

26 The Court in Iowa v. Fitz, cited at 265 N.W. 2nd 896 (1978)
27 considered the issue of whether the trial court erred in denying
28 the motion to disqualify the County Attorney from prosecuting the

1 case on the ground that the County Attorney might be called as a
2 witness for the defense.

3 The Court said, defendant contends the trial court erred in
4 denying his motion to disqualify the county attorney from
5 prosecuting the case on the ground that he might be called as a
6 witness for the defense. This motion was based on the fact the
7 county attorney participated or, at least, was present at St.
8 Francis Hospital when Lt. Kehoe questioned him on the night of his
9 arrest.

10 Defendant supports his position by citation to the Iowa Code
11 of Professional Responsibility for Lawyers, Canon 5, Disciplinary
12 Rules 5-101 (B) and 5102. Rule 5-101(B) does not apply here
13 because it involves the acceptance of employment when a lawyer
14 knows or it is obvious he ought to be called as a witness. Here
15 the county attorney was already employed to represent the people.
16 Rule 5-102 also does not apply because it provides for withdrawal
17 by a lawyer when he learns or it is obvious he ought to be called
18 as a witness on behalf of his client. Here the defense was the
19 party which might call him as a witness.

20 In State v. King, 256 N.W. 2d 1, 15 (Iowa 1977), this court
21 made clear a prosecutor need not withdraw if he is called as a
22 defense witness when it stated:

23 "Although a prosecutor should withdraw upon finding it
24 necessary to testify on behalf of the State, he has no such duty
25 when called as a defense witness. * * * (citing authorities).

26 The Court in State of Arizona v. McClellan, 611 P.2d 948,
27 considered appellants claim that it was error to deny his motion to
28 preclude the Pima County Attorney's Office from prosecuting this

1 case, to preclude him from calling the prosecutor as a defense
2 witness, and to deny his motion to suppress evidence of prior
3 convictions.

4 The Court said the basis for appellant's motion to disqualify
5 the county attorney's office from prosecuting was that a deputy
6 county attorney would be a witness for the defense. We have held
7 that a prosecutor should not be required to withdraw because the
8 defense might call him as a witness. State v. Howard, 27 Ariz.
9 App. 339 554 P.2d 1282 (1976). It was not error to deny
10 appellant's disqualification motion.

11 The Court further found that the court's granting the State's
12 motion to preclude the defense from calling the prosecutor as a
13 witness was also not error. Whether to allow a defendant to call
14 a prosecutor to testify in his behalf is committed to the
15 discretion of the trial court. State v. Howard, supra. Where no
16 compelling need for the prosecutor's testimony is shown, as was the
17 case here where other witnesses were available to testify as to the
18 prosecutor's conversations with appellant's wife, the trial court's
19 ruling was correct. State v. Tuzon, 118 Ariz. 205, 575 P.2d 1231
20 (1978).

21 The State respectfully submits that the same situation exists
22 before this Honorable Court. There is no compelling need for the
23 states testimony. Additionally the testimony would be cumulative
24 as Detective Thowsen and Chandler were present during the execution
25 of the search warrant and interview.

26 The courts have held that the prosecutor must be essential and
27 not merely cumulative. The court considered this in State of
28 Arizona v. Howard, et al at 27 Ariz. App. 339, 554 P.2d 1282

1 (1976).

2 The State brought special action challenging the order of the
3 trial court which required the prosecutor assigned to represent the
4 state to withdraw. The Court of Appeals, Krucker, J., held that
5 where, at the time that defense sought to require the prosecutor to
6 withdraw, there was no need for the prosecutor to testify as to
7 certain statements made by defendant in his presence because there
8 was a third person, a police officer, who could testify as to the
9 statements and where the prosecutor was a defense witness, the
10 prosecutor should not have been required to withdraw.

11 Courts have generally held, in State v. Steele, 530 P.2d 919,
12 23 Ariz. App. 73 (1975) that a prosecutor, who was present when
13 raid was made on home of one defendant, could not testify as a
14 witness and then act as a prosecutor in grand jury proceedings, but
15 the mere fact that he witnessed some of the events did not
16 disqualify him from acting as a prosecutor at trial as long as he
17 limited himself to that role only.

18 Finally, the Nevada Supreme Court has held that a District
19 Attorney's Office should be disqualified only in "extreme" cases
20 where the appearance of impropriety is so great that the public
21 trust and confidence in our criminal justice system could not be
22 maintained without such action. Whenever the office of the
23 District Attorney is disqualified it must be after the court has
24 conducted a full evidentiary hearing and considered all the facts
25 and circumstances.

26 The Nevada Supreme Court has explained in Attorney General v.
27 District Court, Adv. Op. #23699 filed December 22, 1992, as
28 follows:

This court has held that disqualifying the district attorney's office without holding an evidentiary hearing amounted, in essence, to a failure to exercise discretion. Collier v. Legakes, 98 Nev. 307, 311, 646 P.2d 1219, 1221 (1982). Under Collier, district courts may only disqualify district attorney's offices after conducting a full evidentiary hearing and considering "all the facts and circumstances." Id. This court also held that disqualification based on an appearance of impropriety is warranted only in "extreme" cases where the appearance "is so great that the public trust and confidence in our criminal justice system could not be maintained without such action." Id. at 310, 646 P.2d at 1221.

Our justice system has encouraged trial lawyers to participate directly in case preparation, including interviewing witnesses. Obviously this system could not function efficiently if every prosecutor who has interviewed a witness could be disqualified from participating in the trial merely because there is a possibility he may be called as a witness.

Wherefore, the State respectfully requests this Court deny Defense Motion to Disqualify the District Attorney's Office and Quash the Subpoenas Issued to Deputy District Attorney TERESA LOWRY and Chief Deputy District Attorney JOHN LUKENS.

DATED this 11th day of February, 1994.

Respectfully submitted,

REX BELL
DISTRICT ATTORNEY
Nevada Bar #001799
Nevada Bar #003901

BY Teresa M. Lowry
TERESA M. LOWRY
Deputy District Attorney

FILED

FEB 14 2 41 PM '94

Teresa Lowry
CLERK

1 REX BELL
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200 S. Third Street
3 Las Vegas, Nevada 89155
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4 Attorney for Plaintiff
THE STATE OF NEVADA

DISTRICT COURT

CLARK COUNTY, NEVADA

10 THE STATE OF NEVADA,	)	CASE NO.	C106784
11 Plaintiff,	)	DEPT. NO.	IV
12 -vs-	)	DOCKET NO.	C
13 MICHAEL DAMON RIPPO,)		
14)		
15 Defendant.)		

STATE'S RESPONSE TO DEFENDANT'S MOTION TO STRIKE
AGGRAVATING CIRCUMSTANCE NUMBERED 1 AND 2
AND FOR SPECIFICITY AS TO AGGRAVATING
CIRCUMSTANCES NUMBER 4

20 COMES NOW, the State of Nevada, by REX BELL, District
21 Attorney, through TERESA LOWRY, Deputy District Attorney, and files
22 this Response to Defendant's Motion to Strike Aggravating
23 Circumstances Numbered 1 and 2, and for Specificity as to
24 Aggravating Circumstances Number 4.

25 This Response is made and based upon all the papers and
26 pleadings on file herein, the attached points and authorities in

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1 support hereof, and oral argument at the time of hearing, if deemed
2 necessary by this Honorable Court.

3 DATED this 14th day of February, 1994.

4 Respectfully submitted,

5 REX BELL
6 DISTRICT ATTORNEY
7 Nevada Bar #001799
8 Nevada Bar #003901

9 BY: *Teresa Lowry*
10 TERESA LOWRY
11 Deputy District Attorney

12 POINTS AND AUTHORITIES

13 Defendant RIPPO has been previously convicted of the felony
14 offenses of Burglary and Sexual Assault. On April 27, 1982,
15 defendant RIPPO received a life sentence with the possibility of
16 parole for the crime of Sexual Assault. (See Exhibit 1) While on
17 parole the defendant was charged with the double murder now set for
18 trial before this Court.

19 Nevada's statutory aggravating circumstances include the
20 commission of a murder by a person under a sentence of imprisonment
21 and a murder by a person previously convicted of a felony involving
22 the use of or threat of violence to the person of another. (See
23 NRS 200.033(1)(2)).

24 The defense suggests that the defendant's prior felony
25 conviction for Sexual Assault was the product of an involuntary
26 guilty plea.

27 Prior felony convictions are presumed to be valid and are not
28 subject to collateral attack in pre-trial capital murder
proceedings. If this Court is inclined to revisit the Defendant's
guilty plea the State incorporates by reference Exhibit 2 - the

1 State's Brief as to the validity of the Defendant's guilty plea.

2 The granting of defense motion would frustrate the legislative
3 intent manifested by NRS 200.033(1)(2) and it would emasculate the
4 prosecutions ability to present all of the statutory aggravating
5 circumstances which are applicable to defendant RIPPO.

6 The defense seeks to insulate defendant RIPPO from the full
7 impact of his prior criminal history. Accordingly the defense
8 motion to strike aggravating circumstances numbered 1 and 2 should
9 be denied.

10 With regard to defense request for specificity as to
11 aggravating circumstances number 4. Aggravating circumstance
12 number 4 alleges the murders involved torture, or the mutilation of
13 the victim. NRS 200.033(8).

14 More specifically the State alleges torture to victim DENISE
15 LIZZI by repeated shock with a stun gun.

16
17 DATED this 14th day of February, 1994.

18 Respectfully submitted,

19 REX BELL
20 DISTRICT ATTORNEY
21 Nevada Bar #001799
22 Nevada Bar #3901

23 BY: *Teresa Lowry*
24 TERESA LOWRY
25 Deputy District Attorney
26
27
28

mmw

1 RECEIPT OF COPY of the above and foregoing is hereby
2 acknowledged this 11th day of February, 1994.

3 STEVEN WOLFSON, ESQ.
4 ATTORNEY FOR DEFENDANT

5 BY: Steven B. Wolfson
6 302 E. Carson Ave. #200
7 Las Vegas, Nevada 89101

8 RECEIPT OF COPY of the above and foregoing is hereby
9 acknowledged this 11th day of February, 1994.

10 PHILIP DUNLEAVY, ESQ.
11 ATTORNEY FOR DEFENDANT

12 BY: Philip Dunleavy Esq.
13 2810 W. Charleston Blvd. #G-60
14 Las Vegas, Nevada 89102 CA

FILED

FEB 14 1994

LORETTA BOWMAN CLERK

BY

DEPUTY

1 REX BELL
DISTRICT ATTORNEY
2 Nevada Bar #001799
200 S. Third Street
3 Las Vegas, Nevada 89155
(702) 455-4711
4 Attorney for Plaintiff
THE STATE OF NEVADA

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

MICHAEL DAMON RIPPO,

Defendant.

CASE NO. C106784

DEPT NO. IV

DOCKET NO. "C"

AFFIDAVIT

STATE OF NEVADA)

COUNTY OF CLARK)

ss:

JOHN P. LUKENS, being first duly sworn, deposes and says:

1. My name is John P. Lukens. In am a Chief Deputy District Attorney in the Clark County District Attorney's Office. In that capacity, I have been assigned as one of two prosecutors in the above entitled case.

2. I have read the "Motion To Disqualify The District Attorney's Office" prepared by Mr. Dunleavy, Esq. There is simply no polite way to respond other than to say it is filled with

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1 outright lies and absurd allegations. I shall attempt to respond to them in the order in which Mr.
2 Dunleavy presents them.

3
4 3. Page 1, Lines 6½ - 7½ (Mr. Dunleavy's word processor prints some of the lines in
5 between the numbers): "Mr. Lukens made sure she [Alice Starr] felt pressured to change her
6 testimony . . ." **RESPONSE:** I have spoken to Ms. Starr on only two occasions. The first
7 time was in the presence of Teresa Lowry at Ms. Starr's home. We had gone there at Ms.
8 Starr's request. Because of her small children, she could not come to our office for a pre-trial
9 interview. That conversation with her was cordial and on friendly terms. I felt, at that time,
10 that Ms. Starr was telling the truth. She reaffirmed her Grand Jury testimony. However, at that
11 time, she told us that her relationship with the Defendant was only a casual one and that Michael
12 Rippo was only an "acquaintance." Although I can not attest to Ms. Starr's feelings, I
13 categorically deny that I, at this point in time, ever even confronted Ms. Starr as to the
14 truthfulness of her Grand Jury testimony. On the contrary, at this point in time, I believed that
15 perhaps Ms. Starr's testimony before the Grand Jury was truthful. There was, at this point in
16 time, no purpose to even discuss a change of her testimony.

17
18 4. Page 1, Lines 9½ - 11½: "Ms. Starr was subjected to being held at gun point in her
19 own home and forced to watch Mr. Lukens go through her personal papers." **RESPONSE:**
20 The execution of the search warrant was to be conducted as a "knock and talk" warrant. The
21 officer politely knocked on the door. He was greeted by a female (I do not know whether it was
22 Ms. Starr or another female who was present in the home). That female allowed the police
23 officers entry. At this point in time, NO WEAPONS were drawn or displayed! The female
24 who answered the door stated that she was the only adult person inside the house. As the
25 officers walked through the premises, they found another adult hiding in the house. Only at this
26 time did they draw their weapons to search the rest of the house. At this point in time, they had

1 been lied to as to who was in the house. Immediately after the house was secure, all weapons
2 were holstered and never taken out again. Ms. Starr was never "held at gun point."

3 Ms. Starr was never "forced to watch [me] go through her personal papers." In actual
4 fact, Ms. Starr stayed in a room that was not searched. The search was conducted in a dinning
5 room type area where there was a small secretary's desk and her bedroom. During this time,
6 Ms. Star and the other woman (later identified as Ms. Starr's sister) were kept with the children
7 in the living room.

8
9 5. Page 1, Lines 16½ - 18½: "After the discovery of the marijuana, Mr. Lukens again
10 attempted to coerce Ms. Starr to change her testimony." RESPONSE: This statement is false
11 in many respects. First, much more than just 'marijuana' was found. Marijuana,
12 methamphetamine, "owe" sheets, scales, paraphernalia, and even recipes for making
13 methamphetamine were found.

14 Secondly, the only times that I have spoken to Ms. Starr have been in front of other
15 persons (another Deputy District Attorney on one occasion, and police officers and Ms. Starr's
16 sister on the other occasion). To suggest that I would violate the Code of Ethics, my Sworn
17 Oath as a Deputy District Attorney, and commit a Felony is absurd. To suggest that I did this
18 in front of law officers as witnesses is idiotic.

19 After locating love letters written from Ms. Starr to the Defendant in the search, I did
20 confront Ms. Starr as to whether or not she was telling us the truth when she had earlier stated
21 that Mr. Rippo was only an "acquaintance." I also told her that I did expect her to tell the truth
22 and that, based upon the love letters to Mr. Rippo, I thought that perhaps she had been "less
23 than candid" with us when she told us that Mr. Rippo was merely a "friend and acquaintance."
24

25 6. In Mr. Dunleavy's Affidavit, Page 2, Lines 10½ - 12½: "Furthermore, threats
26 against the affiant have been made by Mr. Lukens in the halls of the courthouse, in Mr.
27 Lukens's office, and in this court room." RESPONSE: Again, a rather colorful misstatement.
28

1 First, I do not even speak to Mr. Dunleavy unless others are present or when necessary in court.
 2 I could not have "threatened" him in the halls of the courthouse because I will not speak to him
 3 as set out above. I did not "threaten" him in my office. Present at that time were his co-
 4 counsel, Mr. Wolfson, and Teresa Lowry. No threats were made. In my office, Mr. Dunleavy
 5 attempted to bait me by making the type of allegations he raises in this motion. I did not
 6 respond even though it is difficult when someone like Mr. Dunleavy accuses you of unethical
 7 and criminal conduct.

8 The Court observed what happened in court. It may remember (the record will reflect
 9 it) that Mr. Dunleavy again made his baseless accusations. When he did so, I merely bent down
 10 and said in *sotto voce* (the type of allegations that Mr. Dunleavy makes and an appropriate
 11 response to them need not be on the record) "That is the second strike . . ." at that point in
 12 time, Mr. Dunleavy would not let me finish my statement, Mr. Dunleavy began accusing me
 13 on the record of "threatening" him. Had I been allowed to finish the statement it would have
 14 concluded as follows ". . . you have made. Can we not keep this type of garbage off of the
 15 record?"

16
 17 7. Affidavit of Alice May Starr. Page 1, paragraphs 1 through 4 are *generally* correct.

18
 19 8. Affidavit of Alice May Starr. Page 2, paragraph 8, Lines 13 - 14: "DA Lukens and
 20 DA LOWERY already knew where they wanted to search." RESPONSE: Absolutely not true.
 21 DA LUKENS and DA LOWRY had only been in one room of the house on a prior occasion and
 22 had no idea of where the search was going to be within the house.

23
 24 9. Affidavit of Alice May Starr. Page 2, paragraphs 8, 9 and 10. "Affiant was ordered
 25 to stay in the family room DA Lukens was in the living room searching DA
 26 Lowry was searching Affiant's bedroom." RESPONSE: Remember Mr. Dunleavy's
 27 characterization that Ms. Starr was "forced to watch Mr. Lukens go through her personal
 28

1 papers." Even Ms. Starr states that she was in a room different from those where the search
2 was being conducted.

3
4 10. Affidavit of Alice May Starr. Page 2, paragraph 9, line 18: "Lowry allegedly
5 found a small amount of methamphetamine." RESPONSE: Detective Chandler found
6 methamphetamine hidden in the baby's crib. The Affiant's small child, who had wondered into
7 the bedroom, was the person that actually found the marijuana when she pulled it from under
8 the mattress. It was only after these drugs were found that it became necessary to advise Ms.
9 Starr of her right pursuant to the *Miranda* decision.

10
11 11. Affidavit of Alice May Starr. Page 2, paragraph 10, line 23 - 26: "DA Lukens told
12 you Affiant that he was not into prosecuting drug offenders. He said drugs did not bother him
13 and that he could help your Affiant out of this situation." RESPONSE: Ms. Starr is partially
14 correct. Because drugs had been found, and it was necessary to advise her of her *Miranda*
15 rights and the fact that she was going to be arrested for the drugs, I wished to make it clear to
16 her that I was not going to be involved with any narcotics prosecutions. Furthermore, I wished
17 to stress to her that I was in no way interested in prosecuting her for the illegal drugs found in
18 her home. My sole interest was still the prosecution of the Defendant Rippo. It was then that
19 I felt that she had been less than honest with Ms. Lowry and myself earlier when she had stated
20 that Mr. Rippo was only an "acquaintance" or "friend." I told her that I felt that Mr. Rippo
21 had, in fact, committed the murders that he was being prosecuted for and urged her to tell the
22 truth concerning any knowledge she might have about Mr. Rippo. Ms. Starr said that she had
23 told the truth and that she did not want to talk about it anymore. At that point in time, I ceased
24 all conversation with her and walked away.

25
26 12. There is absolutely nothing to which your Affiant can testify to concerning the Rippo
27 trial. I neither seized nor impounded any evidence. Ms. Starr made no statements to me that
28

1 would any way contradict her previous statements. Any and all statements or actions concerning
 2 the search of Ms. Starr's residence were, to my knowledge, observed by police officers.

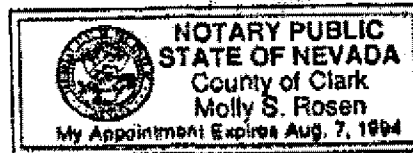
3
 4 13. Further your Affiant sayeth not.

5
 6 
 7 John Patrick Lukens

8
 9 SUBSCRIBED AND SWORN to before me

10 this 11th day of February, 1994.

11
 12 
 13 Notary Public



1 RECEIPT OF COPY of the above and foregoing is hereby
2 acknowledged this 11th day of February, 1994.

3 PHILLIP DUNLEAVY, ESQ.
4 ATTORNEY FOR DEFENDANT

5 BY: Phillip Dunleavy, Esq.
6 2810 W. Charleston #G-67
7 Las Vegas, Nevada 89102

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10 STEVEN WOLFSON, ESQ.
11 ATTORNEY FOR DEFENDANT

12 BY: Steven B. Wolfson
13 302 E. Carson #400
14 Las Vegas, Nevada 89101

15 msr

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DISTRICT COURT

CLERK

CLARK COUNTY, NEVADA

The State of Nevada,

Plaintiff,

vs.

Michael Damon Ripppo,

Defendant.

Case No. C106784

Dept. No. IV

Docket No. "D"

Before the Honorable Gerard J. Bongiovanni

Monday, February 14, 1994

Reporter's Transcript of:

Defendant's Motion To Continue Trial Proceedings

Defendant's Motion to Disqualify District Attorney's Office

APPEARANCES:

For the State:

John Lukens, Esq.,

and

Teresa Lowry, Esq.

Deputies District Attorney

For the Defendant:

Steven Wolfson, Esq.

and

Philip Dunleavy, Esq.

REPORTED BY: Renee Silvaggio, C.S.R. No. 122

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RENEE SILVAGGIO, CCR 122 878-9153

Las Vegas, Nevada, Monday, February 14, 1994

* * * * *

THE COURT: State of Nevada versus Michael
Damon Rippo.

Mr. Rippo is present with his attorneys
Mr. Dunleavy and Mr. Wolfson; Teresa Lowry and John Lukens
for the State.

This is your motion, Mr. Dunleavy.

MR. DUNLEAVY: Your Honor, my motion is to
disqualify the District Attorney's Office for two reasons:

One, that we have served Mr. Lukens, Miss
Lowry with subpoenas as witnesses.

I don't want to waste the Court's time
redoing everything that's been set forth in writing. I
would just point out that once you become an investigator in
a case and once you become personally involved in a case
it's not the same thing as just being an attorney in the
case.

Mr. Lukens, Miss Lowry admitted they've
been out to the house of our alibi witness twice. He said
that he did so not in taking into consideration the fact
that she was an alibi witness.

Why were they there when they knew there

1 was a search warrant going on? Why would they go out if
2 they didn't participate in the search warrant? Why were
3 they there?

4 It's simple. They were there to
5 participate. They were there to act in it. They were the
6 ones who found the things.

7 Miss -- Starr will tell you that Teresa
8 Lowry came out of the bedroom with a baggie in her hand and
9 said, look at what I found, referring to the drugs in the
10 house; not a detective. She said look at what I found.

11 Miss Starr will also point out that when
12 she was sitting in the house, Mr. Lukens knew exactly where
13 to go.

14 They didn't do a general search of the
15 whole house. They went to specific areas that they knew
16 about in the house in advance, and he is the one that went
17 through paperwork and decided what was going to be taken and
18 what wasn't going to be taken.

19 Now, we don't know what was set forth in
20 the affidavit for the search. We didn't know what trial was
21 under investigation because the District Attorney's office
22 wouldn't give us that information.

23 But we do know that they were there and
24 the people saw that they searched -- not the police
25 officers -- that they physically looked at the documents and

1 said this is what I want, this is what we're taking, that's
2 a search. That makes them witnesses to a search. It also
3 makes them a witness.

4 They were intimating and trying to coerce
5 and change her testimony, and I can assure the Court she
6 will testify to that. She's here in Court today, if the
7 Court wants to hear from her, and she's given an affidavit
8 in support of that.

9 The second issue I would bring up very
10 briefly, and I asserted Mr. Lukens has threatened me. He
11 said he didn't. I think the evidence -- well, I put it on
12 the record and he turned to the Court and responded and he
13 didn't admit what he was doing then; he does now in his
14 affidavit under oath; but he didn't do it when he turned and
15 addressed this Court.

16 And how could it have changed if it
17 didn't happen? Why did he say what he did say when he
18 turned and talked to the Court and he didn't do it? That's
19 on the record. It was in open Court at that time.

20 I would submit that there is so much
21 animosity, so many problems in this case, that if we're
22 going to protect the due process rights of my client, who is
23 on trial for double capital murder, someone else should be
24 brought in to prosecute this case; and that if the Court
25 doesn't feel that that can be done, we're not going to have

1 a clean record for appellate review. We are going to have
2 nothing but problems.

3 The problems are already on the record,
4 and the only other alternative would be to recuse me from
5 the trial since I submit that Mr. Lukens has tried to and
6 possibly succeeded in intimating the defense in making
7 zealous representations for a man on trial for his life.

8 THE COURT: Mr. Lukens.

9 MR. LUKENS: Your Honor, the first issue
10 that I will address is the last one. There is just simply
11 no merit to that.

12 As far as -- I mean, if Mr. Dunleavy
13 feels threatened, there is nothing on the record that I can
14 do to make him so he doesn't feel threatened.

15 I certainly don't speak to Mr. Dunleavy
16 outside of the courtroom unless there are others present, or
17 one of the times when Mr. Dunleavy felt threatened was in
18 the District Attorney's office, in my office, and Mr.
19 Wolfson was present there at that time, so was Miss Lowry.
20 It was -- it was in a conversation that we were having about
21 discovery in this case.

22 The other time that -- was allegedly here
23 in Court that -- in front of Your Honor. I simply don't
24 think that the record sustained that, and I don't feel that
25 there is going -- that there is any animosity. It simply

1 doesn't make any sense. It has no business in Court.

2 When I mentioned it to Mr. Dunleavy the
3 other day all I meant to say was, Mr. Dunleavy, that's the
4 second time you said something like that, and it didn't have
5 any business in Court. It was not put on the record because
6 it didn't have anything to do with the trial.

7 With reference to whether or not we are
8 witnesses, Mr. Dunleavy sort of is kind of mixed up with the
9 law. If we were witnesses that we were going to testify to
10 something with reference to the prosecution, then he might
11 have a point. I'll give you a hypothetical:

12 Let's suppose that in this case there was
13 a conversation between Miss Lowry and myself or Miss Starr
14 and no one else was there to overhear that conversation and
15 Miss Starr came forth and said you know I've been lying all
16 along, actually I helped plan these crimes and so forth?

17 Now, with that information, if either I
18 or Miss Lowry wanted to testify at trial as a witness for
19 the prosecution, then there is an obvious conflict, and then
20 we are witnesses and we're witnesses for the prosecution.

21 Simply because Mr. Dunleavy served us
22 with a subpoena does not make us witnesses. There is
23 absolutely nothing that we can testify to that is in any way
24 essential to the prosecution or in any way benefits the
25 defense. We were never there. There were -- all by

1 ourselves.

2 There were other people present. There
3 were police officers that were present, and so there is
4 absolutely no need for us to testify in this trial. We
5 simply are not witnesses, and simply because Mr. Dunleavy
6 serves us with a subpoena doesn't make us witnesses. I
7 would submit it on that, Your Honor.

8 THE COURT: Mr. Dunleavy.

9 MR. DUNLEAVY: Your Honor, very briefly. If
10 Your Honor will remember, there are two separate visits:

11 In the first visit the only people were
12 Lowry and Lukens. Nobody else. And that's why they are
13 witnesses because they had conversations and the information
14 they've got we're entitled to put it in front of the jury.

15 MR. LUKENS: Your Honor, Miss Lowry and I
16 have pretried over 40 witnesses in this case. Miss Starr
17 said absolutely nothing during that interview that is in any
18 way inconsistent with anything that she's ever said before.
19 There was absolutely no impeaching that was obtained.

20 I mean, there is nothing that we could
21 testify to on the record regarding -- there is nothing we
22 can testify to regarding that.

23 THE COURT: I suppose the issue would have
24 to be whether you were acting as investigators or not.

25 MS. LOWRY: Well --

1 THE COURT: And if you were --

2 MR. LUKENS: In this occasion --

3 THE COURT: -- in either occasion.

4 MR. LUKENS: But I submit to you that
5 because a lawyer pretrials or talks with a witness they are
6 not acting as an investigator.

7 I mean, that -- that -- I mean that's --
8 for Mr. Dunleavy to make that assertion boggles my mind.

9 THE COURT: Oh, I can understand attorneys
10 in preparing their cases have to interview witnesses too.

11 MR. WOLFSON: May I add one thing?

12 THE COURT: Mr. Wolfson.

13 MR. WOLFSON: This is not a case where the
14 State had never interviewed Miss Starr.

15 This is a case where Miss Starr provided
16 a voluntary statement to the police two years ago. This is
17 a case where the State subpoenaed Miss Starr to the grand
18 jury. I don't know if they pretried others before the
19 grand jury or not, but they certainly had her testify before
20 the grand jury.

21 This is not something where Miss Lowry or
22 Mr. Lukens had never spoken to Miss Starr or their
23 representatives.

24 This is a pretrial, just as lawyers call
25 it, is when you get some discovery in but you've never

1 talked with the witness, that's not the case here.

2 They've had many conversations, or their
3 representatives have had, and they have -- they have her
4 voluntary statement and now they are going out to her house
5 without police officers.

6 With all due respect to Mr. Wolfson, with
7 all do respect to Mr. Wolfson, I don't think he's aware the
8 first time that we talked to Miss Starr and how that came
9 about.

10 First of all, I had never spoken to Alice
11 Starr. I did not even know what she looked like.

12 This case was set to go to trial and
13 during that period of time subpoenas went out and we were
14 setting up pretrial conferences.

15 Miss Starr indicated that, that she could
16 not -- it was difficult for her to come down to the
17 courthouse because she had small children. She was willing
18 to talk to us. She said she was happy, she couldn't come
19 down to the courthouse because of the children.

20 Miss Lowry said, that's fine. We'll come
21 out to you.

22 I think during that period of time the
23 trial may have been continued. I'm not sure. I'm unclear
24 as to that; but in any event, we kept that pretrial
25 appointment to talk to her. I had never seen her. I had

1 never met her. I never talked to her. And it was at her
2 convenience that we went there. That's not unusual. And it
3 was the first time that I had ever met or spoken to her.

4 And even if -- let's suppose that I had
5 searched her out for something -- there was something really
6 special about her, the fact is that there is nothing that
7 occurred at that time that would in any way make me a
8 witness.

9 THE COURT: I suppose we need a hearing to
10 make that determination.

11 MR. LUKENS: Why?

12 MR. DUNLEAVY: Your Honor, Miss Starr is
13 here today and she would testify she never invited them out
14 to her house, that she didn't know that they were coming.
15 It wasn't voluntary invitation. She hadn't --

16 THE COURT: Well, they made themselves
17 investigators while they were there or they were acting --

18 MR. DUNLEAVY: She said they tried to get
19 her to change her testimony, and when she declined to do so,
20 the next time she sees them they are coming through the door
21 with a search warrant; and if that isn't an attempt to
22 intimidate someone, what is?

23 Your Honor, you can't -- my -- I just
24 simply -- I'm at a loss to think that when attorneys go out
25 and speak to witnesses that they are -- that they cannot do

1 that because they may make themselves as witnesses.

2 THE COURT: Attorneys do not execute search
3 warrants.

4 MR. LUKENS: Well, he did not execute a
5 certain warrant.

6 THE COURT: Well, that's why I think we need
7 a hearing to determine that.

8 MR. LUKENS: The offic- -- the police
9 officers executed the search warrant. The police signed the
10 return. Miss Lowry and I were there to say, yes, that falls
11 within the ambit of the search warrant and this does not.
12 It was to limit the scope of the search warrant to broaden
13 any scope of any search.

14 All the we are there to do is to give
15 advice as to yes, this is within the scope of the search; or
16 no, this is not within the scope, it's illegal.

17 We don't search. We don't knock on the
18 doors. We don't have weapons. It's -- we don't advise them
19 of their Miranda rights. We don't participate any manner in
20 that type of thing.

21 THE COURT: It was my understanding from
22 reading some documents in there that Miss Lowry is the one
23 that searched the bedroom and came out with the drugs.

24 MR. LUKENS: Actually, Your Honor, the
25 people --

1 THE COURT: If that's not executing a search
2 warrant --

3 MR. LUKENS: The people that found --

4 THE COURT: -- what is it?

5 MR. LUKENS: The people that -- oh, well,
6 first of all, when you say you read those documents,
7 there --

8 THE COURT: Well, I'm saying that's why we
9 might need a hearing. To me, if you are executing -- you
10 come out with the drugs, you are acting as an investigator,
11 not an attorney.

12 MR. LUKENS: If, if -- there were two kind
13 of drugs that were found. There were methamphetamine and
14 there was marijuana. The person that found the
15 methamphetamine is Detective Chandler, who is there, pulled
16 it out from the baby's crib.

17 The person that found the marijuana was
18 the woman's, I think, eighteen-month old daughter, who
19 pulled the marijuana from a box that was underneath the
20 nightstand.

21 THE COURT: Well, certainly the defense
22 brief said something different.

23 MR. LUKENS: Well, I mean, you have to
24 understand --

25 THE COURT: That's why I say there should be

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1 a hearing.

2 MR. LUKENS: But, can -- let me -- even if
3 there were a hearing, assume for a second, and if -- assume
4 for a second that everything that they say is correct, what
5 difference does it make?

6
7 (Whereupon, a sotto voce at
8 this time.)

9 MR. LUKENS: It wouldn't make any difference
10 at all.

11 Perhaps if Miss Starr were being
12 prosecuted it might make a difference, Your Honor, but it
13 would make absolutely no difference in this case at all.

14 Let's suppose that Miss Lowry went back
15 there and found a dead body, it still would make no
16 difference in this case. It would make none.

17 MR. DUNLEAVY: It makes a difference in
18 several ways:

19 For one, if they are going to try and use
20 this drug charge against her to attack her credibility at
21 the trial, then we have the right to go in as to how were
22 these drugs discovered, who discovered them? And it also
23 makes a difference if they tried to use those to tell her
24 that it would be advantageous for her to change her
25 testimony.

1 And we submit that's exactly what they
2 tried to do. That's what she would testify happened. And
3 they are witnesses. They were out there acting as
4 investigators, participating in this case.

5 How often does a District Attorney go out
6 to the home of an alibi --

7 THE COURT: I don't have time to have a
8 hearing right now. I'm going to set this down for hearing
9 on the 25th at 10 a.m.

10 MR. LUKENS: Excuse me, Your Honor.

11 (Whereupon, sotto voce at this
12 time.)

13 THE COURT: I don't anticipate this trial
14 going on the 22nd, because I don't think I'm going to
15 complete the one I'm in now.

16 MR. WOLFSON: February 25th at 10 a.m.?

17 THE COURT: Yes.

18 MR. WOLFSON: Judge, I also have a motion to
19 continue the trial that is set for today. Did you want to
20 carry that over to the 25th as well?

21 There are reasons in my motion to
22 continue the trial other than our motion to disqualify.

23 THE COURT: Yes, I know.

24 Well, I know this isn't going to start on
25 the 24th. What I was planning on doing was, if it was

1 convenient for all counsel, was to set this -- I had another
2 murder trial that went off calendarin on March 28th. Is
3 that date open for everyone?

4 MR. DUNLEAVY: Court's indulgence.

5 THE COURT: Is that the right date, March
6 28th.

7 MR. POTTER: Yeah, March 28th.

8 (Whereupon, a sotto voce at
9 this time.)

10 MR. DUNLEAVY: I have a preplanned vacation,
11 but that can be moved.

12 THE COURT: Okay. That's what tentatively
13 thinking of doing, setting this on the 28th, because we're
14 not going to get to it by the 24th.

15 MR. LUKENS: I'm assuming that kind of a
16 delayed -- that is sort of a defacto granting --

17 THE COURT: Would that take care of your
18 problem you have?

19 MR. WOLFSON: Well, let me go on the record
20 with that.

21 THE COURT: Okay.

22 MR. WOLFSON: As you know what Love says, it
23 says, depending on what interpretation you make, any or all
24 witnesses must be interviewed by the defense counsel.

25 There were three additional potential

1 witnesses provided to us at a meeting about five weeks
2 ago -- forgive me. Kim Meyer is the first one.

3 Kim Meyer is the person who allegedly had
4 conversations with our client over the telephone. I've been
5 told that Kim Meyer is a federally protected witness.

6 Mr. Lukens told me the other day that even
7 when he has to go interview Mr. Meyer, he has to go to some
8 undisclosed location, very secretly. How am I going to have
9 access to Kim Meyer and when?

10 Okay. I mean, this is my request to
11 interview Kim Meyer, but my understanding is I have to go
12 through the State of Nevada to reach Kim Meyer. So I don't
13 know if I'm going to be able to interview Kim Meyer in a
14 sufficient enough time before March 28th.

15 Secondly, there is a Donald Hill. Donald
16 Hill is a Nevada State Prison inmate. I believe he's up in
17 Carson City. We're going to have to make arrangements to go
18 up to Carson City or have him brought down here for an
19 interview.

20 THE COURT: Okay. You were aware of this
21 Love decision, now for, what, a month and a half, two months?

22 MR. WOLFSON: That's true, but the
23 information that they gave us was about four or five weeks
24 ago. It was right after the Ricky Love opinion came out.

25 THE COURT: Okay. March 28th gives you

1 another month and a half.

2 MR. WOLFSON: If the State of Nevada can
3 make Kim Meyer available, whether I have to fly somewhere to
4 interview him or they bring him here, as long as it's not a
5 week before and it's sooner than that, it should be enough
6 time.

7 Judge, there is another thing. The State
8 filed answers to our pretrial motions. One of our pretrial
9 motions was a motion in limine asking the Court to restrict
10 the State of Nevada from using evidence of other bad acts;
11 specifically evidence concerning Michael's prior conviction.

12 The State's response seem to indicate
13 they desire to present this evidence in their case in chief.
14 I have no discovery on that.

15 We're not talking about a burglary
16 conviction. We're talking about a rape conviction. I have
17 no discovery on this. When is the state going to give me
18 discovery on that evidence?

19 So when you asked me, Your Honor, can I
20 be ready, will this be enough time, I'll do my business. I
21 mean, here's my request: I need to interview Kim Meyer.
22 That is not within Michael -- I need discovery on the other
23 bad acts evidence. When I get it, I don't know if it's one
24 or two witnesses or ten I'm going to have to interview, but
25 I will do my best. I mean, you are giving up about six

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1 weeks. So I would like to think that's enough time. But
2 until the State reacts and gives me the things I need, I
3 can't tell, Your Honor, if that's enough time.

4 THE COURT: Okay. Could you aid them in
5 seeing these witnesses?

6 MR. LUKENS: Your Honor, I -- yes, with
7 reference to the federally protected witness I would think
8 it's difficult even for us. We have to --

9 THE COURT: What --

10 MR. LUKENS: -- we have to go to an un- --
11 to a location out of the state at a, quote, not neutral,
12 close quote, city that we're told you can go there and then
13 you -- we meet at a neutral location. I haven't gone
14 through it yet. We haven't even spoken to Mr. Meyer. But
15 I'll find out what Mr. Wolfson has to do in order to get
16 there.

17 THE COURT: Well, tentatively the trial will
18 be continued to the 28th.

19 MR. WOLFSON: March 28th.

20 THE COURT: With calendar call the 25th.

21 MR. DUNLEAVY: Your Honor, one thing I would
22 like to request.

23 THE COURT: We'll vacate the trial date at
24 this time.

25 MR. DUNLEAVY: On the hearing on the 25th I

1 would like to make sure that at least the State has a copy
2 of the affidavit for that search warrant available for the
3 court, available for an in camera inspection to the Court.
4 We've never seen it, but I think there may be some issues
5 developed where it's going to be necessary, on the 25th,
6 that that document be available; and I'd like to ask that it
7 be made available to the Court in camera.

8 MR. LUKENS: I'm not sure that this Court
9 isn't the one that signed the search warrants.

10 THE COURT: I can't remember if I did. I
11 sign a lot of warrants. Could you have that available?

12 MS. LOWRY: Your Honor, may I approach to
13 file in open Court the responses to defense motions that
14 I've already provided defense and the Court with? Your
15 Honor, may I approach to file?

16 MR. LUKENS: And are you going to set those
17 over until, when, the 25th? I mean, do you want to continue
18 everything to then?

19 THE COURT: The motion in limine --

20 MR. LUKENS: There is a whole bunch of
21 stuff --

22 MR. WOLFSON: There is seven to ten pretrial
23 motions. What I'd suggest --

24 THE COURT: Do you want to hear them on the
25 25th too?

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1 MR. WOLFSON: What I'd suggest is not the
2 25th. I mean, if Your Honor grants our motion to
3 disqualify, I don't think you are going to want to rule on
4 these motions at that time.

5 What I would suggest is a week to ten
6 days after the 25th. We're going to have our hands full on
7 the 25th.

8 THE COURT: Okay. Let's do it a week after
9 the 25th.

10 THE CLERK: March 4th.

11 THE COURT: How much time do you need on the
12 motion?

13 MR. WOLFSON: These are motions which we
14 filed and they are filing their responses.

15 THE COURT: How much time?

16 MR. WOLFSON: I think it's going to maybe be
17 oral argument.

18 MR. LUKENS: Very little.

19 THE COURT: All right. Put it on the 9:00
20 o'clock calendar on a criminal day, Friday.

21 THE CLERK: Friday is the 24th.

22 THE COURT: All right. We'll put it on
23 Friday.

24 MR. WOLFSON: One final request. Mr. Rippo
25 is down here from Ely. May I ask that you order that he be

1 housed in the Indian Springs, at least for the next couple
2 of weeks?

3 MR. LUKENS: Your Honor --

4 THE COURT: I don't think I have any control
5 over that.

6 MR. DUNLEAVY: Your Honor, I'd ask that he
7 be held here in the Clark County Detention Center. We have
8 two psychiatrists waiting to interview him to assist him to
9 the penalty, they can't get to Ely.

10 MR. LUKENS: I have no problem doing it in
11 the next few days, but Mr. Rippo presents --

12 THE COURT: Security --

13 MR. LUKENS: -- security risks as well other
14 problems.

15 THE COURT: All right, I'll have him held
16 here -- detained here at the Clark County Detention Center
17 for a week.

18 MR. WOLFSON: A week from today?

19 THE COURT: One week. So get your
20 psychiatrists over there to talk to him.

21 MR. DUNLEAVY: I will call them tomorrow
22 Your Honor.

23 THE COURT: All right.

24 MR. WOLFSON: Thank you, Judge.
25

(Whereupon, end of
proceedings.)

ATTEST: Full, true and accurate transcript of proceedings.


RENEE SILVAGGIO, C.C.R. NO. 122
OFFICIAL COURT REPORTER

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 8 THE STATE OF NEVADA

—FILED IN OPEN COURT—

March 7 1994
 LORETTA BOWMAN, CLERK

By *[Signature]* Deputy

DISTRICT COURT

CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,
 10 Plaintiff,
 11 vs.
 12 MICHAEL DAMON RIPPO,
 13 Defendant.

CASE NO. C106784X
 DEPT. NO. IV
 DOCKET NO. C

AFFIDAVIT

16 STATE OF NEVADA)
 17) ss.
 18 COUNT OF CLARK)

19 TERESA M. LOWRY, being first duly sworn, disposes and says:

20 1. My name is Teresa M. Lowry. I am a Deputy District
 21 Attorney in the Clark County District Attorney's Office. In that
 22 capacity, I have been assigned as one of the two prosecutors in the
 23 above entitled case.

24 2. On September 30, 1993, I was present at 3117 Whispering
 25 Willow, along with Chief Deputy District Attorney John Lukens and
 26 Las Vegas Metropolitan Police Department Detectives Chandler and
 27 Thowsen.

28 3. A search warrant was executed on the residence of Alice
 May Starr.

CE

Ⓡ

1 4. The search warrant sought documents and handwriting
2 examples of defendant Ripppo.

3 5. Detectives, along with the District Attorneys were
4 admitted into the house by Ms. Starr's sister. After Ms. Starr
5 came out of hiding, the detectives advised her of the purpose of
6 the search warrant.

7 6. I was involved in the search for documents along with
8 Detectives Chandler and Thowsen and District Attorney Lukens. I
9 reviewed documents in the living room and bedroom of the residence.

10 7. While in the master bedroom reviewing documents I
11 observed Ms. Starr's daughter remove a box containing what appeared
12 to be marijuana from the side of the bed. I pointed this out to
13 Detective Chandler who then recovered this item.

14 8. Also in the master bedroom I located in the baby's crib,
15 a quantity methamphetamine. I brought this to Detectives
16 Chandler's attention and he recovered this item.

17 9. I did not speak with Ms. Starr during the execution of
18 the search warrant.

19 10. There is absolutely nothing to which your affiant can
20 testify to concerning the trial of Michael Damon Ripppo. I do not
21 intend in any manner to be a witness for the prosecution in this
22 case. Any items located by me were impounded by Detective
23 Chandler. Ms. Starr made no statements to me. Detectives Chandler
24 and Thowsen were present

25 ///

26 ///

27 ///

28 ///

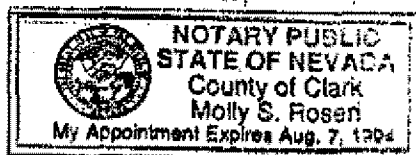
1 during the execution of the search and all evidence was turned over
2 to them.

3 11. Further, your affiant sayeth not.

4
5 *Teresa M. Lowry*
6 TERESA M. LOWRY

7 SUBSCRIBED AND SWORN to before me
8 this 25th day of February, 1994

9 *Molly S. Rosen*
10 NOTARY PUBLIC



DISTRICT COURT
CLARK COUNTY, NEVADA

FILED
MAR 7 12 22 PM '94

ORIGINAL

THE STATE OF NEVADA,

Plaintiff,

vs.

MICHAEL DAMON RIPPO,

Defendant.

Case No. C106784

Dept. No. IV

Docket No. C

Before the Honorable Gerard J. Bongiovanni

Monday, March 7, 1994

Reporter's Transcript of Proceedings
Re: Defendant's Motion to
Disqualify District Attorney's Office

APPEARANCES:

For the Plaintiff: CHRIS OWENS, ESQ.
Deputy District Attorney

For the Defendant: STEVEN WOLFSON, ESQ.
and
PHILIP H. DUNLEAVY, ESQ.

REPORTED BY: Renee Silvaggio, C.S.R. No. 122

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RENEE SILVAGGIO, CCR 122

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I N D E X

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1 Las Vegas, Nevada, Monday, March 7, 1994, 11:00 a.m.

2
3 * * * * *

4
5 THE COURT: State of Nevada versus Michael
6 Damon Rippo.

7 Counsel, please state your appearances
8 for the record.

9 MR. OWENS: Chris Owens for the State, Your
10 Honor.

11 MR. WOLFSON: Steve Wolfson and Phil
12 Dunleavy for Michael Rippo, who is present.

13 THE COURT: Call your first witness.

14 MR. DUNLEAVY: Your Honor, we would move to
15 exclude witnesses at this time.

16 THE COURT: Okay. The exclusionary --
17 do you have any objection to that?

18 MR. OWENS: I would, Your Honor, as to two
19 of our witnesses who are parties to this proceeding as well.
20 They have not been disqualified at this juncture, and that's
21 Mr. Lukens and Miss Lowry. We ask that they be allowed to
22 remain. We have no objection to the exclusion of the police
23 officers that are present.

24 THE COURT: Okay. All other witnesses,
25 except Mr. Lukens and Miss Lowry, leave the courtroom and

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1 remain in the hallway, and don't discuss your testimony with
2 anyone except for the parties or the attorneys in this case.

3 Thank you.

4 MR. DUNLEAVY: We will call Alice Starr.

5 Whereupon,

6
7 ALICE STARR.

8 having been called as a witness by the Defendant and
9 having been first duly sworn to tell the truth, the
10 whole truth and nothing but the truth, was examined
11 and testified as follows:

12
13 DIRECT EXAMINATION

14 BY MR. DUNLEAVY:

15 Q Will you please state your name for the
16 record.

17 A Alice Mae Starr; S-t-a-r-r.

18 Q And are you familiar with Mr. Lukens and
19 Mrs. Lowry?

20 A Yes, I am.

21 Q When did you first meet them?

22 A I met -- I don't re- -- I had seen Miss
23 Lowry before at some hearing that dealt with this. I had
24 first met them personally both, I believe it was, the 15th
25 of September.

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1 Q And how did that meeting come about?

2 A They came to my home.

3 Q Did you call them and ask them to come out
4 to your home?

5 A No, I didn't.

6 THE COURT: The 15th of September of what
7 year?

8 THE WITNESS: 1993.

9 BY MR. DUNLEAVY:

10 Q Did you invite them out to your home?

11 A No, I didn't.

12 Q How did it come about that they showed up?

13 A I had a conversation with Miss Lowry on the
14 phone. She -- the -- it was -- we were planning a pretrial
15 conference --

16 Q Did they ask you to come down to the
17 District Attorney's Office for a conference?

18 A No, they didn't. They just said they were
19 coming to my home.

20 Q Did they, in fact, show up?

21 A Yes, they did.

22 Q What was discussed?

23 A The -- the case, my testimony.

24 Q The case being the Michael Ripppo case?

25 A Yes.

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1 Q Did they discuss whether or not they
2 believed your testimony?

3 A As far as I knew, they did.

4 Q Did they discuss with you that they had
5 doubts with some of your testimony?

6 MR. OWENS: Your Honor, I would object to
7 the leading nature of the questions at this point. I think
8 we're beyond the foundational stage and getting into what
9 was said.

10 THE COURT: Sustained.

11 Rephrase your question.

12 BY MR. DUNLEAVY:

13 Q What conversation occurred between Mrs.
14 Lowry and yourself?

15 A Just that -- I don't understand.

16 Can you --

17 Q Did you talk to Mrs. Lowry?

18 A Yes, I did.

19 Q What was the nature of the conversation?

20 A Just about the case and my testimony.

21 Q Did they specifically discuss what you had
22 said before the Grand Jury?

23 A Yeah, they asked -- they wanted me to go
24 over what I -- what happened.

25 Q And who was conducting this; was it Miss

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1 Lowry or --

2 A Both of them.

3 Q Did they discuss whether or not they
4 believed what you had said?

5 MR. OWENS: Your Honor, that's the same
6 objection. She can talk about what she remembers, but he's
7 just leading her through there.

8 THE COURT: Sustained.

9 BY MR. DUNLEAVY:

10 Q What was the nature of their review of your
11 testimony?

12 A Basically, they want -- they wanted to know
13 what my -- how I knew Michael, what my relationship was with
14 him, how I met him, what had happened.

15 Q Was that the nature of your testimony before
16 the Grand Jury?

17 A Yes, it was.

18 Q Did they just review what you had previously
19 testified to?

20 A Yeah, basically.

21 Q Did anyone tell you what their beliefs were
22 regarding the case?

23 A Yes.

24 Q What was that?

25 A Mr. Lukens stated very clearly how he

1 believed Michael Rippo was guilty of the crimes. He knew
2 that he had killed -- he told me that he knew that he had
3 killed the girls. He asked me what -- what I had thought;
4 and I told him basically I was the flip side of that.

5 Q Had he discussed with you other crimes he
6 believed Mr. Rippo committed?

7 A Yes, he did.

8 For a -- he asked me if I knew about his
9 original conviction, if I knew the nature of it. And
10 basically, I didn't know a whole -- any of the details
11 really, but he was comparing them.

12 Q Did he -- how long did this conversation
13 last?

14 A About an hour, hour and a half.

15 Q And at the end of that conversation, how did
16 it terminate?

17 A He -- Mr. Lukens adamantly stated how he
18 knew that he had -- Michael had done it.

19 Q Was there any conversation about you
20 possibly being in trouble for your association with Mr.
21 Rippo?

22 A Not at that time.

23 Q Not at that time.

24 When was the next time you saw Mr. Lukens
25 and Miss Lowry?

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1 A It was two weeks later.

2 Q And where were you at that time?

3 A I was at home.

4 Q Can you tell the Court what transpired?

5 A There was a knock at the door. I told
6 him -- I didn't know who was there. I told my sister I
7 didn't want to see anybody; if it's for me, just tell them
8 to go away. I had gone into the other room.

9 I -- I couldn't really hear what was
10 going on. I caught a few words here and there, but it was
11 pretty obvious to me that these people weren't leaving.

12 And then, all of a sudden, I started to
13 realize that this was nothing -- it was something very
14 serious, especially important, entering my house.

15 Finally, I had come out and real -- found
16 out what was going on.

17 Q Where were the people standing when you came
18 out?

19 A Kind of in -- in a dining room area.

20 Q Did they have to search for you or did you
21 come out to them?

22 A I came out to them.

23 Q What happened when you came out?

24 A They drew their guns.

25 Q Okay. When you say "they", who is "they"?

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MRIPPO-07029-00543

1 A Detective Chandler and Detective Thowsen.

2 Q Had you met them before?

3 A No, I hadn't.

4 Q So they drew their guns in your house?

5 A Uh-huh.

6 Q Then what happened?

7 A They asked me if anybody else was there, and
8 I said no.

9 They would -- Detective Chandler, I
10 believe it was, went through the house with his gun drawn,
11 looking to see if anybody else was there.

12 My sister was asking for them to please
13 put their guns away; there was nobody there besides her two
14 small children, who were sleeping in one of the -- of the
15 bedrooms in the back of the house.

16 Q Did you ask them why they were there?

17 A I had kind of already heard something about
18 a search and --

19 Q And you said there were two detectives
20 there; is that correct?

21 A Yes.

22 Q Who else was there?

23 A Mr. Lukens and Miss Lowry.

24 Q And what room were you in when you first met
25 them?

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1 A When I first met them?

2 Q When you first saw them that day, where were
3 you?

4 A I was in the kitchen.

5 Q And did they ask you -- or take you in any
6 other room?

7 A Not at that point.

8 Q Did you ask to see the search warrant?

9 A I believe they showed it to me.

10 Q What happened after they had searched the
11 house to see if there were any other adults in the house?

12 A I don't -- they started -- Mr. Lukens and
13 Miss Lowry wanted to know where certain things were.

14 Q What kind of things?

15 A They wanted papers and -- they had gone --
16 they began to search. They --

17 Q Okay.

18 A -- put their gloves on.

19 Q Who is they?

20 A Mr. Lukens and Miss Lowry.

21 Q Did you see them put anything on before they
22 commenced the search?

23 A No, they put -- they put the latex gloves
24 on. Mr. Lukens and Miss Lowry went into the living room
25 area --

1 Q Can you see the living room area from where
2 you are being detained?

3 A Yes, sir, yes.

4 Q Where was Detective Chandler at that time?

5 A They -- at that time, they pretty much stuck
6 close by my sister and I.

7 Q Both detectives?

8 A Yes.

9 Q And what transpired in the living room that
10 you could see?

11 A They were going through my bank -- I have
12 duplicate checks. They were going through all my che- -- my
13 check records.

14 Q Who is they?

15 A Mr. Lukens and Miss Lowry.

16 Q Okay. Specifically, did you see one of them
17 handling your paperwork?

18 A Yes, I did, both of them.

19 Q Both of them.

20 How long did that take place?

21 A How long --

22 Q How long did you observe them doing this?

23 A They were in the living room area, I'd say,
24 probably for a good half hour, between -- between the living
25 room area, where they had gathered the papers and gone and

1 sat on the couch to look at them.

2 Q Now, where was Detective Chandler during
3 this time period?

4 A In the family room where we were at.

5 Q What about the other detective?

6 A Right around the same area. He was kind of
7 wondering around a little bit.

8 Q Did there come a time that they went into
9 the bedroom?

10 A Yes, there was.

11 Q Could you see inside the bedroom from where
12 you were --

13 A No, I couldn't.

14 Q -- being detained?

15 A No.

16 Q So you don't know what happened in the
17 bedroom?

18 A No.

19 Q Was one of the detectives with them in the
20 bedroom?

21 A Part of the time.

22 Q Did you ever see a time when someone came
23 out with what purported to be some drugs?

24 A Yes.

25 Q How was the drug packaged?

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1 A In a little -- there was a bag, a Crown
2 Royal bag and a little -- a little package.

3 Q And who had the drugs in their hand?

4 A Teresa Lowry.

5 Q Where is Detective Chandler?

6 A He was -- at that time, I can't quite
7 totally be for sure, but I know the other detective was
8 standing by me, and I believe Chandler was there, too, or
9 right in that area.

10 Q Now, what happened when Miss Lowry came out
11 with the drugs?

12 A She was real happy.

13 Q Did she come out to show them to somebody?

14 A Yes, she came out to show them to Detective
15 Chandler.

16 Q Do you know what happened to the drugs?

17 A No, I don't.

18 Q Did the search continue?

19 A Yes, it did.

20 Q Was Mr. Lukens still in the bedroom at this
21 time?

22 A I didn't know where he was, so I believe he
23 was in the bedroom.

24 Q You couldn't see --

25 A Huh-uh, because they only searched in the

1 bedroom and around my desk.

2 Q Did there come a time when Mr. Lukens came
3 out to talk to you about your testimony?

4 A Yes.

5 Q Was this after they had found drugs?

6 A Yes.

7 Q What was the nature of that conversation?

8 A Well, they had already read me my rights and
9 placed me under arrest.

10 Q Who had done that?

11 A Detective Chandler.

12 Q Placed you under arrest for what?

13 A Possession of controlled substance.

14 Q And then Mr. Lukens came up to talk to you?

15 A Yes, I was sitting in the --

16 Q Who else was present in the room when that
17 happened?

18 A Detective Thowson; my sister.

19 Q Was Miss Lowry there?

20 A No, she wasn't.

21 Q Your sister was there?

22 A Yes.

23 Q Was Detective Chandler there?

24 A I -- I'm not for sure.

25 Q What was the conversation?

1 A Mr. Lukens came into the room and was
2 talking about how drug offenders bothered him. He didn't
3 care to prosecute them. He felt as though there -- that
4 crime was no big deal.

5 He asked me -- came off with ---

6 Q Did he discuss your testimony at that time?

7 A Well, he was getting to that. He said he
8 could help me out with this one.

9 Q Tell the Court what happened.

10 A After he was talking about how he didn't
11 care to prosecute drug offenders, he said that he could help
12 me out with this one, knowing that I had already been placed
13 under arrest. He said that my life was get -- going to be
14 in bad shape because of my association with Michael Rippo.

15 He had told me how I had lied to him and
16 was pointing -- like pointing his finger at me.

17 And I was -- after he had said that he
18 could help me --

19 Q Were you standing or sitting or --

20 A I was sitting.

21 Q Where was Mr. Lukens, in relation to you,
22 during this conversation?

23 A He was sitting also.

24 My sister was -- she was getting ready to
25 walk out the room, and I told her, no, you are staying here.

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1 right here. You are going to listen to this.

2 And after he had said these things to me,
3 I just went off. I don't -- what are you talking about? I
4 will not change my testimony for nobody. I have not lied
5 about anything in any of this. I will not lie for anyone.

6 And then he come off telling me that if I
7 wanted to dangle on his star, I was going down just like he
8 was.

9 Q Did Miss Lowry talk to you about your
10 relationship with Mr. Ripppo?

11 A The first meeting, yes.

12 Q Oh, that was the first meeting?

13 A Uh-huh.

14 Q What was the conversation about, at that
15 time, relating to Mr. Ripppo?

16 A She said -- she asked me: If Michael had
17 ten friends, where would I be in relation to that.

18 And I asked what, one being the first or
19 the best or ten being the best?

20 And she said one being the best.

21 I said probably number one.

22 During that -- when Mr. Lukens had come
23 out to talk to me, his reference to me lying to him,
24 apparently was about my relationship with Michael.

25 Q Now did you have anything in your house that

533

1 would be directly related to this murder case?

2 A No -- directly related in what --

3 Q Any evidence in the case or anything in your
4 house?

5 A No, no.

6 Q What kind of items were seized from your
7 house?

8 A There was -- I'm not sure exactly what they
9 took. I was taken away before they left with everything,
10 but he took --

11 Q Did they leave you a list of what they had
12 taken?

13 A Very brief; very vague.

14 Q Did they describe paperwork that was taken?

15 A No, it was very vague. It just said
16 miscellaneous paperwork.

17 MR. DUNLEAVY: I'd like to show you -- can I
18 have this marked. It's a two-page document.

19 BY MR. DUNLEAVY:

20 Q I'd like to show you what we've had marked
21 as Defense Exhibit A, and ask if you have seen this document
22 before.

23 A Yes, I have.

24 Q What is it?

25 A The return sheet for what they had seized.

1 Q Does it describe the paperwork, what they
2 had seized?

3 A It doesn't say that on this paperwork.

4 Q Does it say that more than once?

5 A Yes.

6 Q Was some of the miscellaneous paperwork
7 seized a Bible?

8 A Yes, there was, but that's listed on here.

9 Q Did you know what evidentiary value the
10 Bible had to anyone?

11 A I have no idea what -- none.

12 Q Now, how long did your conversation with Mr.
13 Lukens last where he was discussing your testimony?

14 A Maybe a total of two minutes.

15 Q Was it your impression that he was
16 pressuring you to change your testimony?

17 A Yes, it was.

18
19 (Whereupon, a sotto voce at
20 this time.)

21 BY MR. DUNLEAVY:

22 Q When Mr. Lukens came back to talk to you
23 about your testimony, was this towards the end of the
24 search?

25 A No -- I think it was like right in the

535

1 middle of it.

2 Q Did he still have gloves on?

3 A I don't recall.

4 Q Did you see him going through any paperwork
5 after that?

6 A No, they had kept -- they had kept me
7 confined to one area at that time.

8 Q Had you heard them discussing what they were
9 going to take and what they were going to leave?

10 A Hu-huh.

11 MR. DUNLEAVY: No further questions at this
12 time, Your Honor.

13 THE COURT: Cross-examination.

14 MR. OWENS: Thank you, Your Honor.

15

16 CROSS-EXAMINATION

17 BY MR. DUNLEAVY:

18 Q Let's go to the 15th of September, when you
19 had your first conversation.

20 That was in your own home?

21 A Yes, it was.

22 Q And I believe you referred to that as a
23 pretrial?

24 A Yeah, there was -- the trial was supposed to
25 take place, and it ended up being postponed.

536

1 Q So this was a witness pretrial conference?

2 A Yes.

3 Q And it's something that you had engaged in
4 before at the Grand Jury -- before the Grand Jury?

5 A No, there had never been a conference like
6 that before.

7 Q Prior to the Grand Jury, did you speak with
8 somebody about what was going to be involved in that
9 presentation?

10 A Yes.

11 Q Okay. And that was Miss Lowry?

12 A Yes.

13 Q And that was a pretrial conference of a
14 sort, at that time, wasn't it?

15 A If you want to consider that, yes.

16 Q Between the Grand Jury meeting that you had
17 and the meeting on the 15th of September of last year, did
18 you have any other meetings with the attorneys from the
19 D.A.'s Office?

20 A I don't believe so.

21 Q Okay. Now, in both of these meetings, it
22 was your understanding that the purpose of them was to let
23 you know what to expect in the court proceedings?

24 A Right.

25 Q And to allow you the chance to refresh your

537

1 memory about what you had given as far as a statement
2 previously?

3 A I don't know if that was -- I mean, I know
4 what happened.

5 Q But that was discussed?

6 A Yes.

7 Q During the meeting on the 15th, was anyone
8 else present besides yourself, Mr. Lukens and Miss Lowry?

9 A My daughter and baby daughter.

10 Q Where was she?

11 A Right with me.

12 Q And how long did you indicate that that
13 lasted?

14 A About an hour, hour and a half.

15 Q What makes you say that it lasted that long?

16 A 'Cause I know what time -- I mean, they got
17 there, I believe it was at one o'clock. I had told them
18 previous to that, that my kids -- I had two older kids that
19 were going to school and what time they had gotten out, so I
20 knew in reference from when they left to when my kids would
21 be home to when I had to pick my kids up.

22 Q You said that Mr. Lukens was adamant in
23 stating his belief about the facts to you?

24 A Yes.

25 Q What did you mean by that?

1 A He was very firm on it and he wanted me to
2 see that. He came right off telling me how he knew that --

3 Q So you were convinced that he was convinced?

4 A Exactly.

5 Q He didn't threaten you in any manner, did
6 he?

7 A No.

8 Q Didn't threaten any members of your family?

9 A In what way?

10 Q Well, I'm asking you.

11 A Threats -- I mean, I don't understand.

12 Threats like what?

13 Q Did you receive anything that you would
14 consider to be a threat to your safety or the safety of your
15 family?

16 A Not that I thought of at that time, no.

17 Q All right. Let's go now two weeks later
18 when the search warrant was executed.

19 This, once again, was at your home?

20 A Yes.

21 Q And during the search warrant and the
22 execution of it, where were you located?

23 A Most of the time, I was in the family room
24 area.

25 Q When you say most of the time, what does

1 that mean?

2 A There was -- once, I went to go to the
3 bathroom. Once, I went to go get a shirt. A couple times,
4 I had to chase after my daughter.

5 Q Okay. On those occasions, did a police
6 officer or somebody accompany you?

7 A Most every time, yes.

8 Q Other than those few occasions when you were
9 running those errands, you were in the family room?

10 A Yes.

11 Q And how long were you in there?

12 A I don't -- I don't even know. I mean, the
13 time just -- I was just devastated.

14 Q So you are pretty upset at the time?

15 A Very much so.

16 Q Were you asking any questions of anyone or
17 doing any talking at that point?

18 A I wanted to know why -- I mean, what they
19 were looking for. I was upset. I mean, I -- these people
20 are going through all my stuff.

21 Q Who were you talking to?

22 A Most of the time, it was Detective Chandler.

23 Q Because he was the one that was there?

24 A He was one of them, yeah.

25 Q I mean, in that room with you?

540

1 A Part of the time.

2 Q Okay. So you felt upset.

3 You wondered what was going on, is that
4 accurate?

5 A Yeah. I didn't know the reason behind any
6 of it.

7 Q And you were asking questions of the
8 detectives that were there?

9 A Yes.

10 Q And how long were you seated in the family
11 room?

12 A I don't -- you know, the time right now, I
13 can't even -- I don't even recall. I believe -- it might
14 have been about an hour.

15 Q But you are not sure how long it was?

16 A I'm not, no.

17 Q The living room is a different room in your
18 house, isn't it?

19 A Right.

20 Q Where is it located in relation to the
21 family room?

22 A It's like kitty-corner from the family room.
23 There is a three sided fireplace that you could see through,
24 but from where I was sitting, there was a direct view right
25 to the living room.

1 Q There was a kitty-corner kind of view where
2 it's -- the room is not directly opposite to the family
3 room. It was across from it.

4 Q So you have to kind of look around a corner
5 through a hallway or something?

6 A No, there is -- the fireplace is the only
7 thing that sticks out -- that stuck out.

8 Q At the conclusion of the search warrant, you
9 were left with a return on the search warrant?

10 A I wasn't left with it, no.

11 Q Well, a return was left with the home?

12 A It was, yes.

13 Q That's the one that you've been shown just a
14 minute ago?

15 A Right.

16 Q And that contains -- or it looks and appears
17 to be ten entries; is that correct?

18 A Uh-huh.

19 Q The number of things listed individually; is
20 that correct.

21 A Right.

22 Q And that would include the Bible that was
23 taken?

24 A Yes.

25 Q Where was the Bible located before it was

1 taken?

2 A It was in my bedroom.

3 There is other things that weren't even
4 listed. My cre- -- they took my credit cards. I don't -- I
5 don't know the reason for that.

6 Q Was your name on your credit cards?

7 A Yes, they were.

8 Q So that would have been items that would
9 have had your name on them?

10 A Oh, most definitely.

11 Q Now at the conclusion of that, you again
12 talked to Mr. Lukens?

13 A At the conclusion of what?

14 Q Of the search.

15 A I wasn't there at the conclusion of the
16 search.

17 Q Okay. Well, at some point, towards the end,
18 you talked to Mr. Lukens?

19 A Yes.

20 Q And, at that time, he didn't make any
21 threats to you, did he?

22 A No, he didn't threaten me.

23 Q He was just stating what his feelings were
24 about the case and the situation at that time?

25 A Well, if he could -- if he could say if I'm

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1 going to dangle on his star, I'm going to go down like he
2 is, maybe that is a threat.

3 Q That's all you can remember what he said of
4 anything that would be of concern to you?

5 A Of a threat.

6 Q What is your relationship with Michael
7 Rippo?

8 A We're good friends.

9 Q How long have you known him?

10 A I think it's close to three years.

11 Q Where did you meet?

12 A At a friend's of mine's house.

13 Q At where?

14 A A friend of mine's house.

15 MR. DUNLEAVY: Your Honor, this is outside
16 the scope of the direct.

17 THE COURT: Overruled. You may ask.

18 BY MR. OWENS:

19 Q What's the friend's name?

20 A Debbie.

21 Q Debbie --

22 A Kingery (ph).

23 Q Kingery?

24 A Yes.

25 Q When you say "at your friend's," what does

1 that mean?

2 A We were best friends as anybody could be.

3 Q So you could consider yourself to be very
4 close?

5 A Yes.

6 Q Okay. Has your relationship gone into a
7 romantic or sexual relationship at any point?

8 A No.

9 Q But short of that, it's as close as it could
10 possibly be?

11 A Right.

12 Q When the homicides in this matter occurred,
13 you had some knowledge of the events that happened on that
14 date, didn't you?

15 A Yes.

16 Q And you advised the police of that?

17 A Yes.

18 Q How did you do that?

19 MR. WOLFSON: Objection, Judge.

20 I'm sorry, but I think that's outside the
21 scope -- outside the scope of the limited purpose of this
22 hearing; and I'm objecting on that basis.

23 MR. OWENS: Your Honor, it's -- it's the
24 reason for the police officers being there on this occasion,
25 and it's the framework for most of the queries that were

1 made by Mr. Lukens on the earlier occasion, as well as on
2 the search warrant.

3 It's the reason for her involvement in
4 the case, and her involvement in the events that transpired
5 subsequent thereto. It's the reason the State was there and
6 the reason the State was addressing the comments and
7 questions that it was doing on that occasion.

8 Without that background, I think this
9 Court would be hard pressed to understand the statements
10 that were made by Mr. Lukens and Miss Lowry from our office.

11 MR. WOLFSON: The reason the police were
12 there, because another District Court Judge signed a search
13 warrant based upon an affidavit, which is sealed.

14 Your Honor can review that affidavit in
15 camera to see the legal reason why they were there.

16 MR. OWENS: I'm not talking about the reason
17 that the police were there doing the search warrant. I'm
18 talking about the comments that were addressed to her by Mr.
19 Lukens. The basis for those were based upon Mr. Lukens'
20 knowledge and understanding of her involvement in the case.

21 And I think the Court needs to know what
22 her involvement was and things that had transpired
23 concerning her involvement in this case to give meaning to
24 the things that were said and done by Mr. Lukens, which is
25 the issue here, Your Honor.

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1 MR. DUNLEAVY: Your Honor, Mr. Lukens
2 advised the Court the only reason he was there was a legal
3 advisor on the search.

4 MR. OWENS: No. He's also a prosecutor on
5 the case, and she is a witness on the case.

6 THE COURT: I'm going to overrule the
7 objection.

8 Restate your question.

9 BY MR. OWENS:

10 Q How did you contact the police regarding
11 your initial involvement in this case?

12 A Michael had been -- was in the Clark County
13 Detention Center and he had called and asked me if I would
14 speak with them and I agreed to that.

15 Q But -- so you contacted the police?

16 A No. He was on the phone -- he had called me
17 on the phone, and apparently, I guess, he was sitting there
18 with them. I don't know. But they immediately got on the
19 phone with me.

20 Q Okay. So you received a call from Michael?

21 A Uh-huh.

22 Q He wanted you to talk to the police?

23 A Yes.

24 Q Did he tell you that he was in custody or
25 had been arrested or --

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1 A Yes, I already knew -- I had known that,
2 yes.

3 Q And so then somebody else came on the line
4 at that time?

5 A Uh-huh.

6 Q Who was that?

7 A Detective Scholl (ph).

8 Q What did you say to him?

9 A I told -- we kind of -- I don't know -- I
10 don't remember, if we ran over it on the phone at all, but
11 they came out to my home that afternoon.

12 Q So you don't remember what you told them on
13 the phone?

14 A No, I don't remember that.

15 Q But you told them that you had some
16 information about the case?

17 A Right.

18 Q And they indicated they would come out and
19 interview you about it.

20 A Right.

21 Q And did they come out and interview you?

22 A Yes, they did.

23 Q And what did you tell them, at that time,
24 about your knowledge of this crime?

25 A Everything I've stated in all my testimony,

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1 the same thing, about the phone calls being made.

2 Q What did you tell them about your
3 relationship with Michael Rippo at that time?

4 A I do not recall. I don't believe I was even
5 asked that.

6 Q Did you tell them you don't recall being
7 asked anything about the relationship?

8 A Besides the fact that we were friends, if
9 there was anything -- I mean, I don't know what you mean.
10 If there was anything more than friends or how do you know
11 him; is that what you are asking me?

12 Q Did you tell them that you were friends?

13 A Yes, I'm sure I did.

14 Q Did you tell them that you were as close to
15 Michael Rippo as a person could be relationship wise?

16 A No, not at that time.

17 Q Let's move on to the 15th of September --

18 A Uh-huh.

19 Q -- of 1993 --

20 A Uh-huh.

21 Q -- when you had your first conversation with
22 Mr. Lukens in the pretrial at your home.

23 A Okay.

24 Q What did you tell Mr. Lukens and Miss Lowry
25 about your relationship with Michael Rippo at that time?

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1 A I believe I just stated that we were good
2 friends, did -- she asked me one to ten, and one being the
3 best friend you could have, and I said number one.

4 Q Did you tell them anything else about your
5 relationship with him at that point?

6 A I don't recall.

7 MR. OWENS: Court's indulgence.

8 (Whereupon, a sotto voce at
9 this time.)

10 MR. OWENS: Nothing further, Your Honor.

11 THE COURT: Redirect?

12 MR. DUNLEAVY: Very briefly.

13

14

REDIRECT EXAMINATION

15

16 BY MR. DUNLEAVY:

17 Q You said you'd known Michael for about three
18 years?

19 A Uh-huh.

20 Q When did you really develop a close
21 relationship with him?

22 A About a year ago.

23 Q Is that after he was arrested?

24 A Yes, it was.

25 Q In fact, you've never had a physical

550

1 relationship with Michael; is that correct?

2 A Never.

3 MR. DUNLEAVY: No further questions.

4 THE COURT: Anything further?

5 MR. OWENS: No, Your Honor.

6 THE COURT: You are excused. You may step
7 down.

8 (Whereupon, the witness
9 was excused.)

10 MR. DUNLEAVY: We call Cindy Fries,
11 F-r-i-e-s, I believe.

12 Your Honor, at this time, we'd ask to
13 admit what we had marked as Exhibit A, the return of the
14 warrant.

15 MR. OWENS: Court's indulgence one moment.

16 No objection, Your Honor.

17 THE COURT: It will be admitted.

18 (Whereupon, Defendant's Exhibit
19 A admitted into evidence.)

20 Whereupon,

21 CINDY FRIES,

22 having been called as a witness by the Defendant and
23 having been first duly sworn to tell the truth, the
24 whole truth and nothing but the truth, was examined
25 and testified as follows:

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DIRECT EXAMINATION

BY MR. DUNLEAVY:

Q Will you please state your full name and spell it, please.

A Cindy Gloria Fries; F-r-i-e-s, C-i-n-d-y.

Q Can you speak up just a little bit. It's hard to hear you.

THE COURT: Here, put that microphone in front of you.

BY MR. DUNLEAVY:

Q What is your relationship to Alice Starr?

A She's my sister.

Q Were you, in fact, staying with her on the 30th of September, 1993?

A Yes, I was.

Q Were you home when some detectives and members of the District Attorney's Office showed up at the house?

A Yes, I was.

Q What's your relationship with Michael Rippo?

A There is no relationship.

Q Have you ever met him before?

A Once, years ago.

1 Q You've never had any contact with him other
2 than that?

3 A Yes, I went to Indian Springs.

4 Q And when was this?

5 A I don't even remember.

6 Q Was that accompanying your sister?

7 A Uh-huh.

8 Q Now, what happened when somebody knocked on
9 the door that day?

10 A My sister had just got up. I had just come
11 home. And she says, whoever it is, tell them I'm not here.

12 And at her front door, there is a long
13 window. And I said, oh, it looks like there is church
14 people. I thought they were church people. So I answered
15 the door. They asked me if Alice was home. I said no.

16 At that time, Detective --

17 Q Did they identify themselves?

18 A After I told them no, they did. They told
19 me what they were there for, who they were and so forth.

20 Q And who identified themselves, do you
21 remember?

22 A Detective Chandler.

23 Q Anyone else?

24 A Mr. Lukens.

25 Q How many people were in the group?

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1 A Four.

2 Q Do you know the other people involved?

3 A I don't remember the other gentleman's name,
4 the other detective. Teresa Lowry.

5 I did ask them all for their cards at
6 that point. Once they entered the house, I got --

7 Q Do you see Mr. Lukens or Mrs. Lowry here in
8 court today?

9 A Yes, I do.

10 Q Would you identify them?

11 MR. OWENS: Your Honor, we'd stipulate that
12 they were there during the execution of the warrant.

13 THE COURT: Okay.

14 BY MR. DUNLEAVY:

15 Q Did you have any direct conversation with
16 Mr. Lukens?

17 A Yes, I did.

18 Q Was this right after they came in the door?

19 A Yeah, after my sister come around the
20 corner.

21 Q Okay. What happened when your sister came
22 around the corner?

23 A She came around the corner about five
24 minutes after they were already in the house, and the two
25 detectives already had pointed their guns, and I screamed to

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1 them, please don't that do that. I had a two year old son
2 sleeping in the back room.

3 Mr. Lukens then told me that I lied to
4 him --

5 Q Had you ever spoken to Mr. Lukens?

6 A No, sir.

7 Q Okay. He said you lied to him, and then
8 what?

9 A He says we have to do that, just in case
10 there is somebody else in the house, because you lied to us,
11 ma'am.

12 Q Did there come a time when they started to
13 search?

14 A Yes.

15 Q Where were you when this happened?

16 A I was in the living room with my sister.

17 Q And who did you see -- did they leave
18 somebody in the living room with you?

19 A Yes, they did. They left the other
20 detective, but I'm really not sure of his name.

21 Q And could you see where they went, at first?

22 A Teresa Lowry, I believe, went to the
23 bedroom. Mr. Lukens and Mr. Chandler spoke to her about
24 where paperwork was, if she could help them, and then they
25 proceeded -- Lukens went to the desk, and the formal --

1 Q Did you see them putting anything on before
2 they started the search?

3 A Yes.

4 Q What?

5 A Latex gloves.

6 Q Did you see Teresa Lowry put on gloves?

7 A Yes, I did.

8 Q Did you see Mr. Luckens put on gloves?

9 A Yes, I did.

10 Q Detective Chandler?

11 A No, sir.

12 Q You said you saw Mr. Lukens and Chandler
13 going towards the living room; is that correct?

14 A No -- yeah.

15 Q Could you see in to that room from where you
16 were?

17 A Yes, I could.

18 Q Was any part of it blocked or could you only
19 see part of the room or --

20 A From where I was standing at, it was in a
21 corner of a -- in the -- the hallway is separated from the
22 family room with, like, a bar, and there is a fireplace with
23 clear windows; but where I was standing, you could see
24 directly into the part where the desk was.

25 Q There is a desk in the living room; is that

1 correct?

2 A In the formal living room.

3 Q Did anybody sit down at that desk or did
4 they just stand up there or --

5 A Stood and kneeled.

6 Q And who was it that was going through the
7 desk?

8 A Mr. Lukens.

9 Q Where was Detective Chandler?

10 A In the bookcase in the living room, looking
11 through the books.

12 Q Was the other detective assisting Mr.
13 Lukens?

14 A No, sir.

15 Q He was there by himself doing that?

16 A Yes, sir.

17 Q And you saw this?

18 A Yes.

19 Q How long would you say that part of the --
20 that you observed that part of the search?

21 A It was for a while because during that time
22 Chandler came up to my sister and was talking to her about
23 the way she came around the corner, that he could have shot
24 her.

25 And then I was reading --

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1 Q Now, when Chandler came up to your sister to
2 talk like this --

3 A Uh-huh.

4 Q -- where was Mr. Lukens?

5 A In the living room.

6 Q Where was Miss Lowry?

7 A In the bedroom.

8 Q And where was the other detective?

9 A In the living room.

10 Q How long did this conversation between
11 Detective Chandler and your sister take?

12 A I'd say approximately five -- five to ten
13 minutes.

14 Q Then what happened?

15 A Then I spoke with Mr. Chandler and then I
16 asked permission to go into the bedroom -- because they
17 asked us to remain in the living room seated -- so I could
18 get the newspaper because I was looking for a job at that
19 time.

20 Q Did he give you permission to go to the
21 bedroom?

22 A Yes, he did.

23 Q Was this the bedroom being searched?

24 A Yes, it was.

25 Q And were you allowed to go back there on

1 your own?

2 A Yes.

3 Q Was there anybody back there when you got
4 back there?

5 A Yes, there was.

6 Q Who was that?

7 A Teresa Lowry.

8 Q What was happening?

9 A She was kneeling on the end of the bed, and
10 she had a backpack open, with paperwork on top of the bed,
11 and she was looking through the paperwork.

12 Q Were the detectives back there with her?

13 A No; not at that point, no.

14 Q Did you recover the paper you went for?

15 A Yes, I did.

16 Q Did she talk to you at all at that time?

17 A No, she didn't. She didn't speak to me at
18 all.

19 Q And where did you go after that?

20 A Back to the living room.

21 Q Did there come a time when someone came out
22 of the bedroom with what purported to be drugs?

23 A Yes.

24 Q Who was that?

25 A Teresa Lowry.

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1 Q And where were these drugs?

2 A They said it was in --

3 Q I mean, did she have them in her hands; did
4 she have them in a box?

5 A Oh, in her hands.

6 Q Which hand?

7 A Well, she was walking this way. I believe
8 she had it in the left-hand.

9 Q Was there any comment made?

10 A No. She was just walking real fast with a
11 smile on her face.

12 Q Did she give that item to somebody?

13 A Yes, she did.

14 Q Who?

15 A Detective Chandler.

16 Q Was he in the front room with you at that
17 time?

18 A Yes, he was.

19 Q In the family room?

20 A Yes, he was.

21 Q Did there come a time when your sister was
22 placed under arrest?

23 A Yes.

24 Q Had Mr. Lukens come out and talked to her
25 before she was placed under arrest?

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1 A No.

2 Q Did he do so afterwards?

3 A Yes, he did.

4 Q Could you hear the conversation?

5 A Yes, I was sitting right there.

6 Q What was your impression of the
7 conversation?

8 A I -- I could not understand why he would
9 come in there and say the things that he said.

10 Q What did you hear him say?

11 A He accused my sister of lying; that he had
12 just gone through some papers and found some letters from an
13 Alice Starr to a Michael Rippe, and she was lying to him.

14 He then said something to the effect drug
15 offenders never have bothered him, but assault -- some- --
16 something about assault; and then he went into if he -- if
17 my sister knew what Michael had been arrested for before.

18 And then he said if she wants -- I can't
19 recall the exact words, but I know it was if -- if you want
20 to hook on to Michael's star, it's falling real fast and you
21 are going to go down with him.

22 Q Did you hear him comment about whether or
23 not she should change testimony?

24 A He didn't exactly come right out and say I
25 want you to change your testimony.

1 He did -- throughout that conversation
2 when -- they had about the falling star and so forth, my
3 sister asked him what are you talking about?

4 Then they started going back and forth,
5 and I was looking at them. I -- I really don't know what
6 was going on through the whole thing anyhow. And then he
7 stormed off, got angry and went off somewhere.

8 Q And you saw both Mr. Lukens and Mrs. Lowry
9 put on gloves and conduct a search?

10 A Yes, I did.

11 Q And you saw them doing that at the time when
12 there were no detectives with them?

13 A Yes.

14 MR. DUNLEAVY: No further questions of this
15 witness, Your Honor.

16 THE COURT: Cross?

17
18 CROSS-EXAMINATION

19
20 BY MR. OWENS:

21 Q Were you in the living room or the family
22 room when the search warrant was executed?

23 A The family room. I was -- actually I --
24 where the family room -- it's all an open area.

25 Q So you were -- you were in the -- family

1 room?

2 A Yes.

3 Q Can you describe that room.

4 A Yes.

5 Q Just give us some distinguishing
6 characteristics, so we know -- to differentiate that from
7 what they are calling the living room.

8 A It had the big couch in there, the blue
9 couch, the bar stools in front of the little bar, that I
10 talked about when my sister and I sat --

11 Q How much searching was going on in the
12 family room where you were located?

13 A In the family room?

14 Q Yes, where were located.

15 A None. They didn't even ask.

16 Q None?

17 A None.

18 Q But that was where you remained throughout
19 the search, wasn't it?

20 A No.

21 Q Where else did you go?

22 A To the bedroom.

23 Q Okay. And you testified about that.

24 Anyplace else?

25 A I did go into the living room.

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1 Q Okay. Were the police just letting you
2 wander around the house while the search was happening?

3 A Well, I had to get my niece. I had to go
4 take care of my niece.

5 Q You would go do these things and come back
6 and sit on the couch, wouldn't you?

7 A I sat on the couch until after my sister was
8 placed under arrest.

9 Q So were you standing the rest of the time?

10 A Yes.

11 Q You mentioned a conversation with Mr.
12 Lukens, or at least overhearing something.

13 The first time you met Mr. Lukens was on
14 the date of the search warrant, wasn't it?

15 A Yes.

16 Q And you weren't there on the prior occasion
17 when he talked with your sister on the 15th, were you?

18 A No.

19 Q And you mentioned Mr. Lukens saying
20 something about the prior criminal record of Michael Rippo.

21 Did you mention that --

22 A Yes.

23 Q -- a minute ago?

24 Exactly when did you hear Mr. Lukens
25 mention that?

1 A When I was sitting on the couch with my
2 sister after she was placed under arrest and he came in
3 there and spoke with her.

4 Q Are you sure that wasn't something that you
5 maybe heard from your sister that had been said by Mr.
6 Lukens on the 15th?

7 A No, sir.

8 Q You indicated that you are one that opened
9 the door to the police?

10 A That's correct.

11 Q And at that point or shortly thereafter you
12 realized that they were police, didn't you?

13 A Yes.

14 Q And that that was a search warrant, that the
15 house was going to be searched?

16 A Yes.

17 Q What did you feel about that?

18 A I didn't know what to -- I don't really
19 understand what's going on. I don't know this whole case.

20 What was told to me was they were
21 searching the house for something to do with a Diana Hunt.

22 Q What were you feelings inside at that point?
23 You mentioned that you screamed?

24 A Yeah. When they pulled the guns out.

25 Q Okay. Was this -- this was upsetting to you?

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1 A Yes.

2 Q And I believe you testified you didn't
3 really know what was going on through the whole thing
4 anyway; is that accurate?

5 A Yes, sir. Why would they be there to
6 search?

7 MR. OWENS: Nothing further.

8 THE COURT: Redirect.

9

10 REDIRECT EXAMINATION

11

12 BY MR. DUNLEAVY:

13 Q You said you were told that they were there
14 for the purpose of searching for evidence relating to Diana
15 Hunt.

16 A Yes, sir.

17 Q And you indicate you were very upset when
18 they pulled out their guns?

19 A Yes.

20 Q Did that interfere with your ability to see
21 and observe what was going on?

22 A No. At that time, Teresa Lowry and Mr.
23 Lukens remained in the living room with my sister and I,
24 while the two detectives ran through the house with the
25 guns.

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1 Q And your children were in the rest of the
2 house?

3 A My daughter was in the living room with me,
4 and my son, which was two at the time, was in the back
5 bedroom asleep.

6 Q Were there other small children in the
7 house?

8 A Yes, my niece.

9 Q And how old was she?

10 A She was -- God, she was 18 months or so.

11 Q Were there several occasions when they would
12 wonder off and you would have to go after them and get them?

13 A Yes.

14 Q Did you observe what was going on during
15 those occasions?

16 A Yes, I did.

17 Q What did you see?

18 A That was one of the times that I went into
19 the bedroom and Teresa Lowry was in there searching.

20 Q And there was no detective in the room at
21 that time with them?

22 A No.

23 MR. DUNLEAVY: No further questions.

24 MR. OWENS: Nothing.

25 THE COURT: Anything else?

1 MR. OWENS: No, Your Honor.

2 THE COURT: Thank you very much. You are
3 excused.

4 (Whereupon, the witness
5 was excused.)

6 MR. DUNLEAVY: Detective Chandler.

7 Whereupon,

8 ROY CHANDLER,

9 having been called as a witness by the Defendant and
10 having been first duly sworn to tell the truth, the
11 whole truth and nothing but the truth, was examined
12 and testified as follows:

13
14 DIRECT EXAMINATION

15
16 BY MR. DUNLEAVY:

17 Q Would you please state your full name and
18 occupation for the record.

19 A Roy Chandler; C-h-a-n-d-l-e-r. I'm a police
20 officer with the Metropolitan Police Department assigned to
21 the homicide detail.

22 Q And were you one of the detectives assigned
23 to execute a search warrant on, I believe, September 30th,
24 1993, at the residence of Alice Starr.

25 A Yes, I was.

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1 Q Did you prepare the affidavit in support of
2 that search warrant?

3 A Yes, I did.

4 Q What items did you indicate you felt were in
5 the residence that justified the execution of a search
6 warrant?

7 A I wanted all documentation in reference to
8 Michael Ripppo. I also wanted any forms that would tell who
9 the legal owner of the residence was or who resided at that
10 residence.

11 Q Was the residence involved in the murder
12 case?

13 A No, it was not.

14 Q Did you feel that there were documents in
15 there that related directly to this murder case?

16 A Yes, sir, I did.

17 Q What kind of documents could there have been
18 in there that related to this murder case?

19 A Correspondence from Mr. Ripppo to Alice
20 Starr.

21 Q Is this ---you presumed that they had
22 communicated before the crime occurred?

23 A Pardon?

24 Q Were you contending that they had been
25 communicating, before the crime occurred, in writing?

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1 A Before the crime of the homicide?

2 Q Yes.

3 A I would have no idea, sir.

4 Q You are aware that a warrant can only be
5 issued on limited grounds?

6 A Yes, sir.

7 Q Specifically looking for stolen or embezzled
8 property or items designed or intended for use in the
9 commission of a crime?

10 A I don't believe that it's limited to that,
11 sir.

12 Q Or items constituting evidence, which tend
13 to show that a criminal offense has been committed; is that
14 what you are looking for?

15 A You've lost me in your questioning.

16 Q Well, I'm asking you: What did you set
17 forth in your affidavit as the items you were looking for
18 and how did they relate to this murder case?

19 A It related --

20 MR. OWENS: Your Honor --

21 THE COURT: Excuse me.

22 MR. OWENS: Rather than just reading through
23 the affidavit and the warrant, we would have no objection to
24 just making those for the Court's review, so that everything
25 he's asking about is in there, in the affidavit, and in the

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1 search warrant itself.

2 It is a sealed document, at this point
3 still, but we would have no objection to the Court viewing
4 it.

5 MR. LUKENS: Your Honor, we'd certainly have
6 no objection to the Court viewing it.

7 We do, however, have -- we have no
8 problem with perhaps further allowing it, but we do have
9 allowing the defense having a copy of it that they can
10 provide to their client, because of what has happened with
11 some of the last documents that -- that we've provided them
12 with.

13 I don't know -- did the Court understand
14 what it was I said?

15 THE COURT: Not that last part.

16 The problem with documents you provided
17 with him? I don't understand that.

18 MR. LUKENS: The problem is that the
19 defense, in accordance with good practice, has provided
20 their client with copies, for example, of witness
21 statements. Those witnesses are sometimes incarcerated in
22 the same location as Mr. Ripppo.

23 Mr. Ripppo has used those statements, one
24 of them had a thing "snitch" written across it, and so
25 forth, things like that, that put some of the witnesses'

M

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1 health and safety in danger.

2 So --

3 THE COURT: Now I understand what you are
4 saying.

5 MR. LUKENS: Okay. So that's the problem we
6 have in -- in providing copies.

7 MR. DUNLEAVY: Your Honor, we've heard the
8 allegations; but, first, I would point out that the
9 affidavit is germane to why were they there? Were they on a
10 pretext to try and intimidate an alibi witness or did they
11 have some legitimate purpose?

12 The State, therefore, spells out a very
13 small litany of legitimate purposes under our Constitution
14 that they can obtain a warrant for.

15 The State's playing hide and seek with
16 this affidavit. We point out -- what was that cite
17 again? -- NRS 179.035, grounds. I would also point out,
18 there is no statutory authority in the State of Nevada to
19 seal an affidavit.

20 MR. OWENS: Your Honor, as I indicated,
21 that's all moot.

22 First of all --

23 MR. DUNLEAVY: Well --

24 MR. OWENS: -- they haven't made any motion
25 to suppress the evidence contained in this warrant.

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1 That's not before the Court, and we're
2 not objecting to the Court or counsel reviewing the
3 affidavit and warrant as a part of this proceeding.

4 So --

5 MR. DUNLEAVY: Your Honor, I believe part of
6 this procedure is to determine whether they were acting as
7 an investigator, and part of it was: Were they there to try
8 and intimidate a witness?

9 And if, in fact, they were there under a
10 bogus affidavit, not complying with NRS 172.035 or Article
11 I, Section 18 of the Nevada Constitution or the United
12 States Constitution, then that's pretty clear that they were
13 there for an unlawful purpose.

14 MR. OWENS: Your Honor --

15 MR. DUNLEAVY: And that's something we are
16 absolutely here -- that we have to look into and why were
17 they there and why are they confronting our alibi witness?

18 MR. OWENS: This is argument. And I'm
19 suggesting that we put before the Court the evidence that
20 they are seeking to elicit, activity, purpose, so I don't
21 see what the problem is.

22 THE COURT: Do you agree to an in camera?

23 MR. DUNLEAVY: If it's our only alternative.
24 Information was open to the public. If Mr. Ripppo is not an
25 interested party in this case, then there is no case.

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1 But, apparently, the defense are the only
2 ones that aren't entitled to see this information. I think
3 that's a violation of our constitutional rights.

4 MR. OWENS: Up to this point, they haven't
5 asked.

6 MR. WOLFSON: Well, that's absolutely not
7 true. At the last hearing I did ask for the --

8 MR. DUNLEAVY: We have.

9 MR. OWENS: There is -- there is a provision
10 for unsealing, and I don't think that that's been formally
11 addressed.

12 There may become a point where we will
13 unseal it, but that's beside the point in this procedure.

14 Right now, we have no objection, to the
15 Court, in camera, and defense counsel having access to it,
16 and considering it for any full range of evidentiary value
17 it holds in this hearing.

18 MR. DUNLEAVY: I believe the transcript of
19 our last hearing would be that we asked them to provide it
20 to the Court in advance, so that you could inspect it in
21 camera, but, yes, we'd like that.

22 THE COURT: Okay. I will inspect it in
23 camera.

24 You may continue.

25 MR. DUNLEAVY: Pardon, Your Honor?

1 THE COURT: You may continue your
2 examination.

3 BY MR. DUNLEAVY:

4 Q What items of evidence were you looking for
5 in relation to this murder case?

6 A Documents.

7 Q That would directly relate to this murder
8 case?

9 A Yes, sir.

10 Q In what way?

11 A In the way that Mr. Rippo, at the time he
12 was involved in the homicide, had signed some documents; and
13 at the time, we had requested from Mr. Rippo handwriting
14 exemplars. He refused to give those to us through Mr.
15 Wolfson.

16 We had obtained a court order, signed by
17 Judge Bongiovanni, for the handwriting exemplars, and Mr.
18 Wolfson was made aware of that; and Mr. Rippo refused to
19 give handwriting exemplars while he was incarcerated.

20 So we were still investigating the
21 homicide itself, in reference to the signing of the
22 documents belonging to the victim.

23 And, in turn, I had received information
24 that Mr. Rippo had corresponded with Mrs. Starr in reference
25 to signing of letters and et cetera, and I did a search

END

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1 warrant on the residence looking for documentation of
2 correspondence between Mr. Rippo and Mrs. Starr.

3 Q Now, you are aware that Mr. Rippo has been
4 on formal parole; is that correct?

5 A No, I'm not aware of that.

6 Q You are not aware that he had a prior
7 conviction?

8 A Sir, I have -- you might say I obtained this
9 case from other detectives in the homicide detail. When
10 they retired, it became my case.

11 Q You were aware that he was in custody?

12 A Yes, sir, I was.

13 Q And that he was in the state prison?

14 A Yes, sir, I was.

15 Q In your experience, doesn't that usually
16 indicate he's there for something other than this case?

17 A That would not mean that he was on parole.
18 That means that he was incarcerated.

19 Q You knew he was incarcerated?

20 Did you ask to get his prison records
21 that would have his signature on them?

22 A Yes, I did.

23 Q Did you get them?

24 A Yes, I did.

25 Q And there was something wrong with those

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1 signatures?

2 A I turned them over to the handwriting
3 specialist, and he said that it was not substantial enough,
4 and that we needed to get handwriting exemplars from him.

5 Q Did you ask his mother for letters he had
6 written?

7 A No, we did not.

8 Q The only person you could think of was the
9 alibi witness who might have this information?

10 A I didn't know that it was an alibi witness at
11 the time. I had received information that correspondence
12 had taken place between Mr. Ripppo and Mrs. Starr.

13 Q Now, when you went to the residence, were
14 you the one that knocked on the door?

15 A Yes, I was.

16 Q Were you the one that first addressed Mrs.
17 Fries?

18 A Yes, I was.

19 Q Did you show her a badge and identify
20 yourself?

21 A Yes, I did.

22 Q Did you show her a copy of the warrant?

23 A Yes, I did.

24 Q And explain why you were there?

25 A Yes, I did.

MRIPPO-07029-00595

1 Q Who was with you?

2 A There were three other people: Detective
3 Thowsen was with me; also Mr. Lukens and Mrs. Lowry.

4 Q Could you spell Detective Thowsen's name for
5 the record?

6 A I think it's T-h-o-w-s-e-n.

7 Q Now, did you advise them that you were there
8 to look for records relating to Diana Hunt?

9 A I advised them, when I walked through the
10 door, that I had a search warrant for the residence, and I
11 asked her if there was anyone else there, namely Alice
12 Starr.

13 And she stated no, that there was no one
14 else there, with the exception of her and her two children.

15 I told her that we were there with a
16 search warrant, and that I was going to search the
17 residence, and I supplied her with a copy of the search
18 warrant.

19 She asked me -- she said, how did you --
20 why did you come here?

21 And I said, well, it's in reference to a
22 friend of your sister's -- which she had told me that Alice
23 Starr was her sister -- by the name of Diana Hunt.

24 When I stated that, Alice Starr came
25 running out of the kitchen area, telling me that that was a

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1 lie; that she was not a friend of hers; and that she was, in
2 fact, hiding in the kitchen because she didn't want to know
3 about it. She didn't want anybody to know she was there.

4 Q So you didn't have to go search for her; she
5 came running out.

6 A She came running out of the kitchen when I
7 mentioned the name Diana Hunt.

8 Q Were weapons drawn?

9 A No.

10 Q At any time?

11 A I asked Alice if there was anyone else in
12 the residence. And she was upset because of what I had said
13 and she said no, there isn't.

14 And myself and Detective Thowsen walked
15 through the house. I believe when we got to the back
16 bedrooms wasn't in the view of anyone else, as we were
17 checking the closets we did unholster our weapons for our
18 own safety.

19 Q So that happened out of the view?

20 A Yes, they did.

21 Q How would they have known that you pulled
22 the guns out then?

23 A I have no idea.

24 Q Did there come a time when you gathered all
25 the adults in one room in the house?

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1 A Yes, sir, there was.

2 Q What room would that have been?

3 A The adults -- then we had the children go
4 into the kitchen area, which was a -- it's a kitchen and,
5 like, a den area together.

6 Q Would it be possible that they referred to
7 it as a family room area?

8 A Could be.

9 Q Is there a couch in there?

10 A Yes, there is.

11 Q And the two adults and the children were all
12 put in that room?

13 A We asked them to stay in that area, yes.

14 Q Did one of you stay there to keep an eye on
15 them?

16 A Detective Thowsen was assigned right there.
17 He stayed right in that area to watch them.

18 Q And did you go to conduct a search?

19 A Yes, I did.

20 Q Did you go by yourself?

21 A I went over to the desk area in the living
22 room, which is just off to the -- it would be just east of
23 the dining room area and the family room, and I was looking
24 through the desk, through drawers and stuff for the
25 documentation that I was looking for, and Mr. Lukens and

1 Mrs. Lowry joined me at that location.

2 Q Did you put on any gloves or anything for
3 the purposes of this search?

4 A No, sir, I did not.

5 Q No, do you know if anyone else did?

6 A Not that I know of.

7 Q You didn't see Lukens or Lowry glove up?

8 A I don't recall.

9 Q How often do you execute a search warrant?

10 A How often?

11 Q Uh-huh.

12 A In the 23 years I've been on the police
13 department I've probably gone through anywhere from 500 to
14 750 search warrants.

15 Q Do you normally go out with two deputy
16 District Attorneys?

17 A Not normally but they have gone out with us
18 on search warrants before.

19 Q Now, you were at the desk and you said
20 Lukens and Lowry came up to you?

21 A Yes, sir.

22 Q Was anything said?

23 A I was looking for the documentation, and I
24 was asking Mr. Lukens if he would look at the items and
25 see -- if I was going to confiscate them, I wanted him to

1 look at it and see if it had any evidentiary value.

2 Q Did you hand them to him to look at?

3 A Yes, sir, I believe I did.

4 Q Who made the decision of whether or not to
5 seize them or to leave them?

6 A I had already made the decision. They were
7 going to be seized. I just wanted him to look at them.

8 Q And you were there looking for handwriting
9 examples of Mr. Ripppo?

10 A Yes, sir, along with documentation of who --
11 who owned the residence and who was residing at the
12 residence.

13 Q Was there a Bible there?

14 A Yes, there was.

15 Q Was it seized?

16 A Yes, it was.

17 Q Was Mr. Ripppo's handwriting in the Bible?

18 A There was notes -- excuse me, there were
19 notes inside the Bible that had reference to Michael Ripppo,
20 so we took it.

21 Q Did it appear to be in Michael Ripppo's
22 handwriting?

23 A I didn't know what Michael Ripppo's
24 handwriting looked like.

25 Q Did the context of the notes make it look

1 like he had written them?

2 A There was a possibility.

3 Q What about credit cards; were any credit
4 cards seized?

5 A I don't believe so.

6 Q Now, in your training, when you executed a
7 search warrant, you are supposed to prepare a return; is
8 that correct?

9 A Yes, sir.

10 Q What's the purpose of that return?

11 A That return is to advise the people of what
12 we took from the residence. A copy is left with the owner
13 of the residence or a party of that.

14 Q What items had you asked to seize in the
15 search warrant?

16 A Documentation.

17 Q Just documentation, period?

18 A Documentation as to letters back and forth,
19 correspondence from Mr. Ripppo.

20 Q So when you seized a letter, on the return,
21 you would put letter dated such and such a date?

22 A No, sir. I think I put on the search
23 warrant -- I listed it as miscellaneous paperwork.

24 Q Is there any way the defense or anyone else
25 would know what you mean when you say miscellaneous

1 paperwork?

2 A All they would have to do is go through
3 discovery because we photocopy everything and that would be
4 supplied.

5 Q And if something is left out there is no way
6 they can tell if you don't list what you seize?

7 A Nothing is left out, sir, that was put on
8 the return. Whatever I took from the residence was on the
9 return and left with Mrs. Starr.

10 Q And that would be miscellaneous paperwork?

11 A It could possibly be miscellaneous
12 paperwork. I believe the other things that were taken in
13 this was narcotics. There was narcotics paraphernalia.

14 Q That wasn't subject to this warrant; that
15 was something you just found during the search; isn't that
16 correct?

17 A Yes, sir.

18 Q Did you count how many pages you seized?

19 A No, sir, I did not.

20 Q Did you stay at the desk while Mr. Lukens
21 went through paperwork you had found there?

22 A Mr. Lukens was at the desk and I was handing
23 them and he was perusing what I had given him.

24 Q And did you stay there all the time that Mr.
25 Lukens was handling the paperwork?

MRIF00-07029-00602

1 A I was there and I had handed him the
2 paperwork that we were going to seize from the desk, and he
3 was looking at it, and Mrs. Lowry and I then went into the
4 bedroom. And I believe Mr. Lukens walked in and then he
5 walked back into the living room.

6 Q So when you left, Mr. Lukens was looking at
7 the paperwork and you left to go to the bedroom?

8 A That I had provided him, yes.

9 Q Did you prepare a report relating to this
10 execution?

11 A Yes, I did.

12 Q Do you have a copy of it with you today?

13 A I don't believe so. I believe you were
14 supplied with one.

15 (Whereupon, a sotto voce at
16 this time.)

17 MR. DUNLEAVY: Court's indulgence a second,
18 please.

19 THE COURT: Okay.

20
21 BY MR. DUNLEAVY:

22 Q I'd like to show you what I've had marked as
23 Defense B and ask you if it appears to be a five page typed
24 report prepared by yourself in relation to this?

25 A It's a copy, yes, sir.

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1 Q Now, did you describe what happened in the
2 search in your report?

3 A I believe I did.

4 Q Did you indicate, the third paragraph on
5 page three -- was a search conducted?

6 A Yes.

7 Q By whom?

8 A It says a search was conducted by Detective
9 Chandler and deputy District Attorneys Lukens and Lowry, and
10 items were found in the desk and in the drawers of the desk,
11 which were located in the living room.

12 The items consisted of miscellaneous
13 papers, utility bills, and notebooks containing letters to
14 and from the subject of Michael Ripppo -- a subject by the
15 name of Michael Ripppo. These item were confiscated by
16 Detective Chandler and placed them on the return.

17 Q Is that paragraph true?

18 A Yes, it is, sir.

19 Q There is nothing in it you want to change or
20 correct or anything?

21 A No, sir.

22 Q Skip the next paragraph. The next one down,
23 Detective Chandler and -- is that paragraph true?

24 A Well, both of those paragraphs, sir -- are
25 you talking about the following paragraph or the one --

MRJFO-07029-00604

1 Q The one after it.

2 A It states Detective Chandler and deputy
3 District Attorneys Lukens and Lowry --

4 Q Yes.

5 A Is that the one you are speaking of?

6 Q Yes.

7 A -- proceeded to the master bedroom where
8 they found a purple felt bag located in the crib.

9 Q Who actually found that bag?

10 A I did.

11 The purple felt bag contained brown debris
12 leafy substance believed to be methamphetamine, in his sole
13 care and custody and walked into the living room area and
14 asked Alice Starr if she was the only one that had control
15 over the master bedroom.

16 She stated that he -- she -- she and her
17 daughter were the only two that stayed in that master
18 bedroom or in that bedroom.

19 Q Did there come a time, after she was placed
20 under arrest, that you went back to the bedroom?

21 A Yes, I did.

22 Q Would that be related in the paragraph on
23 page four?

24 A Which paragraph, sir?

25 Q First one.

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1 A Detective Thowsen was asked to stay with
2 Alice Starr at the time, and the search of the residence
3 continued for our documents.

4 Detective Chandler and deputy District
5 Attorneys Lukens and Lowry proceeded back to the master
6 bedroom, and upon looking into a cardboard box located under
7 the nightstand --

8 Q ~~Allow me to stop you there for just a~~
9 second.

10 Who looked into this cardboard box?

11 A I looked into it after Mrs. Starr's
12 daughter -- the young daughter, I believe she's two -- was
13 walking around and walked into the bedroom and had reached
14 into the plastic -- or into the cardboard box and lifted up
15 a baggie of marijuana.

16 Q And where were Lukens and Lowry at this
17 time?

18 A I believe, at this time, Mr. Lukens was
19 still in the bedroom with me, and -- Mrs. Lowry was still in
20 the bedroom with me, and Mr. Lukens had gone back to the
21 living room.

22 Q Wasn't this part of the same step that said
23 attorneys Lukens and Lowry proceeded back to the master
24 bedroom?

25 A That's when they joined me back in there.

1 Q Okay. Go ahead and proceed.

2 MR. OWENS: Your Honor, I would object to
3 the mode of testifying at this point. This is not a
4 question and answer format. We're not getting live
5 testimony.

6 Instead, he's just simply reading a
7 report that was compiled sometime earlier and then being
8 asked questions about it. I don't have any problem
9 referring to the report if it's for impeachment; but for
10 rehabilitation, just to have him read a report that he
11 dictated months ago, is not the purpose for having this
12 hearing, I don't think.

13 THE COURT: I agree.

14 Ask questions, Mr. Dunleavy.

15 MR. DUNLEAVY: I thought I was asking
16 questions from the report, Your Honor. I'm --

17 MR. OWENS: The report is hearsay except for
18 very --

19 THE COURT: Well, he's reading the report.

20 MR. DUNLEAVY: Well, he wrote the report,
21 Your Honor, so I think he's available for cross-examination.

22 So it's clearly not a hearsay document
23 because the man who wrote it is the one testifying.

24 THE COURT: He was asked a question, if he
25 knows now what he did there. I don't know why he's got to

1 read from the report.

2

3 BY MR. DUNLEAVY:

4 Q Now, there was a green -- or a backpack -- I
5 forget what color it was -- located in the bedroom; is that
6 correct?

7 A Yes, sir, it was.

8 Q Who located that?

9 A I did.

10 Q And who went through the contents?

11 A I had opened it up, found letters in
12 reference to Michael Rippo, to and from, and --

13 Q Letters to -- these were letters that hadn't
14 been mailed or --

15 A Yes, they were letters that she had written
16 that hadn't been mailed yet.

17 Q And what did you do with them?

18 A I confiscated them.

19 Q Did you hand them to anybody to review?

20 A I believe deputy District Attorney Lowry was
21 standing there, and I asked her to take a look at them also.

22 Q I mean, did you stay with her while she went
23 through them?

24 A Yes, sir, I did.

25 Q Did she make any input as to what would be

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1 seized and what would not be seized?

2 A No, sir. They were already seized.

3 Q So why were the deputy District Attorneys
4 with you?

5 A Deputy District Attorney Lukens -- like I
6 say, this was a case that I had acquired because the two
7 detectives that handled it at the very beginning had both
8 retired and I was put in charge of the case and it was to be
9 my case from that point on.

10 I had asked deputy District Attorney
11 Lukens, as well as Lowry, if they would assist me; if they
12 would come out and tell me legally what I could do or what I
13 should do in reference to the confiscation of the items.

14 Q So in your 23 years' experience you didn't
15 feel qualified to do that without their advice?

16 A No. I was asking for their assistance. I
17 felt very qualified, sir.

18 Q But I believe you testified that you are the
19 one that made the decision to seize items before you showed
20 anything to them.

21 A I knew what I was going to seize. I wanted
22 them to take a look at it as far as evidentiary purposes.

23 Q But you indicated you had already made up
24 your mind as to what you were going to do with these items;
25 is that correct?

1 A Yes, sir, I was going to seize them.

2 Q So they weren't giving you advise on that
3 issue?

4 A As to me seizing them?

5 Q Yes.

6 A No, they were not.

7 Q Were you there when Mr. Lukens went to talk
8 to Miss Starr?

9 A I believe he talked to her in the living
10 room or in the -- you refer to it as a den or family room.

11 Q Did you go with him?

12 A No, I did not.

13 Q So you don't know what was said at that
14 time?

15 A No, sir, I don't.

16 Q Did Mr. Lukens come back, after talking to
17 Miss Starr to the bedroom?

18 A I don't recall if he came back in the
19 bedroom or if we met in the -- in the family room.

20 Q Did he talk to you about what had
21 transpired?

22 A No, sir, he didn't.

23 Q Were you the one that transported Mrs.
24 Starr?

25 A No, sir. I believe Detective Thowsen

1 transported her.

2 Q Now, how did you get to the scene?

3 A We took two vehicles. Detective Thowsen had
4 his and I had mine, and in my vehicle was the deputy
5 District Attorneys.

6 Q And when you came back, did you drop them
7 off here at the courthouse?

8 A Yes, sir, I did.

9 Q The last page, page five, first paragraph,
10 you indicated that you took them back to the police
11 department with you.

12 A It says Detective Chandler and deputy
13 District Attorneys Lukens and Lowry then left the residence
14 and proceeded back to the Clark County Court, slash,
15 Metropolitan Police Department, for completion of the
16 reports.

17 Q Is that your way of saying you dropped them
18 off at the courthouse?

19 A Yes, sir.

20 Q And did you list six items on the police
21 report here?

22 A Yes, sir, I did.

23 Q Items four, five and six are all indicated
24 as miscellaneous paperwork?

25 A I believe that's package four, five and six.

1 Q Or -- oh, package four, five -- what
2 paperwork out of the purple backpack did you not take?

3 A I believe I took everything, because
4 everything in that backpack pertained to documents of
5 correspondence.

6 Q And miscellaneous paperwork found in the
7 master bedroom.

8 A Which one?

9 Q Item number five.

10 A That would have been other paperwork of
11 correspondence and possibly bills indicating who owned the
12 residence and stuff. I would have to look at the exact
13 impound and copies of it, if you'd like to see it.

14 Q So if I was the resident of that house, and
15 I thought I had paperwork missing, how would I know what you
16 took?

17 A I didn't list everything individually.

18 Q Same thing with number six, miscellaneous
19 paperwork from the desk?

20 A Yes, sir.

21 Q What items did you leave behind?

22 A Left behind stuff that did not pertain to
23 the search warrant.

24 Q And the things that did pertain to the
25 search warrant are called miscellaneous?

1 A Things that pertain to the search warrant, I
2 took and confiscated.

3 Q And Lukens and Lowry had no input into your
4 decision as to what you were going to take?

5 A No, sir.

6 MR. DUNLEAVY: Court's indulgence.

7 (Whereupon, a sotto voce at
8 this time.)

9 MR. WOLFSON: I'd like to ask Detective
10 Chandler a few questions.

11 THE COURT: Okay.

12
13 DIRECT EXAMINATION

14
15 BY MR. WOLFSON:

16 Q Detective Chandler, you went to the
17 residence with a search warrant in hand; is that right?

18 A Yes, sir, I did.

19 Q And item number one, as to what things you
20 were there to seize, is documents and other handwriting
21 exemplars of the defendant Michael Rippo --

22 A Yes, sir.

23 Q -- is that right?

24 Because you took the case over from
25 Detective Scholl and the other detective.

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1 Did you review his file?

2 A I looked through it, but I didn't know
3 everything about the case itself.

4 Q How long had you been the assigned detective
5 on this case as of September 30th, 1993?

6 A Probably a month and a half, but we had
7 other homicides that occurred during that time.

8 Q I understand that.

9 And the case file on this is probably two
10 or three or notebooks, is that right?

11 A I believe it's two.

12 Q You read through it but not in great detail,
13 would that be a fair characterization?

14 A Yes, sir.

15 Q But when you went to the residence, you went
16 there with the specific purpose: Documentation of
17 handwriting examples of Mike Rippo, and then things to show
18 who lived in or owned the residence; is that right?

19 A Right.

20 Q Wouldn't you agree that item number one,
21 documents and other handwriting examples of Michael Rippo,
22 is a very specific thing you were looking for?

23 A We were looking for anything to and from
24 Michael Rippo, correspondence.

25 Q Wouldn't you agree that that's a pretty

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1 specific or narrow description of what to seize?

2 A Yes, sir.

3 Q Notwithstanding that you need -- needed two
4 deputy D.A.s to go along with you to aid you in determining
5 what to seize; is that your testimony?

6 A They went along as legal advisors, yes.

7 Q You said that you saw certain things on --
8 well, let me back up.

9 MR. WOLFSON: Judge, understand that I
10 don't have the advantage of knowing what's in the affidavit.
11 Your Honor will, when you review it in camera. This
12 detective does.

13

14 BY MR. WOLFSON:

15 Q But would it be fair to say that you had a
16 pretty good idea, going in there, Detective, that there were
17 going to be letters, writings, presumably to Alice Starr
18 from Michael Rippo?

19 A Yes, sir.

20 Q Probably signed by Michael Rippo?

21 A Yes, sir.

22 Q And you needed deputy District Attorney
23 Lukens or Lowry to tell you, seize that, notwithstanding the
24 fact it says Michael Rippo on it?

25 MR. OWENS: Your Honor, this has been asked

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1 and answered by both counsel at this point.

2 THE COURT: I'll allow him to answer.

3 Can you answer that question?

4 THE WITNESS: I'm sorry, could you repeat
5 the question?
6

7 BY MR. WOLFSON:

8 Q Did you need some help deciding whether to
9 seize a letter that was signed Michael Rippe?

10 A There were other names that Alice Starr used
11 and there are also other names that Mr. Rippe used when he
12 sent letters to Mrs. Starr.

13 I wasn't aware of these names. I felt
14 that maybe Mr. Lukens and Miss Lowry may be familiar with
15 the names.

16 MR. WOLFSON: I have no further questions.

17 Thank you.

18 THE COURT: All right. We're going to take
19 our noon recess. We will reconvene at 1:30.
20

21 (Whereupon, a recess was had in
22 the proceedings, at the
23 conclusion of which the
24 following was had:)
25

1 Las Vegas, Nevada, Monday, March 7, 1994, 1:50 p.m.

2
3 * * * * *

4
5 THE COURT: C106784, State of Nevada versus
6 Michael Rippo.

7 Counsel, state your appearances.

8 MR. OWENS: Chris Owens for the State, Your
9 Honor.

10 MR. DUNLEAVY: Phil Dunleavy and Steve
11 Wolfson for the defense, Your Honor.

12 THE COURT: You may continue with your
13 cross-examination of Detective Chandler.

14 MR. OWENS: Thank you, Your Honor.

15
16 CROSS-EXAMINATION

17 BY MR. OWENS:

18 Q You mentioned, Detective Chandler, that
19 you've been involved, in one way or another, in about 750
20 warrant executions?

21 A Somewhere around there.

22 Q Are these search warrants that we are
23 talking about?

24 A Yes.

25 Q Is there something about this particular

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IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL RIPPO,

Appellant,

-vs-

E.K. McDANIEL, et al.,

Respondent.

No. 53626

FILED

OCT 19 2009

TRACEY L. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
CHIEF DEPUTY CLERK

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22 23	206. Declaration of Mark J.S. Heath, M.D., dated May 16, 2006, including attached exhibits		JA05215-JA05298 JA05299-JA05340
23	207. "Lethal Injection: Chemical Asphyxiation?" Teresa A. Zimmers, Jonathan Sheldon, David A. Lubarsky, Francisco Lopez-Munoz, Linda Waterman, Richard Weisman, Leonida G. Kniaris, <u>PloS Medicine</u> , April 2007, Vol. 4, Issue 4		JA05341-JA05348
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DISTRICT COURT

CLARK COUNTY, NEVADA

Laszlo Th. ...

--oOo--

THE STATE OF NEVADA,

Plaintiff,

-vs-

MICHAEL DAMON RIFPO,

Defendant.

ORIGINAL

Case No. C106784

Dept. No. IV

Docket: C

REPORTER'S TRANSCRIPT

OF

ARRAIGNMENT

BEFORE THE HONORABLE GERARD J. BONGIOVANNI, DISTRICT JUDGE

Monday, July 20, 1992

9:00 o'clock a.m.

APPEARANCES:

For the State:

TERESA M. LOWRY, Esq.
Deputy District Attorney

For the Defendant:

STEVEN WOLFSON, ESQ.
PHILIP H. DUNLEAVY, ESQ.
Attorneys at Law

Reported by: DONNA J. MCCORD, CCR #337
Official Court Reporter

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DONNA J. MCCORD CCR #337 455-3047

CE37

1 LAS VEGAS, CLARK COUNTY, NEVADA; MONDAY, JULY 6, 1992

2 PROCEEDINGS

3 THE COURT: State of Nevada versus Michael
4 Damon Rippo.

5 MR. WOLFSON: He's present, Judge, in
6 custody. I'm Steve Wolfson. I represent him. I've been
7 retained to represent him. Mr. Dunleavy was appointed by the
8 Court at our last appearance pursuant to Rule 250 of the
9 Supreme Court rules to be co-counsel. We are ready to proceed
10 with arraignment.

11 THE COURT: Okay.

12 Would you state your name?

13 THE DEFENDANT: Michael Rippo.

14 THE COURT: What's your age?

15 THE DEFENDANT: Twenty-seven.

16 THE COURT: What is the extent of your formal
17 education?

18 THE DEFENDANT: Eleventh grade.

19 THE COURT: Do you understand, read and write
20 the English language?

21 THE DEFENDANT: Yes.

22 THE COURT: Do you have a copy of the
23 indictment?

24 THE DEFENDANT: Yes.

25 THE COURT: Do you waive the reading of that

DONNA J. MCCORD CCR #337 455-3047

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1 indictment or do you want it read to you?
2 THE DEFENDANT: I waive the reading.
3 THE COURT: Have you discussed the charges
4 contained in that indictment with your attorneys?
5 THE DEFENDANT: Yes, I have.
6 THE COURT: You understand them?
7 THE DEFENDANT: Yes.
8 THE COURT: Are you prepared to enter pleas
9 at this time?
10 THE DEFENDANT: Yes.
11 THE COURT: What's your plea to Count I,
12 murder?
13 THE DEFENDANT: Not guilty.
14 THE COURT: What is your plea to Count II,
15 murder?
16 THE DEFENDANT: Not guilty.
17 THE COURT: Count III, robbery?
18 THE DEFENDANT: Not guilty.
19 THE COURT: Count IV, possession of stolen
20 vehicle?
21 THE DEFENDANT: Not guilty.
22 THE COURT: Count V, possession of credit
23 card without cardholder's consent?
24 THE DEFENDANT: Not guilty.
25 THE COURT: Count VI, unauthorized signing of

1 a credit card transaction document?

2 THE DEFENDANT: Not guilty.

3 THE COURT: You have a right to a trial
4 within 60 days. Do you wish to invoke that right or waive
5 that right?

6 THE DEFENDANT: I waive that right.

7 THE COURT: Okay. We'll set this matter for
8 trial in due course.

9 MR. WOLFSON: Judge, we had the opportunity
10 to speak to your clerk before court for scheduling as well as
11 the District Attorney. We would ask for a setting in
12 February. I have trials scheduled through the end of the
13 year. This case will probably be a minimum of seven to ten
14 working days.

15 THE COURT: Okay. Is the State agreeable to
16 a February date?

17 MS. LOWRY: It was my understanding, your
18 Honor, that February would be the due course and in fact we
19 would need at least ten days set aside for this trial.

20 THE COURT: Okay. We'll set it down in
21 February.

22 THE CLERK: February 8th, 10:00 a.m.,
23 calendar call February 5th, 9:00 a.m.

24 THE COURT: Are there any other matters to be
25 heard at this time?

DONNA J. MCCORD CCR #337 455-3047

1110

MR. WOLFSON: Yes, I believe so, Judge.

First of all regarding the writ of habeas corpus, I received the transcript from the Grand Jury proceeding and Mr. Dunleavy was provided with a copy. You have it as well. Normally the 21 days should start from today. I'm going to ask for an extension of time to file the writ. I start an in-custody murder trial a week from today in Judge Foley's court. It's going for sure. I'm going to be preparing for that this week. That case is five to eight working days. Mr. Dunleavy is going to be out of the jurisdiction from --

MR. DUNLEAVY: August 2nd through the 8th.

MR. WOLFSON: So what I would ask the Judge is with those reasons along with the fact that it is a fairly long transcript with what I consider to be sophisticated legal issues, I would ask you that we be allowed to file a writ of habeas corpus within 60 days from today.

THE COURT: Any objection?

MS. LOWRY: No, your Honor.

THE COURT: Okay. That will be the order. You are to file the writ on or before -- give me a date.

THE CLERK: September 21st, 9:00 a.m.

MR. WOLFSON: Finally, Judge, at this time pursuant to the local rules I would move for discovery.

THE COURT: Okay. Discovery would be provided by the District Attorney's office.

DONNA J. MCCORD CCR #337 455-3047

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1 MR. WOLFSON: Thank you, Judge.

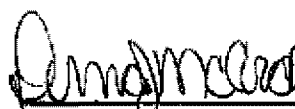
2 MS. LOWRY: Your Honor, I would ask for
3 reciprocal.

4 THE COURT: Reciprocal discovery will be
5 granted.

6 (Proceedings concluded.)

7 --oOo--

8 ATTEST: Full, true, and accurate transcript of
9 proceedings.

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12 DONNA J. MCCORD
13 CCR No. 337
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DONNA J. MCCORD CCR #337 455-3047

1112

1 REX BELL
 District Attorney
 2 Nevada Bar #001799
 200 S. Third Street
 3 Las Vegas, Nevada 89155
 (702) 455-4711
 4 Attorney for Plaintiff
 THE STATE OF NEVADA

-FILED IN OPEN COURT-

September 14, 1992
 CORETTA BOWMAN, CLERK

By *[Signature]* Deputy

DISTRICT COURT
 CLARK COUNTY, NEVADA

10 THE STATE OF NEVADA,
 11 Plaintiff,
 12 vs.
 13 MICHAEL DAMON RIPPO,
 14 ID#0619119
 15 Defendant.

CASE NO. C106784
 DEPT. NO. IV
 DOCKET NO. C

ORDER TO PRODUCE HANDWRITING/HANDPRINTING EXEMPLAR

17 Upon Motion of the STATE OF NEVADA, Plaintiff, by and through
 18 the Clark County District Attorney, and Notice to Defendant above
 19 named by and through Defendant's Counsel, STEVEN WOLFSON, Esquire
 20 and PHILIP H. DUNLEAVY, Esquire, and good cause appearing therefor,

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IT IS HEREBY ORDERED that the Defendant in the above-entitled matter, MICHAEL DAMON RIPPO, provide a handwriting/handprinting exemplar to the Las Vegas Metropolitan Police Department.

DATED this 14th day of September, 1992.


DISTRICT JUDGE

REX BELL
District Attorney
Nevada Bar #001799
Nevada Bar #000102

BY 
WILLIAM HEHN
Deputy District Attorney

da

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Latitia Bowman
CLERK

1 PHILIP H. DUNLEAVY, ESQ.
State Bar No. 000598
2 1000 South Third Street, Ste. E
Las Vegas, Nevada 89101
3 (702) 383-0607
4 Attorney for Defendant

DISTRICT COURT
CLARK COUNTY, NEVADA

9 STATE OF NEVADA,
10 Plaintiff,
11 vs.
12 MICHAEL DAMON RIPPO,
13 Defendant.

CASE NO: C106784
DEPT. NO: IV
DOCKET NO: C

10-28-92

MOTION OF DEFENDANT FOR DISCOVERY AND
TO INSPECT ALL EVIDENCE FAVORABLE TO HIM

16 COMES NOW the Defendant, MICHAEL DAMON RIPPO, by and through
17 his court appointed attorney of record, PHILIP H. DUNLEAVY, ESQ.,
18 and moves this Court for an Order requiring the Plaintiff to
19 reveal, produce and permit the Defendant to inspect and copy all
20 information, and material favorable to a defense of this cause
21 (including all books, papers, records, documents and objects and
22 all facts or information of whatever source or form in the
23 possession of, or known to, the Plaintiff or any of its agents),
24 which material and information are or may become of benefit to the
25 Defendant, either on the merits of the case or on the question of
26 credibility of witnesses.

27 Further, Defendant requests the Court to enter an Order
28 requiring the Plaintiff to furnish Defendant with (1) a list of

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1 witnesses known to the Plaintiff to have knowledge of this cause
 2 favorable to the defense, and a copy of the statement of any such
 3 witness; (2) a list of persons interviewed by the Plaintiff
 4 relating to this case but who will not be called as witnesses by
 5 the Plaintiff, (3) all documents relating to the investigation of
 6 this case or of this Defendant which will not be introduced into
 7 evidence by the Plaintiff, (4) a list of all former or present
 8 agents of Plaintiff who have participated to any extent in the
 9 investigation and prosecution of this case who will not be called
 10 as Plaintiff's witnesses, (5) copies of all crime lab reports or
 11 memos, (6) copies of all autopsy toxicology reports; and (7)
 12 copies of all photographs including, but not limited to, video
 13 tapes, crime scene photos, autopsy photos and forensic photos.

14 Defendant states that said inspection, information and
 15 statements are necessary for the preparation of his defense and for
 16 the Defendant to obtain a fair trial and constitutional due process
 17 of law.

18 DATED this 13th day of October, 1992.


19
 20 
 21 PHILIP H. DUNLEAVY, ESQ.
 22 State Bar No. 000598
 23 Attorney for Defendant
 24 1000 South Third Street, Ste. E
 25 Las Vegas, Nevada 89101
 26
 27
 28

NOTICE OF MOTION

TO: The DISTRICT ATTORNEY of CLARK COUNTY, NEVADA:

PLEASE TAKE NOTICE that the undersigned shall bring a MOTION OF DEFENDANT FOR DISCOVERY AND TO INSPECT ALL EVIDENCE FAVORABLE TO HIM on for hearing in Department No. IV, of the above-entitled Court, on the 28 day of October, 1992, at the hour of 9 a.m., of said day, or as soon thereafter as counsel may be heard.

DATED this 13th day of October, 1992.


 PHILIP H. DUNLEAVY, ESQ.
 State Bar No. 000598
 Attorney for Defendant
 1000 South Third Street, Ste. E
 Las Vegas, Nevada 89101

POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR DISCOVERY

NRS 174.235 states as follows:

Defendant's statements or confessions; reports of examination and tests. Upon motion of a defendant the court may order the District Attorney to permit the defendant to inspect and copy or photograph any relevant:

(1) Written or recorded statements or confessions made by the defendant, or copies thereof, within the possession, custody or control of the state, the existence of which is known, or by the experience of due diligence may become known to the District Attorney; and

(2) Results or reports of physical or mental examinations, and of scientific tests or experiments made in connection with the particular case, or copies thereof, within the possession, custody or control of the state, the existence of which is known, or by the exercise of due diligence may become known to the District Attorney.

NRS 174.245 states as follows:

Other books, papers, documents, tangible objects or places. Upon motion of a defendant the court may order the District Attorney to permit the defendant to inspect and copy or photograph books, papers, documents, tangible objects, buildings or places, or copies or portions thereof, which are within the possession, custody or control of the state, upon a showing of materiality to the preparation of his defense and that the request is reasonable. Except as provided in subsection 2 of NRS 174.235 and NRS 174.087, this section does not authorize the discovery or inspection of reports, memoranda or other internal state documents made by state agents in connection with the investigation or prosecution of this case, or of statements made by witnesses or prospective state witnesses (other than the defendant) to agent of the state.

The prosecution has the duty to disclose to the defendant all exculpatory evidence. Brady v. Maryland, 373 U.S. 220, 83 SCR 1194 (1963); see also, Giles v. Maryland, 183 A.2d 359, appeal dismissed, 382 U.S. 767, 83 S.Ct. 1102; Dennis v. U.S., 384 U.S. 855, 86 S.Ct. 1840 (1966).

A defendant has the right to any prior statements given by witnesses who testify against him. Mears v. State, 83 Nev. 3, 422

1 P.2d 230 (1967). The better practice is to furnish the defendant
 2 with the statements prior to trial to avoid delay and disruption.
 3 Mears v. State, supra.

4 The trial court has wide discretion in permitting discovery.
 5 See, Marshall v. District Court, 80 Nev. 478, 396 P.2d 680 (1964);
 6 Marshall v. District Court, 79 Nev. 280, 382 P.2d 214 (1963).

7 Respectfully submitted this 27th day of October, 1992.

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 9
 10 Philip H. Dunleavy, Esq.
 11 State Bar No. 000598
 12 Attorney for Defendant
 13 1000 South Third Street, Ste. E
 14 Las Vegas, Nevada 89101
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RECEIPT OF COPY of the above and foregoing MOTION OF DEFENDANT
FOR DISCOVERY AND TO INSPECT ALL EVIDENCE FAVORABLE TO HIM is
hereby acknowledged this _____ day of October, 1992.

REX BELL, DISTRICT ATTORNEY

By _____
Deputy District Attorney
200 South Third Street, 7th Floor
Las Vegas, Nevada 89155

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REX BELL
DISTRICT ATTORNEY
Nevada Bar #001799
200 S. Third Street
Las Vegas, Nevada 89155
(702) 455-4711
Attorney for Plaintiff
THE STATE OF NEVADA

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Loretta J. ...
CLERK

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA)

Plaintiff,)

vs.)

MICHAEL DAMON RIPPO,)

Defendant.)

CASE NO. C106784X
DEPT. NO. IV
DOCKET NO. C

STATE'S OPPOSITION TO DEFENDANT'S
MOTION FOR DISCOVERY AND
STATE'S MOTION FOR RECIPROCAL
DISCOVERY

DATE OF HEARING: 10/28/92
TIME OF HEARING: 9:00 A.M.

COMES NOW, the State of Nevada, by REX BELL, District Attorney, through TERESA LOWRY, Deputy District Attorney, and files this Opposition to defendant's Motion for Discovery.

This Opposition is made and based upon all the papers and pleadings on file herein, the attached points and authorities in

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1 support hereof, and oral argument at the time of hearing, if deemed
2 necessary by this Honorable Court.

3 DATED this 27th day of October, 1992.

4 Respectfully submitted,
5 REX BELL
6 DISTRICT ATTORNEY
7 Nevada Bar #001799
8 Nevada Bar #003901
9 BY: *Teresa Lowry*
10 TERESA LOWRY
11 Deputy District Attorney

12 POINTS AND AUTHORITIES

13 A. DISCOVERY REQUIRED BY STATUTE.

14 The State at the outset would submit that there is no
15 objection to compliance with the provisions and requirements
16 outlined in the criminal discovery statutes. CF. NRS 174.235 - NRS
17 174.295, inclusive.

18 B. DISCLOSURE REQUIRED BY BRADY V. MARYLAND.

19 The State recognizes and accepts its continuing disclosure
20 obligations as defined in Brady v. Maryland, 83 S.Ct. 1194 (1963).

21 The State declines to provide any other items of discovery.
22 The Nevada Supreme Court in Franklin v. District Court, 85 Nev.
23 401, 402 - 03 (1969) stated:

24 Before the enactment of our new criminal code
25 the legislature had not concerned itself with
26 criminal cases reposed within the discretion
27 of the trial court [citation]... The new
28 criminal code does deal with criminal
discovery [NRS 174.235 - 174.295] and those
provisions represent the legislative intent
with respect to the scope of allowable
pretrial discovery and are not lightly to be
disregarded.

The defendant further cited Mears v. State, 83 Nev. 3 (1967).

1 The Mears decision pre-dates the Nevada legislatures passage of
2 specific statutes dealing with the scope of pretrial discovery in
3 criminal cases. A view of Nevada Statutory scheme in this area
4 makes it readily apparent what is and what is not included within
5 the ambit of proper discovery.

6 STATE'S MOTION FOR RECIPROCAL DISCOVERY

7 The Court is respectfully directed to NRS 174.255, as follows:

8 NRS 174.255. Discovery by the State. If the
9 court grants relief sought by the defendant
10 under subsection 2 of NRS 174.235 or under NRS
11 174.245 it may, upon motion of the State,
12 condition its order by requiring that the
13 defendant to permit the State to inspect and
14 copy or photograph scientific or tangible
15 object, or copies or portions thereof, which
16 the defendant intends to produce at trial and
17 which are in his possession, custody or
18 control, upon a showing of materiality to the
19 preparation of the State's case and that the
20 request is reasonable. Except as to
21 scientific or medical reports, this section
22 does not authorize the discovery or inspection
23 of reports, memorandums or other internal
24 defense documents made by the defendant, or by
25 State or defense witnesses or by prospective
26 State or defense witnesses, to the defendant,
27 his agents or attorneys.

19 Pursuant to the dictates of this statute, the State would
20 respectfully request reciprocal discovery rights. The State
21 requests no more than the statute allows. It is suggested that any
22 items the defendant intends to produce at trial must necessarily
23 meet the evidentiary standard of materiality and relevance. That
24 being so, said evidence must necessarily be material to the
25 preparation of the State's case.

26 It is clear from a reading of the above discussed authorities
27 that the States request that motions presented conform to the
28 permissible and specific scope of discovery provided by statute

1 law. Therefore, any discovery ordered by this Court be requested
2 to be no broader.

3 DATED this 27th day of October, 1992.

4 Respectfully submitted,

5 REX BELL
6 DISTRICT ATTORNEY
7 Nevada Bar #001799
8 Nevada Bar #003901

9 BY: Teresa Lowry
10 TERESA LOWRY
11 Deputy District Attorney

12 RECEIPT OF COPY

13 RECEIPT OF COPY of the above and foregoing is hereby
14 acknowledged this 27th day of October, 1992.

15 PHILIP DUNLEAVY, ESQ.
16 ATTORNEY FOR DEFENDANT

STEVE WOLFSON, ESQ.
ATTORNEY FOR DEFENDANT

17 BY: Philip Dunleavy
18 /1000 South Third Street, #E
19 Las Vegas, NV 89101

20 BY: Steven B. Wolfson
21 302 East Carson, #400
22 Las Vegas, Nevada 89101

23
24 lk

FILED

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Loretta Doonan
CLERK

1 REX BELL
2 DISTRICT ATTORNEY
3 Nevada Bar #001799
4 200 S. Third Street
5 Las Vegas, Nevada 89155
6 (702) 455-4711
7 Attorney for Plaintiff
8 THE STATE OF NEVADA

DISTRICT COURT
CLARK COUNTY, NEVADA

9 In the Matter of the Application
10 of

11 MICHAEL DAMON RIPPO,
12 for a Writ of Habeas Corpus.

CASE NO. C106784X
DEPT. NO. IV
DOCKET NO. C

ORDER

DATE OF HEARING: 11/4/92
TIME OF HEARING: 9:00 a.m.

15 THIS MATTER having come on for hearing on the 4th day of
16 October, 1992, the Defendant not being present, represented by
17 STEVE WOLFSON, ESQ. and PHILIP DUNLEAVY, ESQ., the Respondent being
18 represented by REX BELL, District Attorney, through TERESA LOWRY,
19 Deputy District Attorney, and the Court having heard the arguments
20 of counsel, and good cause appearing therefore,

21 IT IS HEREBY ORDERED that the Defendant's Petition for Writ of

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1 Habeas Corpus, shall be, and it is, hereby denied and the writ is
2 hereby discharged.

3 DATED this 10th day of November, 1992.

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5 
DISTRICT JUDGE

6 REX BELL
7 District Attorney
8 Nevada Bar #001799
9 Nevada Bar #000102

10 BY: 
11 TERESA LOWRY
12 Deputy District Attorney

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CLERK

1 Philip H. Dunleavy, Esq.
2 Nevada Bar No. 000598
3 1405 S. Maryland Parkway
4 Las Vegas, NV 89104
5 (702) 383-0607

6 DISTRICT COURT
7 CLARK COUNTY, NEVADA

8 STATE OF NEVADA,

9 Plaintiff,

10 vs.

11 MICHAEL DAMON RIPPON,

12 Defendant.

13 CASE NO. C106784
14 DEPT. NO. IV
15 DOCKET NO. C

16 ORDER

17 IT IS HEREBY ORDERED, ADJUDGED AND DECREED, that good cause
18 appearing the State is to provide (1) a list of witnesses known
19 to the Plaintiff to have knowledge of this cause favorable to the
20 defense, and a copy of the statement of any such witness; (2) a
21 list of persons interviewed by the Plaintiff relating to this
22 case but who will not be called as witnesses by the Plaintiff;
23 (3) all documents relating to the investigation of this case or
24 of this Defendant which will not be introduced into evidence by
25 the Plaintiff; (4) a list of all former or present agents of
26 Plaintiff who have participated to any extent in the
27 investigation and prosecution of this case who will not be called
28 as Plaintiff's witnesses; (5) copies of all crime lab reports or
memos; (6) copies of all autopsy toxicology reports; and (7)
copies of all photographs including, but not limited to, video
tapes, crime scene photos, autopsy photos and forensic photos

1 along with all statutory and Brady material and with a continuing
2 obligation as to discovery.
3

4 DATED this 17 day of November, 1992.
5

6 ~~NATHANIEL J. REED~~
DISTRICT COURT JUDGE

7 Respectfully Submitted:
8

9 By *Philip H. Donleavy*
10 PHILIP H. DONLEAVY, ESQ.
11 1405 S. Maryland Parkway
Las Vegas, Nevada 89104
Attorney for Defendant
MICHAEL DAMON RIPPO
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1 REX BELL
 2 DISTRICT ATTORNEY
 3 Nevada Bar #001799
 4 200 S. Third Street
 5 Las Vegas, Nevada 89155
 6 (702) 455-4711
 7 Attorney for Plaintiff
 8 THE STATE OF NEVADA

9
 10 DISTRICT COURT
 11 CLARK COUNTY, NEVADA
 12

13	THE STATE OF NEVADA,)	
14)	
15	Plaintiff,)	
16)	
17	vs.	)	CASE NO. C106784
18)	
19	MICHAEL DAMON RIFPO,	)	DEPT. NO. IV
20	#0619119)	
21	Defendant.	)	DOCKET NO. C

22
 23 STATE'S MOTION TO EXPEDITE TRIAL DATE
 24 OR IN THE ALTERNATIVE TRANSFER CASE
 25 TO ANOTHER DEPARTMENT

26 DATE OF HEARING: 02/17/93
 27 TIME OF HEARING: 9:00 A.M.

28 COMES NOW, the State of Nevada, by REX BELL, District
 29 Attorney, through TERESA M. LOWRY, Deputy District Attorney, and
 30 files this Motion To Expedite The Trial Date Or In The Alternative
 31 To Transfer This Case To Another Department.

32 This Motion is made and based upon all the files, papers and
 33 pleadings on file herein, the Points and Authorities in support

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1 hereof, as well as oral argument at the time of hearing, if deemed
2 necessary by this Honorable Court.

3 DATED this 16th day of February, 1993.

4 Respectfully submitted,

5 REX BELL
6 DISTRICT ATTORNEY
7 Nevada Bar #001799
8 Nevada Bar #000102

9 BY *Teresa M. Lowry*
10 TERESA M. LOWRY
11 Deputy District Attorney

12 **POINTS AND AUTHORITIES**
13 **STATEMENT OF FACTS/PROCEDURAL HISTORY**

14 On February 20, 1992, the bodies of 25 year old Danise Lizzi
15 and 27 year old Lauri Jacobson were found in a closet in apartment
16 #31F at 3890 South Cambridge, Las Vegas, Nevada. Subsequent
17 autopsies by Dr. Sheldon Green determined the cause of death to be
18 strangulation.

19 on June 5, 1992, the Defendant was charged by way of an
20 Indictment with 2 counts of Murder, 1 count Robbery, 1 count
21 Possession of Credit Card Without Cardholder's Consent, and 1 count
22 Unauthorized Signing Of Credit Card Transaction Document.

23 On June 30, 1992, the State filed Notice Of Intent To Seek The
24 Death Penalty due to the following aggravating circumstances:

25 1). The murders were committed by a person under sentence of
26 imprisonment.

27 2). The murders were committed by a person who was previously
28 convicted of a felony involving the use or threat of violence to
another person.

3) The murders were committed while the person was engaged

1 in the commission of or an attempt to commit robbery.

2 4). The murders involved torture, or the mutilation of the
3 victim.

4 On July 20, 1992, in Department 4 of the Eighth Judicial
5 District Court a trial was set for February 8, 1993, with a
6 calendar call scheduled for February 5, 1993.

7 On February 5, 1993, Defense requested a continuance of the
8 trial due to Attorney Dunleavy's involvement in another capital
9 murder trial. The State did not oppose the request for
10 continuance. The court clerk advised at this time that there were
11 only two available times the trial could be scheduled, June, 1993,
12 and November, 1993. Defense advised they were unavailable in June.
13 The trial was re-set some 9 1/2 months later on November 22, 1993.

14 NRS 174.511 provides the State the right to trial within 60
15 days after arraignment. The State, upon demand, has the right to
16 a trial of the defendant within 60 days after his arraignment. The
17 Court may postpone the trial if:

18 1). It finds that more time is needed by the defendant to
19 prepare his defense; or

20 2). The number of other cases pending in the court prohibits
21 the acceptance of the case for trial within that time.

22 As supported by the affidavit of Teresa M. Lowry attached
23 hereto, the State submits that a trial set 9 1/2 months away causes
24 great prejudice to the State.

25 Based upon the foregoing, the State respectfully requests this
26 Honorable Court to expedite the trial date or in the alternative

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1 transfer the trial to another Department so that the trial may be
2 heard in a timely manner.

3 DATED this 16th day of February, 1993.

4

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Respectfully submitted,

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7

REX BELL
DISTRICT ATTORNEY
Nevada Bar #001799
Nevada Bar #000102

8

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10

BY Teresa M. Lowry
TERESA M. LOWRY
Deputy District Attorney

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AFFIDAVIT OF TERESA M. LOWRY
IN SUPPORT OF MOTION TO EXPEDITE OR IN THE
ALTERNATIVE TRANSFER CASE TO ANOTHER DEPARTMENT

STATE OF NEVADA)
)ss:
 COUNTY OF CLARK)

TERESA M. LOWRY, being first duly sworn, deposes and says:

1). That I am an attorney at law duly licensed to practice before the Courts in the State of Nevada, and am a Deputy District Attorney assigned to prosecute the case of State of Nevada v. Michael Damon Ripppo;

2). That the trial in this case has been continued 9 1/2 months until November 22, 1993, due to the court's crowded calendar.

3). That the trial is to be held approximately 21 months after the date of the crimes. This time delay causes undue hardship and prejudice to the State.

4). The State must subpoena approximately 30 witnesses for the prosecution of this case. Memories fade, witnesses move away and become unavailable. Some of the State's witnesses do not have substantial ties to the community and could become impossible to

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1 locate almost 2 years after the crimes were committed.

2 5). Further your Affiant sayeth not.

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8 SUBSCRIBED AND SWORN to before me

9 this 16th day of February, 1993.

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NOTARY PUBLIC

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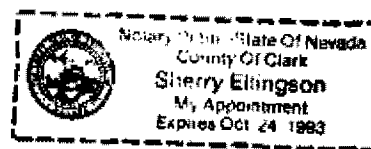
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Teresa M. Lowry
TERESA M. LOWRY
Deputy District Attorney



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CLERK

WOLFSON & GLASS
Steven B. Wolfson
Nevada State Bar No. 001565
Jacalyn Glass
Nevada State Bar No. 225
302 E. Carson Avenue, Suite 400
Las Vegas, Nevada 89101
(702) 385-7227
Attorney for defendant
MICHAEL DAMON RIPPO

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

MICHAEL DAMON RIPPO,

Defendant.

Case No. C106784
Dept. No. IV
Docket No. C

DEFENDANT'S MOTION TO
STRIKE AGGRAVATING
CIRCUMSTANCES NUMBERED 1
AND 2 AND FOR SPECIFICITY
AS TO AGGRAVATING
CIRCUMSTANCE NUMBER 4.

9-10-93

COMES NOW the Defendant, Michael Damon Rippo, by and through
his attorney, Steven B. Wolfson of the law firm Wolfson & Glass,
and hereby moves to strike aggravating circumstances numbered 1
and 2 and for specificity as to aggravating circumstance number 4.

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This Motion is based upon all of the papers and pleadings on file herein, the Memorandum of Points and Authorities attached hereto, and argument of counsel to be heard at the time of hearing.

Dated this the 20 day of August, 1993.

Respectfully submitted,

WOLFSON & GLASS

By: 

Steven B. Wolfson, Esq.
Nevada Bar #001565
302 E. Carson Avenue, Suite 400
Las Vegas, Nevada 89101
Attorney for Defendant

NOTICE OF MOTION

To: The District Attorney of Clark County, Nevada:

PLEASE TAKE NOTICE that the undersigned shall bring the above and foregoing DEFENDANT'S MOTION TO STRIKE AGGRAVATING CIRCUMSTANCES NUMBERED 1 AND 2 AND FOR SPECIFICITY AS TO AGGRAVATING CIRCUMSTANCE NUMBER 4 on for hearing in Department No. IV of the above-entitled Court, on the 10 day of Sept, 1993, at the hour of 9 a.m., of said day, or as soon thereafter as counsel may be heard.

Dated this the 20 day of August, 1993.

Respectfully submitted,

WOLFSON & GLASS

By: 

Steven B. Wolfson, Esq.
Nevada Bar #001565
302 E. Carson Avenue, Suite 400
Las Vegas, Nevada 89101
Attorney for Defendant

MEMORANDUM OF POINTS AND AUTHORITIES

STATEMENT OF FACTS

The prosecutor has filed with this Court a Notice of Intent to Seek Death Penalty in this matter. Such Notice lists the following four aggravating circumstances in support of her Notice:

1. The murders were committed by a person under sentence of imprisonment. NRS 200.033(1).

2. The murders were committed by a person who was previously convicted of a felony involving the use or threat of violence to another person. NRS 200.033(2).

3. The murders were committed while the person was engaged in the commission of or an attempt to commit robbery. NRS 200.033(4).

4. The murders involved torture, or the mutilation of the victim. NRS 200.033(8).

ARGUMENT

The Defendant moves to strike the first and second aggravating circumstances on the ground that the plea entered in the case utilized by the prosecutor to support those aggravating circumstances was illegal because the plea was not voluntary, and there was no factual basis for it.

NRS 174.035(1) provides in part:

That a court may not accept a plea of guilty without first addressing the defendant personally and determining that the plea is made voluntarily with understanding of the nature of the charge and the consequences of the plea...[or] unless it is satisfied that there is a factual basis for the plea.

The facts of Defendant's previous criminal case are as follows:

1 On January 18, 1982, the Defendant was arrested and eventually
2 charged with various offenses. At the time of his arrest,
3 Defendant was only sixteen years old. The Defendant was held in
4 Juvenile Hall, and assigned a public defender, Jerrold Courtney.
5 Mr. Courtney immediately convinced the Defendant to enter into a
6 plea agreement which required Defendant to plead guilty, as an
7 adult, to one count of burglary and one count of sexual assault.
8 The Defendant was eventually convicted, and sentenced to serve a
9 sentence of imprisonment. At the time the instant offense was
10 committed, the Defendant had been released on parole.

11 On March 25, 1982, the Defendant appeared before The Honorable
12 Addelliar D. Guy, Eighth Judicial District Court Judge, for the
13 purpose of entering his negotiated guilty plea. However, Judge Guy
14 quickly determined that the Defendant was not qualified to enter a
15 plea on the grounds that Mr. Courtney had not adequately explained
16 the plea and its consequences to the defendant.

17 Incredibly, Mr. Courtney asked Judge Guy to "just pass this a
18 few minutes so I could talk to him." Judge Guy responded with a
19 resounding "No. I am going to continue this, sir. This is serious
20 -- very serious." Although Mr. Courtney further protested by
21 claiming to have talked to the Defendant "for hours," Judge Guy
22 determined that the Defendant did not understand the consequences
23 of his plea and continued the arraignment. See Exhibit A, page 9,
24 lines 5 - 15.

25 Not only did the Defendant not understand those proceedings
26 but Judge Guy erred when he informed the Defendant that probation
27 was a sentence that the Court could impose. Exhibit A, page 5,
28 lines 19 - 21. The range of punishments established for sexual

1 assault do not include probation. NRS 200.366.

2 When a criminal offense is committed in which one may not
3 receive a term of probation then the trial court, before any such
4 plea of guilty is accepted, must so advise the defendant the
5 offense is not probationable. Meyer v. State, 95 Nev. 885, 603
6 P.2d 1066, 1067 (1979). See also Aswegan v. State, 101 Nev. 760,
7 710 P.2d 83 (1985) (Meyer reaffirmed).

8 In Meyer, supra, a case factually indistinguishable from the
9 instant case, the defendant pleaded guilty to a charge of sexual
10 assault and the Nevada Supreme Court held that the plea was fatally
11 defective because the record was devoid of any indication that the
12 defendant was informed that sexual assault was not a probationable
13 offense.

14 Unlike the Meyer Court, however, Judge Guy actually stated
15 that probation was an available punishment. It is clear that the
16 Defendant's guilty plea for sexual assault would not, and will not,
17 stand even the slightest scrutiny. Because of this glaring error,
18 Defendant's prior conviction for sexual assault cannot now be used
19 as an aggravating circumstance as the prosecutor seeks to take the
20 life of this Defendant.

21 On March 30, 1982, the Defendant returned to Judge Guy's Court
22 to continue his arraignment. Apparently, Mr. Courtney had by now
23 explained the process and the Defendant's legal rights to him.
24 However, the canvass by Judge Guy was once again flawed. Judge
25 Guy's finding as to whether or not there was a factual basis to the
26 Defendant's plea of guilty to the charge of sexual assault is
27 completely inadequate because the defendant clearly, and
28 unequivocally denied an essential element to sexual assault.

1 To be guilty of sexual assault one must engage in either
2 cunnilingus, fellatio, or penetration. NRS 200.364(2).

3 The Defendant was charged with, and plead guilty to, sexual
4 assault by penetration. Judge Guy's canvas relative to the
5 elements of the offense are instructive:

6 THE COURT; Did you actually insert your
7 penis inside of her vagina?

8 THE DEFENDANT: No.

9 Exhibit B, page 6, lines 25 - 27.

10 At that point, Mr. Courtney, who was so anxious to have this
11 young man enter his negotiated plea, proceeded to answer for the
12 Defendant by informing Judge Guy that the alleged victim stated
13 that there was very slight penetration but that the Defendant
14 simply did not remember the penetration. Exhibit B, pages 6 and 7.

15 Judge Guy then asked the defendant whether or not he was
16 willing to take the word of the victim that slight penetration had
17 occurred. To the almost certain relief of his own attorney, the
18 Defendant answered that he would. Exhibit B, lines 5 - 8.

19 The Defendant was unequivocal in his denial of penetration.
20 (Neither cunnilingus nor fellatio was an issue.) Therefore, Judge
21 Guy erred when he accepted Defendants plea of guilty to the charge
22 of sexual assault. It is simply not enough for the Defendant to
23 decide not to deny the allegations of the alleged victim. The
24 Defendant must understand each of the elements of the charge
25 against him, and he must admit to having committed them. Highby v.
26 Sheriff, 86 Nev. 774, 476 P.2d 959 (1970). See also Hanley v.
27 State, 97 Nev. 130, 624 P.2d 1387 (1981).
28

In Breshahan v. People, the Court stated:

The fact that defendant was 16 years of age at the time does not affect his competency but it does impose upon the trial court a duty of great care and caution in accepting a guilty plea.

487 P.2d 551, 553-54 (Colo. 1971)

In the instant case, the Defendant was but sixteen years old when the alleged offense of sexual assault occurred, and only one month into his seventeenth year when he entered his plea of guilty. That fact should carry great weight with this court as it ponders whether or not the Defendant's plea was voluntary, or whether the factual basis for the plea was adequate.

Even if the Court were to determine that the Defendant adequately admitted his penetration of the alleged victim in the sexual assault case by his agreement to not contest the claims made by her, the law is clear as to the Court's duty to advise a Defendant wishing to enter a plea of guilty to a charge of sexual assault that he is not eligible for parole.

In the instant case, not only did the Court fail to so advise the Defendant, the Court actually informed the Defendant that the Court could impose probation. Further, the young age of the defendant, coupled with the extreme urgency the public defender exhibited in rushing this case to a negotiated conclusion, works in favor of a finding that the Defendant's plea was not voluntary. Therefore, the prosecutor should not be allowed to utilize the Defendant's plea, or the subsequent fact that the Defendant had served a prison sentence and was on parole, as aggravating factors in this Case should the unfortunate happen, and the Defendant be convicted.

For all of the reasons stated above, the Defendant requests that the Court not allow the prosecutor to rely upon the Defendant's 1982 conviction for sexual assault to support aggravating circumstances numbers one and two, and for an order requiring the prosecutor to be more specific as to aggravating circumstance number four.

Dated this the 20 day of August, 1993.

Respectfully submitted,

WOLFSON & GLASS

By:

Steven B. Wolfson, Esq.
Nevada Bar #001565
302 E. Carson Avenue, Suite 400
Las Vegas, Nevada 89101
Attorney for Defendant

FILED

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Scott L. Dorman
CLERK.

1 WOLFSON & GLASS
2 Steven B. Wolfson
3 Nevada State Bar No. 001565
4 Jacalyn Glass
5 Nevada State Bar No. 225
6 302 E. Carson Avenue, Suite 400
7 Las Vegas, Nevada 89101
8 (702) 385-7227
9 Attorney for defendant
10 MICHAEL DAMON RIPPO

8 DISTRICT COURT
9 CLARK COUNTY, NEVADA

10 THE STATE OF NEVADA,
11 Plaintiff,
12 vs.
13 MICHAEL DAMON RIPPO,
14 Defendant.

Case No. C106784
Dept. No. IV
Docket No. C

MOTION IN LIMINE TO EXCLUDE
TESTIMONY OF DEFENDANT'S
PRIOR BAD ACTS.

9-10-93

16 COMES NOW the Defendant, Michael Damon Rippo, by and through
17 his attorney, Steven B. Wolfson of the law firm Wolfson & Glass,
18 and moves this Court for an Order that the prosecutor and the
19 state's witness are not to refer to the fact that the Defendant
20 has been convicted, or investigated, for other crimes.

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CMC

This Motion is based upon all of the papers and pleadings on file herein, the Memorandum of Points and Authorities attached hereto, and argument of counsel to be heard at the time of hearing.

Dated this the 20 day of August, 1993.

Respectfully submitted,

WOLFSON & GLASS

By: 

Steven B. Wolfson, Esq.
Nevada Bar #001565
302 E. Carson Avenue, Suite 400
Las Vegas, Nevada 89101
Attorney for Defendant

NOTICE OF MOTION

To: The District Attorney of Clark County, Nevada:

PLEASE TAKE NOTICE that the undersigned shall bring the above and foregoing MOTION IN LIMINE TO EXCLUDE TESTIMONY OF DEFENDANT'S PRIOR BAD ACTS on for hearing in Department No. IV, of the above-entitled Court, on the 10 day of August, 1993, at the hour of 9 a.m., of said day, or as soon thereafter as counsel may be heard.

Dated this the 20 day of August, 1993.

Respectfully submitted,

WOLFSON & GLASS

By: 

Steven B. Wolfson, Esq.
Nevada Bar #001565
302 E. Carson Avenue, Suite 400
Las Vegas, Nevada 89101
Attorney for Defendant

MEMORANDUM OF POINTS AND AUTHORITIES

STATEMENT OF FACTS

The Defendant was convicted of burglary and sexual assault over ten years ago, and has served a sentence of imprisonment in punishment of those offenses. At the time the prior offenses were committed the Defendant was but sixteen years old. There may be additional investigations, charges, arrests, or convictions unbeknownst to counsel; however, the Defendant's prior conviction was for offenses completely unrelated to the present alleged offenses in time or place.

ISSUE PRESENTED

DOES THE DEFENDANT'S PRIOR BAD ACT(S) FALL WITHIN ANY OF THE RECOGNIZED STATUTORY EXCEPTIONS?

The provision specifically governing the admissibility of evidence of "prior bad acts" is NRS 48.045(2). It provides:

Evidence of other crimes, wrongs or acts is not admissible to prove the character of a person in order to show that he acted in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

It has been held that the principle embodied in this provision applies to mere questioning regarding "prior bad acts." Longoria v. State, 99 Nev. 754, 670 P.2d 939 (1983). "Great latitude would be allowed attorneys in cross-examining witnesses, but their questions should not contain insinuations that the defendant is guilty of some other crime." Id. at 755.

In the case at bar, the Defendant is charged with two counts of open murder, one count of robbery, one count of possession of a

1 stolen vehicle, one count of possession of a credit card without
2 cardholder's consent, and one count of unauthorized signing of
3 credit card transaction document. The Defendant's prior arrest and
4 conviction do not fall within the purview of any of the recognized
5 statutory exceptions. Therefore, they are not admissible as "prior
6 bad acts."

7 The general rule observed in all criminal proceedings is that
8 a defendant on trial charged with a particular crime may not be
9 proven guilty thereof by evidence showing that he has committed
10 other crimes. Rhodes v. Commonwealth, 54 S.W.2d 170 (Ky. 1989);
11 Fed.R.Evid. 404. Likewise, it is improper for counsel to allude,
12 in the course of argument, to the fact that the accused has
13 committed other crimes. Rhodes, supra, reiterates the basic rule
14 that prior arrests not resulting in felony convictions are excluded
15 from evidence because of their lack of probative value in
16 determining credibility or character.

17 Finally, the Supreme Court has similarly held that a
18 prosecutor is obligated to see that justice is done. It is as much
19 his duty to refrain from methods calculated to produce wrongful
20 convictions as it is to use every legitimate means to bring about
21 a just one. Garner v. State, 78 Nev. 366, 374 P.2d 525 (19672);
22 Collier v. State, 101 Nev. 473, 705 P.2d 1126 (1985). Although it
23 is proper for a prosecutor to outline his theory of the case and to
24 propose those facts he intends to prove in opening statements, it
25 is the prosecutor's duty to give such facts fairly and refrain from
26 stating facts he will not be permitted to prove.

CONCLUSION

For all of the reasons stated above, the Defendant requests an Order prohibiting the prosecutor from making any mention of the Defendants "prior bad acts".

Dated this the 20 day of August, 1993.

Respectfully submitted,

WOLFSON & GLASS

By: 

Steven B. Wolfson, Esq.
Nevada Bar #001565
302 E. Carson Avenue, Suite 400
Las Vegas, Nevada 89101
Attorney for Defendant

FILED

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Spencer Brown
CLERK

1 WOLFSON & GLASS
2 Steven B. Wolfson
3 Nevada State Bar No. 001565
4 Jacalyn Glass
5 Nevada State Bar No. 225
6 302 E. Carson Avenue, Suite 400
7 Las Vegas, Nevada 89101
8 (702) 385-7227
9 Attorney for defendant
10 MICHAEL DAMON RIPPO

DISTRICT COURT

CLARK COUNTY, NEVADA

10 THE STATE OF NEVADA,
11 Plaintiff,
12 vs.
13 MICHAEL DAMON RIPPO,
14 Defendant.

Case No. C106784
Dept. No. IV
Docket No. C

MOTION TO EXCLUDE
AUTOPSY AND CRIME
SCENE PHOTOGRAPHS.

9-10-93

15 COMES NOW the Defendant, Michael Damon Rippo, by and through
16 his attorney, Steven B. Wolfson of the law firm Wolfson & Glass,
17 and moves this Court for an Order denying the prosecution the
18 right to use, as evidence, certain pictures taken of the deceased,
19 during the autopsy proceedings and the investigation at the time
20 of the trial of the matter above captioned.

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This Motion is based upon all of the papers and pleadings on file herein, the Memorandum of Points and Authorities attached hereto, and argument of counsel to be heard at the time of hearing.

Dated this the 20 day of August, 1993.

Respectfully submitted,

WOLFSON & GLASS

By: 

Steven B. Wolfson, Esq.
Nevada Bar #001565
302 E. Carson Avenue, Suite 400
Las Vegas, Nevada 89101
Attorney for Defendant

NOTICE OF MOTION

To: The District Attorney of Clark County, Nevada:

PLEASE TAKE NOTICE that the undersigned shall bring the above and foregoing MOTION TO EXCLUDE CRIME SCENE AND AUTOPSY PHOTOGRAPHS on for hearing in Department No. 14, of the above-entitled Court, on the 10 day of August, 1993, at the hour of 9 a.m., of said day, or as soon thereafter as counsel may be heard.

Dated this the 20 day of August, 1993.

Respectfully submitted,

WOLFSON & GLASS

By: 

Steven B. Wolfson, Esq.
Nevada Bar #001565
302 E. Carson Avenue, Suite 400
Las Vegas, Nevada 89101
Attorney for Defendant

MEMORANDUM OF POINTS AND AUTHORITIES

The Defendant objects to the use of any and all autopsy photographs which are not necessary to show the manner or means of death, as well as investigatory pictures, which are gruesome.

As grounds therefore, the Defendant states as follows:

1. The pictures referenced herein are highly inflammatory.

2. They have little or no probative value in that they cannot serve to eliminate any issues which will be before the jury.

3. There are several other ways in which the prosecutor can enter evidence of the cause of death, without utilizing the pictures of the deceased's body.

4. That the post mortem autopsy is hideous and has absolutely no relationship to the issues to be presented in this case.

5. The prejudicial impact of these pictures so outweighs the probative value as to make their use a violation of due process as guaranteed by the Fourteenth Amendment applicable under the United States Constitution, Article I, Section 8, of the Nevada Constitution and NRS 48.035, which states as follows:

1. Although relevant, evidence is not admissible if its probative value is substantially outweighed by the danger of unfair prejudice, of confusion of the issues or of misleading the jury,

2. Although relevant, evidence may be excluded if its probative value is substantially outweighed by considerations of undue delay, waste of time or needless presentation of cumulative evidence.

3. Evidence of another act or crime which is so closely related to an act in controversy or a crime charged that an ordinary witness

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cannot describe the act in controversy or the crime charged without referring to the other act or crime shall not be excluded, but at the request of an interested party, a cautionary instruction shall be given explaining the reason for its admission.


CONCLUSION

For all of the reasons stated above, the Defendant requests an Order prohibiting the prosecutor from introducing into evidence said prejudicial photographs at the time of trial.

Dated this the 20 day of August, 1993.

Respectfully submitted,

WOLFSON & GLASS

By: 
Steven B. Wolfson Esq.
Nevada Bar #001565
302 E. Carson Avenue, Suite 400
Las Vegas, Nevada 89101
Attorney for Defendant

FILED

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State Document
CLERK

1 PHILIP H. DUNLEAVY, ESQ.
State Bar No. 000598
2 1405 S. Maryland Parkway
Las Vegas, Nevada 89104
3 (702) 383-0607
Attorney for Defendant
4 MICHAEL RIPPO

DISTRICT COURT
CLARK COUNTY, NEVADA

8 STATE OF NEVADA,)
9)
Plaintiff,)
10)
vs.)
11)
MICHAEL DAMON RIPPO,)
12)
Defendant.)
13)

CASE NO: C106784
DEPT. NO: IV
DOCKET NO: C

MOTION FOR DISCOVERY OF INSTITUTIONAL RECORDS
AND FILES NECESSARY TO RIPPO'S DEFENSE

Hearing Date: 9-10-93
Hearing Time:

17 COMES NOW, the Defendant, MICHAEL RIPPO, by and through his
18 attorney of record, PHILIP H. DUNLEAVY, ESQ., and respectfully
19 files the within Motion.

20 This Motion is made and based upon the attached Points and
21 Authorities, all of the papers and pleadings on file herein, and

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1 upon such other and further evidence as may be adduced at the
2 hearing on this matter.

3 DATED this 24 day of August, 1993.

4 Respectfully Submitted,

5
6 By Philip H. Dunleavy
7 PHILIP H. DUNLEAVY, ESQ.
8 1405 S. Maryland Parkway
9 Las Vegas, Nevada 89104
Attorney for Defendant
MICHAEL RIPPO

10 NOTICE OF MOTION

11 TO: STATE OF NEVADA, Plaintiff; and

12 TO: BILL HEHN, Deputy District Attorney,

13 YOU AND EACH OF YOU WILL PLEASE TAKE NOTICE that the
14 undersigned will bring the foregoing Motion on for hearing before
15 the above-entitled Court on the 10 day of Sept, 1993, at the
16 hour of 9 a.m. in Department IV, or as soon thereafter as counsel
17 may be heard.

18 DATED this 24 day of August, 1993.

19 Respectfully Submitted,

20
21 By Philip H. Dunleavy
22 PHILIP H. DUNLEAVY, ESQ.
23 1405 S. Maryland Parkway
24 Las Vegas, Nevada 89104
25 Attorney for Defendant
26 MICHAEL RIPPO
27
28

1 "Document" also includes the original of any document in whatever
2 form or medium it may exist, and all copies of each such document
3 bearing, on any sheet or side thereof, any marks (including by way
4 of non-limiting example: initials, stamped indicia, or any comment
5 or notation of any character) not a part of the original text or
6 any reproduction thereof. Examples of documents that must be
7 produced include, but are not limited to, working papers,
8 preliminary, intermediate or final drafts, correspondence,
9 transcripts, analyses, studies, reports, surveys, memoranda,
10 charts, notes, records, (of any sort) of meetings, diaries,
11 telegrams, telexes, faxes, reports of telephone or oral
12 conversations, desk calendars, appointment books, audio or video
13 tape recordings, photographs, films, microfilm, microfiche,
14 computer tapes, disks or printouts, press releases, and all other
15 writings or recordings of every kind.

16 3. "Relating to" means discussing, describing, referring to,
17 reflecting, containing, analyzing, reporting on, commenting on,
18 evidencing, constituting, setting forth, considering, recommending,
19 concerning, relevant to, bearing on, or pertaining to, in whole or
20 in part.

21 4. "All" means "any and all."

22 5. "Any" means "any and all."

23 6. "Each" means "any and all."

24 7. "And" means "and/or."

25 8. "Or" means "and/or."

26 9. "Records" means "document" as outlined in paragraph 2
27 above.

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1 II. INSTRUCTIONS

2 1. References to the singular shall be construed to include
3 the plural, and references to the plural shall be construed to
4 include the singular.

5 2. All verbs shall be construed to include all tenses.

6 3. If any document or portion of any document covered by
7 these requests is withheld from production, please furnish a list
8 identifying each such document or portion:

9 (a) the reason(s) for withholding;

10 (b) the date of the document;

11 (c) identification by name, job, title, and the last known
12 business and home address of each person who wrote, drafted or
13 assisted in the preparation of the document;

14 (d) identification by name, job, title, and the last known
15 business and home address of each person who received or has had
16 custody of the document or copies thereof;

17 (e) a brief description of the nature and subject matter of
18 the document;

19 (f) the length of the document;

20 (g) a statement of the facts that constitute the basis of any
21 claim of privilege, work product or other grounds for
22 nondisclosure; and

23 (h) the paragraph(s) of these requests to which the document
24 is responsive.

25 Each request is continuing in nature and additional responsive
26 documents that are obtained or discovered prior to the evidentiary
27 hearing should be produced as soon as they are obtained or
28

1 discovered.

2 5. If any document responsive to a request was, but is no
3 longer in your possession, custody or control, state whether such
4 document; (a) is missing or lost, (b) has been destroyed, (c) has
5 been transferred to others, or (d) has otherwise been disposed of.
6 For each instance, explain the circumstances surrounding such
7 disposition, identify each person who authorized such disposition,
8 indicate the dates of such authorization and disposition, and
9 identify the document and each person or entity that may have
10 custody or control of such document or any copy thereof.

11 6. If information responsive to a request appears on one or
12 more pages of a multi-page document, produce the entire document.

13 7. Individual responses of more than one page should be
14 stapled or otherwise separately bound, with each page consecutively
15 numbered.

16 III. DOCUMENTS TO BE PRODUCED

17 The Defendant respectfully request that this Court order that
18 he be granted leave to inspect, copy and photograph the following
19 documents:

20 1. All records generated or maintained by the Clark County
21 Detention Center pertaining to the Defendant, including but not
22 limited to all disciplinary, medical, psychological, psychiatric,
23 or mental health records;

24 2. All disciplinary, medical, psychological, psychiatric, or
25 mental health records pertaining to the Defendant, generated or
26 maintained by any medical provider at the Clark County Detention
27 Center;

28

POINTS AND AUTHORITIES

Pursuant to NRS 174.235 et seq., Article 1 of the Nevada Constitution and the Sixth, Eighth and Fourteenth Amendments to the United States Constitution, Defendant RIPPO respectfully moves this Court to order the production of the materials specified below.

The accused requests that this Court order the individuals named below to produce for inspection and copying the documents specified herein, wherever such documents may be located.

I. DEFINITIONS

Unless the context indicates otherwise, the terms listed below are defined and used herein as follows:

1. The "state" means any and all of the following organizations; the County of Clark, the Clark County District Attorney's Office, the Las Vegas Metropolitan Police Department, and the Nevada Highway Patrol, the State of Nevada Department of Corrections, the Nevada Parole Board and/or any psychiatric or psychological assistance and/or reports provided to them. The "state also means: (a) all present and former agents, officers, investigators, consultants, employees, and staff members of organizations or officials or on whose behalf such person or entity has acted in the past; or (b) any other person or entity otherwise subject to the control of any of these organizations or officials.

2. "Document" or "documents" means any writing, record or data in any form or medium, whether or not privileged, that is in the state's actual or constructive possession, custody or control. As used herein, a document is deemed to be within the state's control if the state has a right to obtain a copy of it.

1 3. All records pertaining to the Defendant generated or
2 maintained by the Nevada Department of Prisons, including but not
3 limited to RIPPO'S complete "C" and "I" files, disciplinary
4 records, medical records, psychological, psychiatric or mental
5 health records, and any other records generated or maintained by
6 any prison, medical facility or any other entity associated with
7 the Nevada Department of Prisons;

8 4. All records generated or maintained by the Clark county
9 Juvenile Court Services Department, including but not limited to
10 all Juvenile Court records pertaining to RIPPO;

11 5. All records generated or maintained by the Nevada
12 Department of Human Resources, and any divisions thereof, and
13 pertaining to RIPPO;

14 6. All records pertaining to RIPPO and generated or
15 maintained by any state mental health facility in Nevada;

16 7. All documents generated or maintained by the Nevada
17 Department of Parole and Probation pertaining to RIPPO;

18 8. All documents generated or maintained by the Nevada
19 Parole Board pertaining to RIPPO;

20 9. Any and all medical, psychological, psychiatric, or
21 mental health records of any kind generated or maintained by any
22 hospital, psychological, psychiatric, or mental health facility of
23 any kind as well as any such records generated or maintained by any
24 physician, psychologist, psychiatrist, medical or mental health
25 provider of any kind, which are in the possession or constructive
26 possession of the County of Clark or the State of Nevada.

27 This Motion is made under the authority of Brady v. Maryland,

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1 373 U.S. 83 (1963), Napue v. Illinois, 360 U.S. 264 (1959), Giles
 2 v. Maryland, 386 U.S. 66 (1967), Davis v. Alaska, 415 U.S. 308
 3 (1974), United States v. Pitt, 717 F.2d 1334 (11 Cir. 1983), as
 4 well as the constitutional and statutory provisions cited in the
 5 opening paragraph.

6 Specifically, NRS 174.425 provides, in pertinent part, that:

7 Upon motion of a defendant the court
 8 may order the district attorney to permit
 9 the defendant to inspect and copy photograph
 10 books, papers, documents, tangible objects,
 11 buildings or places, or copies of portions
 12 thereof, which are within the possession,
 13 custody or control of the state, upon a
 14 showing of materiality to the preparation
 15 of his defense and that the request is
 16 reasonable.

17 The instant prosecution seeks the execution of the Defendant.
 18 Therefore, all information pertaining to mitigation of the charges
 19 or sentence is "material" to the preparation of the defense. The
 20 United State Supreme Court has repeatedly held that all relevant
 21 mitigating evidence should be presented to the jury. "A jury must
 22 be allowed to consider on the basis of all relevant evidence not
 23 only why a death sentence should be imposed, but also why it should
 24 not be imposed." Jurek v. Texas, 428 U.S. 262, 271, 49 L.Ed.2d
 25 929, 96 S.Ct. 2950 (1976). See also, Lockett v. Ohio, 438 U.S.
 26 586, 57 L.Ed.2d 973, 98 S.Ct. 2954 (1978); Blystone v.
 27 Pennsylvania, 494 U.S. 299, 108 L.Ed.2d 255, 110 S.Ct. 1078 (1990).

28 The information requested herein is "material" to the
 presentation of a mitigation defense during the penalty phase,
 should one be required. Therefore, the Defendant respectfully


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1 requests that this Court order the production of the foregoing
 2 materials and grant leave to depose any individuals associated with
 3 the foregoing materials.

4 DATED this 24 day of August, 1993.

5 Respectfully Submitted by,

6
 7 
 8 PHILIP H. DONLEAVY, ESQ.
 9 1405 S. Maryland Parkway
 10 Las Vegas, Nevada 89104
 11 Attorney for Defendant
 12 MICHAEL RIPPO
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Adrian C.
28

1 PHILIP H. DUNLEAVY, ESQ.
2 State Bar No. 000598
3 1405 S. Maryland Parkway
4 Las Vegas, Nevada 89104
5 (702) 383-0607
6 Attorney for Defendant
7 MICHAEL DAMON RIPPO

SEP 2 3 28 PM '93

Loretta L. Luman
CLERK

DISTRICT COURT
CLARK COUNTY, NEVADA

8 STATE OF NEVADA,
9
10 Plaintiff,
11 vs.
12 MICHAEL DAMON RIPPO,
13 Defendant.

CASE NO: C106784
DEPT. NO: IV
DOCKET NO: C

NOTICE OF ALIBI

15 COMES NOW, the Defendant, MICHAEL DAMON RIPPO, by and through
16 his attorney, PHILIP H. DUNLEAVY, ESQ., and notifies this Court of
17 his intention to offer evidence of an ALIBI.

18 The Defendant advises the District Attorney and the Court that
19 the alibi witness will be ALICE STARR, who will testify that the
20 Defendant called her from a separate phone at the time of the
21 crime.

22 The location of Ms. Alice Starr is known to the State as she

23 / / /
24 / / /
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1 is a listed witness on the information in this action and the State
2 already has her statement.

3 DATED this 2nd day of September, 1993.

4 Respectfully Submitted,

5
6 By 
7 PHILIP A. DUNLEAVY, ESQ.
8 1405 S. Maryland Parkway
9 Las Vegas, Nevada 89104
10 Attorney for Defendant
11 MICHAEL DAMON RIPPO
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RECEIPT OF COPY

I HEREBY CERTIFY that on this ____ day of September, 1993,
that I received a true and correct copy of the foregoing NOTICE OF
ALIBI addressed to:

By _____
District Attorney's Ofc.
200 S. Third Street
Las Vegas, Nevada 89155

1 FRANKIE SUE DEL PAPA
Attorney General
2 By: JANE A. STECKBECK
Deputy Attorney General
3 Nevada Bar No. 3820
Criminal Justice Division
4 401 South Third Street, #500
Las Vegas, NV 89101
5 (702) 486-3420
Attorneys for Defendant
6 STATE OF NEVADA

7
8 DISTRICT COURT
9 DISTRICT OF NEVADA

10 * * *

11 THE STATE OF NEVADA,
12 Plaintiff,

13 vs.

14 MICHAEL DAMON RIPPO,
ID #0619119

15 Defendant.
16

CASE NO. C 106784
DEPT. NO. IV
DOCKET NO. C

17 MOTION TO QUASH AND FOR A
18 PROTECTIVE ORDER ON AN ORDER SHORTENING TIME

19 Date of Hearing: _____

Time of Hearing: _____

20 The State of Nevada Department of Parole and Probation,
21 through its legal counsel, Frankie Sue Del Papa, Attorney General
22 of the State of Nevada, through Jane A. Steckbeck, Deputy
23 Attorney General, moves this Court for an order quashing the
24 subpoena duces tecum commanding Susan McCurdy, custodian of
25 records of the State of Nevada Department of Parole and Probation
26 to appear on September 13, 1993 in District Court, Department IV.
27 This motion is made and based upon the provisions of Nevada Rules
28 of Civil Procedure Rules 45(b), and NRS 213.1098. This motion is

ATTORNEY
GENERAL'S
OFFICE
NEVADA
603-6877

NR1PPO-07060-S0802198

1 further supported by the following Memorandum of Points and
2 Authorities.

3 DATED this 9th day of September, 1993.

4 FRANKIE SUE DEL PAPA
5 Attorney General

6 By: Jane A. Stackback

7 Jane A. Stackback
8 Nevada Bar No. 3820
9 Deputy Attorney General
10 Criminal Justice Division
11 401 So. Third Street, #500
12 Las Vegas, NV 89101
13 (702) 486-3420

14 NOTICE OF MOTION

15 TO: Defendant MICHAEL RIPPO;

16 TO: Steven B. Wolfson, Attorney for Defendant

17 PLEASE TAKE NOTICE that the undersigned will bring the above
18 and foregoing Motion on for hearing before the court at the
19 Courtroom of above-entitled court on the ___ day of September,
20 1993, at ___ o'clock __.m. of said day, or as soon thereafter as
21 the same can be heard.

22 DATED this 9th day of September, 1993.

23 FRANKIE SUE DEL PAPA
24 Attorney General

25 By: Jane A. Stackback

26 Jane A. Stackback
27 Nevada Bar No. 3820
28 Deputy Attorney General
Criminal Justice Division
401 So. Third Street, #500
Las Vegas, NV 89101
(702) 486-3420

ORDER SHORTENING TIME

Good cause appearing therefor,

IT IS HEREBY ORDERED that the time for hearing of the MOTION TO QUASH AND FOR A PROTECTIVE ORDER be, and the same will be heard on the ____ day September, 1993 at the hour of ____ in Department IV.

DISTRICT COURT JUDGE

AFFIDAVIT OF JANE A. STECKBECK

STATE OF NEVADA)
COUNTY OF CLARK) ss.

JANE A. STECKBECK, being duly sworn, deposes and states as follows:

1. I am an attorney licensed to practice in the State of Nevada.

2. I am employed by the Nevada State Attorney General's Office and am the Deputy Attorney General assigned to represent the Department of Parole and Probation in cases that arise in the southern portion of the state.

3. On September 1, 1993, I received a telefaxed copy of a Subpoena Duces Tecum in Criminal Case No. C106784 directed to Susan McCurdy, Custodian of Records, Department of Parole and Probation, in Carson City, Nevada, commanding her appearance on September 13, 1993, in Department IV of the District Court, Clark County.

1 4. The subpoena also commanded the production of any and
2 all records maintained by the Department of Parole and Probation
3 regarding its supervision of Michael Damon Rippe, Id #0619119.

4 5. Immediately upon receiving the subpoena, I called Steven
5 Wolfson, the attorney who issued the subpoena and I explained to
6 his secretary that Parole and Probation records are protected by
7 a specific Nevada statute mandating confidentiality. I was told
8 that Mr. Wolfson was not at his office and would be unavailable
9 until Tuesday, September 7, 1993. I spoke to his office again on
10 September 2, 1993 in an effort to resolve this matter.

11 6. On September 3, 1993, I left the state on business on
12 short notice and only returned in the late afternoon of September
13 8, 1993.

14 7. Given the little time remaining before September 13,
15 1993, and the unavailability of both counsel to discuss this
16 matter, I believe that an Order Shortening Time is necessary to
17 resolve this issue.

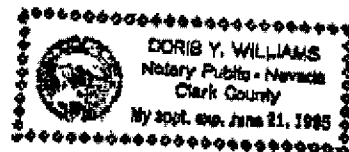
18 Further, your affiant sayeth naught.

19 DATED this 9th day of September, 1993.

20
21 
22 JANE A. STECKBECK

23 SUBSCRIBED and SWORN to before me
24 this 9th day of September, 1993.

25 
26 NOTARY PUBLIC



MEMORANDUM OF POINTS AND AUTHORITIES

I.

STATEMENT OF FACTS

On September 1, 1993, Susan McCurdy, Secretary of the Parole Board in Carson City, Nevada, was served with a subpoena duces tecum commanding her appearance at the courtroom of Department IV of the District Court, Clark County, Nevada on September 13, 1993 at 10:00 a.m. The subpoena duces tecum further commands the production of "any and all records of parolee Michael Damon Rippe regarding supervision, etc., C57388." State law absolutely prohibits disclosure of parole and probation files and all information contained in those files. The Department of Parole and Probation and Ms. McCurdy therefore respectfully requests that this Honorable Court quash the subpoena duces tecum and issue a protective order.

Specifically, NRS 213.1098 mandates that information obtained by parole and probation officers and employees of the Department is privileged and shall not be disclosed. NRS 213.1098 states:

All information obtained in the discharge of official duty by a parole and probation officer or employee of the board shall be privileged and shall not be disclosed directly or indirectly to anyone other than the board, the judge, district attorney or others entitled to receive such information, unless necessary to perform the duties of the department.

The public policy underlying the need for confidentiality is strong. Information contained in parole and probation files is extremely sensitive and by law is to be released only in the restricted circumstances set forth in NRS 176.156(2) and

1 213.1098. Roberts v. State Univ. of Nevada System, 104 Nev. 33,
2 752 P.2d 221 (1988). The language of this statute is absolutely
3 clear on its face. The protection is broad and does not carve
4 out an exception for subpoenas that can be issued unilaterally
5 for a party's own purposes. Courts may not go beyond the
6 language of the statute when the statute is clear and
7 unambiguous. For the Department of Parole and Probation to
8 comply with this subpoena, it would have to violate state law.
9 As such, the Department respectfully requests that this Motion to
10 Quash be granted. Under these circumstances, an order quashing
11 the subpoena duces tecum is appropriate.

12 DATED this 9th day of September, 1993.

13 FRANKIE SUE DEL PAPA
14 Attorney General

15 By: 

16 Jana A. Stackback
17 Nevada Bar No. 3820
18 Deputy Attorney General
19 Criminal Justice Division
20 401 So. Third Street, #500
21 Las Vegas, NV 89101
22 (702) 486-3420

23 RECEIPT OF COPY

24 Receipt of copy of the foregoing Motion and Notice of Motion
25 to Quash on an Order shortening Time is hereby acknowledged this
26 _____ day of September, 1993.

27 Steven B. Wolfson, Esq.
28 WOLFSON & GLASS
302 E. Carson Avenue, Suite 400
Las Vegas, NV 89101

ORIGINAL

1 CASE NO. C106784
2 DEPT. NO. IV
3 DOCKET NO. C
4
5
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FILED

SEP 15 11 56 AM '93

Loetta L. Luman
CLERK

DISTRICT COURT
CLARK COUNTY, NEVADA

* * * * *

10 THE STATE OF NEVADA,)
11)
11 PLAINTIFF,)
12)
12 -VS-)
13)
13 MICHAEL DAMON RIPPO,)
14)
14 DEFENDANT.)
15
16

17 REPORTER'S TRANSCRIPT OF HEARING IN RE
18 MOTION TO CONTINUE JURY TRIAL
19

20 BEFORE THE HONORABLE GERARD BONGIOVANNI, DISTRICT JUDGE
21 FRIDAY, SEPTEMBER 10, 1993
22
23

24 REPORTED BY: RENEE SILVAGGIO, C.S.R. NO. 122
25 TELEPHONE (702) 878-9153

CE33

295

1 APPEARANCES:

2 FOR THE STATE:

JOHN P. LUKENS, ESQUIRE
CHIEF DEPUTY DISTRICT ATTORNEY

3

-AND-

4

TERESA M. LOWRY, ESQUIRE
DEPUTY DISTRICT ATTORNEY
200 SOUTH THIRD STREET
SEVENTH FLOOR
LAS VEGAS, NEVADA 89101

5

6

FOR THE DEFENDANT:

STEVEN WOLFSON, ESQUIRE
WOLFSON AND GLASS
302 EAST CARSON AVENUE
SUITE 400
LAS VEGAS, NEVADA 89101

7

8

9

-AND-

10

11

PHILIP H. DUNLEAVY, ESQUIRE
NATHANIEL REED LAW OFFICES
1405 SOUTH MARYLAND PARKWAY
LAS VEGAS, NEVADA 89101

12

13

FOR THE ATTORNEY
GENERAL:

JANE A. STECKBECK, ESQUIRE
DEPUTY ATTORNEY GENERAL
401 SOUTH THIRD STREET
SUITE 500
LAS VEGAS, NEVADA 89101

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* * * * *

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1 LAS VEGAS, NEVADA; FRIDAY, SEPTEMBER 10, 1993.

2 9:00 A.M. CALENDAR

3 * * * * *

4 THE COURT: THE STATE OF NEVADA VERSUS
5 MICHAEL RIPPO.

6 MS. LOWRY: YOUR HONOR, COURT'S INDULGENCE.

7 MR. LUKENS IS ON THIS CASE AS WELL.

8 THE COURT: OKAY.

9 (BRIEF PAUSE IN PROCEEDINGS.)

10 THE COURT: WILL YOU STATE YOUR APPEARANCES
11 FOR THE RECORD.

12 MS. STECKBECK: JANE STECKBECK FOR THE
13 ATTORNEY GENERAL APPEARING ON BEHALF OF THE DEPARTMENT
14 OF PAROLE AND PROBATION AND THE BOARD OF PAROLE
15 COMMISSIONERS ON A SEPARATE MOTION.

16 MR. DUNLEAVY: PHILIP DUNLEAVY AND STEVE
17 WOLFSON FOR MR. RIPPO.

18 THE COURT: JOHN LUKENS AND TERESA LOWRY FOR
19 THE STATE.

20 MR. WOLFSON: CORRECT, JUDGE. OUT OF
21 RESPECT FOR THE DEPUTY ATTORNEY GENERAL, SHE FILED A
22 MOTION TO QUASH A SUBPOENA THAT I HAD ISSUED. I BELIEVE
23 THAT ON AN ORDER SHORTENING TIME IT WAS SET FOR THIS
24 MORNING.

25 WHAT I SPOKE TO THE DEPUTY ATTORNEY

1 GENERAL ABOUT IS A ONE-WEEK CONTINUANCE ON HER MOTION.
2 I JUST RECEIVED IT YESTERDAY, AND I'D LIKE TO LOOK AT
3 HER POINTS AND AUTHORITIES.

4 AS TO THAT PARTICULAR MOTION ONLY,
5 WE'D BE ASKING YOUR HONOR TO PASS IT OVER A WEEK.

6 SHE HAS MOVED TO QUASH MY SUBPOENA.
7 IT'S NOT ON YOUR CALENDAR. I DON'T THINK IT MADE IT TO
8 YOUR CALENDAR."

9 THE LAW CLERK: I ADDED IT ON.

10 MR. WOLFSON: PARDON ME?

11 THE COURT: THIS MATTER IS SUPPOSED TO START
12 TRIAL MONDAY, ISN'T IT?

13 MR. WOLFSON: CORRECT.

14 THE COURT: WELL, ARE YOU GOING TO -- HOW
15 ARE YOU GOING TO GET A WEEK'S CONTINUANCE ON THIS?

16 MR. WOLFSON: A WEEK'S CONTINUANCE OF --

17 THE COURT: ON HER MOTION. IT WILL BE PAST
18 THE TRIAL DATE.

19 MR. WOLFSON: NO, I BELIEVE THE COURT HAS
20 ALREADY BEEN INFORMED OF THE PARTIES' INTENTIONS FOR A
21 CONTINUANCE OF THE TRIAL.

22 THE COURT: THE COURT DIDN'T GRANT YOUR
23 MOTION FOR THE CONTINUANCE YET.

24 MR. WOLFSON: THAT'S TRUE.

25 WELL, THEN, LET'S PUT HER MOTION TO

1 THE SIDE FOR A MONTH.

2 MS. STECKBECK: YEAH, I CAN WAIT.

3 MR. WOLFSON: WITH RESPECT TO HER, RATHER
4 THAN HAVE HER --

5 MS. STECKBECK: THAT'S FINE.

6 THE COURT: ALL RIGHT. FINE. LET'S TALK
7 ABOUT THE CONTINUANCE FIRST.

8 MR. WOLFSON: VERY WELL.

9 THE COURT: THIS COURT HAS SET ASIDE
10 APPROXIMATELY TWO WEEKS TO HEAR THIS TRIAL, AND ALL OF A
11 SUDDEN THIS MATTER WANTS TO BE CONTINUED. I'D LIKE TO
12 HEAR ABOUT IT.

13 MR. WOLFSON: ABSOLUTELY.

14 JUDGE, ON TUESDAY MORNING JOHN LUKENS
15 APPROACHED ME AND INFORMED ME OF HIS INTENTIONS OF
16 CALLING ADDITIONAL WITNESSES AT THE TRIAL.

17 SPECIFICALLY, JOHN INFORMED ME OF HIS
18 INTENTION OF CALLING AN EXPERT WITNESS ON THE ISSUE OF A
19 STUN GUN; ADDITIONALLY, AN EXPERT WITNESS ON THE ISSUE
20 OF DRUGS; ADDITIONALLY, I BELIEVE HE SAID ABOUT THREE
21 PERIPHERAL WITNESSES WHO WOULD GIVE TESTIMONY IN GENERAL
22 NATURE ABOUT THE CONDUCT ALLEGEDLY OF THE DEFENDANT AND
23 DIANA HUNT DURING THE TIME OF OR SHORTLY THERE AFTER THE
24 ALLEGED CRIME.

25 I TOLD MR. LUKENS -- THIS IS TUESDAY

1 MORNING, THREE DAYS AGO, JUDGE. I TOLD MR. LUKENS THAT
2 WITH THAT IN MIND AND THE ADDITIONAL FACTOR THAT DEPUTY
3 DISTRICT ATTORNEY BILL HEHN, IN A MEETING ABOUT THREE
4 WEEKS AGO, GAVE ME DISCOVERY ON THREE ADDITIONAL NOT YET
5 PROVIDED, QUOTE, JAILHOUSE SNITCHES, UNQUOTE, THAT
6 COMBINING THAT FACT WITH THE FACT OF MR. LUKENS'
7 INTENTIONS, THAT I WOULD NEED TO SPEAK TO MR. DUNLEAVY
8 AND MY CLIENT ABOUT A POTENTIAL CONTINUANCE BECAUSE I
9 CAN'T GO TO TRIAL AFTER MR. LUKENS TELLS ME OF HIS
10 INTENTIONS.

11 THE COURT: YOU WEREN'T AWARE OF THESE
12 WITNESSES PRIOR?

13 MR. WOLFSON: ABSOLUTELY NOT.

14 MR. DUNLEAVY: WE WERE NOT AWARE THAT THEY
15 EXISTED, AND WE STILL DON'T KNOW THE NAMES OF THE
16 EXPERTS OR WHAT THEIR EXPERTS WILL BE TESTIFYING TO.

17 MR. WOLFSON: SO WHAT I DID WAS I CALLED
18 MR. DUNLEAVY, DISCUSSED IT WITH HIM; I WENT AND SAW MY
19 CLIENT AT 12:30 P.M. TUESDAY AFTERNOON, DISCUSSED IT
20 WITH HIM.

21 ADDITIONALLY, MR. LUKENS, I BELIEVE
22 THE SAME DAY, CALLED ME AND TOLD ME OF HIS INTENTIONS TO
23 CALL YET ANOTHER, QUOTE, JAILHOUSE SNITCH, UNQUOTE.

24 IN ADDITION TO EVERYTHING ELSE, HE HAD
25 ALREADY TOLD ME THAT HE WOULD NOT IDENTIFY WHO THIS

1 PERSON WAS BUT WOULD, UNDER CERTAIN CONDITIONS, IDENTIFY
2 THIS NEW, QUOTE, JAILHOUSE SNITCH IN THE FUTURE.

3 WITH THIS IN MIND, JUDGE, I CAN'T GO
4 TO TRIAL ON MONDAY, AFTER BEING NOTIFIED SIX DAYS BEFORE
5 TRIAL OF TWO ADDITIONAL EXPERT WITNESSES ON THE PART OF
6 THE STATE AND AT LEAST APPROXIMATELY FOUR ADDITIONAL
7 WITNESSES WHO I'VE NEVER RECEIVED DISCOVERY FROM.

8 I DON'T KNOW THAT THE DISTRICT
9 ATTORNEY HAS YET EVEN TAKEN FORMAL INTERVIEWS OF THE
10 QUOTE, PERIPHERAL WITNESSES.

11 SO WITH THAT IN MIND, I TALKED TO
12 MICHAEL ABOUT THAT AND I COMMUNICATED OUR POSITION BACK
13 TO MR. LUKENS THAT SAME DAY, I BELIEVE, AND TOLD HIM
14 THAT I CAN'T BE PREPARED TO GO TO TRIAL ON MONDAY.

15 MR. LUKENS SAID THAT HE UNDERSTOOD
16 THAT AND THAT HE WOULD NOT OPPOSE MY ORAL REQUEST AND
17 MOTION AT THE TIME OF CALENDAR CALL FOR A CONTINUANCE,
18 AND THAT IS WHAT I AM NOW MOVING FOR.

19 THE COURT: WHY DIDN'T YOU ASK MR. LUKENS
20 WHY HE WAITED THIS LATE DATE TO GET THESE EXPERT
21 WITNESSES?

22 MR. LUKENS: WELL, FIRST OF ALL, MR.
23 WOLFSON'S FACTUAL REPRESENTATIONS WITH REFERENCE TO WHAT
24 I INFORMED HIM, WHEN I INFORMED HIM OF THAT, ARE
25 ABSOLUTELY CORRECT.

1 AND I CANNOT ANSWER THE PARTICULAR
2 QUESTION THAT THE COURT HAS POSED AS TO WHY THE STATE
3 HAS WAITED UNTIL SUCH A LATE DATE WITH REFERENCE TO
4 THOSE. ALL I CAN SAY IS THAT --

5 THE COURT: I MEAN, ON NUMEROUS OCCASIONS
6 YOU'VE COME IN THIS COURT COMPLAINING: WHY ISN'T THIS
7 CASE GOING TO TRIAL? WHY ISN'T THAT CASE COMING TO
8 TRIAL? AND NOW, ALL OF A SUDDEN, YOU'RE NOT PREPARED TO
9 GO TO TRIAL ON THIS CASE. THIS HAS BEEN SET FOR TRIAL --
10 THIS HAS BEEN GOING ON FOR OVER A YEAR, THIS CASE.

11 MR. LUKENS: YOUR HONOR, THAT'S NOT QUITE
12 THE POSTURE IN THAT -- TO SAY THAT WE'RE NOT READY TO GO
13 TO TRIAL IS --

14 THE COURT: WELL, YOU'RE READY, BUT YOU
15 HAVEN'T -- NOW YOU'RE COMING UP WITH THESE NEW WITNESSES
16 AND YOU PUT THEM IN THIS SITUATION. WHY DIDN'T YOU HAVE
17 THESE WITNESSES READY TO GO THREE MONTHS AGO SO THEY
18 COULD HAVE BEEN PROVIDED THE DISCOVERY, YOU KNOW, WHEN
19 THIS COURT DATE WAS SET, IN FEBRUARY.

20 MR. LUKENS: THAT'S A CORRECT STATEMENT AND
21 I --

22 THE COURT: THIS IS AFFECTING MANY PEOPLE'S
23 LIVES AND THE COURT DOES NOT LIKE TO CONTINUE THESE
24 MATTERS.

25 MR. LUKENS: I UNDERSTAND.

1 THE COURT: I SET ASIDE TWO WEEKS FOR THIS
2 TRIAL, AND NOW IT'S GOING TO HAVE TO BE CONTINUED.

3 I JUST THINK YOU COULD HAVE BEEN
4 PREPARED WITH THIS MONTHS AGO WITH THESE EXPERT
5 WITNESSES AND GIVEN THEM DISCOVERY. WHY WASN'T THAT
6 DONE BEFORE?

7 MR. LUKENS: I WAS -- THE ONLY ANSWER I CAN --
8 I CAN GIVE YOU IS THAT DIFFERENT LAWYERS TRY CASES IN
9 DIFFERENT WAYS. I WAS NOT THE TRIAL LAWYER ON THIS CASE
10 DURING THE TIME FRAME THAT THE COURT IS POINTING OUT.

11 THE COURT: WELL, I DON'T WANT TO HEAR YOU
12 COME IN HERE COMPLAINING AGAIN ABOUT THIS COURT'S
13 CALENDAR AND WHY I HAVE TO CONTINUE A CASE THAT I DON'T
14 HAVE TO AND YOU SHOULD UNDERSTAND THAT THINGS HAPPEN.

15 MR. LUKENS: I UNDERSTAND THAT, JUDGE, AND I
16 HAVE --

17 THE COURT: YOU PUT ON NUMEROUS SHOWS IN
18 THIS COURT IN RECENT PAST.

19 HAVE YOU AGREED TO A CONTINUANCE DATE
20 IN THIS MATTER?

21 MR. WOLFSON: YOU MEAN A SPECIFIC DATE?

22 THE COURT: YES.

23 MR. WOLFSON: YES, WE TOOK THE LIBERTY, MR.
24 LUKENS AND --

25 THE COURT: DID WE HAVE ONE MURDER TRIAL

1 THAT WAS GOING TO GO OFF?

2 THE LAW CLERK: THEY CAN'T BE READY IN THAT
3 TIME, SO WITH THE DATE OF FEBRUARY 11TH FOR CALENDAR
4 CALL, FEBRUARY 14TH FOR TRIAL.

5 THE COURT: ALL RIGHT. WE WILL VACATE THE
6 TRIAL DATE, SET THIS OVER FOR FEBRUARY 14TH AT
7 10:00 A.M. FOR TRIAL, WITH CALENDAR CALL FEBRUARY 11TH,
8 1994.

9 IN REGARDS TO ALL THESE OTHER MOTIONS,
10 DO YOU WANT THOSE CONTINUED, TOO?

11 MR. WOLFSON: YOUR INDULGENCE.

12 (WHEREUPON, SOTTO VOCE
13 AT THIS TIME.)

14 MR. WOLFSON: HOW ABOUT IF WE TAKE THEM OFF
15 CALENDAR AND THEN I WILL PUT THEM ON --

16 THE COURT: OKAY. TAKE THOSE OFF CALENDAR.
17 DO YOU WANT THE ATTORNEY GENERAL'S MOTION ON IN ONE
18 WEEK?

19 MR. DUNLEAVY: YES.

20 MR. WOLFSON: YOUR INDULGENCE FOR ONE
21 MOMENT.

22 (WHEREUPON, SOTTO VOCE
23 AT THIS TIME.)

24 MR. WOLFSON: JUDGE, MR. LUKENS AND I HAVE
25 ALREADY TALKED ABOUT THIS AS WELL. I DON'T KNOW HOW

1 MANY MOTIONS THERE ARE, 10, 12 MOTIONS, I DON'T KNOW IF
2 THE STATE IS GOING TO FILE MOTIONS, BUT WE'RE GOING TO
3 GET TOGETHER TO TRY AND SEE IF WE CAN RESOLVE SOME OF
4 THE MORE PERFUNCTORY MOTIONS, IF YOU WILL, TO SAVE THE
5 COURT TIME. SO WE WILL WORK TOGETHER ON THOSE.

6 AS FAR AS THE ATTORNEY GENERAL'S
7 MOTIONS, YES, ONE WEEK, PLEASE.

8 THE COURT: ALL RIGHT. ONE WEEK ON THE
9 MOTION.

10 THE CLERK: THAT WOULD BE NORMALLY --

11 MR. WOLFSON: ONE WEEK TO 10 DAYS, WHATEVER
12 IS CONVENIENT.

13 THE CLERK: OKAY. SEPTEMBER 20TH AT
14 9:00 A.M.

15 (WHEREUPON, THE HEARING
16 WAS CONCLUDED.)

17
18 * * * * *

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REPORTER'S CERTIFICATE

STATE OF NEVADA)
: SS
COUNTY OF CLARK)

I, RENEE SILVAGGIO, CERTIFIED SHORTHAND REPORTER,
DO HEREBY CERTIFY THAT I TOOK DOWN IN STENOGRAPH ALL
PROCEEDINGS ~~HAD IN THE~~ BEFORE-ENTITLED MATTER AT THE
TIME AND PLACE INDICATED, AND THAT THEREAFTER SAID
STENOGRAPH NOTES WERE TRANSCRIBED INTO TYPEWRITING AT
AND UNDER MY SUPERVISION.

THAT THE FOREGOING TRANSCRIPT CONSTITUTES A
FULL, TRUE AND ACCURATE RECORD OF THE PROCEEDINGS
HAD.

IN WITNESS WHEREOF, I HAVE HEREUNTO SUBSCRIBED
MY NAME AND AFFIXED MY OFFICIAL SEAL OF OFFICE AT
LAS VEGAS, NEVADA, THIS 15 DAY OF September,
1993.


RENEE SILVAGGIO, C.S. & NO. 122

ORIGINAL

FILED

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OCT 15 10 23 AM '93

Luella Dorman
CLERK

1 CASE NO. C106784
2 DEPT. NO. IV
3 DOCKET NO. C

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5
6 DISTRICT COURT
7 CLARK COUNTY, NEVADA

8 * * * * *

9
10 THE STATE OF NEVADA,
11 PLAINTIFF,
12 -VS-
13 MICHAEL DAMON RIPPO,
14 DEFENDANTS.

15
16
17 REPORTER'S TRANSCRIPT

18 OF HEARING

19 IN RE: ATTORNEY GENERAL'S MOTION TO QUASH
20 AND FOR PROTECTIVE ORDER.

21 BEFORE THE HONORABLE GERARD BONGIOVANNI, DISTRICT JUDGE

22 MONDAY, SEPTEMBER 20, 1993

23
24 REPORTED BY: RENEE SILVAGGIO, C.S.R. NO. 122
TELEPHONE (702) 878-9153

25 APPEARANCES:

CE

307

MRIPPO-07029-00299

JA000316

1 APPEARANCES:

2 FOR THE STATE:

C. DAN BOWMAN, ESQUIRE
CHIEF DEPUTY DISTRICT ATTORNEY
200 SOUTH THIRD STREET
SEVENTH FLOOR
LAS VEGAS, NEVADA 89101

5 FOR THE DEFENDANT:

STEVEN WOLFSON, ESQUIRE
WOLFSON AND GLASS
302 EAST CARSON AVENUE
SUITE 400
LAS VEGAS, NEVADA 89101

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1 LAS VEGAS, NEVADA; MONDAY, SEPTEMBER 20, 1993.

2 9:00 A.M. CALENDAR

3 * * * * *

4 THE COURT: THE STATE OF NEVADA VERSUS MICHAEL
5 DAMON RIPPO.

6 MR. WOLFSON: GOOD MORNING, JUDGE. STEVE
7 WOLFSON APPEARING.

8 JUDGE, MR. RIPPO IS NOT HERE. I
9 UNDERSTOOD HE'S GOING TO BE HOUSED IN THE DETENTION
10 CENTER. THE CORRECTIONAL OFFICER TELLS ME THAT HE'S ON
11 HIS WAY. I THINK WE CAN HANDLE THIS WITHOUT HIM BEING
12 HERE.

13 THIS IS THE STATE'S MOTION TO QUASH THE
14 SUBPOENA. I BELIEVE THAT THE ATTORNEY GENERAL AND I HAVE
15 WORKED SOMETHING OUT INFORMALLY, SO I DON'T HAVE AN
16 OBJECTION TO YOU GRANTING THEIR MOTION.

17 THE COURT: ALL RIGHT, YOUR MOTION WILL BE
18 GRANTED.

19 MR. WOLFSON: THANK YOU.

20 MR. BOWMAN: THANK YOU, YOUR HONOR.

21 (WHEREUPON, THE HEARING
22 WAS CONCLUDED.)
23

24 * * * * *

REPORTER'S CERTIFICATE

STATE OF NEVADA)
: SS
COUNTY OF CLARK)

I, RENEE SILVAGGIO, CERTIFIED SHORTHAND REPORTER,
HEREBY CERTIFY THAT I TOOK DOWN IN STENOGRAPHY ALL PROCEEDINGS
HAD IN THE BEFORE-ENTITLED MATTER AT THE TIME AND THE PLACE
INDICATED, AND THAT THEREAFTER SAID STENOGRAPHY NOTES WERE
TRANSCRIBED INTO TYPEWRITING AT AND UNDER MY SUPERVISION.

THAT THE FOREGOING TRANSCRIPT CONSTITUTES A
FULL, TRUE AND ACCURATE RECORD OF THE PROCEEDINGS HAD.

IN WITNESS WHEREOF, I HAVE HEREUNTO SUBSCRIBED
MY NAME AND AFFIXED MY OFFICIAL SEAL OF OFFICE AT LAS VEGAS,
NEVADA, THIS 14 DAY OF October, 1993.

Renee Silvaggio
RENEE SILVAGGIO, C.S.R. NO. 122

MRIPPO-07029-00307

FILED
SEP 22 12 06 PM '93
Loretta L. Lannon
CLERK

FRANKIE SUE DEL PAPA
Attorney General
By: JANE A. STECKBECK
Deputy Attorney General
Nevada Bar No. 3820
Criminal Justice Division
401 South Third Street, #500
Las Vegas, NV 89101
(702) 486-3420
Attorneys for Defendant
STATE OF NEVADA

DISTRICT COURT
DISTRICT OF NEVADA

* * *

THE STATE OF NEVADA,

Plaintiff,

vs.

MICHAEL DAMON RIPPO,
ID #0619119

Defendant.

CASE NO. C 106784
DEPT. NO. IV
DOCKET NO. C

ORDER

This matter coming on for hearing on the 20th day of
September 1993, the State of Nevada Board of Parole Commissioners
and Department of Parole and Probation being represented by Jane
A. Steckbeck, Deputy Attorney General, and the Defendant being
represented by Steven B. Wolfson, Esq., the court reviewing the
Motion to Quash Subpoena Duces Tecum and good cause appearing
therefor,

. . .
. . .
. . .
. . .

IT IS HEREBY ORDERED, ADJUGED AND DECREED that the state's
Motion to Quash Subpoena Duces Tecum and for a Protective Order
is hereby granted.


SEP 22 1993

~~GERARD J. BONGIOVANNI~~
DISTRICT COURT JUDGE

SUBMITTED this 20th day of September, 1993.

FRANKIE SUE DEL PAPA
Attorney General

By:


Jane A. Steckbeck
Deputy Attorney General
401 So. Third Street, #500
Las Vegas, NV 89101

FILED

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Loretta D. Downman
CLERK

DISTRICT COURT
CLARK COUNTY, NEVADA

The State of Nevada,)	
)	
Plaintiff,)	
	)	Case No. C106784
vs.	)	Dept. No. IV
	)	Docket No. "C"
Michael Damon Rippe,)	
)	
Defendant.)	
)	

Before the Honorable Gerard J. Bongiovanni

Monday, January 31, 1994

Reporter's Transcript of Proceedings
Re: Oral Request of District Attorney

APPEARANCES:

For the Plaintiff: John Lukens, Esq.
Deputy District Attorney

For the Defendant: Philip H. Dunleavy, Esq.
and
Steven Wolfson, Esq.

REPORTED BY: Renee Silvaggio, C.S.R. No. 122

CE

Las Vegas, Nevada, Monday, January 31, 1994, 9:00 o'clock

* * * * *

THE COURT: State of Nevada versus Michael
Damon Rippo.

Let the record reflect the presence of
Mr. Dunleavy and Mr. Wolfson; Mr. Lukens for the State.

Mr. Rippo is in custody in the Nevada
State Prison.

Gentlemen, I believe you asked that this
be continued to today because Mr. Lukens was out of town the
last Court date. You had some motions to bring out prior to
the trial.

MR. DUNLEAVY: Well, Your Honor, that was
put on at the request of the State. We had some issues we
were going to raise at the time. I believe the State's
motion goes first.

THE COURT: What was the State's motion?
It was to set --

MR. LUKENS: Right, do we --

THE COURT: It was to February 21st date for
trial.

MR. LUKENS: The trial date is currently set
for the February 14th.

1 THE COURT: Okay.

2 MR. LUKENS: And that was the last order
3 entered, and the State is aware of the Connors trial, as is
4 the Court; and it was anticipating that there is no way that
5 the Rippo trial could start on February 14th.

6 So we simply ask the Court if it's going
7 to trial on Connors that if it will be permissible to
8 subpoena the case for the 22nd of February.

9 THE COURT: The 22nd, and I granted that
10 motion.

11 MR. LUKENS: That's correct. If --

12 MR. WOLFSON: Well, there is no motion
13 granted. I think Mr. Lukens may have spoken to us
14 informally about it, perhaps he approached the Court, but
15 that was granted to my knowledge.

16 MR. LUKENS: It was just to advise the Court
17 and ask the Court if that would be permissible.

18 THE COURT: I permitted that.

19 MR. DUNLEAVY: Well, Your Honor, before it
20 goes on the 22nd date, there is an issue I wanted to bring
21 to the attention of the Court, and Mr. Wolfson has some
22 things to bring up.

23 We have served Mr. Lukens and Miss Lowry
24 with subpoenas. It is our opinion that they are now
25 important witnesses for the defense in this case. Through

1 some knowledge that they have engaged in, they have become
2 witnesses, and we think it's necessary that they, in fact,
3 be available as witnesses.

4 The Code of Ethics has made it quite
5 clear they cannot prosecute a case if they are a witness,
6 and we are going to ask who is going to try the case. It's
7 our opinion that the Attorney General's office should step
8 in, but it's up to the Court how they want to handle that
9 issue.

10 THE COURT: Any response to that?

11 MR. LUKENS: There is no possible way I can
12 respond to Mr. Dunleavy when -- Mr. Dunleavy has in his
13 opinion --

14 THE COURT: How -- anybody could, I suppose,
15 subpoena counsel on the other side as witnesses.

16 MR. DUNLEAVY: Your Honor, I have an
17 affidavit I can submit to the Court at this time. I can
18 advise the Court that what happened is Mr. Lucherini and Mr.
19 Lukens obtained a search warrant for our alibi witness.

20 MR. LUKENS: Mr. Lukens and Mr. Lucherini?

21 MR. DUNLEAVY: Mr. Lukens and Miss Lowry
22 obtained a search warrant for our alibi witness's house.
23 They went over there. In the course of that the police were
24 there to guard her sister while Mr. Lukens and Miss Lowry
25 conducted the search.

1 They seized numerous items because he
2 went in there and searched and seized the items. That makes
3 him a witness. He was acting as an investigator, not as a
4 district attorney. He went in there and physically picked
5 out what he wanted. That makes him a witness in the trial.

6 I would point out to the Court's
7 attention that there was a case, Sheriff versus County, 106
8 Nevada 145, where there was an evidentiary hearing trying to
9 disqualify the District Attorney's office. The Court ruled
10 that they could not disqualify the office.

11 The attorney at that time mentioned that
12 he intended to subpoena and the Supreme Court wrote, at page
13 149, that the District Attorney created his own dilemma by
14 not removing himself from the case sooner, waiting until two
15 days before the trial until he was actually subpoenaed to
16 try to recuse himself at the time trial at that time was too
17 late, that he had known of Flangas' intention to subpoena
18 him for two months, and yet took no action and because of
19 that the case was dismissed because the District Attorney
20 was subpoenaed and didn't recuse himself out of the trial

21 And that was a hearing had been held when
22 they said there wasn't grounds.

23 MR. WOLFSON: Judge, I think one thing that
24 should be emphasized is that the witness we're talking
25 about, Alice Starr, is our alibi witness. She is the heart

1 of our case. Our defense rests on Alice Starr more than
2 other things.

3 What Mr. Dunleavy is providing the Court
4 with is that the District Attorneys assigned to prosecute
5 this case, Mr. Lukens and Miss Lowry, went to her house,
6 anticipated a search, they didn't go just to observe; but
7 according to Alice Starr, who has provided us with an
8 affidavit, participated in the execution of the search
9 warrant, physically themselves seized evidence they intend
10 to use in this case; additionally, seized things that we
11 believe they would use to impeach Alice Starr with, and made
12 statements to Alice Starr concerning her testimony.

13 I'm not talking about peripheral witness.
14 I'm talking about our alibi witness. And that's why they
15 are under subpoena, and that's why they should be
16 disqualified, their entire office should be disqualified,
17 and either have a special prosecutor or the Attorney General
18 be appointed.

19 MR. LUKENS: This is nonsense and hogwash.
20 It's an eleventh hour ploy on behalf of Mr. Dunleavy to try
21 and raise smoke.

22 MR. DUNLEAVY: Your Honor, the eleventh hour
23 ploy is the District Attorney going in this house with a
24 search warrant.

25 MR. LUKENS: Wait, wait, wait a minute. You

1 had your opportunity --

2 THE COURT: Let Mr. Lukens speak. Go ahead.

3 MR. LUKENS: The search warrant was executed
4 months and months ago, I think it was maybe November
5 sometime, if not before, when the search warrant was
6 constituted.

7 Miss Lowry and I were there. We did not
8 participate. We did not seize any items of evidence at all.
9 We had been to Miss Starr's house on previous occasions to
10 speak to Miss Starr. She had willingly spoken to us. She
11 spoke with us on this particular day. We did nothing
12 improper.

13 I mean, Mr. Dunleavy has evidently some
14 knowledge of this for quite some time, yet he hasn't filed
15 anything. He's trying to argue a motion without putting
16 anything at all in writing to which we can respond.

17 I -- it's rather difficult, Mr. Dunleavy.
18 So, I mean, all I'm saying is --

19 MR. DUNLEAVY: I'm going to --

20 MR. LUKENS: -- if -- if he's going to --

21 MR. DUNLEAVY: The comments are
22 inappropriate.

23 THE COURT: Let him finish first.

24 MR. LUKENS: All I'm asking is that he
25 comply with the rules of the Court. If he has a motion that

1 he wishes to file, he can file it. He can file the
2 supporting affidavits and we can respond in writing.

3 MR. DUNLEAVY: Your Honor, I believe the
4 cases that he cited said we don't have to do anything. We
5 served him on a subpoena. If he shows up on trial date
6 we're just going to ask for dismissal --

7 MR. LUKENS: I have absolutely -- I mean, I
8 don't know who Mr. Lukens subpoenaed. Some subpoenas for
9 Miss Lowry and myself arrived at our office. I have no
10 knowledge why or what reason. It's rather difficult to
11 anticipate the workings of Mr. Dunleavy's mind.

12 As to what possible information we would
13 testify to regarding this case is also beyond me. We're
14 prepared to try this case. We're going to try this case.
15 Mr. Dunleavy wants to have him removed, he can file his
16 motion.

17 THE COURT: I think they should be supported
18 by at least affidavits and a motion if you want to file a
19 written motion regarding this.

20 MR. DUNLEAVY: If the Court wants us to,
21 Your Honor. It's our position, however, though that the
22 State is on notice at this time that they are subpoenaed and
23 if they want to violate the code of ethics, Mr. Lukens is
24 quite aware of how to do that. He does it all the time.

25 THE COURT: I request that you file a motion

1 with the appropriate affidavits.

2 MR. WOLFSON: Judge, there are a couple
3 other things I'd like to bring to the Court's attention.
4 Apparently --

5 (Whereupon, a sotto voce at
6 this time.)

7 MR. DUNLEAVY: Are you threatening me, Mr.
8 Lukens?

9 THE COURT: All right. Let's stop right
10 now.

11 MR. LUKENS: I just told Mr. Dunleavy, I
12 told him don't do that, Mr. --

13 MR. DUNLEAVY: He said that's the second
14 time, you are going to get it.

15 THE COURT: Mr. Lukens, stand over there
16 where your chair is.

17 All right. What else do you want to
18 bring out?

19 MR. DUNLEAVY: Your Honor, for the last
20 meeting he had his --

21 THE COURT: I don't want to hear none of
22 this stuff.

23 MR. DUNLEAVY: I think it's inappropriate
24 conduct, Your Honor, in Court or in his office.

25 MR. WOLFSON: Judge, I think that Mr.

1 Dunleavy needs to also advise the Court that in the Sharp
2 case there are hearings scheduled February 28th, March 1st
3 and March 4th. I think that February 28th is scheduled for
4 the State to present evidence at the penalty hearing, March
5 1st for the defense, and then March 4th for argument. Those
6 are three days where, I think, nine lawyers, including Mr.
7 Dunleavy, are to appear in Judge Mosley's courtroom.

8 If we begin our trial on the 22nd, I'm
9 not sure what that would do to the February 28th, March 1st
10 and March 4th dates. We needed to advise the Court of that.

11 I think those are pretty firm dates in
12 Judge Mosley's courtroom. Those are three full judicial
13 days. I'm not sure what the Court --

14 THE COURT: Well, we will have to work
15 around it or something.

16 MR. WOLFSON: I had heard that -- whether it
17 was through Mr. Potter or Mr. Lukens, I don't know -- that
18 we are talking about picking a jury in this case February
19 22nd, maybe not starting the evidence until March 7th or
20 something like that. I don't know. I heard that.

21 THE COURT: That's a possibility, too.

22 MR. WOLFSON: Okay. Finally --

23 THE COURT: We'll work around -- we'll
24 accommodate everybody.

25 MR. WOLFSON: Because of the recent decision

1 from our Nevada Supreme Court, State versus Love, we may be
2 moving to continue the trial and if we do we will do it
3 formally in writing. It will go along with Mr. Dunleavy's
4 motion because of the need to interview additional
5 witnesses.

6 Mr. Lukens gave us some additional
7 discovery about two or three weeks ago in his office. One
8 of the witnesses which we would need to interview is a Kim
9 Meyer, and I've been informed that this is a person who is a
10 federally protected witness.

11 Miss Lowry did say she could make him
12 table (sic) you, but I'm not sure how easily that's going to
13 be.

14 Additionally, there is a voluntary
15 statement from a Donald Hill. Donald hill is a, quote,
16 jailhouse snitch. He's in custody somewhere, I believe. We
17 would be needing to interview him.

18 Finally, Mr. Lukens gave us the name of a
19 person who they intend to call as a, quote, stun gun expert.
20 I think that's his location was Wisconsin -- was in
21 Wisconsin and at the very least an interview would need to
22 be done with him and perhaps a trip to Wisconsin to
23 interview this man.

24 For these reasons, in light of Love
25 decision and everything else, I believe we're going to be

1 moving to continue the trial.

2 Part of the reason that a move to
3 continue is being made is it's our very strong opinion that
4 the District Attorney's office should be disqualified and I
5 don't know if another prosecutor, whether it be the Attorney
6 General or a special prosecutor, could be prepared to go on
7 the February 22nd.


8 THE COURT: Okay. Well, put that other
9 motion in writing.

10 MR. WOLFSON: Thank you, Judge.

11 THE COURT: That's all.

12 * * * * *

13
14
15
16
17 ATTEST: Full, true and accurate transcript of proceedings.

18
19
20 
21 RENE SILVAGGIO, C.S.R. NO. 122
22 OFFICIAL COURT REPORTER
23
24
25

FILED²

FEB 7 1 58 PM '94

CLERK

1 PHILIP H. DUNLEAVY, ESQ.
2 STATE BAR No. 000598
3 2810 W. CHARLESTON
4 SUITE G-67
5 LAS VEGAS, NEVADA 89102
6 Attorney for Defendant
7 MICHAEL DAMON RIPPO

DISTRICT COURT

CLARK COUNTY, NEVADA

8 STATE OF NEVADA,)
9)
10 Plaintiff,)
11 vs.)
12 MICHAEL DAMON RIPPO,)
13 Defendant,)

CASE No: C106784
DEPT. No: IV
DOCKET No: C

MOTION TO DISQUALIFY THE
DISTRICT ATTORNEY'S OFFICE

Hearing Date: 2-14-93

Hearing Time: 9A

17 COMES NOW, the Defendant, MICHAEL RIPPO, by and through
18 his attorney of record, PHILIP H. DUNLEAVY, ESQ., and
19 respectfully moves this court to disqualify the District
20 Attorney's Office from further proceedings on this case.

21 This Motion is made and based upon the attached Points
22 and Authorities, all of the papers and pleadings on file
23 herein, the attached Affidavits and such other and further
24

25 /////
26 /////
27 /////
28 /////

CMC

CE11

evidence, as may be aduced at the hearing on this
matter.

DATED THIS 7th day of FEBRUARY, 1994.

Respectfully Submitted,

By Philip H. Dunleavy
PHILIP H. DUNLEAVY, ESQ.
STATE BAR NO. 000598
2810 W. CHARLESTON
SUITE G-67
LAS VEGAS, NEVADA 89102

NOTICE OF MOTION

TO: STATE OF NEVADA, Plaintiff; and
TO: D.D.A. LUKENS AND LOWRY.

YOU AND EACH OF YOU WILL PLEASE TAKE NOTICE that the
undersigned will bring the foregoing Motion on for hearing
before the above-entitled Court on the 14 day of February,
1994, at the hour of 9 a.m. in Department IV, or as soon
thereafter as counsel may be heard.

DATED this 7th day of February, 1994.

Respectfully Submitted,

By Philip H. Dunleavy
PHILIP H. DUNLEAVY, ESQ.
STATE BAR NO. 000598
2810 W. CHARLESTON
SUITE G-67
LAS VEGAS, NEVADA 89102
Attorney for Defendant
MICHAEL RIPPO

POINTS AND AUTHORITIES

The defense disclosed the identity of their alibi witness as required by NRS 174.087. Then D.D.A. Lukens and Lowry visited the witness at home and Mr. Lukens made sure she felt pressured to change her testimony. When this failed, Mr. Lukens and Ms. Lowry returned with a search warrant and two detectives. The witness, Ms. Starr, was subjected to being held at gun point in her own home and forced to watch Mr. Lukens go through her personal papers. Among other items seized by Mr. Lukens was her Bible. During this search, which was based on a secret affidavit, a small quantity of marijuana was allegedly found in Ms. Starr's bedroom, not by the police but by Ms. Lowry.

After the discovery of the marijuana, Mr. Lukens again attempted to coerce Ms. Starr to change her testimony. Based upon this information, the defense subpoenaed both D.D.A. Lukens and Lowry as witnesses for the defense. The fact that an attorney shall not be a witness in a trial they are trying is black letter law, see American Bar Association Model Rules of Professional Conduct Rule 3.7 "(a) A lawyer shall not act as advocate at a trial in which the lawyer is likely to be a necessary witness except where:" There are three exceptions to the above rule, but they do not apply to this case. These are: (1) the issues they are subpoenaed on are not contested, (2) they do not relate to a fee

1 dispute, and (3) there is no substantial hardship to the
2 State.

3 The Nevada Supreme Court has ruled on this holding
4 that if a district attorney"... is aware, prior to the
5 trial, that he will be a necessary witness, or, if he
6 discovers this fact in the course of the trial, he should
7 withdraw and have other counsel prosecute the case." Tomlin
8 v. State 81 Nev. 620 @ 623, 407 P2d 1020 (1965).

9 In another case dealing with the subpoena of a
10 district attorney, the Nevada Supreme Court has also found
11 " the district attorney created his own dilemma by not
12 removing himself from the case sooner. He had known of
13 Flangas' intention to subpoena him for over two months, yet
14 took no action because he thought Flangas was bluffing."
15 Sheriff v. Davis 106 Nev 145 @ 149, 787 P2d 1241 (1990). In
16 the above case no subpoena was served before the district
17 attorney was obligated to take action to avoid a conflict.

18 The ethical duty of a prosecutor " is to seek
19 justice, not merely convict." Ethical Issues in
20 Prosecution, National College of District Attorneys, by Dean
21 Douglass @ p22.

22 In the instant case, the D.D.A. admits they have
23 been served copies of the subpoenas, which are attached. The
24 defense asserts they are necessary defense
25 witnesses because of the unique facts set forth in the
26 attached affidavits and as such the court must protect the
27 defendant's right to a fair trial and remove the
28

1 prosecution, ordering either the appointment of a special
2 prosecutor or the Attorney General's office to assume
3 responsibility for the State.

4 In addition to the above, there is clearly an
5 issue of prosecutorial abuse when a prosecutor seeks out a
6 case not on his track, harrasses and attempts to coerce an
7 alibi witness to change her testimony, and threatens the
8 defense. Something seriously wrong is occurring and it has
9 nothing to do with the pursuit of justice which the district
10 attorney is obligated to seek. Ever since *Berger v. United*
11 *States*, 295 U.S. 78, 55 S Ct 629 (1934), the standard has
12 been clearly defined.

13 "The United States Attorney is the representative
14 not of an ordinary party to a controversy, but of a
15 sovereignty whose obligation to govern impartially is as
16 compelling as its obligation to govern at all; and whose
17 interest, therefore, in a criminal prosecution is not that
18 it shall win a case, but that justice shall be done. As
19 such, he is in a peculiar and very definite sense the
20 servant of the law, the twofold aim of which is that guilt
21 shall not escape or innocence suffer. He may prosecute with
22 earnestness and vigor-indeed, he should do so. But, while he
23 may strike hard blows, he is not at liberty to strike foul
24 ones. It is as much his duty to refrain from improper
25 methods calculated to produce a wrongful conviction as it is
26 to use every legitimate means to bring about a just one." at
27 89.

28


1
2 Clearly the whole concept of the Bill of Rights is
3 to protect a defendant from the kind of outrageous abuse Mr.
4 Lukens is perpetrating in this case. By right the
5 defendant should be given protection from the court when
6 this kind of abuse occurs.

7 The defendant submits it would be proper to
8 dismiss this case as a just sanction; however, the defendant
9 is aware of both the State's and his right to a fair trial.
10 He therefore submits that the appropriate sanction should be
11 for the court to strike the notice of intent to seek the
12 death penalty and appoint an independent prosecutor where
13 the opportunity to present his defense in a court with out
14 this kind of abuse and where the defense alibi witness can
15 testify truthfully without fear of retaliation by the State.

16 Wherefore the defense respectfully requests that
17 this court removes the prosecutors currently involved and
18 appoint an independnt prosecutor or the Attorney General to
19 proceed.

20 Dated this 27th day of February, 1994
21

22 RESPECTFULLY SUBMITTED

23 
24 PHILIP H. DUNLEAVY, ESQ.
25 STATE BAR # 000598
26 2810 W. CHARLESTON
27 SUITE G-67
28 LAS VEGAS, NEVADA 89102
attorney for defendant
MICHAEL DAMON RIPPO

AFFIDAVIT OF COUNSEL

COMES NOW, PHILIP H. DUNLEAVY, ESQ. having been first
duly sworn, deposes and says:

1. That he is an attorney duly licensed in the state of
Nevada and is one of the attorneys appointed to represent
the defendant Michael Rippo in this matter.

2. That he has interviewed the defense witness Ms.
Alice Starr who was twice visited by D.D.A. Lukens and
Lowry.

3. That the attached affidavit of Ms. Starr sets forth
the relevant facts of those visits by D.D.A. Lukens and
Lowry.

4. That Ms. Starr is certain Mr. Lukens was trying to
intimidate her and force her to change her exculpatory
testimony by lying for the prosecution if she wanted to be
left alone.

5. That Ms. Starr described the physical mannerisms of
Mr. Lukens during these confrontations including such unique
facts as the way he rocked back and forth and blew air
through his mouth when upset, which are traits this
affiant is unfortunately familiar with and are traits Ms.
Starr could not have known about unless she had observed
them.

6. That there is a question of fact as to whether Mr.
Lukens and Ms. Lowry were over zealous in searching the
residence.

1 7. That Ms. Starr further asserts Mr. Lukens attempted
2 to coerce her into committing perjury.

3 8. That based upon the above, Mr. Lukens and Ms. Lowery
4 are witnesses for the defense and have been subpoenaed as
5 witnesses for the defense.

6 9. That in addition to the above, there is the issue of
7 prosecutorial abuse by Mr. Lukens. Mr Lukens, head of a
8 sexual assault unit, sought out this non sexual case for
9 prosecution. Mr. Lukens harrassed the alibi witness and
10 attempted to intimidate her. Furthermore, threats against
11 the affiant have been made by Mr. Lukens in the halls of the
12 courthouse, in Mr. Lukens's office, and in this court room.
13 He is apparently attempting to chill Mr. Rippo's
14 representation in a double capital murder case.

15 10 That your affiant spoke with co-counsel Mr.
16 Woolfson Esq. who overheard when Mr. Lukens approached
17 affiant in court and said, " That's strike two one more time
18 and." This is clearly not what Mr. Lukens tried to tell the
19 court when affiant raised the threat on the record.

20 11. That affiant is not the only attorney Mr.
21 Lukens has threatened trying to chill the defense. See the
22 attached affidavit of Thomas C Naylor filed in the case of
23 State V. Evans C104658X, setting forth similar prosecutorial
24 misconduct.

25 13. That the above facts clearly demonstrate a chain of
26 events making Mr. Lukens himself a crucial witness for the
27 defense and demonstrating the need to remove him from
28

1 further proceedings on this case.

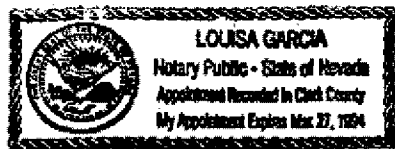
2 That further your affiant saith not.

3 Dated this 7th day of February, 1994.

4
5 Subscribed and sworn to
6 before me this 7 day
7 of February, 1994.

8 Louisa Garcia
9 NOTARY PUBLIC

Philip H. Dunleavy
PHILIP H. DUNLEAVY ESQ.
State Bar # 000598
2810 W. CHARLESTON
SUITE G-76
LAS VEGAS, NEVADA 89102



AFFIDAVIT OF ALICE MAY STARR

STATE OF NEVADA)
) ss
COUNTY OF CLARK)

ALICE MAY STARR, being first duly sworn, deposes and states that:

1. Affiant is a witness in a criminal case involving Michael Rippo;

2. Affiant has personal knowledge of the contents of this Affidavit and is competent to testify thereto;

3. On September 30, 1993, Affiant was residing at 3117 Whispering Willow, Las Vegas, Nevada, 89108 with Affiant's children; Cindy Fries, Affiant's sister; Cindy's children; and Duane Ivy;

4. In the two weeks prior to September 30, 1993, Affiant was visited at her residence by Deputy District Attorneys John P. Lukens and Teresa M. Lowry. DA John Lukens told Affiant that he knew Michael Rippo committed the murders and he was curious how affiant felt about the case. He told affiant about the incident Michael Rippo was involved in a few years ago and that DA Lukens was basing his belief in this incident on the facts of the one a few years ago;

5. On September 30, 1993, at about 1:30 pm, DA John Lukens, DA Teresa Lowry, Las Vegas Metro Police Detective Chandler and Detective Thowsen arrived at 3117 Whispering Willow. A knock was heard at the door and Affiant's sister answered the door. Affiant saw someone in a suit and Affiant thought it was Jehovah's Witness members there to solicit money. Affiant told her sister that if it was for her, she was not there. Affiant heard someone speaking and

1 asking for her. It was obvious the persons had entered the house
2 from the loud voices. Affiant heard someone tell her sister they
3 were there because of Affiant's friend Diana;

4 6. Affiant came from around the corner and told the people
5 that she was Alice Starr. The two detectives drew their guns and
6 pointed them at your Affiant. The detectives did not show a
7 warrant at that time;

8 7. Detective Chandler told Affiant that he wanted a copy of
9 the lease on the house and handwriting samples of Michael Ripppo.

10 8. Affiant was ordered to stay in the family room with her
11 sister. The two detectives stayed with the affiant and her sister
12 while DA Lukens and DA Lowery searched certain areas of the house.
13 It was obvious to your affiant, DA Lukens and DA Lowery already
14 knew where they wanted to search;

15 9. During the search, DA Lukens was in the living room
16 searching through Affiant's desk and filing cabinet while DA Lowry
17 was searching Affiant's bedroom. While searching the bedroom, DA
18 Lowry allegedly found a small amount of methamphetamine. Detective
19 Thowsen was instructed to watch your affiant and Detective Chandler
20 read Affiant her Miranda Rights. At the time DA Lowery was
21 searching the bedroom she was alone;

22 10. Affiant was sitting on the couch in the family room and
23 DA Lukens came out from the bedroom. DA Lukens told your Affiant
24 that he was not into prosecuting drug offenders. He said drugs did
25 not bother him and that he could help your Affiant out of this
26 situation. DA Lukens asked your Affiant if she knew why they were
27 going through all of this. He said your Affiant's life is going to

1 shit because of Michael Ripppo. He said "If you dangle on his star,
2 your going down just like he is". He said your Affiant had lied
3 to him but he would not say what she had lied about. Affiant said
4 she was not going to lie for DA Lukens or change her testimony for
5 him or anyone else. DA Lukens began to try to stare your affiant
6 down, shaking his head and not saying anything else. Detective
7 Thowsen told your Affiant she was not taking good care of her
8 daughter because during the search of the home, Affiant's daughter
9 picked up a cigarette butt and put it into her mouth. The
10 detectives threatened your Affiant with her children being taken to
11 Child Haven. Affiant sister was sitting in the room when DA Lukens
12 was trying to threaten and intimidate your Affiant.

13 11. Affiant was restricted from supervising her child and
14 placed under arrest. Affiant asked where her daughter was and no
15 one knew. One of the detectives found Affiant's daughter in the
16 Garage with a screw in her mouth.

17 12. At no time was your affiant advised either verbally or in
18 writing of the crime the search warrant was based.

20 FURTHER YOUR AFFIANT SAYETH NAUGHT

21 Alice May Starr
22 ALICE MAY STARR

24 SUBSCRIBED and SWORN to before me

25 this 21th day of January, 1994

26 Jo Anne B. Pierpont
27 NOTARY PUBLIC

