

1 Did there come a time when you
2 learned the name of the second victim?

3 A Yeah. I sat there in a daze until the
4 eleven o'clock news came on to hear the broadcast and it was
5 Denise Lizzi and Louri Jacobson.

6 Q Mr. Sims, did you know either of those young
7 ladies?

8 A No, I didn't.

9 Q To your knowledge, had you ever seen or met
10 either of them before?

11 A No.

12 Q Did you make any effort when the -- I would
13 think the full impact of what you had had come to mind.

14 Did you attempt at that point
15 to call the police?

16 A No, I didn't.

17 Q Why didn't you immediately just pick up the
18 telephone and call the Las Vegas Metropolitan Police
19 Department?

20 A I just didn't want to be involved. I would
21 rather not be involved in it at all.

22 Q Was there a time after Friday, February the
23 21st, 1992, when you spoke with Mr. Rippe over the
24 telephone?

9 1 A Yes, there was.

2 Q Was this a call you made to him or did he

3 call you?

4 A He called me.

5 Q Was it at your business or at your

6 residence?

7 A It was at my business.

8 Q Do you remember on what day Mr. Rippe called

9 you at your business?

10 A February 26th.

11 Q Why do you specifically remember it as being

12 February the 26th?

13 A Because that's his birthday.

14 Q Mike Rippe's birthday?

15 A That's correct.

16 Q Are you speaking of the calendar year 1992?

17 A Yes, I am.

18 Q So this is February the 26th, 1992?

19 A That's correct.

20 Q When you got the call did you recognize who

21 you were talking with?

22 A Yes, I did.

23 Q How did you recognize who was calling?

24 A I just knew. I know his voice.

9

1 Q Was there any doubt in your mind you were
2 talking to Mike Rippo?

3 A No.

4 Q About what time did you receive the call?

5 A I would say it was about four o'clock in the
6 afternoon.

7 Q Did you have a conversation with Mr. Rippo?

8 A Yes, I did.

9 Q What was the nature of the conversation
10 which you remember now?

11 A He said that he had left something at my
12 shop and that he wanted to come by and pick it up.

13 Q Did he tell you what it was he had left?

14 A Yes, he did.

15 Q What did he say?

16 A He said it was a bottle of morphine that he
17 had left in the refrigerator behind my desk.

18 Q Did you have a refrigerator behind your
19 desk?

20 A Yes, I did.

21 Q Were you aware, at the time of the telephone
22 conversation, that Mr. Rippo had left behind some object
23 which was inside your refrigerator?

24 A No, not at all.

RENEE SILVAGGIO, CCR 122 391-0379

9

1 Q What did you say to Mr. Rippe when he
2 imparted this information to you?

3 A I believe I told him to hang on while I
4 could look and see if, in fact, there was something in my
5 refrigerator.

6 Q Did you check the refrigerator?

7 A Yes, I did.

8 Q Did you find something?

9 A Yes, I did.

10 Q What did you find in the refrigerator?

11 A It was an amber bottle with a liquid in it
12 that was, maybe, halfway full. I don't really know what was
13 in it. I didn't open it. I didn't smell it. I didn't
14 really do anything with it.

15 Q Would it be correct to say you can only
16 explain what Mr. Rippe said was in it?

17 A That's correct.

18 Q Did he tell you it was morphine?

19 A Yes, he did.

20 Q You've described it as being an amber
21 bottle.

22 A Yes.

23 Q I suppose descriptions of colors mean
24 different things to different people.

9 1 When you say amber, what color
2 are you talking about?

3 A Like a dark brown, yellowish brown, dark
4 colored bottle.

5 Q About how large was the bottle?

6 A (Indicating). About that big, maybe three
7 inches.

8 Q Maybe three inches tall?

9 A Uh-huh.

10 Q About how big around?

11 A (Indicating). Oh, about the size of a 50
12 cent piece maybe.

10 13 Q Are you indicating perhaps an inch in
14 diameter?

15 A I guess. I -- I'm not good at diameters.

16 Q Well, I'm not trying to suggest a number to
17 you.

18 A I would say it was bigger than a quarter.

19 Q Do you remember the shape of the bottle?

20 A It was a round -- round bottle, tall, with a
21 screw on lid.

22 Q After you had located this bottle, about
23 half full with some type of fluid, did you go back to the
24 telephone?

10

1 A Yes, I did.

2 Q Did you have further conversation with Mr.

3 Rippo?

4 A Yes, I did.

5 Q What did you talk about?

6 A I told him that he wasn't going to come to
7 the shop to pick it up, because I didn't want him coming
8 around the shop, but that I would meet him somewhere and
9 deliver it to him.

10 Q Did you agree where that meeting place would
11 be?

12 A Yes.

13 Q What did you agree upon?

14 A Caribbean Charlie's on Tropicana and
15 Rainbow.

16 Q Did you then end the telephone conversation?

17 A Yes, I did.

18 Q Did you, at some point, after the telephone
19 conversation, remove the small bottle of fluid from the
20 refrigerator and take it to your car?

21 A Yeah, when I left the shop, I took it with
22 me.

23 Q About what time was that?

24 A I would say about six o'clock that evening.

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10

1 Q Tell us what happened then.

2 A I was -- I remember I was driving up
3 Flamingo, and I got -- I was right about at Decatur when I
4 got a beep from Mr. Rippo.

5 And so I called him back and he
6 told me that his car had broke down and so he wasn't going
7 to be able to make it to Caribbean Charlie's and if I could
8 meet him where he was at at the present time.

9 Q Did he tell you where he was at at the
10 present time?

11 A Yes, he did.

12 Q What did he tell you?

13 A He was at -- in the parking lot of K-Mart at
14 the corner of Rainbow and Spring Mountain Road.

15 Q Did you agree to go to that location?

16 A Yes, I did.

17 Q Did you have any concern at this time about
18 meeting with Mr. Rippo in a parking lot somewhere?

19 A Yeah. That was the first time I really
20 became concerned.

21 Q What was your concern?

22 MR. WOLFSON: Objection.

23 May counsel approach the bench?

24 THE COURT: Yes.

10

1

(Whereupon, an off-the-record discussion was had.)

2

3

BY MR. HARMON:

4

Q Do you remember having a particular frame of mind as a result of hearing that his car had broken down?

5

6

A Yes.

7

Q Did you, nevertheless, arrive at the

8

location near the Thrifty Mart? I think you said it was

9

Rainbow and Spring Mountain?

10

A Yeah, it was a K-Mart. Yes, I -- I arrived

11

there.

12

Q Tell us what happened there.

13

A Um, well, I remember the first thing I did

14

was check to make sure, in fact, that his car had broke

15

down, and there was a big puddle of oil. It looked like

16

the -- everything in the engine was on the ground.

17

And I got out and --

18

Q Do you remember what type of car it was?

19

A It was a Pinto.

20

Q Had you seen it before?

21

A Yes, I had.

22

Q So you say you got out?

23

A Yes.

24

Q What happened then?

1 A I gave him his bottle and --

2 Q What bottle did you --

3 A The morphine that he had.

4 Q Did you ever see it again after that?

5 A No, I didn't.

6 Q What happened after you gave Mr. Rippo his
7 bottle?

8 A I started discussing the murders with him.
9 I asked him -- I asked him if he was crazy?

10 I don't remember exactly what
11 was said, but we started discussing the murders. I started
12 asking him about the murders.

13 Q While you were in the parking lot close to
14 the K-Mart store did Mr. Rippo make any statement about
15 being involved in the murders?

16 A Yes, he did.

17 Q What is it he said to you?

18 A He said that he had choked those two bitches
19 to death.

20 Q Do you remember now what question of yours
21 he was responding to when he said that?

22 A I think that it was when I asked him if he
23 was crazy or what, that he had really -- in fact, that a
24 murder really had, in fact, taken place; and he said that he

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10

1 had choked those two bitches to death.

2 Q Did you learn at that time whether the Pinto
3 that Mr. Rippe had been driving was operational?

4 A It didn't look operational to me with the
5 amount of oil that was underneath it.

6 Q Did he indicate to you, in the parking lot,
7 whether he could drive it?

8 A He said it was -- that was it. It had blown
9 up.

10 Q As a result of the condition of his car did
11 you go somewhere with him?

12 A Yeah. I drove him to the Stardust Hotel.

13 Q Why did you drive him to that location?

14 A That's where he asked to be dropped off.

15 Q Do you recall what route you took from
16 Spring Mountain and Rainbow to get to the Stardust?

17 A Yes. I went straight down Spring Mountain
18 Road to Industrial, made a left on Industrial, and then took
19 the back parking lot into the Stardust Hotel and dropped him
20 off over by the employee entrance.

11

21 Q Did Mr. Rippe have anyone else with him on
22 this evening, February the 26th, 1992?

23 A No, he didn't.

24 Q In route from the K-Mart parking lot to the

RENEE SILVAGGIO, CCR 122 391-0379

1 Stardust, did you have further conversation with Mr. Rippo
2 about the murders of two young women?

3 A Yes, I did.

4 Q How did it happen that you talked
5 additionally with him on that subject?

6 A We were just talking.

7 Q Did he volunteer the information or did you
8 ask questions of it?

9 A I think I was asking questions.

10 I had heard something -- for I
11 had read in the newspaper about one of the girl's faces
12 being traumatized, like she had been punched or beaten, and
13 so I had asked him about that.

14 Q Did Mr. Rippo answer the question?

15 A Yes, he did.

16 Q What did he say?

17 A He told me that when he was -- I don't know
18 if he said carrying or dragging the girl to the back, that
19 her face hit the coffee table and that's what caused the
20 trauma to her face.

21 Q Did you ever ask him if he was alone when he
22 did this?

23 A He -- he told me that Diana Hunt was with
24 him, that she had participated in the murder with him.

- 11 1 Q Did you ask him anything about Diana Hunt?
- 2 A I asked him if he trusted her.
- 3 Q Why did you ask him that?
- 4 A Because I figured that if he was involved in
- 5 something like that and someone was with him in something
- 6 like that, that he surely better trust her or he was going
- 7 to have some serious problems.
- 8 Q Did Mr. Rippe respond to your question, did
- 9 he trust Diana Hunt?
- 10 A Yes, he told me --
- 11 Q What did he say?
- 12 A He told me that Diana Hunt had hit the girl
- 13 over the head with a beer bottle and that he trusted her
- 14 fully. His exact words were she's a down bitch.
- 15 Q A down bitch?
- 16 A Yeah.
- 17 Q Did you ask him to explain what he meant by
- 18 that?
- 19 A No, I knew what he meant.
- 20 Q As a result of the news coverage that you
- 21 were, at this point, aware of, whether it was television
- 22 news or the newspaper, had you learned anything about the
- 23 condition of the clothing of the victim?
- 24 A Yeah. It seems that -- I -- I don't know if

1 I read it or if I saw it on the news, that one of the
2 girls --

3 MR. DUNLEAVY: Your Honor, I'm going to
4 object. This would be hearsay of the least reliable source.

5 THE COURT: Sustained.

6 MR. HARMON: Your Honor, it's certainly not
7 offered for the truth. It's offered to explain why this
8 witness asked a further question of the defendant.

9 MR. DUNLEAVY: Just ask him if he asked
10 another question.

11 MR. HARMON: Yeah.

12 MR. DUNLEAVY: You don't have to ask him
13 what he may or may not have heard on the news.

14 THE COURT: Can you ask the other question?

15 MR. HARMON: I certainly can. I just don't
16 think it's improper for a witness to explain, even though it
17 may be hearsay, what his state of mind was.

18 This explains why he asked the
19 question.

20 THE COURT: All right. I've already ruled,
21 so go ahead, ask the next question.

22 BY MR. HARMON:

23 Q Did you ask Mr. Rippe something about the
24 clothing of one of the victims?

11

1 A Yes, I did.

2 Q What did you ask him?

3 A I asked him why one of the girls had no
4 pants on when they found her body.

5 Q What did he say to you?

6 A He told me that he had cut his finger during
7 the ar- -- altercation, and dropped blood -- had his blood,
8 on her pants. So he had to take them with him when he left
9 and dispose of them.

10 Q Did you ask him why he did it; that is, why
11 he killed these two women?

12 A No, I don't believe I did ask him that.

13 Q Did he ever tell you how it happened, that
14 they were killed?

15 A No. Just that he had told me that he had
16 choked both of them. That was -- we didn't really get into
17 any discussions about why or anything like that.

18 Q When he told you that he choked both of
19 them.

20 Did he explain whether -- well,
21 did he tell you by what means he had choked them?

22 A No.

23 Q Didn't say whether it was with his hands or
24 some other type of instrument?

11

1 A No.

2 Q Did he ever, in the conversation you had, as
3 you proceeded from the K-Mart area to the Stardust, mention
4 anything about an accident?

5 A Yeah. He told me -- this was when we
6 first -- this was still in the parking lot at K-Mart, that
7 when it first came up, he told me that he had accidentally
8 killed the one girl, so he had to kill the other.

9 Q Did you question him about why he had
10 accidentally killed one?

11 A No. That's about when I started asking him
12 about the girl's -- the trauma to the one girl's face.

13 Q Do you distinctly remember that he said he
14 had to kill the second one?

15 A Yes, I do.

12

16 Q Did Mr. Rippe ever say anything about what
17 type of women these were?

18 A I don't really understand the question.

19 Q Did he tell you whether they were attractive
20 women?

21 A He said they were both fine.

22 Q Both fine?

23 A Yeah.

24 Q Did he explain anything further in the

12

1 context of that statement?

2 A He said that he could have -- he said both
3 of them were fine. I could have fucked both of them, but I
4 didn't.

5 And I don't know if -- how much
6 further you want me to go with that.

7 Q Well, did he say something else?

8 A He said I'm cured. That means I'm cured.

9 Q Do you remember at this time any additional
10 comments that Mr. Rippe made during the ride in your vehicle
11 that evening that you haven't covered?

12 A No, not really. I think I've pretty much
13 covered it all, but I -- I couldn't tell you. Everything is
14 kind of tunneled right now. I'm just right here trying to
15 answer your direct questions.

16 Q About what time would you say you arrived at
17 the Stardust?

18 A I would guess that it was probably about
19 seven o'clock.

20 Q You did drop Mr. Rippe off?

21 A Yes, I did.

22 Q Did he take with him the bottle of what he
23 had told you was morphine?

24 A I assume -- I assume he did. I don't --

1 MR. DUNLEAVY: I object to assume, Your
2 Honor. If he doesn't know, the answer is I don't know.

3 THE COURT: Did he or didn't he?

4 THE WITNESS: I don't know what he did with
5 the bottle when I gave it to him at Spring Mountain and
6 Rainbow.

7 BY MR. HARMON:

8 Q Did you ever find it inside your car?

9 A No, I didn't.

10 Q After this contact with Mr. Rippe, did you
11 have any type of change of heart and feel like, well,
12 perhaps you ought to get involved in this case and report
13 your information to the police?

14 A No.

15 Q Why didn't you get ahold of the police
16 department and tell them what you had just learned?

17 A I didn't want to be involved. I didn't
18 want -- you know, it wasn't my business, and I just didn't
19 want to be involved in it.

20 Q Did there come a time when you were
21 contacted by representatives of the Las Vegas Metropolitan
22 Police Department?

23 A Yes.

24 Q Do you remember, on or about March the 2nd,

12

1 1992, giving a statement to a homicide detective named Steve
2 Scholl?

3 A Yes, I do.

4 Q Is that S-c-h-o-l-l?

5 A I guess. I don't know.

6 Q Where was the interview which occurred with
7 Detective Scholl?

8 A Down at City Hall on Stewart and Las Vegas
9 Boulevard.

10 Q Had you contacted the police department
11 during that time period or did the police get ahold of you?

12 A They got ahold of me.

13 Q Did you speak voluntarily with the police at
14 that time?

15 A Yes, I did.

16 Q Did you share with them certain information
17 that you had?

18 A I answered his questions the best I could.

19 Q Did you try to volunteer any information
20 that went beyond the specific questions you were given?

21 A No, not at all.

22 Q What was your mind set then?

23 You were giving a statement.

24 Did you feel like you were becoming involved in this

12

1 investigation?

2 A As soon as I received the call from
3 homicide, I knew that I was getting involved, yes.

4 Q On that date, at the police department,
5 March the 2nd, 1992, did you tell the police everything that
6 you knew?

7 A I just -- no. I just answered his questions
8 that he asked me.

9 Q Did you mention to Detective Scholl that the
10 defendant had brought a suitcase and some tapes to your
11 business?

12 A No, I didn't.

13 Q Did you tell him anything about the
14 telephone call regarding a bottle of what purported to be
15 morphine?

16 A No, I didn't.

17 Q Did you mention anything about admissions
18 the defendant made to you on his birthday, February the
19 26th, 1992?

20 A No, I didn't.

21 Q Why didn't you share that information with
22 Detective Scholl?

23 A He didn't ask the questions.

24 Q The direct question?

12 1 A He didn't specifically ask me any of the
2 questions that you are referring to.

3 MR. HARMON: May I approach the witness,
4 Your Honor?

5 THE COURT: You may.

6 BY MR. HARMON:

7 Q Mr. Sims, I'm showing you an eleven-page
8 document that appears to be a copy of a statement given by
9 you to Detective Scholl March the 2nd, 1992.

10 A Uh-huh.

11 Q Have you been furnished -- was that yes?

12 A Yes.

13 Q You've got to keep your voice up. I'll move
14 out here.

15 A All right.

16 Q Were you given a copy of this eleven page
17 statement to review before testifying in the trial?

18 A Yes, I was.

19 Q Have you had a chance to read over the
20 statement?

21 A Yeah.

22 Q Does this document I've handed you appear to
23 be a correct transcript of the interview you had with
24 Detective Scholl on March the 2nd, 1992?

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12 1 A Yes, it does.

2 Q I want to direct your attention to the last
3 page.

4 Will you read to yourself the
5 area, Mr. Sims, that's been circled in red on page eleven,
6 at first, just to yourself.

7 A (Complies.)

13 8 Q Does that refresh your memory regarding a
9 question asked by Detective Scholl and the answer you gave?

10 A Yes.

11 Q Do you remember now being asked this
12 question by the homicide detective:

13 Okay. Considering what's going
14 on here, Tom, is there anything else you might be able to
15 add that we haven't talked about that might help us in our
16 investigation?

17 And did you answer: Ah, not
18 that I know of?

19 A Yes, I did.

20 Q Wouldn't you agree that Detective Scholl
21 sort of gave you an opening at that time to share any
22 additional information that you might have had about a
23 suitcase and some tapes and a bottle of morphine and some
24 statements by the defendant?

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13

1 A Yeah.

2 THE COURT: Is that yes?

3 THE WITNESS: Yes.

4 BY MR. HARMON:

5 Q But you didn't tell him about that
6 information.

7 A No, because I've been -- I mean, I've had my
8 share of run ins with the police department, and my attorney
9 has always advised me --

10 MR. WOLFSON: Objection; hearsay.

11 THE COURT: Sustained.

12 BY MR. HARMON:

13 Q You've indicated you've had your share of
14 run-ins with law enforcement.

15 A Right. When I'm in situations like the
16 situation I'm --

17 MR. WOLFSON: Your Honor, I'm going to
18 object. He's not responding to the question. Mr. Harmon
19 asked him for yes or no.

20 THE COURT: Sustained.

21 THE WITNESS: You are going to have to
22 repeat your question.

23 MR. HARMON: I will.

24 BY MR. HARMON:

13

1 Q My question was in response to -- the first
2 part of your comment, you indicated you had your share of
3 run-ins with law enforcement.

4 A Yes, I have.

5 Q In fact, are you a convicted felon?

6 A Yes, I am.

7 Q For that reason, is it a role that you feel
8 comfortable with, to be cooperating fully with law
9 enforcement?

10 A Not at all.

11 Q Even on March the 2nd, 1992, did you want to
12 be involved in this investigation the police were conducting
13 regarding the murder of two young women?

14 A No, I didn't.

15 Q Did you have any desire at some point to be
16 a witness in a court of law to the information you had?

17 A Not at all.

18 Q Earlier in your testimony, you said that the
19 defendant told you that he was sure he could trust Diana
20 Hunt because she was a down bitch, I think you said was his
21 phrase.

22 MR. DUNLEAVY: Your Honor, was that a
23 question or a statement by the District Attorney's Office?

24 THE COURT: I don't know. I guess it's a

13

1 statement.

2 MR. HARMON: It's the beginning of a
3 question.

4 THE COURT: It's the beginning of a
5 question.

6 Now let's get the rest of the
7 question.

8 BY MR. HARMON:

9 Q Yeah. You said he didn't tell you what he
10 meant, but you knew what he meant?

11 A That's correct.

12 Q What did he mean?

13 MR. WOLFSON: Objection. How could he know
14 what he meant? This witness may know what he thinks it
15 means to him, but he doesn't know what Mike Rippo meant by
16 that.

17 MR. HARMON: Well, I'm --

18 MR. WOLFSON: Objection. It's speculation.

19 MR. HARMON: I'm willing to use the
20 different wording.

21 BY MR. HARMON:

22 Q What do you think it means to you?

23 A It means that it's someone that he can
24 trust, someone he has faith in, confidence. Basically

13

1 that's it. That's basically what it means, someone you can
2 trust.

3 MR. HARMON: May I have the Court's
4 indulgence one minute?

5 THE COURT: Yes.

6 BY MR. HARMON:

7 Q On Tuesday, February the 18th, 1992, when
8 you saw the burgundy Nissan, was it all one color? Was it a
9 solid burgundy color --

10 A Yes, it was.

11 Q -- to your memory?

12 A Yes.

13 Q Do you recall any type of primer paint being
14 on the car at that time?

15 A No.

16 Q I'm going to show you two photographs, Mr.
17 Sims. They've been marked as proposed Exhibits 64 and 65.

18 Will you examine the vehicle
19 which is shown in the photographs and explain to us whether,
20 in any way, it looks like similar or dissimilar to the car
21 Mr. Rippe had brought to Tommy's Maintenance the afternoon
22 of February the 18th, 1992.

23 A It looks similar.

24 Q In what way does it look similar?

13

1 A The fact that it's a 300ZX --

2 MR. DUNLEAVY: I'm going to object to the
3 form of the question. There is absolutely no testimony that
4 he saw Mr. Rippe bring it there. He said Mr. Rippe walked
5 into his office and said come on, look at it. There is no
6 testimony as to who brought it there.

7 MR. HARMON: I don't think the objection is
8 timely. He began to answer. But I can rephrase the
9 question.

10 THE COURT: Okay. Rephrase, Mr. Harmon.

11 BY MR. HARMON:

12 Q You didn't actually see who drove it to the
13 location; is that correct?

14 A No, I didn't.

15 Q But, the person you talked to regarding
16 looking at a car that he had was Mike Rippe?

17 A That's correct.

18 Q Mr. Rippe wasn't with anyone else at that
19 time, was he?

20 A No, he wasn't.

21 Q Now, I had asked you if the car shown in
22 proposed Exhibits 64 and 65 was similar or dissimilar to the
23 car you saw on that date, Tuesday, February the 18th, 1992.

24 A It looks similar.

14 1 Q In what way does it look similar?

2 A The fact that it's a 300ZX is really all.
3 The color looks much -- it doesn't look like they're the
4 same color to me. It looks more faded than the car I saw.

5 Q Is -- how would you describe the color, the
6 primary color, of the vehicle shown in proposed Exhibit 64
7 and 65?

8 A It looks more of a -- like a burnt orange to
9 me than the burgundy that I saw.

10 Q You remember the car as being burgundy.

11 A Yes, I do.

12 Q On proposed 64 it is, I believe, there
13 appears to be some primer paint on the left front fender.

14 THE COURT: You have to answer aloud.

15 THE WITNESS: Yes.

16 BY MR. HARMON:

17 Q Would that be a dissimilarity?

18 A That definitely was not on the car I saw.

19 Q As you went around the vehicle and looked at
20 the outside, did you see any damage to the car?

21 A Yes, I did.

22 Q What did you observe?

23 And please tell us where it

24 was.

14

1 A On the rear quarter panel -- I don't know
2 what it's called -- there was a dent, almost like a --
3 someone had hit it with a baseball bat, a hammer. It was
4 like the size of a baseball, a round dent that was in the
5 back of the car.

6 Q Do you remember on which side?

7 A It seems -- no.

8 Q But it was on one of the sides towards the
9 rear of the car?

10 A Yes, it was.

11 Q You are talking about the outside of the
12 vehicle?

13 A Yes, I am.

14 Q Was that something distinctive that you
15 remember noticing?

16 A Yes, it is.

17 Q Why did you pay attention to that?

18 A It was just something I noticed. I don't --
19 there was no particular reason, just something that stood
20 out when I was looking at the car.

21 Q Now, Mr. Sims, you said that on the
22 defendant's birthday, he was driving a Pinto.

23 A That's correct.

24 Q Had you seen him driving that car before?

14 1 A Yes, I had.

2 Q Did you know whose car it was?

3 A No.

4 Q I'm showing you proposed Exhibit 71 and 72.

5 Do you recognize the car shown

6 in those pictures?

7 A Yes, I do.

8 Q What is that car?

9 A That's the white Pinto that was broke down

10 at the corner of Spring Mountain and Rainbow.

11 Q Would you have an image in your mind now of

12 how the defendant looked when you saw him February the 18th,

13 1992?

14 A Yes.

15 Q Was his appearance then similar to the

16 defendant as the defendant appears in the courtroom now or

17 different?

18 A Different.

19 Q In what ways do you remember the appearance

20 being different on February the 18th, 1992?

21 A His hair was longer and he didn't seem as

22 pale as he seems today.

23 Q Do you remember if the defendant had any

24 facial hair back then?

1 A I don't -- I don't remember.

2 Q What do you remember about his weight? Do
3 you remember it being --

4 MR. HARMON: Your Honor, perhaps we could
5 have Mr. Ripppo stand so --

6 THE COURT: Stand up, please.

7 MR. WOLFSON: We don't have an objection to
8 that, Your Honor.

9 BY MR. HARMON:

10 Q Do you have a better view of Mr. Ripppo now?

11 A Uh-huh.

12 THE COURT: Yes?

13 THE WITNESS: Yes.

14 BY MR. HARMON:

15 Q What do you remember about the weight? Does
16 it appear similar today or dissimilar?

17 A He seems about the same weight as he was
18 then.

19 Q What is your estimate -- thank you.

20 What is your estimate regarding
21 the approximate height and weight of the defendant?

22 A I would say Mike is probably about 160
23 pounds, five five, five six.

24 MR. HARMON: Your Honor, that concludes

14

1 direct.

2

THE COURT: Cross-examination.

3

4

CROSS-EXAMINATION

5

BY MR. DUNLEAVY:

6

Q Prior to April -- or February 18th, 1992,

7

when was the last time you saw Michael?

8

A About a week prior to that.

9

Q Now, you came down here straight from the

10

D.A.'s Office; is that correct?

11

A No, it isn't.

12

Q You weren't in the D.A.'s Office?

13

A No. I was up in Department IV with my

14

attorney.

15

Q Is your attorney here in the court with you

16

today?

17

A Yes, he is.

18

Q Did you make any kind of a deal with the

19

State in exchange for your testimony?

20

A No, I didn't.

21

Q Nothing at all?

22

A Nothing at all.

23

Q Now, the District Attorney asked you if you

24

had any felony convictions.

14 1 And you answered yes; is that
2 correct?
3 A That's correct.
4 Q How many?
5 A Three.
6 Q So if you got in any more trouble, you could
7 be what's called a three time loser?
8 A I would assume so.
9 Q Do you have any charges pending against you
10 right now?
11 A Yes, I do.
12 Q You said you had two companies, Tommy's,
13 Incorporated and Tommy's Maintenance; is that correct?
14 A I don't think that's -- that's not what I
15 meant, if that's what I said.
16 Q Do you have two different companies?
17 A Not really. I have one corporation. I do
18 business -- I started my business as Tommy's Maintenance and
19 then I incorporated. It's all one business as far as I'm
20 concerned.
21 Q So does the sign say Tommy's, Incorporated
22 or Tommy's Maintenance?
23 A The sign says Tommy's Maintenance.
24 Q What else do you do for a living?

15

1 A That's all I do for a living.

2 Q Don't you manufacture and sell
3 methamphetamine for a living?

4 A No, I don't.

5 Q You don't?

6 A No.

7 Q And the State didn't give you any immunity
8 to admit it if you did?

9 A No, they didn't.

10 Q What about dealing in stolen cars?

11 A Never in my life.

12 Q Never?

13 A Never.

14 Q Not even a couple of Corvettes?

15 A Nope.

16 Q Haven't dealt in any stolen cars at all?

17 A Never.

18 Q So if other witnesses testified that that's
19 what you did --

20 MR. HARMON: Objection. This is
21 argumentative.

22 THE COURT: Overruled.

23 MR. HARMON: Your Honor, with due respect,
24 it is not proper to confront this witness with what others

15

1 may have said. That argues with the witness.

2 He can ask him, and if he has
3 evidence to impeach the testimony, that's another thing. He
4 can present --

5 THE COURT: I'll change my ruling. I'll
6 sustain it.

7 MR. DUNLEAVY: That's permissible
8 cross-examination. His credibility is an issue before the
9 Court.

10 THE COURT: I sustained the objection.

11 Go on.

12 BY MR. DUNLEAVY:

13 Q Now, you had this conversation with Nike on
14 the 18th. He walked into your office.

15 A That's correct.

16 Q You didn't see him drive the car there?

17 A No, I didn't.

18 Q You didn't see him drive the car away?

19 A No, I didn't.

20 Q You never saw him drive the car at all, the
21 Nissan, the red -- burgundy Nissan?

22 A Right.

23 Q Never saw him drive it?

24 A Nope.

1 Q And you gave statements to the police on the
2 2nd; is that correct, March 2nd, 1992?

3 A That's correct.

4 Q The one that Mr. Harmon talked to you about.

5 A That's correct.

6 Q And anywhere in that statement did you
7 mention the suitcase?

8 A No, I didn't.

9 Q The tapes?

10 A No, I didn't.

11 Q Did you give the tapes or the suitcase to
12 the police?

13 A No, I didn't.

14 Q Do you still have them?

15 A No, I don't.

16 Q What happened to them?

17 A I threw them in the garage.

18 Q Before or after you talked to the police?

19 A Before.

20 Q When you were contacted by the police, did
21 they come and get you or did they call you on the phone?

22 How did that contact come about?

23 A They beeped me. I was in route to one of my
24 properties. I called one of my employees, asked him to call

15

1 the number, and then call me on the radio and let me know
2 who and what it was about. He called me back, told me it
3 was homicide, and so I called homicide.

4 They told me do you want us to
5 come see you or do you want to come see us? I told them I
6 would come see him.

7 Q And went to the police department and you
8 gave a tape recorded statement?

9 A That's correct.

10 Q Talked to them first, and then they sat you
11 down and tape recorded the statement or did they just sit
12 you down and tape record it cold?

13 A It seemed to me we just tape recorded it
14 cold.

15 Q And this was after you had -- the 26th of
16 February, 1992, when you had had this conversation on Mike's
17 birthday, right?

18 A That's correct.

19 Q And after you had the suitcase?

20 A Yes.

21 Q And after you had the tapes.

22 But you didn't mention it in
23 that statement at all?

24 A That's correct.

15

1 Q Even when they asked you that catchall
2 question at the end, right?

3 A That's correct.

4 Q Did you think they weren't asking you that?

5 A I --

6 Q Anything else you might be able to add that
7 we haven't talked about that might help us in our
8 investigation?

9 A I -- I didn't feel it was specific.

10 Q Where was the specific question in your
11 statement about somebody died for the car?

12 A I don't know. You'd have to let me see it
13 to refresh my memory.

14 MR. DUNLEAVY: I'll be glad to.

15 THE WITNESS: What page is it on, do you
16 know?

17 MR. DUNLEAVY: I believe it's on page five.

18 THE WITNESS: That's just my luck. These
19 aren't numbered.

20 BY MR. DUNLEAVY:

21 Q The first question and answer on page five.

22 A I -- oh, okay. Now I see where you are at.

23 Q He specifically asked you: What did he tell
24 you about the car?

15

1

And your answer was: Someone

2

died for it.

3

A That's exactly what he said.

4

Q And it was specific enough for you to give

5

that specific response?

6

A Sure.

16

7

Q But the question about anything else that

8

might help us in our investigation wasn't specific enough to

9

tell them that you had had tapes that had belonged to the

10

victims, that you had had a suitcase belonging to the

11

victims?

12

A No.

13

Q That you had had a confession to murder?

14

A No. Like I said, I didn't want to be

15

involved.

16

Q Thank you. I think the answer was no;

17

right?

18

Then you testified before a

19

Grand Jury.

20

A That's correct.

21

Q And in the Grand Jury you were questioned

22

about this case; is that correct?

23

A That's correct.

24

Q Where in the Grand Jury did you mention the

16

1 suitcase?

2 A Where in the Grand Jury did they ask me
3 about it?

4 Q The question is: Did you mention it?

5 A They didn't ask me -- no, I didn't.

6 Q Did you mention --

7 A I specifically answered the questions that
8 were asked.

9 Q Did you mention the tapes? Did you mention
10 the tapes?

11 A No, I did not.

12 Q Did you mention the confession?

13 A No, I did not.

14 Q When is the first time you told anybody
15 about this?

16 A As soon as I was specifically asked about
17 it.

18 Q When did that happen?

19 A Oh, I believe it was around October of '93.

20 Q And who did you talk to?

21 A Teresa Lawry and John Lukens.

22 Q And did you give them a statement?

23 A I don't know if you would call it a
24 statement or not.

16

1 Q It was tape recorded?

2 A It wasn't tape recorded to my knowledge.

3 Q Both of them were present?

4 A That's correct.

5 Q Where did this occur?

6 A In the District Attorney's Office, up on the
7 seventh floor.

8 Q And you told them about it at that time?

9 A Yes, I did.

10 Q When you had all this information with you,
11 you didn't call anybody; is that correct, 'cause they didn't
12 ask?

13 A Would you ask me that again?

14 Q When you had this information originally,
15 you saw the news, you realized you had this stuff, you
16 didn't call the police.

17 A No, I didn't.

18 Q You said you were worried about going to see
19 Michael?

20 MR. WOLFSON: Excuse me, counsel.

21 Your Honor, may we be heard out
22 of the presence of the jury?

23 THE COURT: Yes. All right.

24 Ladies and gentlemen, we'll

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take a short recess.

Remember: Do not discuss this case among yourselves or with anyone else;

Or read, watch, listen to any report or commentary on the case by any medium of information, including, without limitation, newspaper, radio or television;

Don't express any opinion on this case until the matter is finally submitted to you.

I'll send the bailiff for you when we're ready.

(The following proceedings were had in open court outside the presence of the jury:)

MR. WOLFSON: Counsel approach the bench?

THE COURT: Let the record reflect we are now outside the presence of the jury.

MR. WOLFSON: May we approach the bench?

THE COURT: Uh-huh.

(Whereupon, an off-the-record discussion was had.)

THE COURT: Wait outside.

(Whereupon, the witness was excused.)

16 1 THE COURT: You want to do this in chambers;
2 is that right?

3 MR. DUNLEAVY: The Court's convenience, Your
4 Honor.

5 THE COURT: I don't care.

6 MR. WOLFSON: Let's do it in chambers on the
7 record.

8 THE COURT: Let's go in chambers.

9
10 (The following proceedings were
11 had in chambers, outside the
12 presence of the jury.)

13 MR. WOLFSON: Thank you, Judge.

14 THE COURT: In chambers; all counsel are
15 present, with the court clerk and the reporter.

16 MR. WOLFSON: Judge, at this time, the
17 defense would specifically move for a mistrial; and, in the
18 alternative, a request for an evidentiary hearing.

19 It has come to light, through
20 witness Tom Sims, that he told deputy District Attorneys
21 themselves about our client's supposed confession over two
22 years ago. I believe he said October of 1993. I believe he
23 said it was perhaps up in their office.

24 MR. DUNLEAVY: This is the same witness that

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16

1 I objected to after opening statements, and we received
2 assurances that the D.A.'s Office became aware of it about a
3 week before the pretrial.

4 MR. WOLFSON: Judge, pursuant to the
5 discovery statutes, we are entitled to be provided with
6 discovery concerning our client's statements.

7 Now, I know that statute says
8 written or recorded, but I think it's incumbent upon the
9 State of Nevada, when they learn from a witness, who first
10 went to the police in March of 1992, was interviewed by the
11 police, and then testified before a Grand Jury two or three
12 months later, who never volunteered at that time anything
13 about statements made by the defendant, who, then, in a
14 pretrial setting about a year later, advises District
15 Attorneys about our client's confessions and repeated
16 statements and physical evidence --

17 THE COURT: What do you mean a pretrial
18 setting?

19 MR. WOLFSON: In a pretrial, meaning an
20 interview up in their office, in preparation for trial.

21 THE COURT: Oh, okay.

17

22 MR. WOLFSON: That it is incumbent upon the
23 State of Nevada, it is obligatory upon the State of Nevada,
24 for them to provide us with that document, or those pieces

17

1 of information, whether it's written or recorded or not.

2 We are caught totally by
3 surprise during Mr. Harmon's opening statement about these
4 things -- and now we learn -- that he actually provided to
5 the State of Nevada about two and a half years ago, so we
6 move for a mistrial.

7 In the alternative or in
8 conjunction with, we ask for an evidentiary hearing so that
9 John Lukens and Teresa Lowry, under oath, can advise this
10 Court as to whether or not they did receive these -- this
11 information from Mr. Sims and what they did with that
12 information, if any --

13 MR. DUNLEAVY: This is a more -- I mean, he
14 testified before a Grand Jury, under oath; never mentioned
15 this.

16 The D.A. becomes aware that
17 he's changing his testimony 180, from nothing inculpatory to
18 confessions, and doesn't notify the defense, springs it on
19 us in the middle of trial, that's inappropriate. That's not
20 the way it's supposed to be done. And that's why we have
21 the rules to prevent this kind of thing. We're not supposed
22 to be tried by ambush.

23 MR. HARMON: Judge, with due respect, the
24 last characterization by Mr. Dunleavy of Thomas Sims' Grand

17

1 Jury testimony isn't accurate. Mr. Sims is correct. And in
2 the context of this motion, it probably is important for the
3 Court, once again, to look at exactly what Sims was asked
4 before the Grand Jury and what testimony he gave.

5 He didn't change anything.
6 He's right. He was not asked about any statements made by
7 the defendant. He wasn't asked about a suitcase or tapes.

8 He was asked about a very
9 narrow area; that is, whether the defendant appeared, on
10 February the 18th, whether he saw the car, whether he looked
11 at the car, whether he made the statement that someone died
12 for this car, and there was conversation about money,
13 \$2,000, and the defendant wanting to leave town. That
14 basically is the long and short of what Mr. Sims was asked
15 at the time of the Grand Jury hearing in June, 1992.

16 Now, when the earlier motion
17 was made for a mistrial, I don't remember precisely what I
18 said, but I didn't mean to imply, Judge, that Mr. Sims
19 hadn't ever said to someone else, and that includes
20 representatives of the office of the District Attorney, that
21 admissions were made to him. I was relating to the Court
22 what Mr. Seaton and I knew. And I -- I think we have to put
23 this case in its proper chronology.

24 Frankly, I don't know how many

17

1 attorneys Mr. Rippe has had. I haven't gone to the trouble
2 to examine closely the case history. I don't know how many
3 other prosecutors, frankly, he's had, but there are some
4 disadvantages that come from that.

5 If the defense is going to
6 argue some type of fellow officer, that is fellow deputy
7 rule, and say that everything Lukens and Lowry found out in
8 October 1993 is somehow imputed to specific deputies
9 assigned to the case, specifically Mr. Seaton and myself, I
10 say that's a legal fiction.

11 MR. DUNLEAVY: Your Honor --

12 MR. HARMON: I never knew.

13 MR. DUNLEAVY: And when Lukens --

14 THE COURT: Let him finish.

15 MR. DUNLEAVY: I thought he was.

16 MR. HARMON: And I think I can safely speak
17 for Mr. Seaton, I don't think he ever knew, until Tom Sims
18 came to the office -- and it's my recollection it was the
19 Friday before this trial began, and I sat down and spoke
20 with him, because we had divided the witnesses and I was to
21 examine Sims -- I never found out until that moment that he
22 had the additional information.

23 And, Judge, I treated it then
24 like any other information. We argued before we don't own

17 1 this witness. He testified before the Grand Jury. Whenever
2 these gentleman came on to the case, they had to have read
3 the Grand Jury transcript. They knew Sims was a witness.
4 They had the option of interviewing him in a pretrial
5 conference just like we do.

6 And I can't tell you how many
7 hundred times you sit down with a witness one-to-one and you
8 acquire additional information. That's just the nature of
9 this business.

10 And if we were obligated in
11 every situation, with every single snippet of information we
12 get, to go to the defense then and say, hey, we talked about
13 so and so, and he's got this additional information, that
14 would be totally unrealistic, totally impractical to do
15 that.

16 Now, I know this is significant
17 to the case. There is no doubt that Sims has
18 information --

19 THE COURT: Significant. It's a confession.

20 MR. HARMON: It is a confession.

21 MR. WOLFSON: And that's the distinction.

22 THE REPORTER: Would the --

23 MR. HARMON: The statute requires that we
24 disclose written or recorded statements, not work product,

18

1 not information that we acquire from a witness, who the
2 defense is fully aware of at the time of a pretrial
3 conference.

4 And for those reasons, Judge,
5 the motion should be denied.

6 MR. WOLFSON: The distinction, this is not a
7 little snippet of information.

8 I agree with Mr. Harmon, that
9 in pretrial settings, in interviews with witnesses,
10 additional information comes out.

11 We're talking about a
12 confession. We're also talking about a confession learned
13 by the State of Nevada by prior prosecutors, who previously
14 withheld discovery until a calendar call date.

15 And I don't know if Your Honor
16 recalls, but about a year and a half ago one of the
17 continuances was caused because Mr. Lukens dumped on us, at
18 about calendar call, new discovery, new information.

19 So when you combine that, we're
20 talking about a confession, and we believe under the statute
21 that they are obligated to provide us with that.

22 MR. DUNLEAVY: I would also point out when
23 you come across information of this caliber and you sit on
24 it for two years, when you have the discretion to reduce it

18

1 to writing or to a tape recording -- they have
2 investigators, they have the police, all they had to do was
3 say get this statement. They choose not to. There is a
4 reason for that, and it's to sandbag somebody at trial.

5 When Mr. Lukens and Miss Lowry
6 were disqualified from this case, new District Attorneys,
7 who took this case over, came up with a lot of information
8 that had been withheld from us.

9 And I was under the impression
10 there had been inquiries to make sure we weren't getting
11 sandbagged with anything else. They provided us with close
12 to a thousand pages of documents that had been withheld
13 previous to that. And the whole purpose was so we level the
14 playing field and start getting all the information we were
15 supposed to have.

16 Now we've just had a hand
17 grenade blow up in our face because nobody told us two years
18 ago that somebody made a decision not to reduce this to
19 writing and not to have a tape recorder, but to wait until
20 trial and dump it on us, and that's just us not the way it
21 was done.

22 MR. WOLFSON: May I make one more thought
23 along that line?

24 MR. HARMON: Sure.

18

1 MR. WOLFSON: I think I mentioned this to
2 the Court before.

3 I believe it was January 25th
4 or 26th, four days before trial, that Mr. Dunleavy brought a
5 document over to me that was apparently provided to him by
6 Mr. Harmon or Seaton wherein a criminologist, Alan Coblis,
7 in writing, says that the integrity of the evidence
8 gathering has been seriously compromised, in writing,
9 authored February, '92, and we got it five days before
10 trial.

11 So it's not just an isolated
12 incident. But if you look at the -- the number of things
13 where we're being sandbagged --

14 MR. DUNLEAVY: Significant.

15 MR. WOLFSON: -- not necessarily by
16 intentional conduct.

17 I understand the State of
18 Nevada and the D.A.'s Office has some pretty shabby methods
19 of providing us with discovery, but if you look at
20 collectively what's happening, this is just another
21 incidence of us being deprived of what we're entitled to.

22 MR. HARMON: Well, Judge, if I can make one
23 additional comment.

24 I take exception to the

18

1 shabbiness characterization for this reason; I've been with
2 this office -- in fact, today is my anniversary, for 28
3 years.

4 THE COURT: Congratulations.

5 MR. HARMON: Thank you.

6 For 28 years, we've had an open
7 file policy.

8 Now, there is nothing to
9 prevent defense counsel -- maybe our procedures are not
10 state of the art, but there is nothing to prevent the
11 defense from examining the file to learn what's there.
12 Unfortunately, it doesn't always get there.

13 And Mr. Seaton and I took the
14 initiative because when we looked at the file, we weren't
15 sure if we had all the crime lab reports. We asked our
16 secretary to contact the lab and have them copy every crime
17 lab report under this event number.

18 And it was as a result of that
19 that we learned that there were, I think, two reports. One
20 is the Cabralis report that Mr. Wolfson mentions, that we
21 did not have. We immediately provided that. It's written
22 or recorded.

23 But, Judge, regarding the
24 product of pretrial conferences, there isn't any hand

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19 1 grenade of our making. The defense had the same option Mr.
2 Seaton and I had.

3 MR. DUNLEAVY: Your Honor, that's legal
4 fiction.

5 MR. HARMON: The defense may contact Mr.
6 Sims. It's one thing if they make an effort to talk to the
7 man and if they are going to tell you now on the record he
8 refused to speak with them.

9 But if they are going to say
10 they made no effort to contact him, made no effort to sit
11 down with him and ask very direct questions that were asked
12 of him during our pretrial conference, then we're not
13 sandbagging anyone, because I would assume that the defense,
14 with a key witness, and even based upon the Grand Jury
15 testimony, of seeing the car, seeing Mr. Rippe, of hearing
16 Mr. Rippe say somebody died for this car, and Mr. Rippe
17 saying I want a couple of thousand dollars so I can leave
18 town, that translated Sims into a key witness, and the
19 defense had the same option that we exercised of
20 interviewing him to obtain the information.

21 We didn't tell Mr. Sims not to
22 talk to the defense. We didn't tell Mr. Sims to confide
23 only in us about the confession.

24 Your Honor, it's not written or

19

1 recorded. It is work product. It is just not feasible in
2 our system for each -- as each additional information
3 surfaces, to spoon feed it to the defense.

4 MR. WOLFSON: Quickly.

5 THE COURT: Let me ask you this:

6 Did Mr. Lukens or Teresa Lowry
7 ever indicate to either Mr. Harmon or Mr. Seaton that --
8 about this confession that was testified to?

9 MR. SEATON: No. And I will back up what
10 Mr. Harmon has said, may be my comments.

11 In fact, I knew nothing of it
12 until Mr. Harmon came to my office and told me, after his
13 meeting with Tom Sims, what he had to say.

14 MR. DUNLEAVY: Your Honor, we had Lukens and
15 Lowry removed for some unethical conduct. It's not
16 inconsistent. I'm not saying --

17 MR. HARMON: What conduct is unethical? It
18 has to be --

19 MR. DUNLEAVY: To participate in the
20 investigation.

21 MR. HARMON: Because they went along when a
22 search was executed?

23 MR. DUNLEAVY: To intimidate the defense
24 witnesses and to execute a search warrant and intimidate a

19

1 witness, yes.

2 MR. HARMON: Well, I think you should choose
3 your words more carefully.

4 THE COURT: Well, I made a finding that they
5 made themselves witnesses.

6 MR. HARMON: Exactly.

7 MR. DUNLEAVY: Now, I would also point out,
8 as to their claim of shabbiness, Judge Lochrer, here more
9 than two years ago, made it clear to them what they should
10 do is establish a procedure similar to the federal system,
11 that whenever a discovery is provided, there is a sign sheet
12 for it so there is a record of what has been provided and
13 what has not been provided. The State deliberately chooses
14 not to do that.

15 THE COURT: Well, there is nothing to
16 provide you because nothing was ever put in writing.

17 MR. DUNLEAVY: Because they knew about a
18 confession and chose not to reduce it to writing, it's one
19 thing if something comes up in a pretrial today, a day or
20 two before, but when they know about it years in advance and
21 choose not to reduce it to writing, because then they can
22 stand up and say we don't have to provide it, that's just
23 trying to backhole the law.

24 The law is that they are

19 1 supposed to be acting in an ethical manner, and an ethical
2 manner does not apply when you are sandbagging people like
3 this.

4 They know damn good and well
5 that they could have tape recorded this or reduced it to
6 writing. They made the conscious decision not to do so and
7 not to notify the defendant that he's swung 180 out from his
8 previous written and recorded testimony.

9 THE COURT: Is there any points -- any law
10 on this?

11 MR. WOLFSON: Give us a chance.

12 One other thing: I believe
13 there are between four and six Jailhouse informants on this
14 case that the State intends to call and that we have been
15 provided discovery on.

16 It is abundantly clear that the
17 State of Nevada learned, during the pendency of this case,
18 of their existence, of the fact that people have come
19 forward and said the defendant made inculpatory statements.

20 It was then that either the
21 District Attorney's Office or the police department, or even
22 in conjunction with each other, sent detectives to record
23 the interviews, and I think in one case, they went up north
24 to Carson City.

20

1 If they go to the trouble to
2 interview a jailhouse snitch by sending a detective hundreds
3 of miles to take down the interview, they could have very
4 easily, and in the same line, done that with Mr. Sims.

5 I agree with Mr. Dunleavy.
6 They purposely chose not to do it so that they could avoid
7 the obligation under Chapter, I believe, 174.

8 MR. HARMON: So now when we interview these
9 jailhouse snitches, if they provide information that is in
10 addition to what is contained in their written or recorded
11 statements, do we have the obligation of going to the
12 defense each time that occurs, if it's --

13 MR. DUNLEAVY: If it's a confession.

14 MR. WOLFSON: If it's a statement by our
15 client.

16 MR. HARMON: Well, that's not provided by
17 statute in this state. The statute talks specifically about
18 written or recorded statements. It's just not realistic, in
19 the context of the pretrial conference, for us to provide
20 every bit of additional information we receive.

21 It's not sandbagging, Judge.
22 This witness was not a secret.

23 MR. WOLFSON: The distinction, it was a
24 confession. It wasn't just additional information. It's

20

1 considered a confession.

2 MR. HARMON: It wasn't Brady material. It
3 was not gathering new material. This is inculpatory
4 material.

5 MR. DUNLEAVY: But it completely changed his
6 prior testimony.

7 MR. SEATON: Judge, I have not said anything
8 or much up to this point. Let me just put an exclamation
9 point behind what I think is dispositive of this whole
10 issue.

11 If you look at the discovery
12 statute, and whatever section it is, I think it is the first
13 words of that particular sentence -- sentence, and it says
14 any written or recorded statements of the defendant.

15 If it said any statements of
16 the defendants, we wouldn't be here arguing. We'd be
17 apologizing. It says written or recorded. This is neither.

18 And so the statute takes
19 consideration of the fact that this very scenario will
20 occur. We will learn things that do not necessarily have to
21 be lent to recordation at that particular time.

22 MR. DUNLEAVY: I would also remind the Court
23 that we have a discovery order that was very broad; it was
24 not opposed by the State; and I submit that it's covered.

20

1 MR. WOLFSON: A written discovery order,
2 which I can produce momentarily, if Your Honor wants to
3 review it.

4 THE COURT: Produce it.

5 Do you want to prepare points
6 and authorities on this issue for tomorrow?

7 MR. DUNLEAVY: I think we need to.

8 THE COURT: I think so too.

9 MR. DUNLEAVY: I mean, obviously, we didn't
10 know this was coming.

11 THE COURT: All right. Prepare points and
12 authorities.

13 I'm going to send the jury
14 home.

15 We'll reconvene tomorrow at ten
16 o'clock. We're going to reconvene tomorrow at ten o'clock.
17 I want points and authorities on this issue.

18 MR. WOLFSON: May I have that back?

19 THE COURT: It's easier to make another
20 quick copy.

21 MR. HARMON: We'd like a copy, too.

22 THE COURT: Two copies.

23 MR. WOLFSON: Are we breaking for the day
24 now?

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THE COURT: Yeah. I ain't going to do
nothing until I review that.

MR. WOLFSON: Okay. So are we done?

THE COURT: Yeah, we're off. We're done.

(Whereupon, the proceedings
were recessed until Thursday,
February 8, 1996, at ten a.m.)

-000-

ATTEST: Full, true and accurate transcript of proceedings.


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

●● ORIGINAL ●●

MRIPPO-07029-00912

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-FILED IN OPEN COURT-
February 8, 1996
LORETTA BOWMAN, CLERK
By *[Signature]* Deputy

DISTRICT COURT
CLARK COUNTY, NEVADA

8 THE STATE OF NEVADA,
9 Plaintiff,
10 -vs-
11 MICHAEL DAMON RIPPO,
12 #0619119
13 Defendant.

Case No. C106784
Dept. No. IV
Docket C

ANSWER IN OPPOSITION TO
DEFENDANT'S MOTION FOR MISTRIAL BASED ON
AN ALLEGED DISCOVERY VIOLATION

DATE OF HEARING: 2-8-96
TIME OF HEARING: 10:00 A.M.

20 COMES NOW, the State of Nevada, by STEWART L. BELL, District Attorney, through
21 MELVYN T. HARMON, Chief Deputy District Attorney, and files this Opposition to Defendant's
22 Motion for Mistrial Based on an Alleged Discovery Violation.

23 This Opposition is made and based upon all the papers and pleadings on file herein, the attached

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CE31

897

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

3 DATED this 8th day of February, 1996.

4 Respectfully submitted,

5 STEWART L. BELL
6 DISTRICT ATTORNEY
7 Nevada Bar #000477

8 BY Melvyn T. Harmon
9 MELVYN T. HARMON
10 Chief Deputy District Attorney
11 Nevada Bar #000862

12 POINTS AND AUTHORITIES

13 STATEMENT OF THE ISSUES

- 14 1. Whether the United States Constitution or Nevada statute requires the disclosure of oral
15 inculpatory statements by a secondary witness?
- 16 2. Whether the timing of Mr. Sims' disclosure to the District Attorney's Office impacts whether or
17 not his oral statement is discoverable?
- 18 3. Whether mistrial is the appropriate remedy even if there is a discovery violation?

19 STATEMENT OF THE CASE

20 Defendant has, in the midst of jury trial, moved for a mistrial based on an alleged discovery
21 violation regarding testimony from Tom Sims that Defendant made admissions to him. The defense
22 claims nondisclosure of this oral inculpatory statement amounts to a violation of the discovery rules and
23 that such a violation mandates a mistrial. Defendant is incorrect on both counts: there is no duty to
24 disclose unmemorialized inculpatory statements and any violation of the discovery rules does not
25 automatically mandate a mistrial.

26 In fact, this very issue was addressed out of the presence of the jury following the State's Opening
27 Statement. See Reporter's Transcript of Friday, February 2, 1996, Volume VI, pp. 72-78. At that time,
28 Mr. Harmon represented to this Court that the first time he learned of Defendant's admissions to Tom
Sims was the previous week during an oral pre-trial interview of Tom Sims. *Id.* at p. 76. This Court

properly ruled that the adversarial process requires that the defense use its own investigators to prepare its case and denied Defendant's mistrial motion. *Id.* at 77-78.

Now it has come to light on cross-examination of Mr. Sims that, according to his testimony, he informed Mr. John Lukens of the District Attorney's Office that Defendant made admissions to him during a discussion with Mr. Lukens in 1993. It is the State's position that the information was not discoverable regardless of when it may have come to the attention of the District Attorney's office. Further, the State maintains that Mr. Harmon and Mr. Seaton were in fact never informed by Mr. Lukens of Tom Sims' comments regarding Defendant's admissions, and that they at all times have acted in good faith towards their discovery obligations. Finally, the State argues that if a discovery violation is found, the proper remedy is a brief recess or continuance rather than the severe remedy of a mistrial.

ARGUMENT

I.

DEFENDANT HAS NO CONSTITUTIONAL OR STATUTORY RIGHT TO DISCLOSURE OF ORAL INCULPATORY EVIDENCE.

A.

There Is No Constitutional Right To Disclosure of Oral Inculpatory Evidence.

It is well established that the State must provide to a criminal defendant any exculpatory evidence which it has in its possession that is material to guilt or punishment. *Brady v. United States*, 373 U.S. 220, 83 S. Ct. 1194 (1963); see *Kyles v. Whitley*, ___ U.S. ___, 115 S. Ct. 1555 (1995); *United States v. Bagley*, 473 U.S. 667, 105 S. Ct. 3375 (1985); *Giglio v. United States*, 405 U.S. 150, 92 S. Ct. 763 (1972). Thus, there are two prongs that must be met under *Brady* before the Constitution mandates disclosure: first, the evidence must be exculpatory; and second, the evidence must be material.

1. Tom Sims' Testimony Regarding Defendant's Admissions Is Not Exculpatory Evidence.

To require disclosure, evidence must be exculpatory. Here, Tom Sims' testimony is clearly inculpatory, in that it contains admissions by the Defendant. However, in *Bagley*, the United States Supreme Court indicated that exculpatory evidence also includes impeachment evidence. *Bagley, supra*,

1 at 3385. Here, however, Sims' testimony is not the type of impeachment evidence contemplated in
2 Bagley.

3 In Bagley, supra, government witnesses had been paid money in exchange for testimony.
4 However, the government attorneys did not disclose this fact to the defense. In reversing the Court of
5 Appeals and remanding for a determination of materiality, the Supreme Court indicated that such
6 impeachment evidence demonstrating that key government witnesses had perjured themselves on the
7 stand did in fact constitute exculpatory evidence as it is "evidence favorable to the accused," particularly
8 when that perjury comes from the only witnesses used by the government to establish guilt.

9 Similarly, in Giglio, supra, the first prosecutor to handle the case knew of a deal made between
10 the government and its key witness: defendant's alleged co-conspirator who agreed to turn State's
11 evidence if the government agreed not to prosecute him and who happened to be the only witness linking
12 the defendant to the crime. Subsequently, another prosecutor took over the case who did not know
13 about this deal not to prosecute the key witness. When the key witness testified, he stated that he had
14 made no deals with the government. This testimony was, of course, false. The unknowing prosecutor
15 did not correct this testimony. The Supreme Court held that this impeachment evidence was exculpatory
16 evidence under Brady as it, too, was "evidence favorable to the accused."

17 Thus, the impeachment evidence which has been held to fall within Brady is evidence necessary
18 to reveal perjury which the State has in its possession but which it has not revealed. The evidence here,
19 though arguably impeachment evidence, does not rise to this level. First, there is no allegation that Tom
20 Sims is perjuring himself. The evidence the defense claims was not disclosed is not evidence
21 contradicting Sims' current testimony. The only impeachment is one of omission not contradiction.
22 Whether Sims is now relating the full story or is lying is a question to be tested through cross-
23 examination and left to the jury's determination. The State, unlike in Bagley and Giglio, is not in
24 possession of any evidence which directly contradicts Sims' trial testimony and proves perjury. Nor is
25 the State allowing knowingly perjured testimony. See Kyles, supra.

26 While the defense might prefer to have known this information earlier, that alone does not create
27 a Brady violation. As the Supreme Court has held:

28 ///

The prosecutor is not required to deliver his entire file to defense counsel, but only to disclose evidence favorable to the accused that, if suppressed, would deprive the defendant of a fair trial.

Bagley, supra, at 3380. In a footnote to this very quote, the Court further stated:

An interpretation of Brady to create a broad, constitutionally required right of disclosure "would entirely alter the character and balance of our present system of criminal justice." [citation omitted] Furthermore, a rule that the prosecutor commits error by any failure to disclose evidence favorable to the accused, no matter how insignificant, would impose an impossible burden on the prosecutor and would undermine the interest in finality of judgments.

Id., at n.7. Here, the evidence the defense argues should have been disclosed, while possibly "favorable" in a broad sense, is exactly the type of evidence contemplated in the above footnote.

Since this evidence is inculpatory rather than exculpatory and since it is not the type of impeachment evidence which has been held to trigger Brady concerns, the first prong of the Brady test has not been met. As such, Defendant has no Constitutional right to its prior disclosure.

2. The Testimony Is Not Material Because Lack Of Disclosure Of Tom Sims' Testimony Does Not Undermine Our Confidence In The Result Or Deprive Defendant Of A Fair Trial

Even if exculpatory, the second prong of Brady requires that any exculpatory or impeachment evidence must be material before it must be disclosed. The test of materiality requires that there be a "reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." Bagley, supra, at 3383. The Supreme Court has held that:

Such suppression of evidence amounts to a constitutional violation only if it deprives the defendant of a fair trial. Consistent with "our overriding concern with the justice of the finding of guilt," [citation omitted] a constitutional error occurs, and the conviction must be reversed, only if that evidence is material in the sense that its suppression undermines confidence in the outcome of the trial.

Id., at 3381. As explained above, in Bagley the evidence withheld was evidence proving perjury. Further, the evidence of perjury related to the only witness who could link the defendant to the crime.

1 Thus, evidence that this witness had committed perjury could well have rendered incredible the only
 2 witness establishing defendant's guilt. And even in that instance the Court did not hold outright that this
 3 evidence was material. Instead the Court remanded the case to the District Court for a determination of
 4 materiality. *Id.*, at 3385. Similarly in *Giglio* the undisclosed evidence of perjury related to the main
 5 witness establishing the guilt of the defendant. *Giglio, supra*, at 766.

6 Here, these cases might be applicable if the undisclosed evidence revealed perjury by Diana Hunt.
 7 That would almost certainly "undermine confidence in the outcome or the trial." However, that is not
 8 the case. The evidence the defense alleges should have been disclosed here is simply that Tom Sims, a
 9 secondary witness, now is including a fact in his testimony that he previously had not indicated in either
 10 of his two recorded statements. Certainly Tom Sims is important to the State as he corroborates some
 11 of Diana Hunt's testimony and offers other testimony helping to establish Defendant's possession of the
 12 stolen vehicle. However, there is little, if any, evidence for which Tom Sims is the sole source. This falls
 13 far short of the materiality standards set by the United States Supreme Court. It could easily be argued
 14 that a conviction could be obtained without any of Tom Sims' testimony at all. Thus, it seems impossible
 15 for the defense to claim that impeachment by omission of a secondary witness somehow undermines our
 16 confidence in the result and deprives Defendant of a fair trial.

17 Again, the defense may well prefer to have known about Tom Sims' statement that Defendant
 18 confessed to him prior to hearing it at trial. However, that preference does not make the evidence
 19 material in a constitutional sense and mandate its disclosure. Instead, this testimony does not rise to the
 20 level of evidence which undermines our confidence in the trial. Regardless of the timing of the disclosure,
 21 the defense is free to cross-examine Tom Sims on this omission. As such, the second prong of *Brady* has
 22 not been met. Defendant, thus, has no constitutional right to prior disclosure of this information.

23 Thus, since Tom Sims' testimony that Defendant made admissions to him is neither exculpatory
 24 nor material, there is no Constitutional mandate that the State disclose this evidence prior to trial. Since
 25 there has been no Constitutional violation, Defendant's Motion for Mistrial must be denied as to this
 26 issue.

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B.

Nevada Statute Does Not Create A Right To Discovery Of
Unwritten And Unrecorded Inculpatory Statements.

Though the United States Constitution does not mandate disclosure, States may enact more stringent disclosure rules. However, Nevada's discovery statute does not require disclosure of oral statements. NRS 174.235 provides:

Upon a 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 admissions 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 exercise of due diligence may become known, to the district attorney

Here, however, there was no written or recorded version of Tom Sims' testimony regarding Defendant's admissions to him. Thus, under NRS 174.235, there is no duty to disclose it.

Further, there is no duty on behalf of a prosecutor to reduce oral interviews with witnesses to writing, thus making them discoverable to defense counsel. See, e.g., People v. Graham, 678 P.2d 1043 (Colo. App.), cert. denied, 467 U.S. 1216, 104 S. Ct. 2660 (1983); see also People v. Garcia, 627 P.2d 255 (Colo. App. 1980)(prosecution not required to furnish defense with substance of oral statement of witness whose name had been disclosed to defense pursuant to discovery order).

No Nevada case has held that NRS 174.235 requires disclosure of unrecorded, inculpatory oral statements. Instead, directly on point is Thompson v. State, 93 Nev. 342, 343, 565 P.2d 1011 (1977), where the Nevada Supreme Court held:

Appellant next argues he was denied due process because the State failed to, *sua sponte*, disclose to defense counsel oral inculpatory statements made by appellant. "Pretrial discovery of the accused's statements is not constitutionally compelled by the Fourteenth Amendment," Mears v. State, 83 Nev. 3, 7, 422 P.2d 230, 232 (1967). Further, voluntary disclosure is not contemplated by our statutory provisions concerning criminal discovery.

Thus, in Nevada, there is no requirement to disclose oral inculpatory statements. See also Franklin v. District Court, 85 Nev. 401, 402, 455 P.2d 919 (1969)(district court erred in requiring disclosure of all

1 statements of all persons to be called by prosecution, as statute does not authorize such disclosure and
 2 defendant has no constitutional right to it); Wallace v. State, 88 Nev. 549, 550-51, 501 P.2d 1036
 3 (1972)(it was error for prosecutor to fail to disclose exculpatory psychiatrist report indicating defendant
 4 was mentally ill); Maginnis v. State, 93 Nev. 173, 176, 561 P.2d 922 (1977)(since State's non-compliance
 5 with discovery was neither willful nor deliberate and since court took appropriate action to prevent
 6 prejudice to the defendant, there was no error); Donovan v. State, 94 Nev. 671, 673, 584 P.2d 708
 7 (1978)(discovery provision only operates where formal request has been made); State v. Havas, 95 Nev.
 8 706, 708, 601 P.2d 1197 (1979)(due process is violated where prosecutor withholds exculpatory
 9 evidence regardless of intent); Riddle v. State, 96 Nev. 589, 590, 613 P.2d 1031 (1980)(evidence must
 10 be material to be discoverable); Lopez v. State, 105 Nev. 68, 77-79, 769 P.2d 1276 (1989)(where
 11 information is questionably exculpatory, where there is no showing information was suppressed or
 12 intentionally withheld and where defense was aware of information through other sources, trial court did
 13 not abuse its discretion in denying motion for mistrial).

14 Further, the defense here has long been on notice of Mr. Sims. He was interviewed by
 15 investigators. A copy of that interview was provided to the defense. He testified before the grand jury.
 16 A transcript of that testimony was provided to the defense. His name was included on both the original
 17 long list of witnesses and the revised short list of witnesses in this case. Also, the defense has been on
 18 notice of the specific fact that Sims will testify that Defendant made admissions to him, as it was
 19 mentioned by Mr. Harmon six days ago on February 2, 1996, in his opening statement. Defendant has
 20 had ample time to do his homework.

21 Though obviously not a witness of the magnitude of Diana Hunt, Tom Sims certainly is important
 22 to the State's case-in-chief and is deserving of investigation by the defense. As Mr. Harmon argued and
 23 as this Court noted, the defense has access to investigators. It is a fundamental premise of our adversarial
 24 system that each party is required to do their own preparation and may not rely on the other side to their
 25 homework for them. It is up to the defense to do their own work.

26 Thus, Nevada law does not require the disclosure of Tom Sims' oral statements. Since there is
 27 no Constitutional or statutory requirement compelling disclosure of this evidence, there has been no
 28 discovery violation. Defendant's Motion for Mistrial must, as a result, be denied.

II.

THE SURPRISING REVELATION TO BOTH PARTIES THAT TOM SIMS INFORMED JOHN LUKENS IN 1993 OF DEFENDANT'S ADMISSIONS DOES NOT CHANGE THE CONCLUSION THAT ORAL INCUPLYATORY STATEMENTS NEED NOT BE DISCLOSED TO THE DEFENSE, REGARDLESS OF WHEN THE STATE MAY HAVE LEARNED OF THEM.

This Court was surprised, as was both the Defendant and the State, to learn that Tom Sims had informed John Lukens back in 1993 that Defendant had made admissions to him. However, regardless of how surprising, the timing of when the State learned of this fact does not control whether or not that information must be disclosed to the defense. As explained above, the defendant has no constitutional or statutory right to oral inculpatory statements. As such, there is no duty either Constitutional or statutory, to disclose it.

There is no sliding scale of disclosure obligations. Defendant did not have a right to discover these oral statements when it was understood that Mr. Harmon learned of this information late last week. Defendant does not gain the right to discovery simply because it is now understood that Mr. Lukens was orally informed of this information in 1993. As such, though this new revelation is surprising, it does not make discoverable evidence which there is otherwise no duty to disclose.

The state, however, understands this Court's concern and is itself concerned about establishing that no rights of the defendant have been violated. The Clark County District Attorney's Office is interested both in fair and just resolution of criminal matters as well as in obtaining verdicts which do not require the undue expenditure of time and resources on appeal and later on remand. Where it is possible to address potential problems in the District Court, it is wise to do so. It is not in the interest of this Court, the parties, the witnesses, the victims or the State of Nevada to retry this case. With these interests in mind, the State would not object to an evidentiary hearing held out of the presence of the jury to determine that in fact no recorded or written statements were made by John Lukens or Teresa Lowry regarding Tom Sims' testimony that the Defendant made admissions to him. Only then can all parties be satisfied that there is no material of a discoverable nature which the State is required to disclose.

If in fact it is discovered that written or recorded statements exist, then this Court may consider an appropriate remedy. However, the State is confident that an evidentiary hearing will simply reveal that

no written or recorded statements were ever made and thus there is no discoverable material which the State has a duty to disclose.

III.

MISTRIAL IS NOT THE PROPER REMEDY WHERE DEFENDANT HAS SUFFERED NO PREJUDICE, AND WHERE ANY VIOLATION MAY BE CURED BY A BRIEF RECESS OR CONTINUANCE AND CROSS-EXAMINATION AND ARGUMENT.

Defendant asks for a very severe remedy: mistrial. However, mistrial is not mandated in this instance. Assuming arguendo that a violation of the discovery rules is found, NRS 174.295 provides:

If at any time during the course of the proceedings it is brought to the attention of the court that a party has failed to comply with such sections or with an order issued pursuant to such sections, the court may order such party to permit the discovery or inspection of materials not previously disclosed, grant a continuance, or prohibit the party from introducing in evidence the material not disclosed, or it may enter such other order as it deems just under the circumstances.

Thus, this Court has discretion to tailor an appropriate remedy.

As a general rule, however, the District Court should fashion the least severe sanction that will accomplish the desired result. United States v. Euceda-Hernandez, 768 F.2d 1307 (11th Cir. 1985)(court abused its discretion in suppressing statements as sanctions for prosecutor's violation of discovery requirement); see also People v. District Court, 793 P.2d 163 (Colo. 1990); United States v. Schwartz, 857 F.2d 655 (9th Cir. 1988); United States v. Gee, 695 F.2d 1165 (9th Cir. 1983).

In fact, the ABA Standards for Criminal Justice provide:

In selecting an appropriate sanction [for discovery violation], the trial court should assess both the nature and extent of the prejudice flowing from the nondisclosure. The court should then attempt to tailor the sanction to remedy the prejudice and to promote compliance with the discovery rules while affecting the evidence at trial and the merits of the case as little as possible.

II ABA Standards for Criminal Justice 11-4.7 commentary at 11-19S (2d ed. 1986 Supp.)

The ABA Standards strongly disfavor suppression of evidence as a sanction for a violation of discovery, let alone the granting of a mistrial:

The exclusion sanction is not recommended because its results are capricious. Thus, exclusion of prosecution evidence may produce a disproportionate windfall for the defendant, while exclusion of defense evidence may lead to an unfair conviction. Either result would defeat the objectives of discovery.

II ABA Standards for Criminal Justice 11-4.7 commentary at 11-67 to 11-68 (2d ed. 1980).

Instead, the proper remedy here is a brief recess or continuance. In United States v. Euceda-Hernandez, 768 F.2d 1307 (11th Cir. 1985), the Federal District Court considered a situation where a United States Attorney unknowingly violated a standing discovery order to turn over oral statements. The court there found a violation, but held that the sanction of exclusion was too extreme, noting:

Among the factors the court must weigh [in granting a sanction for a discovery violation] are the reasons for the Government's delay in affording the required discovery, the extent of prejudice, if any, the defendant has suffered because of the delay, and the feasibility of curing such prejudice by granting a continuance or, if the jury has been sworn and the trial has begun, a recess.

Id. at 1312. The court further held that:

By suppressing the Government's evidence rather than granting a continuance or recess, a trial judge may achieve a speedier resolution to a criminal case and reduce his docket, but he does so at the expense of sacrificing the fair administration of justice and the accurate determination of guilt and innocence.

Id. Several factors here mitigate against the granting of a mistrial and in favor of a brief recess or continuance.

A.

The Prosecutor In This Case Was In Fact Unaware Of Tom Sims' Prior Oral Statement That Defendant Made Admissions To Him.

In People v. District Court, 793 P.2d 163 (Colo. 1990), the Colorado Supreme Court held that though lack of actual knowledge is not a defense to a failure to disclose discoverable information, it is a consideration in fashioning a remedy.

Here, Mr. Harmon truthfully related that he did not know until last week that Defendant had made

admissions to Sims. Upon learning of this information he in good faith believed it to be not discoverable. While this is not a defense to failure to disclose the evidence, his good faith does mitigate against granting a severe remedy in this case.

B.

Defendant Suffered No Prejudice Here Because The Substance Of The Admissions Is Nothing New To The Defense. The Only New Aspect Of This Testimony Is That Now Tom Sims Will Be Joining Several Other Witnesses In Testifying That Defendant Made Admissions To Him.

Though Defendant may be surprised that Sims is now saying that Defendant made admissions to him, Defendant is in truth only surprised by the messenger not the message. Defendant is already well advised that other individuals will be testifying that he made admissions to the crime. The content of the admissions Sims has related to the jury is no different in substance from the other admissions to which Defendant is already on notice. There are no new angles or facts told by Sims which require substantially more investigation than was already required by the defense to prepare a rebuttal to the other admissions. The only truly new fact is that Tom Sims is joining the list of other individuals who are going to testify that Defendant bragged about killing Lauri Jacobsen and Denise Lizzi.

C.

Defendant's Ability To Cross Examine On The Subject And To Argue That This Is The First Time This Witness Is Telling This Story Adequately Protects Defendant's Rights.

Here, regardless of what Sims says, or when the defense learns of it, their response is the same: cross-examine Sims on the fact that he never mentioned these admissions either in his interview or in his grand jury testimony. That cross-examination strategy exists whether the defense learned of the admissions the instant the State did, a year ago, a month ago, or yesterday. The timing of its disclosure has not in any way changed the only logical approach to the situation.

In fact, the State by not disclosing this evidence has in some ways made the defense case better than it would have been had the State disclosed the evidence. Until Sims stated that Defendant had made admissions to him, the defense did not have this rather effective line of cross-examination implying that Sims is making the admissions up. The defense can now include this item in its list of alleged mistakes and argue that the State is out to get the defendant and is willing to overlook the "truth." Certainly, this

1 pause in the trial, even if these proceedings have been out of the presence of the jury, have not been to
 2 the State's advantage. The defense has not been substantially prejudiced by this testimony, and any
 3 prejudice is offset by the ability to cross-examine on the subject and the ability to argue to the jury in
 4 closing that Sims is lying on the stand. The traditional adversarial tools more than remedy any
 5 nondisclosure.

6 D.

7 Conclusion

8 These factors all indicate that a mistrial is not the appropriate remedy in the event this Court finds
 9 a violation of the discovery rules. It is within this Court's discretion to order any remedy it feels is just
 10 under the circumstances. Here, the adversarial process of cross-examination and argument coupled with
 11 a reasonable continuance or recess to which the State would not object in order for the defense to
 12 properly prepare to deal with this new information more than cures any prejudice suffered by Tom Sims'
 13 undisclosed testimony.

14 IV.

15 CONCLUSION

16 Though possibly surprising, because Defendant has neither a Constitutional nor statutory right
 17 to discovery of Tom Sims' oral inculpatory statements, Defendant's Motion for Mistrial must be denied.
 18 In order to guarantee that Defendant's rights have not been violated, the State would not object to a brief
 19 evidentiary hearing so that this Court and the defense can satisfy itself that in fact no written statements
 20 of Tom Sims exist which indicate Defendant made admissions to him.

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In the event this Court finds a violation of discovery obligations, the State respectfully requests that this Court grant a reasonable recess or continuance to allow the defense to make the necessary preparations to proceed in light of Tom Sims' testimony rather than grant the severe remedy of mistrial.

DATED this 27th day of February, 1996.

Respectfully submitted,

STEWART L. BELL
DISTRICT ATTORNEY
Nevada Bar #000477

BY

Melvyn T. Harmon
MELVYN T. HARMON
Chief Deputy District Attorney
Nevada Bar #000862

RECEIPT OF COPY

RECEIPT OF A COPY of the above and foregoing ANSWER IN OPPOSITION TO DEFENDANT'S MOTION FOR MISTRIAL BASED ON AN ALLEGED DISCOVERY VIOLATION is hereby acknowledged this _____ day of February, 1996.

STEVEN WOLFSON, ESQ.

By

302 E. Carson #400
Las Vegas, Nevada 89101

ORIGINAL

-FILED IN OPEN COURT-

February 9, 1996
LORETTA BOWMAN, CLERK
[Signature] Deputy

DISTRICT COURT
CLARK COUNTY, NEVADA

The State of Nevada,)
)
Plaintiff,)
)
vs.)
)
Michael Damon Ripppo,)
#0619119)
Defendant.)

Case No. C106784
Dept. No. IV
Docket No. "C"

Before the Honorable Gerard J. Bongiovanni
Thursday, February 8, 1996, 10:15 o'clock a.m.
Reporter's Transcript of Proceedings

VOLUME I

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



RENEE SILVAGGIO, CCR 122 391-0379

1 APPEARANCES:

2 For the State: MELVYN T. HARMON, ESQ.
3 DANIEL SEATON, ESQ.
Deputies District Attorney

4 For the Defendant: STEVEN B. WOLFSON, ESQ.
5 PHILIP H. DUNLEAVY, ESQ.
6 Attorneys at Law

7 Law Clerk: Delwin Potter
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RENEE SILVAGGIO, CCR 122 391-0379

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EXHIBITS ON BEHALF OF DEFENDANT: Marked Admitted

A DA File History Notes 73 75

B Police Department Memorandum 133

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Las Vegas, Nevada, February 8, 1996, 10:15 o'clock a.m.

* * * * *

(The following proceedings were
had in open court outside the
presence of the jury:)

THE COURT: State of Nevada versus Michael
Damon Rippo Rippo.

Let the record reflect the
presence of the defendant, with his attorneys Steve Wolfson
and Philip Dunleavy; Dan Seaton and Mel Harmon for the
State.

The record will also reflect
we're outside the presence of the jury.

THE COURT: Mr. Wolfson.

MR. WOLFSON: Good morning, Judge.

Judge, I believe that this is a
hearing, if you will, on our motion for a mistrial. We are
going to be asking that the Court conduct an evidentiary
hearing pursuant to that motion.

THE COURT: I've asked for points and
authorities. You didn't supply any.

MR. WOLFSON: That's true, Judge.

THE COURT: Okay.

4 1 MR. WOLFSON: I don't have a staff person
2 who can draft written points and authorities between when we
3 broke yesterday and when we came back to court today;
4 neither does Mr. Dunleavy. However, we are prepared to
5 present Your Honor with written authorities.

6 THE COURT: Oral authorities?

7 MR. WOLFSON: Well, oral authorities by
8 citing cases and presenting the Court with cases.

9 THE COURT: Okay.

10 MR. HARMON: Your Honor, the prosecution
11 does have written points and authorities.

12 THE COURT: I know. I've had an opportunity
13 to review yours.

14 MR. HARMON: I furnished a copy to the
15 Court, also copies to defense counsel; at about ten o'clock
16 this morning is when they were completed.

17 THE COURT: Okay. I think it's necessary to
18 have a hearing on this.

19 MR. WOLFSON: You do or do not?

20 THE COURT: I do.

21 MR. HARMON: We agree, Your Honor.

22 And Mr. Lukens and Miss Lowry
23 are present.

24 May we file, in open court, our

1 points and authorities?

2 THE COURT: You may.

3 MR. WOLFSON: Judge, while Mr. Harmon is
4 doing that, if I may, we are also going to be asking for the
5 disqualification of the District Attorney's Office, and we
6 respectfully will be asking for recusal of this Court.

7 Judge, we think that all of the
8 potential witnesses at this evidentiary hearing should be
9 ordered to remain outside the courtroom while others are
10 testifying. So we ask Your Honor to order certain persons
11 outside of the courtroom.

12 THE COURT: So you are moving for exclusion
13 of witnesses?

14 MR. WOLFSON: Yes.

15 THE COURT: Okay.

16 MR. WOLFSON: Because this is our motion, I
17 believe we will call -- excuse me.

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

20
21 MR. WOLFSON: Judge, do you want to take
22 testimony now or may we present our proffer, if you will, in
23 the form of oral representations as to what we expect -- and
24 this would be brief --

1 THE COURT: You want exclusion of witnesses
2 first?

3 MR. WOLFSON: Yes, I do.

4 MR. DUNLEAVY: Yes, Your Honor.

5 THE COURT: Okay. And include the witness?

6 MR. DUNLEAVY: That would be basically
7 anybody in the District Attorney's office who is not trying
8 this case, anybody from Bob Archie's office, if they should
9 be present, and all the lay witnesses that have been
10 subpoenaed.

11 THE COURT: All right. Those people --

12 MR. HARMON: Your Honor, it sounds to us
13 like the motion regarding the office of the District
14 Attorney is much too broad.

15 For example, the District
16 Attorney is here.

17 THE COURT: Well, the office of -- the
18 District Attorneys who were involved in this particular
19 case.

20 MR. WOLFSON: I notice Mr. Bell is in the
21 courtroom. I don't think we have an objection to him
22 remaining, but obviously District Attorneys Lukens and Lowry
23 is outside.

24 MR. HARMON: I don't think Bill Hehn is

1 here. During a certain interval, he was involved in the
2 case.

3 THE COURT: Mr. Lukens in here?

4 I don't see him.

5 MR. WOLFSON: He was earlier.

6 MR. DUNLEAVY: I guess he left.

7 THE COURT: Miss Lowry?

8 MR. HARMON: They are outside the courtroom.

9 THE COURT: All right. They are outside.

10 THE BAILIFF: Let me check, sir.

11 THE COURT: Who else do you want outside?

12 MR. WOLFSON: Well, for purposes of this
13 proffer, if you will, Mr. Sims, if he's in the courtroom.

14 If you will --

15 MR. HARMON: He's outside with Mr. Archie.

16 THE COURT: All right.

17 MR. DUNLEAVY: Your Honor, briefly, our
18 points and authorities -- I didn't have a chance to get them
19 typed last night. I didn't finish them until the wee hours.

20 But I would point out we argued
21 some issues in chambers yesterday, before we had a chance to
22 really sit down and go over what happened yesterday, and a
23 lot happened yesterday.

24 I would point out that the key

4 1 to our argument at this time is that evidence relevant to
2 either the guilt or punishment of somebody, especially if
3 it's potentially exculpatory, is absolutely required under
4 Brady versus Maryland. The Court is aware of that.

5 The Court signed an order
6 saying they must comply with that Brady term. What we have
7 is, first, Mr. Sims' statement on 3/2/92 to the police, when
8 there was no mention of cassettes, there was no mention of a
9 suitcase, there was no mention of this alleged confession.

10 Then he testified before the
11 Grand Jury on 6/92, June of '92, same thing: No mention of
12 the cassettes, no mention of the suitcase, no mention of
13 this alleged confession.

14 In Mel's opening statement was
15 the first time the defense became aware that this statement
16 existed, and we had no prior knowledge to it whatsoever.

17 At that time, Mr. Harmon
18 assured us that they learned of it in January of '96 in a
19 pretrial meeting; perhaps early February, '96. I don't know
20 the exact date, but it was within the last week or so.

21 And their assertion was that it
22 was privileged, that there was no need to turn it over
23 because it was only inculpatory.

24 However, I fortunately got the

5

1 transcript this morning. One of things that was very
2 clearly said by Mr. Sims was that he had accidentally killed
3 one of the girls, so he had to kill the other one.

4 Now, if that's not potentially
5 exculpatory as to one count and relevant to punishment, I
6 don't know what is. That's as clear a Brady as I can think
7 of.

8 Our client made a statement
9 that he had accidentally killed and that -- that goes to
10 both exculpatory and punishment. And Brady is not vague on
11 that issue. That's something the Court must take action on.

12 It also -- we asked the
13 question, when did you first tell the District Attorney,
14 based on Mr. Harmon's assurances that it was January, 1996.

15 Now, Mr. Harmon talks about,
16 gosh, how am I supposed to know what was said to other
17 deputies and so forth. Only there is a case -- and I know
18 Mr. Harmon is aware of it; they cite it in their brief.

19 Mr. Harmon tried the
20 D'Augustino (ph) case, which is on appeal to the Supreme
21 Court right now, which deals with the Kyles issue; and the
22 Kyles issue makes it quite clear that the prosecutor has an
23 obligation, quoting:

24 "Held to a disclosure standard

1 based on what all State officers at the time knew."

2 It goes on; it talks about
3 other prosecutors.

4 Further language is that a
5 prudent prosecutor would resolve doubtful questions in favor
6 of the disclosure. This is as it should be.

7 "Such disclosure will serve to
8 justify trust in the prosecutor as the
9 representative of a sovereignty whose interest in a
10 criminal prosecution is not that it shall win a
11 case, but that justice shall be done."

12 That's the Kyles case, United
13 States Supreme Court. It puts the burden on the State to
14 find out if there is these ticking bombs out there, and when
15 they know there is potential exculpatory -- that is not even
16 a close issue -- but even if that exculpatory wasn't there,
17 they had provided us with a police report that said there
18 was no damaging evidence; they provided us with Grand Jury
19 testimony that said there was no damaging evidence; and then
20 in opening statements, they tell us of a confession of our
21 client.

22 If you look at the spirit of
23 seeking justice, that is sandbagging, not seeking justice;
24 and we submit that it's clearly a Brady violation. We have

1 copies of that.

2 There is also the case of
3 B-r-e-c-h-t versus Abrahamson, which puts the pattern -- if
4 there is a pattern of any kind of prosecutorial misconduct
5 and so forth, then there is a real problem, that that's an
6 automatic grounds for a federal writ of habeas corpus.

7 In this case, two District
8 Attorneys have been taken off the case. There has been
9 disclosure of the forensic statement that basically said
10 there was no valuable evidence found at the scene because of
11 a contamination that was offered --

12 THE COURT: Excuse me. You wanted Mr.
13 Archie excused?

14 MR. ARCHIE: May I come in?

15 MR. WOLFSON: You are supposed to be
16 outside, Bob.

17 MR. DUNLEAVY: But -- it was offered
18 February 24th, 1992, but it was given to us one week before
19 trial, and given to us basically three days before trial in
20 this case.

21 It's indicative of a pattern of
22 abuse in this case. It's indicative of the reason that the
23 District Attorney's Office in this case should be recused.

24 It's time to bring in a

5 1 prosecutor that doesn't have an agenda in this case. It's
2 time to bring in a prosecutor who is going to talk to all
3 the people involved, find out what's out there that hasn't
4 been given to the defense, and the obligation under Kyles
5 and under Giglio.

6 We don't even have to ask about
7 it. When the State finds out about potentially exculpatory
8 evidence or evidence relative to the punch book, they are
9 obligated to turn it over. We don't even have to request
10 it. But we're not getting it.

6 11 We're getting it when we've
12 asked a question in front of the Judge, after they've heard
13 it all in direct examination. You can't un-ring that bell.
14 That Jury has heard all this stuff without allowing us an
15 opportunity to have done a background on Mr. Sims to find
16 out what might have motivated this statement. We don't have
17 any of that.

18 As to the issue on the recusal
19 of the Court, we respectfully submit that this Court is
20 under a lot of unusual pressure right now. The newspapers
21 have just -- I believe it was yesterday or the day before,
22 were blasting the Court for what they, quoted as mishandling
23 of a D.U.I. case.

24 Well, this is a double capital

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1 murder case, a high profile case, and we're asking you now
2 to rule against the District Attorney's Office and grant a
3 mistrial. That puts you in an absolutely untenable
4 position. You are stuck.

5 They are grilling you in the
6 newspapers; you are under investigation; the federal Grand
7 Jury is looking at you. And you are supposed to sit here
8 and say, I don't -- I'm not worried about what the State is
9 going to do to me?

10 It's putting you in a position
11 that -- I think it makes it almost impossible for you to
12 make decisions fair to my client without having to weigh
13 issues outside this trial. And it's not done with
14 disrespect to this Court, but it's an unfortunate fact
15 that's going on.

16 There has to be a burden to
17 make rulings on cases such as this.

18 THE COURT: I don't know what the relation
19 of the federal probe has to do with this case.

20 MR. DUNLEAVY: Only that, according to all
21 the newspaper articles and so forth, a federal probe is
22 saying that you have been unduly favorable towards the
23 defense, and now we're the defense in a high profile double
24 murder case saying throw this case out, get in somebody

1 other than the District Attorney's Office and let's do it
2 properly.

3 And if they are sitting there
4 saying Bongiovanni is overly favorable to the defense, it's
5 very hard for you to do something in a double capital murder
6 case that's getting a lot of media attention.

7 THE COURT: No, it isn't.

8 MR. WOLFSON: Judge, the article that Mr.
9 Dunleavy is referring to was the article, I believe, by
10 reporter John Smith just the other day, wherein this D.U.I.
11 matter was discussed, wherein a deputy District Attorney was
12 quoted in the article.

13 And our position is that now
14 you are being put in a position where the District
15 Attorney's Office is criticizing your handling of a matter.
16 There is scrutiny of whether Judge Bongiovanni acted
17 inappropriately and unfairly to the State of Nevada, the
18 D.A.'s Office in that case.

19 Our position is that,
20 regretfully, you are in an awkward position because of the
21 attention that you've been getting in these other matters.

22 MR. DUNLEAVY: And one thing we would
23 request permission to do is supplement the record with
24 copies of the recent newspaper articles relating to this

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1 case while this case -- or relating to Your Honor while this
2 case has been going on.

3 THE COURT: I can only state for the record
4 that I feel no pressure whatever from the State of Nevada
5 to -- and it has no effect on me whatsoever.

6 I'm here to do my job and I
7 feel no pressures of any kind, that would affect this case,
8 from the State.

9 Is that your full offer?

10 MR. DUNLEAVY: Basically, yes, Your Honor.

11 THE COURT: Now you wish to call a witness?

12 MR. WOLFSON: Yes.

13 THE COURT: Okay.

14 MR. WOLFSON: Sims.

15 THE BAILIFF: Who?

16 MR. WOLFSON: Sims.

17 THE BAILIFF: Mr. Archie has asked if he
18 would be allowed in or not.

19 MR. WOLFSON: Our position would be no,
20 Judge, because -- well, in fact, to bring the Court totally
21 up to date, Mr. Seaton informed Mr. Dunleavy and I of an
22 additional factor, which brings Mr. Archie potentially into
23 the scenario.

24 And I think Mr. Seaton would

6 1 agree that Mr. Archie may be called upon as a witness and,
2 therefore, he should be outside.

3 MR. HARMON: We do agree, Your Honor.

4 THE COURT: All right. He will remain
5 outside.

6 THE BAILIFF: Thank you, sir.

7 THE COURT: Stand up; raise your right hand.

8
9 Whereupon,

10 THOMAS SIMS

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

15
16 THE CLERK: Thank you.

17 Please be seated.

18
19 DIRECT EXAMINATION

20
21 BY MR. DUNLEAVY:

22 Q Mr. Sims, the reason you are here today is
23 that yesterday you had made a statement that you had talked
24 to Mr. Lukens and Mrs. Lowry in October, 1993.

6 1 Do you remember that
2 conversation?

7 3 A The conversation yesterday when I --

4 Q Yesterday -- to begin with, do you remember
5 stating that yesterday?

6 A Yeah. I'm not sure it was October. I think
7 I said I believe October.

8 Q In -- well, in 1993 --

9 A Correct.

10 Q -- when they were working on the case, did
11 they bring you into the D.A.'s Office or did they come out
12 to your business or how did that come about?

13 A I believe Teresa Low -- I came -- I came to
14 the D.A.'s Office. How -- I believe Teresa Lowry called me
15 and set up an appointment with me.

16 Q And it -- was the purpose for preparing for
17 this trial --

18 A I believe --

19 Q -- the Rippo trial?

20 A I believe so, yes.

21 Q Is that what they talked to you about?

22 A Yes.

23 Q And you gave them a statement at that time,
24 talked to them about the case?

1 A Well, see, it's getting -- there were --
2 there was more than one occasion.

3 Q Well, when was the first time?

4 A It was sometime in 1993, but I went in --
5 when I went in to meet with John Lukens and Teresa Lowry, my
6 attorney was not present. So they called my attorney and
7 then they let me go; and then later on, they set up the
8 appointment that I spoke of yesterday.

9 Q So you felt you had to have your attorney
10 present before you could talk to them?

11 A No. I went down there to talk to them. Mr.
12 Lukens seemed to think that it was necessary to contact my
13 attorney since I had one.

14 Q Were they threatening you with any kind of
15 prosecution or were you facing charges at that time?

16 A I'm not sure. I don't believe so, no.

17 Q You have some charges pending at this time,
18 do you not?

19 A Yes, I do.

20 Q Drug case?

21 A That's correct.

22 Q An ex-felon in possession of a firearm?

23 A It's all the same case.

24 Q All the same case, but two counts?

7

1 A Yes.

2 Q Or is there more than two counts?

3 A Two counts.

4 Q It's a sales or manufacturing or trafficking

5 or just a possession?

6 A Possession with intent.

7 Q Now -- but that was after you went for this

8 meeting with Lukens and Lowry that you were arrested on

9 this?

10 A I believe so.

11 Q Do you remember when this case arose?

12 A My case?

13 Q Yes.

14 A May of '93, I think.

15 Q Roughly May of '93?

16 A Yes.

17 Q Has that case been resolved yet?

18 A No, it's still pending.

19 Q Now, you went in with your attorney to talk

20 to Lukens and Lowry about this case, right?

21 A That's correct.

22 Q And did you tell them the same story you

23 told the Grand Jury?

24 A Well, I don't think it was a story. I

7 1 answered the questions the way they were asked of me.

2 Q Did they --

3 THE COURT: Who was your attorney at that
4 time?

5 THE WITNESS: Robert Archie.

6 THE COURT: Okay.

7 BY MR. DUNLEAVY:

8 Q Did they go through the same material that
9 was covered in the Grand Jury testimony?

10 A I would say yes.

11 Q Then did they specifically ask you questions
12 about other information?

13 A Yes. They --

14 Q Such as?

15 A Oh, they -- we went through all kinds of
16 stuff. When Rippo and I were in -- I can talk out of the
17 presence of the Jury now, right?

18 Q Yes.

19 A -- about me and Rippo, when we were in the
20 penitentiary together. I was in there for four hours. I
21 mean, he -- he went through phone numbers with me for
22 probably 30 minutes, whose number is this, whose number is
23 that? I mean, he covered quite a bit of information in that
24 time, a lot of stuff that didn't really have anything to do

1 with this case, but a lot of things.

2 Q Now, was there an investigator from the
3 D.A.'s Office there as well?

4 A I don't -- no.

5 Q Just Mr. Lukens, Mrs. Lowry and Mr.
6 Archie --

7 A That's correct.

8 Q -- and yourself?

9 Do you know if they were tape
10 recording this or --

11 A I don't -- I don't think so.

12 Q Did you see anyone making notes while you
13 were talking?

14 A Not to -- no, not to my recollection.

15 Q Did you bring up the subject of Mr. Rippo's
16 alleged confession?

17 A Yes, I did.

18 Q What did you tell them at that time?

19 A Basically exactly what I said yesterday.

20 Q Do you remember telling them that Mr. Rippo
21 said I strangled the bitches --

22 A Yes.

23 Q -- or something to that effect?

24 Did you also tell them that Mr.

1 Rippo said the first one died accidentally or something to
2 that effect, so I had to kill the second one?

3 A I believe so, yes.

4 Q That's information that you had at that time
5 that you would have disclosed to them?

6 A Yes.

7 Q You weren't trying to hold anything back
8 from them at that time?

9 A No, not at all.

10 Q Then did you have another meeting with them
11 on another date?

12 A No, not -- that was the last time.

13 Q Until you met with Mr. Harmon --

14 A That's --

15 Q -- a week or so ago?

16 A That's correct.

17 Q And you told Mr. Harmon the same story you
18 told Teresa Lowry and John Lukens?

19 A That's correct.

20 MR. DUNLEAVY: Court's indulgence for a
21 moment.

22

23

24

(Whereupon, a sotto voce at
this time.)

1 BY MR. DUNLEAVY:

2 Q Now, do you remember yesterday you were
3 talking about you were in the parking lot of K-Mart?

4 A Yes.

5 Q And you were asked the question: Did he
6 ever in the conversation you had, as you proceeded from the
7 K-Mart area to the Stardust, mention anything about an
8 accident?

9 And your answer was: Yeah, he
10 told me this was when he first -- this was still in the
11 parking lot at K-Mart, that when it first came up, he told
12 me that he had accidentally killed the one girl so he had to
13 kill the other.

14 Is that accurate?

15 A Wow, I got lost there for a minute.

16 What did I --

17 Q Would you like to take a look at it for a
18 moment --

19 A Sure.

20 Q -- and see if this refreshes your
21 recollection?

22 A Sure.

23 Q It's page 62 of the transcript of
24 yesterday's hearing.

- 1 A Start right here?
- 2 Q At the top where it says answer there -- or
- 3 on A and then your reply.
- 4 A Okay.
- 5 Q Would that be the same information you gave
- 6 to Mr. Lukens and Mrs. Lowry back in 1993?
- 7 A Yes.
- 8 Q And the same information that you gave to
- 9 Mr. Harmon a couple weeks ago?
- 10 A Yes.
- 11 Q Did you also tell them something to the
- 12 effect of I strangled the bitches -- have you used the same
- 13 language each time pretty much?
- 14 A Yeah; yes.
- 15 Q Do you know if Mr. Harmon tape recorded the
- 16 conversation?
- 17 A I don't know if he did. I don't think so.
- 18 Q You didn't see one; he didn't tell you he
- 19 was going to tape it?
- 20 A No.
- 21 Q Were there any investigators from the D.A.'s
- 22 Office there when you gave your statement to Mr. Harmon?
- 23 A No.
- 24 Q Who else was there, anyone?

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1 A Just Mr. Harmon and myself.

2 Q Just the two of you.

3 How long did that interview
4 take?

5 A I would guess maybe an hour and a half, two
6 hours.

7 Like I said, it's just a --
8 well, let me think. Wait a minute. We were in there at
9 2:30. I'd say about an hour and a half.

10 Q Did your attorney accompany you on that
11 occasion?

12 A Yes, he did.

13 Q So Mr. Archie was there as well on the
14 second interview?

15 A No. He went in with my girlfriend while she
16 spoke to Mr. Seaton.

17 Q So your girlfriend is who?

18 A Laurie Tyler.

19 Q And he went with her to talk to Mr. Seaton.

20 A That's correct.

21 MR. DUNLEAVY: I'm sorry, Your Honor, I lost
22 my train of thought.

23

24

(Whereupon, a sotto voce at

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this time.)

BY MR. DUNLEAVY:

Q Did you and your attorney discuss whether or not your testimony here would have an impact on your pending case?

A No.

Q It was never mentioned to you?

A No.

Q This case has been pending since May of 1993?

A That's correct.

Q Do you know who's prosecuting it?

A No, I'm not sure.

Q Is it the Clark County District Attorney's Office?

A Yes.

Q It's here in Las Vegas?

A Yes.

Q But you don't recall talking to your attorney about your testimony in relation to that case?

A It has nothing to do with this case.

Q And you weren't looking for any favors or anything from your testimony here; you just came forward?

A No. I -- to be honest with you, I'd rather

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1 not be here at all. This has nothing to do with that.

2 Q Well, yesterday, you indicated that you
3 didn't put it in your original police statement because they
4 didn't ask the specific question.

5 A That's correct.

6 Q And then you said the same thing at the
7 Grand Jury.

8 A That's correct.

9 Q And the only reason you brought it up was
10 because they asked a specific question about a confession?

11 A That and the fact that my attorney told me
12 to tell the truth.

13 MR. DUNLEAVY: Your attorney. Okay.

14 Thank you.

15 Nothing further, Your Honor.

16 MR. HARMON: No questions.

17 THE COURT: All right. You may step down.

18

19 (Whereupon, the witness
20 was excused.)

21

22

23 THE COURT: Call your next witness.

24 MR. WOLFSON: John Lukens.

8

1 Whereupon,

2 JOHN LUKENS

3 having been called as a witness by the Defendant and
4 having been first duly sworn to tell the truth, the
5 whole truth and nothing but the truth, was examined
6 and testified as follows:

7 THE CLERK: Thank you.

8 Please be seated.

9
10 DIRECT EXAMINATION

11
12 BY MR. WOLFSON:

13 Q Good morning, Mr. Lukens.

14 I'm going to be asking you a
15 few questions.

16 How are you employed, sir?

17 A I am employed by the Clark County District
18 Attorney's Office.

19 Q How long have you been employed in that
20 capacity?

21 A Since July of 1987.

22 Q You are a chief deputy District Attorney; is
23 that right?

24 A Yes.

RENEE SILVA6610, CCR 122 391-0379

8 1 Q Are you familiar with the case styled State
2 of Nevada versus Michael Rippo?

3 A I am.

4 Q Did you, at some point in time, become the
5 prosecutor on that case?

6 A I did.

7 Q Do you remember approximately when you
8 became the assigned prosecutor on that case?

9 A I do not.

10 Q You recognize that, previous to your
11 assignment, District Attorneys William Hehn, H-e-h-n, and
12 Teresa Lowry were the assigned prosecutors; isn't that
13 right?

14 A Correct.

15 Q At some point in time thereafter you joined
16 Teresa Lowry in the prosecution of this case, did you not?

17 A I did.

18 Q We've received certain information that you
19 conducted pretrial interviews with at least one witness
20 during 1993.

21 Does that sound to be a fair
22 approximate time period of when you were assigned this case?

23 A Yes. It would have been the fall of '93,
24 sometime in there, in the fall or winter, in that --

9 1 Q Did you have occasion to conduct a pretrial
2 interview with a witness by the name of Tom Sims?

3 A Yes.

4 Q What is a pretrial interview?

5 A I'm going to be -- it was not, in my mind, a
6 pretrial interview. It was an interview with Tom Sims that
7 was prior to the trial. It was not what I would have
8 characterized as my formal pretrial interview.

9 THE COURT: What trial date do you recall we
10 may have had in the fall or winter, or perhaps -- winter of
11 '94 that you would be preparing for, do you recall?

12 THE WITNESS: I do not.

13 My recollection, as I sit here
14 today, was that there was a trial date in early '94. There
15 was also -- there had been a trial date, like, in September
16 of '93, sometime there, that was -- that I think was -- that
17 I remember as fairly short notice, and then maybe a trial
18 date in spring of '94, somewhere in there.

19 BY MR. WOLFSON:

20 Q What was your purpose for interviewing
21 witness Tom Sims?

22 A My purpose for interviewing Tom Sims -- as
23 it was a number of other witnesses -- was, first of all,
24 just to meet Mr. Sims.

9

1 I had not -- since I got into
2 the case late, and after it had been presented to the Grand
3 Jury, I did not know any of the witnesses by sight or
4 anything about them. So the first round of interviews that
5 I did was to simply become acquainted with them.

6 Q Did you interview other witnesses as well
7 during this time period?

8 A Yes, I did.

9 Q How many times did you sit down with witness
10 Thomas Sims?

11 A At least once, not more than twice, but
12 probably twice.

13 Q Mr. Sims just testified that perhaps he sat
14 down with you on a first occasion and the subject of him
15 having an attorney present was raised; and he, therefore,
16 followed that suggestion and came back another time after
17 the advice of counsel.

18 Does that sound accurate?

19 A Yes. That sounds like it would be probably
20 correct.

21 Q In any event you eventually sat down with
22 him and conducted your interview; is that right?

23 A I spoke with him, yes.

24 Q Why are you quibbling with my word

1 interview? Why are you not saying yes, that you interviewed
2 him?

3 A Because it was -- I never interviewed him
4 from the standpoint of this is a pretrial interview now and
5 I need to establish these things, this is what I am going to
6 ask you, and what is your answer going to be with that?

7 It was a hi, I'm John Lukens.
8 I'm going to be prosecuting this case. I understand you
9 know something about this case in general. And it was more
10 of a general type of discussion rather than a specific
11 pretrial interview.

12 Q How long did this discussion take?

13 A My recollection would have been it's not
14 extensive or in depth and probably 15 minutes.

15 Q Who was present during this 15 minute
16 approximate discussion?

17 A My recollection is that there would have
18 been four people present: Mr. Sims, myself, Bob Archie and
19 Teresa Lowry.

20 Q Was Bob Archie present during the entire
21 discussion?

22 A I believe that he was.

23 Q Were you recording this discussion?

24 A No.

1 Q Was anybody there with a recording device,
2 to your knowledge?

3 A No. It was not -- it was not that type of
4 interview.

5 Q Where did this take place?

6 A It would have taken place in my office.

7 Q Had you previously read Mr. Sims' voluntary
8 statement and/or Grand Jury testimony?

9 A I would have, yes.

10 Q You were generally familiar, were you not,
11 with what he had previously told both the police and the
12 Grand Jury?

13 A Yes.

14 Q Do you recall with any specificity what Mr.
15 Sims told you about what he knew about this case?

16 A There are some things that I do, yes.

17 Q When did you learn that you may be asked to
18 give testimony at this hearing?

19 A Sometime yesterday afternoon.

20 Q All right. Have you had any discussions
21 with the prosecutors regarding the subject of your
22 testimony?

23 A Yes.

24 Q Did that aid you in trying to recall what

10

1 Mr. Sims may have told you?

2 A No.

3 Q Did you make any notes of your discussions
4 with Mr. Sims?

5 A I did not.

6 Q Did you record, in any way, statements made
7 by Mr. Sims?

8 A No.

9 Q Do you know if District Attorney Teresa
10 Lowry recorded or took notes of any of the discussions with
11 Mr. Sims?

12 A I don't believe she did so contemporaneously
13 with those discussions.

14 Q Do you know whether she made notes
15 thereafter concerning the discussions with Mr. Sims?

16 A I think she might have, yes.

17 Q Have you ever read them?

18 A I have not.

19 Q You went out on the search of a witness'
20 residence that had pertinent information on this case, did
21 you not?

22 A I participated and was present -- well, I
23 didn't participate, but I was present during the execution
24 of a search warrant, yes.

10

1 Q So you went out on it, didn't you?

2 A I did.

3 Q Do you recall when that action would have
4 taken place, relative to your interview or discussion with
5 Tom Sims, before or after?

6 A I was under the impression -- I had a vague,
7 general impression that it took place prior to my discussion
8 with Tom Sims.

9 I have since confirmed that it
10 did, in fact, take place prior to my discussion with Tom
11 Sims.

12 Q The search that you went out on of Alice
13 Starr's residence occurred before your discussions with
14 witness Tom Sims; is that what you said?

15 And I don't know, John. I'll
16 have to look it up, but do you remember?

17 A Well, I don't have a recollection of my
18 first discussion with Tom Sims.

19 I have a recollection of my
20 second discussion with Tom Sims, and my recollection is that
21 the search occurred prior in time to my discussion with Tom
22 Sims, the second one.

23 Q Was it in between the first and the second?

24 A I don't know, because I -- I don't have a

1 recollection of when my first talk with Tom Sims took place,
2 when it was just he and I, and I said, wait a minute, you
3 may want to have your attorney present.

4 Q And during that first discussion, was it
5 just that brief, to suggest that no substance was discussed
6 at that first face-to-face meeting?

7 A Yes. As a matter of fact, I didn't even --
8 I didn't even remember that first meeting until you
9 mentioned it, that I had said you may want to have your
10 attorney. So certainly nothing of substance was said during
11 that time.

12 Q I have the advantage of having a copy of the
13 return to the search warrant, which says that the warrant
14 was executed on September 30th of 1993.

15 Does that sound accurate?

16 A Yes.

17 Q That was the warrant of Alice Starr's
18 residence that we're talking about?

19 A Yes.

20 Q So your discussion with witness Sims
21 occurred -- the 15 minute or so discussion occurred at this
22 second meeting: is that right?

23 A The -- the in depth discussion in 15
24 minutes -- it may have been a little longer than that 'cause

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1 I know that more substantial information was garnered, but
2 it occurred after the search warrant.

3 Q Would it be fair to say that you were still
4 investigating this case when you interviewed or discussed
5 the case with Tom Sims?

6 A Yes.

7 Q Would it be fair to say that you
8 participated in whatever role when you went out on this
9 search warrant of Alice Starr's residence?

10 A No.

11 Q Would it be fair to say that an
12 investigation was still being conducted by perhaps the
13 police department in this search warrant of Alice Starr's
14 residence?

15 A If I remember, a portion of the search
16 warrant was to obtain handwriting exemplars or samples of
17 Mr. Rippe because he had failed to -- he refused to give
18 examples or samples; and so, in the sense that that was, in
19 fact, connected with this case, I think the answer would be
20 yes.

21 Q What do you recall Tom Sims saying as to
22 what Michael Rippe allegedly said to him concerning this
23 case?

24 A I'm sorry. Would you repeat that question

1 again --

2 Q Certainly.

3 A -- because it limits some of the things that
4 Tom Sims said, and --

5 Q What do you recall Tom Sims telling you that
6 Mike Rippo said to him concerning this case?

7 A I have a specific recollection of two
8 specific things that Mr. Rippo said to him. One was with
9 reference to the car, that someone died for this car. And
10 the next was an ambiguous statement, something in the nature
11 of I'm cured. I didn't rape and -- and I don't remember
12 whether it was I didn't rape them or I didn't rape the
13 bitches, but I didn't rape someone.

14 Q Are those the only statements you recall Tom
15 Sims making to you during this discussion?

16 A No.

17 Q What else did Tom say concerning what Mike
18 Rippo told him?

19 A There --

20 Q Did Tom Sims tell you anything else that
21 Mike Rippo said to him?

22 A Concerning this case after the murders, the
23 answer to that question would be no.

24 Q Would be no, you don't recall anything else?

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1 A I do not recall Tom Sims telling me anything
2 else that Mike Rippo would have said to him. After that, I
3 spent a fair amount of time exploring the relationship
4 between Tom Sims and Michael Rippo prior to the murders.

5 Q We are concerned with -- we are focusing on
6 what Tom Sims did or did not tell you about what Mike Rippo
7 told him in the form of an admission or confession to the
8 murders.

9 Do you recall Tom Sims saying
10 anything else to you, with that focus in mind?

11 A No.

12 Q Did Tom Sims tell you that Mike Rippo
13 admitted to him that, quote, he had accidentally killed the
14 one girl, so he had to kill the other?

15 A I have no recollection of Tom Sims ever
16 telling me that.

17 Q Did Tom Sims say that Mike Rippo said words
18 to the effect: Both of them were fine, meaning the girls,
19 both of them were fine; he could have fucked both of them,
20 but I didn't, and that Michael Rippo then said that means
21 I'm cured?

22 A I don't remember nearly that detail or that
23 extent of that statement -- that statement obviously related
24 to the one I'm cured, I didn't rape them and -- but there

11 1 was nowhere near that detail.

2 Q Did there come a time when you and Mr. Sims'
3 lawyer, Bob Archie, had discussions about settlement of Mr.
4 Sims' pending criminal case?

5 A In a very broad sense, the answer to the
6 question is yes.

7 Q Could you relate to us when those
8 conversations would have taken place and what those
9 conversations were, please?

10 A They would have taken place after my
11 first -- the first time that I saw Mr. Sims.

12 Q And before the second, more in depth
13 discussion; in between the two meetings, in other words?

14 A I don't have a distinct recollection, but
15 certainly either before or contemporaneously around that --

16 Q Within that general time period?

17 A Yes.

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

20 BY MR. WOLFSON:

21 Q Why did you feel that Mr. Sims should have
22 his lawyer present during your discussions with him?

23 A Because Mr. Sims was also -- I learned and
24 discovered Mr. Sims was also being prosecuted by the office,

11 1 and simply to avoid that appearance of impropriety, I
2 suggested it probably wouldn't be a bad idea if he had his
3 lawyer present.

4 Q You became aware of that fact by running Mr.
5 Sims on your computer and you learned that he had a pending
6 case?

7 A Either that or it was in the file. I mean,
8 there was something in the file -- there were -- there are
9 some witnesses in this case that have interesting pasts.

10 Q What discussions did you have with Mr.
11 Archie concerning settlements, deals, et cetera, concerning
12 Mr. Sims?

13 A Specifically that I could not offer Mr. Sims
14 any type of deal with reference to -- for his testimony in
15 this case.

16 I was aware that a plea bargain
17 had been made with Diana Hunt, and the testimony had been
18 required and turned for the plea bargain there, that that
19 was a point that the defense would obviously try to bring
20 out, and I acknowledge, and for that very reason, we
21 couldn't be perceived as offering another deal to obtain
22 additional testimony, and so we simply could not offer Mr.
23 Sims any type of plea bargain agreement.

24 Q And that's the brunt of the discussions

11 1 regarding settlement or lack thereof that you had with Mr.
2 Archie in reference Mr. Sims?

3 A Yes.

4 Q Do you know why Mr. Sims' 1993 possession
5 with intent and ex-felon in possession of a firearm case is
6 still pending?

7 Q I do not know why it is still pending at the
8 present time, so the answer to your question is no.

9 Q Do you know why it has been still pending
10 for the last two years?

11 A I will -- since I was removed from the Rippo
12 case by this Court, I have had no contact with that file or
13 with this case, so I can't say that.

14 Q From the date that this Court removed you
15 from this case.

16 What about before that date?

17 A From before that date, I agreed with Bob
18 Archie to continue that case, so that, yes, I am aware of
19 that prior to the time I was removed from this case.

20 Q Were you the assigned prosecutor of the case
21 entitled State of Nevada versus Tom Sims, wherein he was
22 charged with possession with intent and ex-felon in
23 possession of a firearm?

24 A I don't know that there was an assigned

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1 prosecutor.

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Q Were you affiliated with the sex offense unit at the time that you entered into that agreement with Bob Archie?

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A I don't know that there was, in fact, an agreement, an actual formal agreement, but in the sense that there was an understanding, the answer to your question is that was the understanding and, yes, I was the head of the sexual assault and child abuse unit at that time.

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Q Wouldn't you say it was unusual and out of the ordinary for you at that time to enter into representing the State of Nevada's cases that had anything to do with your clients?

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A Not considering its relationship with this case.

As a matter of fact, it would have been unusual had I not followed that case and wanted to know what was happening with that case.

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(Whereupon, a sotto voce at this time.)

21

BY MR. WOLFSON:

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23

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Q You do have a unique interest in this case, don't you?

A You mean as I sit here today?

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1 Q Yes.

2 A Or -- I was at one time the prosecutor on
3 this case.

4 Q You have not been the prosecutor for
5 approximately one year or one and a half years; isn't that
6 about right?

7 A I -- if you say that it is, it is.

8 Q Yet you have been monitoring this case
9 somewhat closer than most, haven't you?

10 A I have a hard time with the word when you
11 say monitoring.

12 A Have you checked in every single day since
13 we started the trial?

14 Q Have I been watching the proceedings in this
15 trial?

16 Yes, I have. I was present for
17 opening statements. I have been following the order of
18 witnesses, so the answer to your question is yes.

19 MR. WOLFSON: Court's indulgence.

20 BY MR. WOLFSON:

21 Q Mr. Lukens, have you discussed or had
22 occasion to have discussions with witness Diana Hunt this
23 week?

24 A Yes.

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MR. WOLFSDN: That concludes my examination.

Thank you, Mr. Lukens.

THE COURT: Cross-examination.

CROSS-EXAMINATION

BY MR. SEATON:

Q Mr. Lukens, you indicated that you had had discussions with Mr. Sims where he told you things other than what had been mentioned in the Grand Jury testimony and his previous statement; is that correct?

A Yes.

Q And you indicated that there were two things: One, that someone had died for the car, and I'm cured; I didn't rape -- and the words are -- either them or the bitches?

A That is correct.

Q Did he tell you anything about morphine?

A The -- yes. There was something to do with a brown bottle. I don't remember -- I remember the -- I remember something about a brown bottle. Whether it was morphine or not -- there had been previous indications about morphine in the brown bottle, so I don't know if I'm confusing the two, but that answer -- yes, yes, he did.

Q Did he say anything to you about the

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1 defendant, Mr. Rippe, needing to retrieve this particular
2 brown bottle?

3 A I don't know about a recol- -- and I beg
4 your pardon -- a recollection of that from that
5 conversation.

6 He may well have said that, but
7 I don't have a recollection of that.

8 I remember something about a
9 brown vile and something with reference to the brown bottle
10 and in a refrigerator at his work.

11 Q And was your answer to Mr. Wolfson's
12 question that you are not aware of any admissions made by
13 the defendant to Mr. Sims, that Mr. Sims related to you in
14 your talking to him?

15 A Other than somebody had to die for this; in
16 other words, there were no -- there were no admissions.

17 Q Mr. Sims never told you that Mr. Rippe told
18 him that he had actually committed the killings?

19 Q No. I have a good distinct recollection
20 that that did not take place.

21 Q Did you have any discussions with Mr. Sims,
22 to your recollection, about phone numbers having to do with
23 this case?

24 A At some point in time, I remember the phone

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1 numbers became important because Mike Rippo had requested of
2 Tom Sims -- supposedly somebody had a cellular phone that
3 Mike Rippo had access to, and Mike Rippo had requested of
4 that person -- and if that person was Tom Sims -- copies of
5 the billing records that would show the numbers called.

6 The investigation was unaware
7 of that and it didn't become important until Mr. Rippo
8 requested that information, and so there was some discussion
9 about the -- if it was Mr. Sims, some discussion about a
10 cellular phone and the phone records for that.

11 Q If Mr. Sims came in here and testified that
12 you and he discussed -- you asked him about certain phone
13 numbers and trying to find out who belonged to them, would
14 he be incorrect in that statement?

15 A No, that would have been -- that would have
16 been correct.

13

17 Q And that would have happened in this second
18 meeting that you had with him with Mr. Archie and Teresa
19 Lowry present?

20 A Yes, if there were only two meetings.

21 I mean, there would have been
22 another meeting to discuss the phone information or the
23 records, because at one time, those records weren't
24 available and he had to request them or something, so there

1 may have been an additional meeting, but that would have
2 been a topic of discussion.

3 Q And you recall talking about the -- Mr. Sims
4 telling you that the defendant had told him that the
5 defendant had accidentally strangled one of the girls and
6 that he had to kill the other one?

7 A No.

8 Q You have never known that information?

9 A No. And that's -- the reason I can be so
10 sure, because had that been said, that's something I would
11 have remembered.

12 Q Sure.

13 In your discussions at that
14 point, first of all, with Mr. Sims, just Mr. Sims, did you
15 ever say anything to him regarding any negotiations that
16 might take place under this pending case for possession with
17 intent and ex-felon in possession of a firearm?

18 A With the exception that I can't offer you
19 any plea -- any plea type of agreements in this case, no.

20 Q Did he specifically hear those words, that
21 you were not going to offer him anything on his behalf in
22 return for his testimony in this case?

23 A Whether he heard them or not -- or whether
24 or not that was a discussion I had with Bob Archie in which

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1 he was not present, I don't know -- I don't remember.

2 Q But at least you never did tell him that
3 there was any possibility of negotiations because of his
4 involvement in this case?

5 A No.

6 Q And now let's turn our attention to Mr.
7 Archie.

8 In your discussions with him,
9 did you ever suggest to him that any negotiations could be
10 made on behalf of his client for his client's participation
11 in this case?

12 A No.

13 Q So that understanding never went out to
14 either the client or to Mr. Archie?

15 A No.

16 Q And do you know whether Teresa Lowry ever
17 made such an offer?

18 A I cannot imagine her making such an offer.

19 Q You don't have any knowledge of it?

20 A Absolutely.

21 Q Do you have any knowledge of making such an
22 offer to Mr. Archie or to his client?

23 A No.

24 MR. SEATON: I have no further questions.

1 THE COURT: Anything else?

2 MR. WOLFSON: Court's indulgence.

3 (Whereupon, a sotto voce at
4 this time.)

5 REDIRECT EXAMINATION

6
7 BY MR. WOLFSON:

8 Q Mr. Lukens, concerning your representations
9 about an agreement, if you will, with Mr. Archie to continue
10 the case, how long was it going to be continued for?

11 A Until after the conclusion of the Rippo
12 case. That was -- in other words, I don't know that there
13 was any definite agreement, but I will tell you that was my
14 intention to do that.

15 Q Did you indicate it in that fashion to Mr.
16 Archie?

17 A I don't know. I don't have any recollection
18 of doing that. I --

19 Q Would it sound consistent, recognizing that
20 the case is still pending, two and a half years later,
21 almost three years later?

22 A I don't know because I have specifically not
23 interfered or done anything since the case was taken over.
24 I can tell you that were I the prosecutor still on the Rippo

1 case, I would still -- I would have continued seeing this
2 case out.

3 MR. DUNLEAVY: Your Honor, may we approach
4 the bench for a second?

5 THE COURT: Yes.

6
7 (Discussion had off the record.)

8
9 THE COURT: No further questions for Mr.
10 Lukens?

11 MR. DUNLEAVY: At this time, but he'll be
12 subject to coming back when we have the --

13 THE COURT: Okay.

14 MR. SEATON: None by the State.

15 (Whereupon, the witness
16 was excused.)

17 MR. DUNLEAVY: And we'd ask him to be
18 admonished not to talk to the other witnesses --

19 THE COURT: Mr. Lukens, did you hear that?
20 You are admonished not to talk
21 to other witnesses.

22 MR. DUNLEAVY: Teresa or anyone else.

23 MR. LUKENS: With reference to what this is
24 about? Teresa is --

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL RIPPO,
Appellant,

No. 53626

-vs-

E.K. McDANIEL, et al.,
Respondent.

FILED

OCT 19 2009

TRACIE L. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
CHIEF DEPUTY CLERK

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36	325. <u>State v. Rippo</u> , Eighth Judicial District Court, Clark County, Nevada, Case Nos. 57388, 57399, Reporter's Transcript of Proceedings -- Continued Initial Arraignment, heard March 25, 1982		JA08610-JA08619
36	326. <u>State v. Rippo</u> , Eighth Judicial District Court, Clark County, Nevada, Case Nos. 57388, 57399, Reporter's Transcript of Further Proceedings and/or Continued Initial Arraignment heard March 30, 1982		JA08620-JA08626
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FILED IN OPEN COURT

February 7, 1996

DISTRICT COURT

LORETTA BOWMAN, CLERK

CLARK COUNTY, NEVADA

BY *[Signature]*
Deputy

ORIGINAL

--COO--

THE STATE OF NEVADA,

Plaintiff,

Case No. C106784

-vs-

Dept. No. IV

MICHAEL DAMON RIPPO,

Docket: C

Defendant.

REPORTER'S TRANSCRIPT

OF

TRIAL

BEFORE THE HONORABLE GERARD J. BONGIOVANNI, DISTRICT JUDGE

Tuesday, February 6, 1996
2:30 p.m.

Volume 2 - Afternoon Session
Pages 1 - 78, inclusive

APPEARANCES:

For the State:

Melvyn Harmon, Esq.
Daniel Seaton, Esq.
Deputy District Attorneys

For the Defendant:

Steven Wolfson, Esq.
Philip Dunleavy, Esq.
Attorneys at Law

Reported by: Danette L. Antonacci, CCR #222
Official Court Reporter

DANETTE L. ANTONACCI, CCR #222 (702) 455-4672

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DANETTE L. ANTONACCI, CCR #222 (702) 455-4672

LAS VEGAS, CLARK COUNTY; TUESDAY, FEBRUARY 6, 1996

--ooOoo--

THE COURT: Cross examination of Angela Sposito.

MR. WOLFSON: S-p-o-s-i-t-o.

THE COURT: All right.

CROSS EXAMINATION (continued)

BY MR. WOLFSON:

Q Eventually you gave a statement to the police.
Did you say it was at the police department or there at the
store?

A At my store.

Q Did they take you to a private area where you
sat down so that you could be in private?

A Yes.

Q And how long did this statement take for you to
give?

A I'd say approximately twenty minutes.

Q If I were to ask you to estimate the number of
days after the transaction which we know occurred on
February 19th that you sat down with the detective and gave
your voluntary statement, how many days later would be your
best estimate?

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1 A Within fourteen days.

2 Q Within. That means you think it was about
3 fourteen days later?

4 A Yes.

5 Q So if the detective's report says that it was on
6 February 20th, that would be an error?

7 A I'm not sure. All I know is that when I saw it
8 on the news, it was not within a very long period of time
9 after that then, maybe just a couple of weeks that I heard
10 from them. I didn't remember it as datewise, just time
11 span.

12 Q Okay. And you are estimating as you said within
13 two weeks?

14 A Uh-huh.

15 Q But February 20th is the next day. Could you
16 have given the statement the next day or is it more like
17 ten days to two weeks later?

18 A I would say it's more like ten days, in my
19 recollection more like ten days.

20 MR. WOLFSON: Thank you. No further questions.

21 MR. SEATON: No redirect, Judge.

22 THE COURT: Thank you. You're excused.

23 Teresa Perillo.

24 THE CLERK: Remain standing and raise your right
25 hand.

1 TERESA PERILLO,
2 called as a witness by the State, having been first duly
3 sworn to tell the truth, the whole truth, and nothing but
4 the truth, testified as follows:

5
6 THE CLERK: State your name and spell your last
7 name for the record.

8 THE WITNESS: Teresa Perillo.

9 THE COURT: Spell it please.

10 THE WITNESS: T-e-r-e-s-a, P-e-r-i-l-l-o.

11 THE CLERK: Thank you.

12

13 DIRECT EXAMINATION

14

15 BY MR. HARMON:

16 Q Is it Miss or Mrs. Perillo?

17 A Miss.

18 Q Do you currently live outside of the State of
19 Nevada?

20 A Yes, I do now.

21 Q Did you reside for a period of time in Las
22 Vegas?

23 A Yes, I did.

24 Q How long did you live here?

25 A Approximately ten years.

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1 Q Were you living in Las Vegas in February 1992?

2 A Yes, I was.

3 Q During that time frame did you know a person

4 identified as Thomas Christos?

5 A Yes, I did.

6 Q How is it that you knew Mr. Christos?

7 A I lived with him at his residence.

8 Q Do you recall either the specific address or the

9 street on which you lived with Mr. Christos?

10 A Yes, 2801 Autumn Haze.

11 Q That is in Las Vegas?

12 A Yes, it is.

13 Q Do you recall what part of the city it was in?

14 A It's on the outskirts.

15 Q How long did you live at that address with Tom

16 Christos?

17 A About a year.

18 Q Were you boyfriend and girl friend?

19 A Yes, we were.

20 Q Did anyone else live with you at least for part

21 of the time at the address on Autumn Haze?

22 A Yes, Carrie Burns.

23 Q How long did Carrie Burns live there?

24 A Off and on for six months.

25 Q Did you in February 1992 know a lady identified

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1 as Diana Hunt?

2 A Yes, I did.

3 Q How did you know Miss Hunt?

4 A I met her through Carrie. She came to the
5 house.

6 Q Did you learn whether Carrie Burns and Diana
7 Hunt had a relationship?

8 A Yes, they were cousins.

9 Q Did you know the defendant in this action, Mike
10 Rippe?

11 A I met him. I did not know him.

12 Q Let us say as of February the 19th, 1992, how
13 many times had you seen Mike Rippe?

14 A As of that time none. I talked to him on the
15 phone.

16 Q But up to that date you had never seen him in
17 person?

18 A Yes, before the 19th is when I met him.

19 Q I didn't hear your answer.

20 A Before the 19th is when I met him.

21 Q Oh. So that was my question. As of February
22 the 19th, 1992, how many times had you seen him?

23 A Once or twice.

24 Q Were you a friend of Mike Rippe?

25 A No.

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1 Q Simply an acquaintance?

2 A Yes.

3 Q What about Diana Hunt, in February of 1992 were
4 you a friend of hers?

5 A Still an acquaintance.

6 Q Do you have a birthday in February?

7 A Yes, on the 19th.

8 Q Did you see Diana Hunt on February the 19th,
9 1992?

10 A Yes, I did.

11 Q Where did you see her?

12 A At my residence.

13 Q 2861 Autumn Haze?

14 A 2801.

15 Q Oh, I'm sorry, 2801 Autumn Haze.

16 A Yes.

17 Q Had you been expecting her to come by on your
18 birthday, February the 19th?

19 A No.

20 Q About what time did you see her?

21 A Approximately 6:00 or 6:30 in the evening.

22 Q Did she come to the residence by herself or with
23 someone else?

24 A By herself.

25 Q Did you notice whether she was driving a

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1 particular vehicle?

2 A Yes, she was. She was driving a Dodge Colt.

3 Q Had you seen the Dodge Colt before?

4 A Yes, I had.

5 Q Did you associate that vehicle with any
6 particular person?

7 A Yes, I assumed it was her car.

8 Q Why did you make that assumption?

9 A Because I had seen her drive it a couple of
10 times.

11 Q Had you ever seen her drive any other type of
12 car up to that point when she arrived on your birthday
13 between 6:00 and 6:30 p.m.?

14 A No, I had not.

15 Q Did you have occasion after the arrival of Diana
16 Hunt in the Dodge Colt to go anywhere with her?

17 A Yes, I did. She was going to take me shopping.

18 Q Do you remember how it happened that she was
19 going to take you shopping?

20 A Yes. She said we'd go to the mall and we left
21 the house. We left in the Colt. And then she drove out to
22 Cheyenne area on 95 and she said that since it was my
23 birthday and I was dressed so nice that I should be riding
24 in a nicer car and she drove up alongside of this car with
25 a cover on, parked beside it, took the cover off the car

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1 and then we left from there in that car.

2 Q Will you describe the car that Diana Hunt took a
3 cover off of?

4 A Yes, it was a maroon colored, I believe 300ZX
5 Nissan.

6 Q Had you ever seen that vehicle prior to that
7 date?

8 A No.

9 Q Did you know Denise Lizzi?

10 A No, I did not.

11 Q What about Laurie Jacobson?

12 A No.

13 Q To your knowledge had you ever met or seen those
14 persons prior to February the 19th, 1992?

15 A No, I had not.

16 Q What about Denny Mason, did you know him?

17 A No.

18 Q To the best of your memory, what was the
19 location of this Nissan vehicle when you saw the cover
20 taken off of it by Diana Hunt?

21 A Somewhere off of Cheyenne and 95.

22 Q Did she tell you either as you were driving to
23 that location or at the location how it was that she had
24 access to the car?

25 A After we had got in the car she told me that she

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2 1 repoed it from somebody, that it was a bad drug deal.

2 Q She repoed it; repossessed it?

3 A That's what she said.

4 Q Did you question her any further about how she
5 happened to have it?

6 A Not really because I really didn't want to know.

7 Q Did she have a key to the car?

8 A Yes, she did.

9 Q Do you remember now if the key was in the car or
10 if she had the key on her person?

11 A I don't know.

12 Q What happened to Diana Hunt's Dodge Colt?

13 A She left it at the spot where we picked up the
14 Nissan.

15 Q In some type of parking space?

16 A Yes, at an apartment complex.

17 Q Where did you go after you changed into the
18 Nissan?

19 A Then we went to the mall.

20 Q To which mall?

21 A To the Meadows Mall.

22 Q Is this the Meadows Mall in Las Vegas?

23 A Yes, it is.

24 Q Do you have a best estimate of what time the two
25 of you arrived there?

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1 A Approximately 8:00 p.m.

2 Q What happened after you arrived at the Meadows

3 Mall?

4 A We went to Dillards which is a department store

5 and she purchased me some perfume for my birthday.

6 Q Do you remember the brand of the perfume?

7 A Yes, it was Obsession.

8 Q Was it one bottle or several bottles of perfume?

9 A Two, one bottle for me and a bottle of cologne

10 for my boyfriend.

11 Q What was the brand of the cologne?

12 A Obsession.

13 Q They were both Obsession?

14 A Uh-huh.

15 Q That's yes?

16 A Yes.

17 Q Do you know whether Miss Hunt paid cash or used

18 some type of credit card for the purchase of the perfume?

19 A She did use a credit card.

20 Q Do you know what type of credit card it was?

21 A Not positively, no.

22 Q You say not positively.

23 A I thought it was a Dillards card.

24 Q You mentioned you were at the Dillards store.

25 A Yes.

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1 Q So your frame of mind is you thought it was a
2 Dillards card, but you're not sure what type of credit
3 card?

4 A Correct.

5 MR. DUNLEAVY: It's been asked and answered,
6 your Honor.

7 MR. HARMON: Asked and answered again
8 apparently.

9 THE COURT: She may answer.

10 THE WITNESS: Yes, I was --

11 THE COURT: Go ahead, you may answer.

12 You forgot what you wanted to say.

13 Ask another question.

14 BY MR. HARMON:

15 Q I was asking you what your frame of mind was
16 regarding the card. Do you know it was a credit card?

17 A Yes, I do.

18 Q Do you know for sure what kind of credit card it
19 was?

20 A No.

21 Q Are you certain it was a credit card
22 transaction?

23 A Yes, I am.

24 Q While you were at the Meadows Mall do you know
25 whether Diana Hunt telephoned or tried to call someone?

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1 A Yes, she did. After we left the store, it was
2 almost nine o'clock, the stores were closing and she tried
3 to phone a Mike. She didn't give a last name.

4 Q You say after you left the store. Are you
5 referring to Dillards?

6 A Uh-huh. We were inside the mall.

7 Q Did she tell you beforehand that she was going
8 to try to call someone named Mike?

9 A Yes.

10 Q Did she tell you why she wanted to call Mike?

11 A He was supposed to bring her some money.

12 Q Did you see her attempt to telephone someone?

13 A Yes, I did.

14 Q Do you know whether she spoke with anyone?

15 A No.

16 Q She didn't or you don't know if she did?

17 A She didn't.

18 Q What happened then?

19 A Then we left the mall and she said she was going
20 to check by where he worked.

21 Q Check by where who worked?

22 A Where Mike worked. The one that was supposed to
23 meet her. And we drove by there and she didn't see his
24 car.

25 Q Where was it that you drove by?

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3 1 A It was off of Spring Mountain and Valley View I
2 do believe.

3 Q You think somewhere in that neighborhood?

4 A Yes.

5 Q Was this a business that she drove by?

6 A Yes, it was.

7 Q Do you remember the name of the business?

8 A No, I don't.

9 Q Did you know a person named Tom Sims?

10 A No, I don't.

11 Q You don't know and for that reason I take it you
12 didn't back on February the 19th?

13 A Correct, I did not.

14 Q Did she tell you she didn't see the car of Mike?

15 A Yes, that was her comment when we drove by.

16 Q Where did you go then?

17 A We went to the Marker Down which is a bar. I
18 believe it's in the same area. And we went in and she
19 tried to call him again from inside the bar.

20 Q She tried to call who?

21 A Mike.

22 Q Do you know whether she was successful based
23 upon what she said to you?

24 A No. As far as I know she never contacted him
25 that night.

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1 Q How long did you remain with Diana Hunt at the
2 Marker Down, a bar?

3 A I'm not sure the time we left. I know we went
4 from there to Club Rock and we were there until 5:00 in the
5 morning.

6 Q Were both of you drinking during this period of
7 time?

8 A Yes, heavily.

9 Q Let's just focus on yourself for the time being.
10 Did you become intoxicated?

11 A Yes, I did.

12 Q Do you know whether there was any effort to
13 communicate at some point that night with your boyfriend,
14 Tom Christos?

15 A She had called him earlier from the Marker Down.

16 Q She meaning Diana Hunt?

17 A Yes, I did not talk to him.

18 Q How do you --

19 MR. DUNLEAVY: Your Honor, I ask him to lay a
20 foundation.

21 MR. HARMON: I'm just starting to.

22 THE COURT: As to time.

23 MR. HARMON: Yes.

24 BY MR. HARMON:

25 Q How do you know that Diana Hunt called Tom

1 Christos earlier that evening?

2 A Well, I saw her make the phone call and I heard
3 her talking to him and then she told me that he said don't
4 bother to bring her there if she's intoxicated.

5 Q You said this call was made from the Marker Down
6 bar?

7 A Yes, it was.

8 Q Are you able to tell us about what time of the
9 evening it was?

10 A No, I could not.

11 Q You said you stayed at the Club Rock till about
12 five o'clock in the morning?

13 A Yes, we did.

14 Q That would now be February the 20th, 1992?

15 A Correct.

16 Q What happened at about five o'clock in the
17 morning?

18 A She said that she had a motel room and we could
19 go spend the night there and get cleaned up.

20 Q Did you go spend the night at a motel or hotel
21 room?

22 A Yes, we did.

23 Q Where did you go?

24 A The Gold Coast.

25 Q Do you have a best estimate of about what time

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1 it was that you arrived at the Gold Coast?

2 Q I would say about 5:30 or 6:00 in the morning.

3 Q Do you remember what room you went to?

4 A It was ten thirty something. I'm not sure of
5 the exact number.

6 Q Sometime after your arrival at the Gold Coast,
7 room ten thirty something, did Diana Hunt leave to go
8 somewhere?

9 A Yes, she left and she said she needed to go to
10 my residence to pick up a phone book that had some
11 paperwork for the car in it.

12 Q If you were to give us a best estimate, about
13 when would you say it was that she left?

14 A I would say afternoon, about three o'clock.

15 Q Is the date still February the 20th?

16 A Yes, it is.

17 Q Did you expect her to be gone for a long time?

18 A No, it's approximately twenty minutes to my
19 house and twenty minutes back, so I expected about an hour.

20 Q How long was she gone?

21 A Till about 8:30 or nine o'clock in the evening.

22 Q So you're estimating from perhaps three o'clock
23 in the afternoon to 8:00 or 9:00 p.m. Diana Hunt was gone?

24 A Yes.

25 Q What basically did you do during that time

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1 frame?

2 A Sat in the room, kind of paced around. I
3 flipped the TV on and that's when I decided to check the TV
4 because it has a billing on the TVs. I saw that that came
5 up and I flipped that on and that's when I saw Denny
6 Mason's name on the billing on the TV.

7 Q Did you discover at that time that the room was
8 rented in the name Denny Mason?

9 A Yes.

10 Q That was based upon what you read concerning the
11 bill from the TV monitor?

12 A Correct.

13 Q Up to that point did you have any idea in whose
14 name the room had been rented?

15 A No, I did not.

16 Q Did you have access to or in your possession any
17 type of credit card in the name Denny Mason?

18 A No, no.

19 Q Had you actually seen whether Diana Hunt had a
20 credit card in that name?

21 A Well, that's the name she signed at the mall
22 when we went to the mall.

23 Q You actually saw what name she signed?

24 A Yes.

25 Q And by the mall you're talking about the Meadows

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1 Mall?

2 A Yes.

3 Q And are you referring to the transaction
4 regarding the perfume at Dillards?

5 A Yes, I am.

6 Q What happened when Diana Hunt arrived back at
7 the Gold Coast?

8 Q By that time it was nine o'clock in the evening
9 and the gentleman that was with us from the Club Rook had
10 to go back. So we took him to his motel room and then back
11 to the club and we proceeded to go to a friend's house.
12 His name was Rick Guthrie, a friend of mine.

13 Q The last name was Guthrie?

14 A Yes.

15 Q Will you spell Guthrie please?

16 A G-u-t-h-r-i-e -- I'm sorry, h-r-i-e.

17 Q G-u-t-h-r-i-e?

18 A Yes.

19 Q Had there been any conversation between you and
20 Diana Hunt about the reason for going to see your friend
21 Rick Guthrie?

22 A Yes, she told me she wanted to purchase a gun.

23 Q A gun?

24 A Yes.

25 Q Did she tell you why she wanted to purchase a

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1 gun?

2 A No, she didn't.

3 Q Were you still riding with Diana Hunt in this
4 Nissan vehicle that she had uncovered off of Cheyenne road?

5 A Yes, we were.

6 Q What happened when you got to Rick Guthrie's
7 place?

8 A We went inside. He was by himself. And she
9 proceeded to talk to him about business. I kind of sat on
10 the other side of the room and as far as I know there was
11 no transaction for a gun, but she had asked him for spray
12 paint, if he had any primer paint.

13 Q Do you know whether Miss Hunt got some primer
14 paint from Rick Guthrie?

15 A Yes, he gave her a can of paint and before we
16 left that residence she had painted the fender of the car,
17 said she wanted to change the appearance.

18 Q Did you see Rick Guthrie give a can of primer
19 paint to Diana Hunt?

20 A Yes, I did.

21 Q Do you know if she paid for it or if he just
22 gave her the paint?

23 A He gave it to her.

24 Q You said before you left the residence she had
25 painted?

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1 A Yes, right out on the street. She took the can
2 and spray painted the bumper or the fender.

3 Q Were you outside on the street when she did that
4 or were you still inside the residence?

5 A No, I was outside.

6 Q So you saw her do it?

7 A Yes, I did.

8 Q Did she tell you why she wanted to change the
9 appearance of the car?

10 A No.

11 Q Do you remember what part of the vehicle she
12 spray painted?

13 A Yes, the driver's fender. Front fender.

14 Q Would you recognize a picture of the car if you
15 saw it?

16 A Yes.

17 MR. HARMON: May we have the Court's indulgence,
18 your Honor?

19 THE COURT: Yes.

20 BY MR. HARMON:

21 Q I'm showing you Proposed Exhibits 64 and 65.
22 Miss Perillo, will you examine the photographs and tell us
23 if you recognize the car shown in them.

24 A Yes, that's the car.

25 Q When you say that's the car, you're referring to

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1 the car spray painted by Miss Hunt?

2 A Yes.

3 Q Outside the residence of Rick Guthrie?

4 A Correct.

5 Q Is this the same car that you rode in with her
6 on February the 19th and February the 20th, 1992?

7 A Yes, it is.

8 Q Is this the same car she took the cover off of?

9 A Yes, it is.

10 Q Thank you.

11 Do you think you would recognize the
12 photograph also of Miss Hunt's Dodge Colt?

13 A Yes, I do.

14 MR. HARMON: And may we again have the Court's
15 indulgence, your Honor?

16 THE COURT: Yes.

17 MR. HARMON: May I again approach the witness,
18 your Honor?

19 THE COURT: Yes.

20 MR. DUNLEAVY: Mel, what's the number?

21 MR. HARMON: 74.

22 BY MR. HARMON:

23 Q I'm showing you Proposed Exhibit 74. Do you
24 recognize the car shown in that picture?

25 A Yes, that looks like her car.

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1 Q When you say that looks like her car, are you
2 talking about the car of Diana Hunt?

3 A Yes, I am.

4 Q This would be the car you rode from Autumn Haze
5 to the location out off of Cheyenne?

6 A Yes.

7 Q February the 19th, 1992; is that correct?

8 A That's correct.

9 Q What happened after Miss Hunt spray painted the
10 Nissan?

11 A Then she took me to my residence and I got out
12 and stayed at the house. She tried to talk me into leaving
13 with her.

14 Q What do you mean leaving with her?

15 A She wanted me to just go with her, take off and
16 leave town.

17 Q She indicated she wanted to get out of Las
18 Vegas?

19 A Yes, she did.

20 Q Did she indicate any place specifically that she
21 wanted to go --

22 A No.

23 Q -- to with you?

24 A No.

25 Q Did you want to leave town at that time?

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1 A I -- if I did it wasn't with her.

2 Q So you didn't agree to leave town with her?

3 A No.

4 Q About what time was it that you got back to your
5 residence on Autumn Haze?

6 A I would say close to 10:00 or 11:00 in the
7 evening.

8 Q The date is still February the 20th?

9 A Yes.

10 Q Now to digress for just a moment.

11 When she came back to the Gold Coast about
12 nine o'clock in the evening, did she have some clothing of
13 yours?

14 A Yes. She brought back a bag of stuff. When she
15 went out to the house she put a bunch of my stuff into a
16 suitcase and brought it with her.

17 Q She brought that with her to the hotel room?

18 A Yes, she did.

19 Q Did you have further contact with Diana Hunt
20 after approximately 10:00 or 11:00 p.m. on February the
21 20th?

22 A No, I did not.

23 MR. HARMON: That concludes direct, your Honor.

24 THE COURT: Cross examination.

25

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CROSS EXAMINATION

BY MR. DUNLEAVY:

Q You were living with Tom Christos at the time?

A Yes, I was.

Q And what did he do for a living?

A At that time he was not working.

Q Was he dealing in stolen vehicles?

A Not that I know of.

Q You never heard of that?

A No.

Q Did he help anybody that you knew of get
paperwork for cars?

A That I did know, yes.

Q But they were all legitimate cars?

A I don't know.

Q Now you went to the area of Cheyenne and 95 to
pick up this car; is that right?

A That's correct.

Q Did you know a Deldre D'Amore?

A No.

Q Do you know where she lived?

A No.

Q This car was under a tarp when you saw it or a
car cover of some kind?

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- 1 A Yes, car cover.
- 2 Q And Diana had the keys?
- 3 A Yes, she did.
- 4 Q What did she do with the car cover when she took
- 5 it off?
- 6 A I don't remember.
- 7 Q She told you that she had gotten this car in a
- 8 repo in a drug deal?
- 9 A That's what she said, yes.
- 10 Q You didn't ask her any further questions about
- 11 that?
- 12 A No.
- 13 Q Did you believe her?
- 14 A Uhm, I don't -- didn't really know.
- 15 Q Did you know if she was involved in drugs?
- 16 A Not for certain, no.
- 17 Q There came a time when you and she went to the
- 18 Meadows Mall, right?
- 19 A Yes.
- 20 Q Went shopping?
- 21 A Yes.
- 22 Q And you said at one time you thought she used a
- 23 Dillards card.
- 24 A Yes.
- 25 Q You were with her when the purchases were made?

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1 A Yes, I was.

2 Q I'd like to show you what has been marked as
3 Defense Proposed Exhibit D. This is supposed to be the
4 credit card bill of Denny Mason's credit card. Do you see
5 any purchases on there for this cologne and perfume?

6 A No, I don't.

7 Q Did you in fact see her with a Dillards credit
8 card?

9 A No. I know she used a credit card.

10 Q Do you remember stating that she tried to use a
11 Dillards card and they had a problem with the account?

12 A Yes, I do.

13 Q Did you see the card when they had the problem?

14 A I don't remember.

15 Q How did you know it was a Dillards card?

16 A I'm not sure.

17 Q She did buy the stuff with the credit card,
18 right?

19 A I think so.

20 Q Do you remember seeing the card at all? Was it
21 gold or blue or any distinctive color that you can
22 remember?

23 A I don't remember.

24 Q It's been a long time?

25 A It has been a long time.

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1 Q You also indicated that after that she tried to
2 contact her friend Mike.

3 A Uh-huh.

4 Q And how did she do that?

5 A On a pay phone in the mall.

6 Q She went to the pay phone in the mall?

7 A Yes.

8 Q Did you go with her?

9 A Yes, I did.

10 Q Did she make more than one phone call?

11 A I do believe so, yes.

12 Q Do you know who else she called?

13 A No.

14 Q Do you know if she called the police?

15 A No.

16 Q She could have if she had wanted to, right?

17 A Yes.

18 Q You wouldn't have prevented her?

19 A Oh no.

20 Q Then you went to the Marker Down?

21 A Yes.

22 Q Did some partying there, did some drinking, she
23 went to the pay phone, made a couple phone calls.

24 A Yes.

25 Q You know that at least once she talked to your

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1 boyfriend Tom?

2 A Yes.

3 Q And she also apparently called to try and find
4 this Mike person. Do you know if she tried to call the
5 police?

6 A No, I don't.

7 Q She could have if she had wanted to?

8 A She could have.

9 Q Then you went to the Club Rock?

10 A Uh-huh.

11 Q And you did some partying at the Club Rock,
12 right?

13 A Correct.

14 Q You said you got drunk?

15 A Yes.

16 Q Birthday.

17 Now there came a time, I think you said
18 it was about five o'clock in the morning, when it was time
19 to leave there.

20 A Yes.

21 Q And she said I have a motel room?

22 A Yes.

23 Q Did she already have this motel?

24 A Yes.

25 Q She already had the key?

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- 1 A Yeah.
- 2 Q Or the card or whatever it took to get in there?
- 3 A Yes.
- 4 Q So you didn't have to go looking for a motel
- 5 room to check in, she already had one?
- 6 A Right.
- 7 Q And that would be the one that you stayed in
- 8 with her?
- 9 A Yes.
- 10 Q Did you watch movies while you were there?
- 11 A I don't remember.
- 12 Q Order room service?
- 13 A Yes, we did.
- 14 Q I'd like to show you was been marked as State's
- 15 103 and ask you if that appears to be a copy of the bill
- 16 for that stay?
- 17 A Yes, it appears to be.
- 18 Q That appears that the room was rented for the
- 19 19th; is that correct, and the 20th?
- 20 A No, this says 20th and the 21st.
- 21 Q Doesn't it also say charges for the 19th?
- 22 A Yes, it does.
- 23 Q So it was for the 19th, 20th and 21st?
- 24 A Correct.
- 25 Q And she had this room rented before you guys

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6

1 went to the Club Rock, was that it?

2 A Yes.

3 Q Were you with her when you she went to rent this
4 room?

5 A No, I was not.

6 Q It was done before she came to pick you up?

7 A Yes.

8 Q You recognize the phone numbers on that bill?

9 A Where are they?

10 Q I believe there are several places that would
11 indicate charges for phone calls.

12 A No, I don't recognize the numbers.

13 Q But there were quite a few phone calls made from
14 there?

15 A Yes.

16 Q Do you know if she called the police while she
17 was there?

18 A No.

19 Q You don't know?

20 A I don't know.

21 Q She could have, it wouldn't have been any
22 problem.

23 There came a time when she was gone for
24 hours, supposedly went to your house to get some things.

25 A Correct.

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1 Q Did you later find some of your items missing?

2 A Yes, I did.

3 Q What kind of things turned up missing?

4 A A phone book. It belonged to me. And I'm not
5 sure what else. It's been so long.

6 Q Was there any clothing missing?

7 A I don't even know what all the clothing that she
8 took from the house so apparently there could be.

9 Q Do you remember saying there was also a massager
10 that was missing?

11 A Yes.

12 Q Do you know who took those items?

13 A Diana had them with her at the motel.

14 Q Did she have your permission to go get all these
15 things?

16 A No, she did not.

17 Q Did you ever get all these things back?

18 A No, I did not.

19 Q When she came to your house did she drop some
20 things off?

21 A The day of my birthday you mean?

22 Q Uh-huh.

23 A No. The things were already at the house I do
24 believe.

25 Q Do you remember talking about a book and some

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1 cellular phones?

2 A Yes.

3 Q She had more than one cellular phone?

4 A Yes.

5 Q Do you know if any of those worked?

6 A No, I don't.

7 Q Now when she picked you up, the car hadn't been

8 painted yet, right?

9 A No.

10 Q As a matter of fact you took her to your

11 friend's, Rick Guthrie's house?

12 A Yes.

13 Q Did she know Rick?

14 A No, she didn't.

15 Q He wasn't her friend, he was your friend?

16 A He was my friend, correct.

17 Q She talked to him about maybe buying a gun?

18 A Yes.

19 Q And borrowed some paint?

20 A Yes.

21 Q And painted the car. That would be on the 20th?

22 A Yes, that would.

23 Q So she didn't check into the hotel with you with

24 the paint already painted on the car?

25 A Correct.

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1 Q And you were outside watching when the thing was
2 painted?

3 A Yes, I was.

4 Q Anybody else out there?

5 A I don't remember. I think Rick probably walked
6 out with us. I'm not sure.

7 Q Do you remember indicating that Diana had some
8 identification of some other people with her?

9 A Yes, I do.

10 Q What did she have?

11 A Different driver's licenses. As far as I
12 remember a couple different driver's licenses.

13 Q Women's driver's licenses?

14 A Yes.

15 Q Do you remember who they were?

16 A I do remember seeing the name Denise Lizzi on
17 one of the identifications.

18 Q She had a driver's license or some kind of
19 I.D. --

20 A Yes.

21 Q -- with the name Denise Lizzi on it and she had
22 more than one?

23 A Yes, she had a couple.

24 Q Was she in fact trying to alter those?

25 A Yes. That's why I remember the name is because

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1 she wanted to change that she told me to Denny Mason on the
2 one driver's license.

3 MR. DUNLEAVY: Thank you. I have no further
4 questions of this witness, your Honor.

5 THE COURT: Redirect.

6 MR. HARMON: Thank you, your Honor.
7

8 REDIRECT EXAMINATION

9
10 BY MR. HARMON:

11 Q What property of yours was it that you didn't
12 get back?

13 A The thing I remember most is the telephone book,
14 address book. With names and addresses in it.

15 Q As I remember your testimony you indicated that
16 between 8:00 or 9:00 in the evening she came back to the
17 Gold Coast Hotel room.

18 A Correct.

19 Q And was it in the suitcase that she put your
20 belongings?

21 A I don't think that the address book was in the
22 suitcase, no.

23 Q But she came with a suitcase?

24 A Yes, she did.

25 Q What happened to the items that were in the

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1 suitcase?

2 A I don't know if I left them in the car when she
3 dropped me off or --

4 Q That's what I wanted to clarify, how you became
5 separated from the items she brought to the hotel room.

6 A Well, she had them in the car and she was still
7 trying to get me to leave with her and she got in a fight
8 with Thomas at the house.

9 Q With Thomas Christos?

10 A Yes. And I stayed there and she left. So I
11 wouldn't come back outside. So that's how I got separated.

12 Q So I as far as you know the suitcase and your
13 clothes were still in the Nissan?

14 A Yes.

15 Q Now tell us when it was that you saw that Diana
16 Hunt had different pieces of identification in her
17 possession.

18 A That was back at the Gold Coast.

19 Q While you were inside the room?

20 A Yes, in the room.

21 Q Ten thirty something?

22 A Yes.

23 Q And you indicated it was different driver's
24 licenses?

25 A Yes.

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1 Q Now did you mention one identification or two in
2 the name Denise Lizzi?

3 A I just remember the one. She showed it to me
4 and she was trying to see if I could help her change the
5 name on it and I did not do that.

6 Q What was the nature of that piece of
7 identification?

8 A That was a driver's license.

9 Q Now you also mentioned something about
10 identification in the name Denny Mason.

11 A Yes. She said the credit card was in Denny
12 Mason, that's why she wanted an I.D. that also said Denny
13 Mason.

14 Q Did you ever actually see the credit card that
15 had Denny Mason on it?

16 A I don't remember.

17 Q When was it that you were contacted by the
18 police and gave a statement to them setting out the
19 information you were aware of?

20 A That would be the following week.

21 Q Have you had a copy of your statement to read
22 over to assist you in refreshing your memory?

23 A Yes, I have.

24 Q Do you have a copy of it with you?

25 A No, I don't.

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1 Q Without referring to the statement, do you
2 remember the exact date of the interview?

3 A No, I don't.

4 Q But you think it would have been the following
5 week?

6 A Yes.

7 MR. HARMON: May we have the Court's indulgence,
8 your Honor?

9 THE COURT: Certainly.

10 MR. HARMON: Thank you.

11 BY MR. HARMON:

12 Q If you looked at the statement would that help
13 you refresh your memory regarding the exact date?

14 A I'm sure it would.

15 MR. HARMON: May I approach the witness, your
16 Honor?

17 THE COURT: Yes.

18 BY MR. HARMON:

19 Q I'm showing you a document that has your name
20 typed in. It appears to be a statement given by you to the
21 police.

22 A Yes. It was approximately two weeks after my
23 birthday.

24 Q Would you read to yourself the paragraph
25 describing the location and date of the interview?

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1 A This is the --

2 MR. DUNLEAVY: Your Honor, this is interesting,
3 but it goes beyond the area of redirect. I never went into
4 what date she made this statement.

5 THE COURT: Go ahead.

6 MR. HARMON: Thank you, Judge.

7 BY MR. HARMON:

8 Q I don't want you to read it out loud, I want you
9 to read it to yourself and tell us if you're able to
10 refresh your memory regarding the exact date of the
11 interview.

12 A Yes. It was March 5th.

13 Q 1992?

14 A 1992.

15 Q Did you attempt at that time to fully cooperate
16 with the police?

17 A Yes, I did.

18 Q You didn't really know -- well, you weren't a
19 friend of any of the principals in this case?

20 A Correct.

21 MR. HARMON: Thank you. That's all, your Honor.

22 THE COURT: Recross?

23 MR. DUNLEAVY: No questions.

24 THE COURT: Thank you very much. You're
25 excused.

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1 THE WITNESS: Thank you.

2 THE COURT: Let's take about a five minute
3 recess.

4 Don't discuss this case among yourselves
5 or with anyone else; or read, watch or listen to any report
6 or commentary on the case by any medium of information; or
7 form or express any opinion on this matter until it is
8 finally submitted to you.

9
10 (Recess.)

11
12 THE COURT: Who is your next witness?

13 MR. HARMON: Wendy Liston.

14 THE COURT: Wendy Liston.

15 Counsel stipulate to the presence of the
16 jury?

17 MR. DUNLEAVY: Yes, your Honor.

18 MR. SEATON: Yes, Judge.

19 THE COURT: Okay.

20 THE CLERK: Remain standing and raise your right
21 hand.

22
23 ///

24 ///

25

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WENDY LISTON,

called as a witness by the State, having been first duly sworn to tell the truth, the whole truth, and nothing but the truth, testified as follows:

THE CLERK: State your name and spell your last name for the record.

THE WITNESS: Wendy Liston, L-i-s-t-o-n.

THE CLERK: Thank you.

DIRECT EXAMINATION

BY MR. SEATON:

Q Do you live in Las Vegas?
A Yes, I do.
Q And have you for sometime?
A Yes.
Q Did you know a Laurie Jacobson?
A Yes.
Q How long had you known Laurie Jacobson?
A About three years.
Q And this was before 1992?
A Yes.
Q How had you met her?
A We worked together at a bar called Tramps.

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1 Q How were you employed at the bar called Tramps?

2 A I was bartender.

3 Q And how was she employed?

4 A Cocktail waitress.

5 Q Showing you what's been marked as State's

6 Proposed Exhibit 1, do you recognize the individual

7 depicted in that photograph?

8 A Laurie Jacobson.

9 Q And you had known her for about three years?

10 A Yes.

11 Q Is that a fair and accurate representation of

12 what Laurie Jacobson looked like?

13 A Yes.

14 MR. SEATON: I move for its admission, Judge.

15 MR. WOLFSON: No objection.

16 THE COURT: It will be admitted.

17

18 (State's Exhibit No. 1 admitted

19 in evidence.)

20

21 BY MR. SEATON:

22 Q And when was it that you the two of you worked

23 at Tramps?

24 A Oh, 1991, 1990.

25 Q Did you ever live together?

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1 A Yes.

2 Q And when did that occur?

3 A We lived together for two years, 1990 and 1991.

4 Q Was there anyone else who lived with the two of

5 you?

6 A Yes.

7 Q Who?

8 A My girl friend Michelle.

9 Q And anyone else?

10 A My son.

11 Q How old is your son now?

12 A My son is ten.

13 Q Where did all of you live?

14 A In Green Valley, 2001 Ramrod.

15 Q And that was, did you say that was in '89 and

16 '90 or '90 and '91? I can't recall.

17 A I'm not sure. I'm not sure.

18 Q In those days when you first started living

19 together with Laurie Jacobson, what kind of a person was

20 she?

21 A A happy person. Very witty. Friendly. Kind of

22 quiet, clean. Just a good, wholesome person. Farm girl,

23 that's what I used to call her.

24 Q Where was she from?

25 A Montana.

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1 Q Did you know her parents?

2 A Yes.

3 Q They're from Montana as well?

4 A Yes.

5 Q In those days did she have anything to do with
6 drugs that you were aware of?

7 A No.

8 MR. DUNLEAVY: Is that no she didn't know or no
9 she didn't do drugs?

10 THE WITNESS: Not to my knowledge.

11 BY MR. SEATON:

12 Q You don't have any awareness of any involvement
13 that Laurie Jacobson had in the early days of your living
14 together with her with drugs?

15 A I have no knowledge, yes, that's correct.

16 Q Did there come a time when Laurie Jacobson
17 started partying a little bit?

18 A Yes.

19 Q How long into your relationship with her, how
20 long had you lived with her when that started to occur?

21 A We lived together for probably about a year and
22 a half before she started to indulge.

23 Q Indulge in?

24 A A lot of drinking and some drugs.

25 Q And you became aware of that?

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1 A Yes.

2 Q Did you approve?

3 A No.

4 Q Did you talk to her about it?

5 A Yes.

6 Q Did you try to help her with that particular

7 problem?

8 A Yes.

9 Q Was she willing to accept your help?

10 A No.

11 Q Did that problem end up causing a rift between

12 the two of you?

13 A Yes.

14 Q Tell us about that.

15 A Well, it became a problem. My concern for my

16 son being in the household and the kind of people she was

17 hanging out with and the drug use ended up in my asking her

18 to move.

19 Q Did she indulge in drugs at your house?

20 A Yes.

21 Q In a place where you son might become aware of

22 it?

23 A In her room basically, but still in my home.

24 Q And did she have friends come over of whom you

25 did not approve?

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1 A Yes.

2 Q And you asked her to leave?

3 A Yes.

4 Q Did she?

5 A Yes.

6 Q When she left and after she left, what was your

7 relationship, how would you characterize it?

8 A We remained friends and I continued to try to

9 help her. And on several occasions we would discuss her

10 moving back to Salt Lake to be with her husband and her

11 child and basically I just wanted her to leave Las Vegas.

12 It wasn't doing good for her.

13 Q She had a child?

14 A Yes. She has a daughter. Had a daughter.

15 Q What was that child's name?

16 A Brittany.

17 Q And Brittany you said lived in Salt Lake City?

18 A Salt Lake City.

19 Q With whom?

20 A With her father Dave.

21 Q Were they still married or had they gotten a

22 divorce?

23 A I believe they had gotten a divorce.

24 Q Did she resist your efforts to talk her into

25 moving back to Salt Lake with Brittany and Dave?

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1 A She pondered, pondered the thought in her mind,
2 and then it would just kind of float away and she would
3 continue to be the Laurie that she turned into, partying
4 and hanging out with her friends.

5 Q And how about an individual by the name of
6 Denise Lizzi, did you know that person?

7 A I knew -- yeah, I knew her.

8 Q Had you met her?

9 A Yes.

10 Q You had seen her a number of times?

11 A On a few occasions.

12 Q Showing you what has been marked as State's
13 Proposed Exhibit 2, do you recognize the individual
14 depicted in that photograph?

15 A Yeah, with blond hair.

16 Q And that would be --

17 A She had blonde hair.

18 Q This is --

19 A Denise.

20 Q But this picture shows her with dark hair?

21 A Dark hair.

22 Q You remember her?

23 A It resembles her. She looked different. She
24 looked different.

25 Q Because of the hair?

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1 A Skinnier. Blonde hair. A little faster.
2 Q How long before her death had you gotten to know
3 her?

4 A Not very long. Approximately six months.

5 Q Other than those changes, can you recognize the
6 facial features as those of Denise Lizzi?

7 A Yes.

8 MR. SEATON: I move for the introduction of 2.

9 MR. DUNLEAVY: Your Honor, I object. It looks
10 similar to her, I can recognize some of the facial
11 features, but the hair is different, the weight is
12 different. It's not an accurate representation and that's
13 what it's supposed to be is an accurate representation
14 contemporaneous in time.

15 MR. SEATON: It's supposed to be a picture that
16 she recognizes as the individual named.

17 THE COURT: State's 2 will be admitted.

18
19 (State's Exhibit No. 2 admitted
20 in evidence.)

21
22 MR. SEATON: Thank you. May I publish it,
23 Judge.

24 THE COURT: Uh-huh.
25

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1 BY MR. SEATON:

2 Q And what sort of a relationship did you maintain
3 with Denise Lizzi?

4 A Just someone that I knew through Laurie. Just
5 an acquaintance.

6 Q Laurie introduced her to you?

7 A Yes.

8 Q And do you recall how and when she introduced
9 you?

10 A Yes.

11 Q Tell us about that.

12 A Laurie and I had been out drinking one night and
13 I was really intoxicated and I didn't want to drive home.
14 Laurie took me somewhere, I don't even really remember
15 where, but when I woke up Denise was there. And that's how
16 I met her.

17 Q What was Denise --

18 A The next day.

19 Q What was Denise doing the next day when you
20 awoke?

21 A I believe she was trying to give me something to
22 drink. I was a little hung over.

23 Q Did you get along with her?

24 A Yeah, she was sweet. She was really sweet.

25 Q Do you know whether or not she did drugs at all?

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1 A At that time?

2 Q Yes.

3 A When I met her, no, I had no idea.

4 Q Did you later learn?

5 A Oh, yeah.

6 Q What did you learn?

7 A I learned that Laurie would obtain drugs through

8 Denise or through a friend associated with Denise.

9 Q Do you know that friend?

10 A And that they partied together. That's about

11 it.

12 Q Do you know that friend?

13 A One of them.

14 Q Tell us the name please.

15 A Michael Rippo.

16 Q Do you know whether or not Denise Lizzi did

17 drugs intravenously?

18 A Yes.

19 Q How do you know that?

20 A We would be in the same apartment together

21 basically.

22 Q We meaning you and Denise?

23 A Myself, Laurie and Denise, among other

24 individuals.

25 Denise and Laurie ...

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10 1 Q Take your time. Would you like some water?

2 A They would go into the bathroom so as not to
3 intravenously do drugs in front of me because it was
4 something that I completely didn't want anything to do
5 with.

6 Q They would do them in the bathroom?

7 A Yes, together.

8 Q You mentioned other people. Would other people
9 do the same thing?

10 A Yes.

11 Q You had mentioned before that Mr. Rippe was
12 involved with the two of them insofar as drugs were
13 concerned.

14 A Yes.

15 Q Was he involved in these incidents of taking
16 drugs intravenously in the bathroom?

17 A Yes.

18 Q I want to take you to January and February of
19 1992 just before her death. Do you know where Laurie
20 Jacobson lived?

21 A Yes.

22 Q Where?

23 A Katie Arms Apartments.

24 Q Had you been there before?

25 A Yes.

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10

1 Q Had you been there often?

2 A Yes.

3 Q What was generally your purpose in going to the
4 apartment at the Katie Arms to visit Laurie Jacobson?

5 A To take care of her.

6 Q And what do you mean to take care of her?

7 A I would go by each day as often as I could
8 during my lunch hour and I would take her food, anything
9 that she needed, give her some money to get groceries, gas,
10 that kind of stuff. Trying to convince her to move from
11 there. It wasn't a very cool place to be.

12 Q Court's indulgence for just a moment.

13 You say you went by to bring food. When
14 would you do that? What part of the day?

15 MR. DUNLEAVY: It's been asked and answered,
16 your Honor.

17 THE COURT: Sustained.

18 BY MR. SEATON:

19 Q Where were you coming from?

20 A Paradise and Swenson area.

21 Q What were you doing there?

22 A I was a secretary for American International
23 Services.

24 Q What does that company do?

25 A Fire safety. Sales.

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10 1 Q And you were employed there as a secretary?

2 A Yes.

3 Q And you would leave on your lunch hour?

4 A Yes.

5 Q How often would you leave in that fashion and go

6 over and visit Laurie Jacobson?

7 A As often as I could.

8 Q Showing you what's been admitted as State's

9 Exhibit 5, do you recognize the front of this building?

10 A Yes.

11 Q And what is it?

12 A Laurie's apartments.

13 Q Do you see Laurie's door on that particular

14 photograph?

15 A Third floor.

16 Q There is a red marking circle around a door.

17 Where is it in relationship to that circle?

18 A I believe the number on the apartment was 312 or

19 317.

20 Q 312 or 317?

21 A Yeah.

22 Q All right. Thank you.

23 A It's been a while.

24 Q Do you know if Laurie Jacobson had a car?

25 A A car?

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- 10 1 Q Yes.
- 2 A Yes, she did.
- 3 Q What kind of a car was it?
- 4 A A 280Z.
- 5 Q Was it in very good working order?
- 6 A No.
- 7 Q Let me show you 66 and 67 and ask if you can
- 8 identify the automobile shown in those photographs.
- 9 A That's Laurie's car.
- 10 Q Look at both photographs if you would.
- 11 A Uh-huh.
- 12 Q Do you recognize the automobile in 66 and 67 as
- 13 being the automobile owned and driven by Laurie Jacobson?
- 14 A Yes.
- 15 Q Can you recognize the area in which those
- 16 photographs were taken?
- 17 A This is in front of Katie Arms Apartments. And
- 18 I don't recognize this area.
- 19 Q The one in front of Katie Arms is the picture
- 20 66?
- 21 A Yes.
- 22 Q And the other you don't recognize?
- 23 A I don't recognize that.
- 24 Q Is this what her car looked like at the time you
- 25 last saw it?

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10 1 A Yes.

2 MR. SEATON: I move for the admission of 66 and
3 67, Judge.

4 MR. DUNLEAVY: No objection, your Honor.

5 THE COURT: They'll be admitted.

6

7 (State's Exhibit Nos. 66 and 67 admitted
8 in evidence.)

9

10 BY MR. SEATON:

11 Q And Denise Lizzi -- let me get -- I'll come back
12 to that one later.

13 I'm going to publish these if I might,
14 Judge.

15 THE COURT: All right.

16 BY MR. SEATON:

17 Q During the time that Laurie Jacobson lived with
18 you in Green Valley, did you see how she handled her car
19 and apartment keys, what her habits were regarding those
20 things?

21 A Yes.

22 Q What were her habits in terms of her keys
23 relative to the car? Would she leave her keys in the car
24 or always take them or what did you notice?

25 A There would be occasions where she would leave

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11 1 the keys in the car on the floorboard or under the seat.
2 Most of the time she would have her keys with her in the
3 house.

4 Q Did she have a house key for your place when she
5 lived there?

6 A Oh, yes.

7 Q And would the house key be kept on the same key
8 ring as the car keys?

9 A Oh, yes.

10 Q Would she ever to your knowledge leave the car
11 keys in the ignition of the car?

12 A Not to my knowledge.

13 MR. DUNLEAVY: Your Honor, could we have it put
14 in perspective what year this habit was.

15 MR. SEATON: I think I had asked her but I'll
16 ask again.

17 BY MR. SEATON:

18 Q Your familiarity with these habits, did that
19 come about from the time that she lived with you in Green
20 Valley?

21 A Yes.

22 Q When was the last time that you saw Laurie?

23 A The Monday before she died.

24 Q Have you looked at a calendar that has been
25 prepared to help you remember these days and events?

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11 1 A I have looked at a calendar.

2 MR. SEATON: Do we have that calendar?

3 MR. DUNLEAVY: Your Honor, for the record we've
4 stipulated to 4. It can be admitted if they would like.

5 THE COURT: What is that, State's what?

6 MR. SEATON: Exhibit 4, and it is a calendar
7 showing March -- February and March of 1992.

8 THE COURT: It will be admitted.

9
10 (State's Exhibit No. 4 admitted
11 in evidence.)
12

13 BY MR. SEATON:

14 Q Are you familiar with the dates as shown on
15 State's Exhibit 4?

16 A Am I familiar with the dates?

17 Q Yes. Have you looked that calendar over in
18 recent times?

19 A I have looked at the calendar, yes.

20 Monday the 17th would be the last time I
21 saw her.

22 Q All right. Let me go back a day before that to
23 Sunday. Is that the 16th?

24 A Yes.

25 Q Do you recall going to her apartment and seeing

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11 1 her on the 16th?

2 A Yes.

3 Q Approximately what time of the day or night was
4 that?

5 A It was in the evening. Between 8:00 and 10:00.

6 Q What was your purpose in going to her apartment
7 on that evening?

8 A She had asked me to come by. She called and
9 asked me to come and sit with her. She was a little
10 nervous. Something was going on with her.

11 MR. WOLFSON: Your Honor, I'm going to object on
12 the grounds of hearsay.

13 THE WITNESS: She wouldn't say --

14 THE COURT: Stop talking when there is an
15 objection.

16 MR. WOLFSON: Hearsay, your Honor.

17 MR. SEATON: I'll reword the question, Judge.

18 THE COURT: Thank you.

19 BY MR. SEATON:

20 Q What was your purpose in going over there?

21 A To check on her and make sure she was okay and
22 make sure everything was all right, if she needed anything.

23 Q When you got there was she in her apartment?

24 A Yes.

25 Q Was anyone in there with her?

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11 1 A Yes.

2 Q And who was that?

3 A Mike Rippo.

4 Q Had you seen Mike Rippo before?

5 A Yes.

6 Q On a number of occasions?

7 A A couple of occasions.

8 Q Is he present in court today?

9 A Yes, he is.

10 Q Would you point to him and tell us what he's

11 wearing right now?

12 A Blue sweater, pink shirt, slacks.

13 MR. SEATON: May the record reflect

14 identification of the defendant, Judge?

15 THE COURT: The record will so reflect.

16 BY MR. SEATON:

17 Q Was there anyone else in the apartment besides,

18 once you got in there, yourself, Laurie Jacobson and

19 Michael Rippo?

20 A No one.

21 Q When you got there what were Michael Rippo and

22 Laurie Jacobson doing?

23 A They were discussing some morphine that Laurie

24 had.

25 Q Did you see that morphine?

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11 1 A Yes, I did.
2 Q What did it look like?
3 A It was in a bottle probably this big.
4 Q You're showing the distance between your
5 fingers. What would you estimate that distance to be?

6 A Three inches.

7 Q Three inches.

8 A Laurie had --

9 MR. WOLFSON: Your Honor, I'm going to object.
10 Anything that Laurie says, with all due respect, is
11 hearsay.

12 MR. SEATON: Well, Judge, the rule is that the
13 discussions held by the defendant, including those people
14 who were in his presence, are not hearsay and are
15 admissible.

16 MR. WOLFSON: Excuse me. I don't know of any
17 rule that says what other people say in the presence of
18 Michael Rippo are an exception to the hearsay rule. What
19 Michael Rippo said is not hearsay. What other people said
20 is.

21 THE COURT: Sustain the objection.

22 BY MR. SEATON:

23 Q Tell us what Michael Rippo was saying.

24 A That he would take the morphine from Laurie to
25 get rid of it for her so that she could have money to pay

11

1 her rent.

2 Q Was she having difficulty paying her rent at
3 that time?

4 A Yes, she was.

5 Q Do you know whether or not she was in arrears,
6 late in her rent payment?

7 A Yes, she was.

8 MR. DUNLEAVY: Objection, your Honor. It would
9 call for hearsay. How else would she know.

10 THE COURT: Sustained.

11 MR. DUNLEAVY: I ask that it be stricken.

12 THE COURT: It will be stricken.

13 BY MR. SEATON:

12

14 Q While you were in the apartment that evening on
15 Sunday, February the 16th, were any drugs used by anyone?

16 A Yes.

17 Q Who used drugs?

18 A Mike and Laurie.

19 Q How did they do it?

20 A Intravenously.

21 Q Did they use that particular morphine?

22 A Yes.

23 Q Did you see them do it or did they go to the
24 bathroom with the things that they use?

25 A They went into the bathroom with the morphine,

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1 needles, and came out buzzed.

2 Q You saw all of those things?

3 A Yes.

4 Q Now you had mentioned that the last time you saw

5 Laurie was the next day on the 17th.

6 A Yes.

7 Q And that again is what day?

8 A Monday.

9 Q Monday the 17th, where did you see her at that

10 time?

11 A At her apartment.

12 Q When?

13 A During my lunch hour.

14 Q When you got there to her apartment during your

15 lunch hour, was anyone else present?

16 A Yes.

17 Q Who?

18 A Mike Rippo.

19 Q The same individual you've just identified here

20 in court a few minutes ago?

21 A Yes.

22 Q Anyone else besides the three of you?

23 A No one.

24 Q What was going on at that time?

25 A Laurie needed her tire fixed on her car.

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12

1 Q Had you seen her tire?

2 A Yeah, it was flat.

3 MR. WOLFSON: I'm going to object. It calls for

4 a hearsay response.

5 BY MR. SEATON:

6 Q Was there a discussion regarding the flat tire?

7 A I was asked to follow her to --

8 MR. DUNLEAVY: Objection, your Honor. It's a

9 yes or no answer.

10 BY MR. SEATON:

11 Q Just was there a discussion about the tire?

12 A Yes.

13 Q Did that occur while Mr. Rippe was there?

14 A Yes.

15 Q Did there come a time when he left?

16 A Yes.

17 Q That day was there any ingestion of drugs?

18 A Not to my knowledge.

19 Q After Mr. Rippe left did you go someplace?

20 A Yes.

21 Q Did you go with someone else?

22 A Yes, I did.

23 Q Who did did you go with?

24 A Laurie.

25 Q How did the two of you go?

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12

1 A We first took my car, drove to Discount Tires,
2 the guy said for us to bring her car back and that he would
3 take the tire off and fix it and put it back on. I then
4 went back to the apartment and followed her with my car to
5 drop the car off at Discount Tires.

6 Q So you left the Katie Arms on Tuesday -- I'm
7 sorry, Monday --

8 A Monday.

9 Q -- the 17th, went to Discount Tire, came back
10 and then had both cars and left?

11 A Yes.

12 Q Who drove which car?

13 A I drove my car, Laurie drove her car.

14 Q Did you follow her?

15 A Yes.

16 Q Did she drive the black Z that you had just
17 identified a little while ago?

18 A Yes.

19 Q What kind of a car did you have?

20 A I had a red Dodge Daytona.

21 Q Is that a small sports car?

22 A Medium, small, yeah. Medium I would say.

23 Q Look anything like a Camaro?

24 A Similar.

25 Q In terms of size?

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12

1 A Yes.

2 Q Did you go back to Discount Tire?

3 A No.

4 Q No. When you followed Laurie Jacobson --

5 A To Discount Tire?

6 Q -- the second time --

7 A Right.

8 Q -- did you go to Discount Tire?

9 A Yes.

10 Q And what happened to her car?

11 A We left it there.

12 Q When was it to be picked up?

13 A Later when he fixed it. You know.

14 Q Did you leave Discount Tire?

15 A Yes.

16 Q And how about Denise -- I'm sorry -- Laurie

17 Jacobson, did she leave with you?

18 A She left with me.

19 Q In your car?

20 A Yes.

21 Q Where did you go?

22 A I dropped her back off and went back to work.

23 Q Did you ever have lunch that day?

24 A Bagels.

25 Q Where do you have --

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12

1 A I would bring them. I would stop at the bagel
2 place, grab a couple bagels and take them to her house when
3 I go over there.

4 Q Was that the typical noon thing you did?

5 A Yes.

6 Q Did you do it on noon on Monday the 17th?

7 A Yes.

8 Q Do you know when you ate lunch, was it before
9 you went to Discount Tire or after?

10 A Before.

11 Q Before.

12 So then you dropped her off and you just
13 headed back to work?

14 A Yes.

15 Q And do you know how you -- do you know whether
16 or not she got her car back?

17 A That day, no, I had no idea.

18 Q Did you have anything to do with the getting
19 back her of her car?

20 A No.

21 Q Where was the particular Discount Tire company
22 that you went to?

23 A On Maryland Parkway.

24 Q Where on Maryland Parkway?

25 A Right behind the Katie Arms Apartments.

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12 1 Q Oh, it's close?
2 A Oh, yeah, it was very close.
3 Q In terms of blocks, how many blocks?
4 A A block.
5 Q One block?
6 A Yeah.
7 Q So that's where you drove to?
13 8 A Yeah.

9 MR. DUNLEAVY: Your Honor, I'm going to object
10 to relevance. How in the world is a flat tire relevant to
11 this case?

12 MR. SEATON: Well, I seem to remember a manager
13 of the apartment, Mr. Hooper, saying that he saw a red car
14 following Laurie Jacobson's black 2 out on this particular
15 date.

16 MR. DUNLEAVY: So?

17 MR. SEATON: I think that just brings that out.

18 THE COURT: I'll allow it.

19 BY MR. SEATON:

20 Q I'm going to show you what has been marked for
21 identification as 84B, what appears to be a piece of paper
22 folded in half. So I'll ask you just to turn it over to
23 see both sides of it, but I don't believe you need to take
24 it out of there.

25 Just look at that document and tell us if

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13 1 it relates at all, to the best of your knowledge, to the
2 Discount Tire store that you took Laurie Jacobson to.

3 MR. DUNLEAVY: Your Honor, I object to
4 foundation. It's a receipt from a tire store. She doesn't
5 work in a tire store. She doesn't know if it's one of how
6 many thousands.

7 MR. SEATON: She can tell us by looking at it
8 whether or not she recognizes that it relates to that
9 particular store. That's all I asked her, Judge.

10 THE COURT: I'll allow it.

11 THE WITNESS: Yes.

12 BY MR. SEATON:

13 Q It does? Same store?

14 A Yes.

15 Q Does it appear to be the same transaction that
16 you took Laurie Jacobson to the store for?

17 A A used tire.

18 Q Is that what she was going there for?

19 A Yes.

20 Q Thank you.

21 Did you see the date?

22 MR. WOLFSON: Judge, the document is not in
23 evidence. I object.

24 MR. SEATON: I'm not showing it to the jury. I
25 just asked her if she saw the date.

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13

1 MR. WOLFSON: She's reading off a document not
2 yet in evidence. Now a little foundation is fine.

3 THE COURT: Objection sustained.

4 BY MR. SEATON:

5 Q When was the next time that you went back to the
6 apartment of Laurie Jacobson?

7 A Tuesday the 18th.

8 Q Tuesday the 18th of February, 1992?

9 A Yes.

10 Q And what was your purpose in going back that
11 day?

12 A Lunch.

13 Q It was noontime again?

14 A It was lunch time.

15 Q You had bagels with you?

16 A Yes.

17 Q What happened when you got there?

18 A I arrived, pulled up in the parking lot. I saw
19 Denise's car parked there. I had loaned her some boots --

20 Q Denise Lizzi?

21 A Yes.

22 Q Before you go on let me show you what has been
23 marked as State's Exhibit 64 and 65 and ask if you can
24 identify the automobile which is shown in those
25 photographs.

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13

1 A Denise's car.

2 Q Does that appear to be her car?

3 A Yes.

4 Q One of them, 64, appears to have white on the

5 left rear, the left front fender quarter panel. Were you

6 familiar with that?

7 A No.

8 Q Other than that, does the car appear to be the

9 same?

10 A Yes.

11 Q Same type?

12 A Yes.

13 Q Style, color?

14 A Yes.

15 Q You saw this automobile in the parking lot did

16 you say?

17 A Yes.

18 Q Did you also see the automobile of Laurie

19 Jacobson, the black Z that you had identified earlier?

20 A Yes.

21 Q This was the day after the Discount Tire trip?

22 A Yes.

23 Q Where you left the black Z at the Discount Tire?

24 A The day before we left it there, yes.

25 Q On the 18th?

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13

1 A Yes.

2 Q So today, this day that we're talking about now

3 on the 20th, that same car was back at the apartment

4 complex?

5 A I'm talking about Tuesday. Are we talking about

6 Tuesday the 18th?

7 Q I'm sorry, I meant the 18th.

8 On the 18th was the black Z of Laurie

9 Jacobson's back at the apartment complex?

10 A Yes.

11 Q And did you notice whether or not the tire was

12 fixed?

13 A Yes, it was.

14 Q It was no longer flat?

15 A No.

16 Q Were the cars parked next to each other?

17 A No, Laurie's car was parked facing the street,

18 Cambridge, and Denise's car was parked in front of the

19 elevators facing the building.

20 Q Did you go upstairs?

21 A Yeah. After I looked in Denise's car, in the

22 back window I saw my boots, I wanted them back. I then

23 went upstairs.

24 Q You had loaned boots to Denise Lizzi?

25 A To Denise, yes. I then went upstairs and

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13

1 started to knock on the door. Usually I would knock and
2 walk in, just a habit of mine.

3 Q Would --

4 A With her --

5 Q I'm sorry, let me interrupt you for a moment.

6 Would her door typically be open when you
7 would come and knock?

8 A Yes.

9 Q Was she in the habit of leaving the door of her
10 residence open?

11 A While she was home, yes.

14

12 Q Was that a pretty regular thing?

13 A Yes.

14 Q What happened when you knocked and tried the
15 door?

16 A The door was locked and there was no answer. I
17 continued to knock. I tried the window.

18 Q Did you notice anything unusual about the
19 window?

20 A Yes, there was a stick in the window.

21 Q What do you mean there was a stick in the
22 window?

23 A Like a broom stick or a mop stick, something
24 like that. It was unusual to me because that's not a
25 regular habit of Laurie's.

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14 1 Q Could you tell --

2 A -- to put the stick in the window.

3 Q Could you tell the purpose of the stick, what it

4 accomplished?

5 A To not be able to open the window.

6 MR. DUNLEAVY: That calls for a conclusion.

7 MR. SEATON: I think that's within her --

8 THE COURT: I'll allow it.

9 BY MR. SEATON:

10 Q And did you continue to knock on the door and

11 the window?

12 A Yes, I did.

13 Q And were you successful? Did anyone answer the

14 door?

15 A No.

16 Q Could you hear any voices from within at all?

17 A No. There were neighbors out, you know, walking

18 about and, no, I didn't hear anything.

19 Q You could hear nothing from the interior of the

20 apartment?

21 A No.

22 Q Could you hear any music, stereo or anything

23 like that?

24 A No.

25 Q How long were you there?

DANETTE L. ANTONACCI, CCR #222 (702) 455-4672

14 1 A Approximately ten minutes.

2 Q Did you give up and go, leave?

3 A Yeah, after I said a few things.

4 Q Did you go back to work then?

5 A Yes.

6 Q When was the next time you went by the apartment

7 of Laurie Jacobson?

8 A I'm not sure. I'm not sure.

9 Q Let me ask it to you this way: When was the

10 next time that you went by there and there was some

11 activity?

12 A Thursday. Thursday.

13 Q Is that Thursday the 20th?

14 A Thursday the 20th.

15 Q When you drove into the apartment complex what

16 did you see in the nature of activity?

17 A A lot. I saw news crews and a lot of suits, men

18 in suits walking around.

19 Q People dressed like we are dressed?

20 A Yes. I didn't see Laurie's car and I looked up

21 towards her apartment and didn't see anything wrong there

22 and I just drove, I just kept driving. I didn't want to

23 stop. I thought there was some kind of drug bust or

24 something. It was no business of mine. I just kept on

25 going.

DANETTE L. ANTONACCI, CCR #222 (702) 455-4672

1 Q Did you see Denise's car?

2 A No.

3 Q So neither the red car nor the black car were
4 there in the parking lot at that time?

5 A Correct.

6 Q When did you learn of the deaths of Laurie
7 Jacobson and Denise Lizzi?

8 A Thursday evening.

9 MR. DUNLEAVY: Your Honor, may we approach for a
10 second?

11
12 (Discussion off the record.)

13
14 THE COURT: All right, we're going to recess for
15 the evening, ladies and gentlemen. We'll begin again
16 tomorrow morning at approximately 10:30. I have a very
17 large criminal calendar in the morning but I'll hopefully
18 be done by then. Please bear with us if we aren't.

19 So remember don't converse among
20 yourselves or with anyone else on any subject connected
21 with the trial; read, watch or listen to any commentary on
22 the trial by any medium of information including without
23 limitation newspapers, television and radio; and don't form
24 or express any opinion on any subject connected with the
25 trial until the matter is finally submitted to you.

DANETTE L. ANTONACCI, CCR #222 (702) 455-4672

1 So we'll see you tomorrow morning at

2 10:30 a.m. Have a good evening.

3 (Proceedings adjourned.)

4 * * * * *

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9 ATTEST: Full, true and accurate transcript of
10 proceedings.
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14 
15 Danette L. Antonacci, CCR #222

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DANETTE L. ANTONACCI, CCR #222 (702) 455-4672

-FILED IN OPEN COURT-

February 8, 1996

LORETTA BOWMAN, CLERK

By *Josephine [Signature]* Deputy

ORIGINAL

DISTRICT COURT

CLARK COUNTY, NEVADA

The State of Nevada,

Plaintiff,

vs.

Michael Damon Rippe,
#0619119

Defendant.

Case No. C106784
Dept. No. IV
Docket No. "C"

Before the Honorable Gerard J. Bongiovanni

Wednesday, February 7, 1996, 1:45 o'clock p.m.

Reporter's Transcript of Proceedings

JURY TRIAL

VOLUME I

REPORTED BY: Renee Silvaaggio, C.C.R. No. 122

CE

RENEE SILVAGGIO, CCR 122 391-0379

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APPEARANCES:

For the State: MELVYN T. HARMON, ESQ.
DANIEL SEATON, ESQ.
Deputies District Attorney

For the Defendant: STEVEN B. WOLFSON, ESQ.
PHILIP H. DUNLEAVY, ESQ.
Attorneys at Law

Law Clerk: Delwin Potter

RENEE SILVAGGIO, CCR 122 391-0379

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I N D E X

WITNESSES ON BEHALF OF PLAINTIFF:

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Cross-Examination by Mr. Dunleavy

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SIMS, Thomas

Direct Examination by Mr. Harmon

Cross-Examination by Mr. Dunleavy

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-000-

1 Las Vegas, Nevada, February 7, 1996, 1:45 o'clock p.m.

2
3 * * * * *

4
5 (The following proceedings
6 were had in open court in
the presence of the Jury:)

7 THE COURT: State of Nevada versus Michael
8 Damon Rippo.

9 Let the record reflect the
10 presence of the defendant, with his attorneys Steven Wolfson
11 and Philip Dunleavy; Dan Seaton, Mel Harmon for the State.
12 Counsel stipulate to the
13 presence of the Jury?

14 MR. SEATON: Yes, Judge.

15 MR. DUNLEAVY: Yes, Your Honor.

16 THE COURT: Ladies and gentlemen, I would
17 like to apologize to you. I had a morning calendar that had
18 to be the longest calendar I've had yet. I didn't get done
19 with that until a quarter to one.

20 Call your next witness.

21 MR. SEATON: It's Wendy Liston, Judge. She
22 was on the stand when we finished yesterday.

23 THE COURT: Do you understand you are still
24 under oath?

RENEE SILVAGGIO, CCR 122 391-0379

1 THE WITNESS: Yes.

2 MR. SEATON: This is the finish of direct
3 examination.

4 THE COURT: We are still on direct?

5 THE REPORTER: Yes.

6
7 Whereupon,

8 WENDY LISTON
9

10 the witness on the stand at time of recess,
11 having been previously duly sworn, resumed
12 the stand and testified further as follows:

13
14 DIRECT EXAMINATION (Resumed)

15
16 BY MR. SEATON:

17 Q Good afternoon.

18 A Good afternoon.

19 Q I'll show you a few pieces of evidence.

20 This is 92-A, a brown bag.

21 Do you recognize that bag at

22 all?

23 A No.

24 Q Never seen it before or one like it?

RENEE SILVAGGIO, CCR 122 391-0379

1 A No.

2 Q I want to show you the bag full of things.

3 What I'd like you to do is just

4 get into the bag, without looking real specifically at

5 everything, but look at it well enough to see if there is

6 anything in there that you recognize as having belonged

7 to --

8 MR. DUNLEAVY: Your Honor, I'd object to not

9 looking specifically. You either look at everything or

10 don't. There is not much sense in having her look not

11 specifically. That doesn't make any sense.

12 THE COURT: She's got to go through the bag.

13 I mean, there is I don't know how many things in there.

14 Move things around and take things out and see if she can

15 find any of these.

16 MR. SEATON: He can ask her item for item on

17 cross-examination if he wishes to, Judge.

18 THE COURT: Okay. Your objection is --

19 MR. HARMON: Your Honor, for the record,

20 what did we mark this bag?

21 THE CLERK: It's --

22 THE COURT: Is that bag marked?

23 MR. HARMON: I thought it was marked --

24 MR. WOLFSON: It's either 92-A or 92-B.

1 MR. HARMON: 92-B.

2 MR. SEATON: It is 92-B.

3 THE COURT: 92-B.

4 BY MR. SEATON:

5 Q And so that the record is clear, I've handed
6 you a bag which is marked 92-B. It has a lot of items in
7 it.

8 A Yes.

9 Q Have you had an opportunity to go through
10 it?

11 A Yes.

12 Q Did you see anything in there that was
13 familiar to you at all?

14 A No.

15 Q All right. Now, I want to show you what has
16 been marked as 92-A, I believe. Let me find it --

17 THE COURT: No, that can't be A.

18 MR. SEATON: Oh, no. These were all
19 individually marked.

20 THE CLERK: Yeah.

21 BY MR. SEATON:

22 Q I'm going to take these things out -- or I'll
23 just put this down. And, one at a time, I want you to go
24 through all of these items.

RENEE SILVA6610, CCR 122 391-0379

Do you see that they have markings on them that show their exhibit number?

A Uh-huh.

Q Look through each of those. If you don't recognize the particular item, put it off to the side. If you do recognize it, tell me what the number is on that particular exhibit.

A Okay.

I recognize item 92-A.

THE COURT: A has got to be A with a number on it.

THE WITNESS: It's A-10.

THE COURT: A-10?

THE WITNESS: Yeah.

BY MR. SEATON:

Q All right. And 92-A-10 is what?

A Lauri Jacobson's address book.

Q How do you recognize that as being Lauri Jacobson's address book?

A Lauri always made her sevens like that, (indicating), this seven, all these sevens.

Q A seven with a line through it?

A Yes.

Q Do you recognize -- were you familiar with

1 the handwriting of Lauri Jacobson?

2 A Yes.

3 Q Does this appear to be similar to the
4 handwriting that you had seen of hers before?

5 A Yes.

6 Q And so you recognize it from the
7 handwriting?

8 A Yes. And the addresses -- and the
9 addresses, the names in the book.

10 Q Why the addresses and the names in the book?

11 A Norman, Marie Jacobson, her parents, her
12 brother, her other brother.

13 Q Are you familiar -- are you familiar with
14 these people?

15 A Yes.

16 Q Okay. So you are convinced that this is the
17 address book of Lauri Jacobson?

18 A Yes.

19 Dave Maxwell.

20 Q All right. If you would put 92-A-10 off to
21 the side there, over -- there you go, and then look through
22 the other items.

23 A Guns and Roses tape.

24 Q What is the number?

2 1 A 92-A-13.
2 Q Now why is that familiar to you?
3 A It's Lauri's tape.
4 Q How do you know that?
5 A Lauri was a die hard Guns and Roses fan and
6 this is her writing.

7 MR. SEATON: Okay. Thank you.

8 Miss Clerk, so that we may
9 know, what are the numbers, 92-A-1 through what? In this --
10 do you have that list in your --

11 THE CLERK: No, I don't.

12 MR. SEATON: Do you have that down yet?

13

14 (Whereupon, a sotto voce at
15 this time.)

16 THE WITNESS: 92-A-3.

17 BY MR. SEATON:

18 Q And what is that?

19 A Guns and Roses Use Your Illusion II.

20 Q That is a tape you -- or a group that you
21 said Lauri Jacobson was particularly fond of?

22 A Very fond of.

23 Q One of her favorites?

24 A Yes.

RENEE SILVAGGIO, CCR 122 391-0379

1 Q Have you looked at all of the items in that
2 bag?

3 A Yes, I have.

4 Q And these are all the items -- all of these
5 other items were marked 92-A-1 through some high number --
6 the clerk doesn't have those marked as yet -- is that
7 correct?

8 A Yes.

9 Q All of these items were marked?

10 A Yes.

11 MR. WOLFSON: Excuse me, counsel, just for a
12 clean record, why don't we have her go 92-A-3, I don't
13 recognize; -5, I don't recognize, because we're jumbled up
14 with numbers. We need a clean record. There aren't that
15 many, I don't think.

16 THE COURT: All right. Just go through them
17 all one at a time and --

18 MR. WOLFSON: She either does or doesn't.

19 THE COURT: -- the following numbers you do
20 not recognize and take them one at a time.

21 THE WITNESS: 92-A-15.

22 MR. WOLFSON: Thank you.

23 THE WITNESS: 92-A-12; 92-A-11; 92-A-7;
24 92-A-19; 92-A-2; 92-A-14; 92-A-18; 92-A-1; 92-A-4; 92-A-5;

1 92-A-17; 92-A-8; 92-A-16; 92-A-5; 92-A-15 and 92-A-9.

2 MR. WOLFSON: Thank you.

3 BY MR. SEATON:

4 Q If you would replace those back into the
5 bag, please.

6 And tell us, again, once again,
7 the numbers on the two Guns and Roses tapes and on the
8 address book.

9 A 92-A-3.

10 Q Does that --

11 MR. DUNLEAVY: Could we have her identify
12 which is which?

13 MR. SEATON: Yeah, let's do that.

14 BY MR. SEATON:

15 Q What is that?

16 A Guns and Roses.

17 Q Is that the tape with the handwriting on it
18 or the tape without the handwriting on it?

19 A The tape without the handwriting on it.

20 Q Okay. The one with the handwriting on it?

21 A The tape with the handwriting on it.

22 92-A-13.

23 Q And the address book?

24 A The address book, 92-A-10.

RENEE SILVAGGIO, CCR 122 391-0379

2 1 Q Those three items are friends -- are items
2 belonging to your friend Lauri Jacobson?

3 A Yes, sir.

4 MR. SEATON: Thank you.

5 I have no further questions.

6 THE COURT: Cross-examination.

7
8 CROSS-EXAMINATION

9
10 BY MR. DUNLEAVY:

11 Q Have you ever met Mr. Ripppo?

12 A Yes.

13 Q On several occasions?

14 A A few occasions.

15 Q As a matter of fact, I believe you said that
16 on one occasion you saw him, he had actually been using
17 drugs with your friend Lauri; is that correct?

18 A Yes.

19 Q And you believe and were advised what they
20 were using was morphine?

21 A Yes.

22 Q What was he acting like before and after?
23 Was there a difference?

24 A After they came out of the bathroom, 15

NR1PP0-07030-01458

2 1 minutes, they were very, very mellow, kicked back, very
2 relaxed.

3 Q Is that the kind of thing -- or have you
4 seen people use morphine before?

5 A I've seen people on morphine, yes.

6 Q Is that pretty typical activity?

7 A Yes.

8 Q Mellow, you out?

9 A Sleepy.

10 Q Have you ever heard of it referred to as
11 being on the nod?

12 A No.

13 Q Now, you knew that Lauri's friend was
14 Denise, one of her friends?

15 A Yes.

16 Q And you indicated yesterday, I believe,
17 that -- and to your credit, you were trying to get Lauri to
18 clean up her life and get off the drugs and the bad friends
19 she had?

20 A Yes.

21 Q Would you classify Denise as one of those
22 bad friends?

23 A I would classify Denise as a confused
24 friend.

RENEE SILVAGGIO, CCR 122 391-0379

1 Q Do you remember stating, in your statement
2 to the police, that Lauri had been talking to you about
3 trying to get off crystal, get a job, get her life together?

4 A Yes.

5 Q And that somebody in particular kept coming
6 over, trying to get her to use some crystal?

7 A No, I don't recall.

8 Q If I show you a page of your statement,
9 would that help refresh your recollection?

10 A Yes, it could.

11 Q Page nine, showing you what's the last full
12 answer on page nine of your statement, does that appear to
13 be your statement to the police?

14 A Yes.

15 Q And at that time, did you indicate to the
16 police who it was that was coming over and trying to get her
17 to continue using drugs?

18 A Yes.

19 Q And who was it?

20 A Denise.

21 Q Did you observe this?

22 A No.

23 Q Were you there when it happened or was this
24 just something your friend told you?

1 A Something that was said to me.

2 MR. SEATON: Judge, if that's true, then I
3 would object based on hearsay and ask that it be stricken.

4 MR. DUNLEAVY: I'm sorry. The context of
5 the answer, I thought she was present when it happened.

6 THE COURT: But obviously she wasn't, so it
7 should be stricken.

8 MR. HARMON: And the Court --

9 THE COURT: The Jury will disregard that
10 answer.

11 BY MR. DUNLEAVY:

12 Q Now, there was some discussion about the use
13 of -- what Lauri's habits were with her keys yesterday; and
14 you -- you indicated yesterday that she would sometimes
15 leave them in her car, but not in the ignition; she'd leave
16 them on the floor board or something like that.

17 A Yes.

18 Q Do you remember giving a statement where you
19 talk about the keys?

20 A Briefly.

21 Q Do you remember what your answer was at that
22 time?

23 A No, I do not.

24 Q Would it refresh your recollection if I

1 showed you the area of your statement?

2 A Yes, sir.

3 Q Referring you to page 13 of your statement,

4 the first full answer on that page, is that discussing

5 Lauri's habits with her keys?

6 A I don't recall saying that she left her keys

7 in the ignition --

8 Q Is that what the --

9 A -- in the car.

10 Q Is that what the statement says?

11 A Yes, it does.

12 Q Did you review this statement when you gave

13 it to the police?

14 A Yes, I did.

15 Q Did you make a note that this was incorrect

16 when you reviewed the statement?

17 A Can't recall if I did or not. It's been

18 quite some time.

19 Q You also testified to the Grand Jury, did

20 you not?

21 A Yes, I did.

22 Q And do you remember what you told the Grand

23 Jury about?

24 A About --

3

1 Q Her habits with her keys?

2 A That she would leave them in her car
3 sometimes; most of the time, she'd have them with her.

4 Q I'd like to show you page 110 of your Grand
5 Jury testimony and see if that helps refresh your
6 recollection as to what you told the Grand Jury.

7 A Yes.

8 Q What did you tell the Grand Jury?

9 A She was in the habit of leaving the doors
10 open, and she was also in the habit of leaving keys in the
11 car?

12 Answer: No.

13 Q And then what's the next question?

14 A She would always take the keys in?

15 Q And your answer?

16 A Yes.

17 Q So to the Grand Jury, you said that she
18 always took her keys in?

19 A Katie Arms Apartments.

20 Q Is there a question about the Katie Arms
21 apartment here?

22 A No.

23 Q They were talking about her car keys, were
24 they not?

3

1 A Yes, they were.

2 Q Now, you indicated that when you went up to

3 the door looking for your friend that day, you knocked and

4 knocked on the window and called out and so forth, trying to

5 see if she was in there, right?

6 A Which day?

7 Q The 18th, February 18th, 1992.

8 A Yes.

9 Q And was the stereo on?

10 A I didn't hear the stereo.

11 Q Do you think you would have if it had been

12 on?

13 MR. SEATON: Objection; that calls for

14 speculation.

15 MR. DUNLEAVY: I can lay the foundation,

16 Your Honor.

17 THE COURT: Lay some foundation.

18 BY MR. DUNLEAVY:

19 Q You had known Lauri for some time; is that

20 correct?

21 A Yes.

22 Q Been roommates?

23 A Yes.

24 Q Did she play the stereo often when you knew

3

1 her?

2 A On occasion.

3 Q She was a Guns and Roses fan?

4 A Yes.

5 Q Is that the kind of music you usually play
6 very low and mellow or did she usually turn it up?7 A It would depend. Sometimes you are in the
8 mood for loud music; sometimes you are not.9 Q Had you ever been over to her house when she
10 had the stereo on?

11 A Yes.

12 Q Could you hear it outside?

13 A Not when the door is closed.

14 Q So she played it so low you couldn't hear it
15 through the door?

16 A Correct.

17 Q So it may or may not have been on; you have
18 no way of knowing?

19 A Correct.

20 Q Had you and Lauri seen anybody at the tire
21 store the day before when you took your car over there?

22 A The tire guy.

23 Q Anybody else in the parking lot that you had
24 a discussion about?

4

1 A Nicely dressed gentleman that was crossing
2 the parking lot headed towards McDonald's.

3 Q And then when you went over there the next
4 day and knocked, you thought something might be going on
5 because the cars were there and the door was locked?

6 A Right; correct.

7 Q Did you, in fact, make a comment through the
8 door as you were getting ready to leave?

9 A Yes, I did.

10 Q Do you remember what that comment was?

11 A Something to the effect that you better be
12 having some good sex to not open the door for me.

13 Q Showing you page 104 and 105 of your Grand
14 Jury testimony.

15 Does this refresh your
16 recollection as to what you said at that time?

17 A Yes.

18 Q And what did you say at that time?

19 A You better be getting a good piece of ass
20 because you are not answering the door for me.

21 Q So if she didn't answer the door, that's
22 what you would expect to be going on?

23 A Yes.

24 Q And you also thought her friend Denise Lizzi

4 1 was there; is that correct?

2 A Yes.

3 Q And did you make a comment about that on

4 page 1057.

5 A Yes, I did.

6 Q What was that comment?

7 A Denise's car was there; Lauri's car was

8 there. I figured that they had to have been there and I

9 figured they were not answering the door because they were

10 probably doing the wild thing.

11 Q So you wouldn't have been surprised to find

12 out that she was engaged in activities with her friend there

13 as well?

14 MR. SEATON: I'm going to object as to the

15 form --

16 THE WITNESS: I don't understand the

17 question.

18 THE COURT: When there is an objection you

19 have to stop talking.

20 MR. SEATON: I just want to object to the

21 form of the question. It was so open ended that I -- and

22 she said it best. She doesn't understand.

23 THE COURT: Lay more foundation.

24 MR. DUNLEAVY: I will be glad to.

4

1 BY MR. DUNLEAVY:

2 Q You indicate that you thought they both were
3 in the apartment, both vehicles were there?

4 A Yes.

5 Q And in that statement you indicated you
6 thought they were both in there.

7 A Yes.

8 Q And your -- I believe you testified if the
9 door was locked you expected a certain type of activity to
10 be going on.

11 A Yes.

12 Q And you wouldn't have been surprised for
13 that to have been going on with the both of them there?

14 A I would not have been surprised.

15 MR. DUNLEAVY: May we approach for just a
16 minute, Your Honor?

17 THE COURT: Yes.

18

19

20

(Whereupon, an off-the-record
discussion was had.)

21

22

23

24

MR. DUNLEAVY: Your Honor, with the
understanding that she will be available at a later date if
we need her, I have no further questions.

4 1 THE COURT: Okay. Redirect?
2 MR. SEATON: No redirect.
3 THE COURT: Thank you. You are excused.
4 THE WITNESS: Thank you.
5 THE COURT: But you will make yourself
6 available if needed.
7 THE WITNESS: Yes, sir.
8 (Whereupon, the witness
9 was excused.)
10 THE COURT: The State may call their next
11 witness.
12 And collect these items for the
13 clerk, please.
14 MR. HARMON: The next witness will be Thomas
15 Sims.
16 THE BAILIFF: Sims is upstairs. The D.A.
17 investigator went after him.
18 THE COURT: Okay.
19 MR. HARMON: May we have the Court's
20 indulgence, Your Honor?
21 THE COURT: Yes.
22 JUROR ESCALANTE: Your Honor, we have two
23 ladies who would like to address you.
24 THE COURT: How do you know?

1 All right. We'll take a short
2 recess.

3 Remember: Do not discuss this
4 case among yourselves or with anyone else;

5 Or read, watch, listen to any
6 report or commentary on the case by any medium of
7 information, including, without limitation, newspaper, radio
8 or television;

9 Don't express any opinion on
10 this case until the matter is finally submitted to you.

11 MR. WOLFSON: The defense has no objection.

12 (Whereupon, a recess was had in
13 the proceedings, at the
14 conclusion of which the
following was had:)

15 THE COURT: Counsel stipulate to the
16 presence of the Jury?

17 MR. SEATON: Yes, Judge.

18 MR. DUNLEAVY: Yes, Your Honor.

19 THE COURT: I believe you gave me wrong
20 information. The number was four instead of three -- five.

21 A VOICE: It's all the men.

22 THE COURT: Okay. Call your next witness.

23 MR. HARMON: It's still Tom Sims, Your
24 Honor.

THE COURT: Tom Sims.

THE CLERK: Remaining standing, please, and
raise your right hand.

Whereupon,

THOMAS SIMS

Whereupon,

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

THE CLERK: Thank you.

Please be seated.

Will you state your name and
spell it for the record.

THE WITNESS: Tom Sims; T-o-m, S-i-m-s.

DIRECT EXAMINATION

BY MR. HARMON:

Q Mr. Sims, we want to make sure that you have
the microphone positioned closer to your lips.

A Okay. Is that better?

Q Yes.

RENEE SILVAGGIO, CCR 122 391-0379

4 1 Do you live in the Las Vegas
2 area?

3 A Yes, I do.

4 Q How long have you resided in this community?

5 A Since 1966.

6 Q How old are you?

7 A '83.

8 Q What do you do for a living, sir?

9 A I run a maintenance company.

10 Q What is the name of the company?

11 A Tommy's, Inc.

12 Q Tommy's, Inc.?

13 A Yes. I do business also as Tommy's
14 Maintenance.

15 Q How long have you been in business, either
16 as Thomas, Inc. or Tommy's Maintenance?

17 A This will be my seventh year; since 1989.

18 Q Where is the business located?

19 A 3830 Vanessa.

20 Q Explain to us basically the major cross
21 streets that would be closest to that address.

22 A Spring Mountain and Valley View.

23 Q That is in Las Vegas, Nevada?

24 A Yes.

5

1 Q What type of business is it?

2 A It's a maintenance business. I have seven
3 commercial properties here in town that I take care of.

4 Q Mr. Sims, do you know the defendant in this
5 action, Michael Rippo?

6 A Yes, I do.

7 Q Do you see Mr. Rippo in the courtroom this
8 afternoon?

9 A Yes, I do.

10 Q Will you point to him and describe some
11 article of clothing he's wearing.

12 A (Indicating). He just stood up. He is
13 wearing a beige sweater.

14 THE COURT: The record will reflect the
15 identification of the defendant.

16 MR. HARMON: Thank you, Judge.

17 BY MR. HARMON:

18 Q How long have you known the defendant,
19 Mr. Rippo?

20 A Since 1985.

21 Q Mr. Sims, I want to direct your attention to
22 a Tuesday, February the 18th, 1992.

23 On that date were you in
24 business at 3830 Vanessa?

5

1 A Yes, I was.

2 Q What was the name that you were using at
3 that time?

4 A Tommy's Maintenance.

5 Q Did you have occasion to see the defendant,
6 Mr. Rippe, on Tuesday, February 18th, 1992?

7 A Yes, I did.

8 Q Will you explain how it was that you saw
9 him.

10 A I was sitting at my desk, doing exactly what
11 I don't know, and Mr. Rippe had entered my shop.

12 Q Do you have a best memory of about what time
13 it was?

14 A I would say it was probably two or three
15 o'clock.

16 Q Are you referring to a.m. or p.m.?

17 A P.m., in the afternoon.

18 Q Had you been expecting Mr. Rippe to come by?

19 A No, I wasn't.

20 Q Was it unusual for him to come by your
21 business?

22 A Not really, no.

23 Q However, he hadn't alerted you beforehand
24 that he was going to drop by?

5

1 A No.

2 Q Tell us what happened after he arrived. You
3 are saying perhaps between two and three o'clock in the
4 afternoon.

5 A Well, I remember I was busy, because I
6 remember he came in and I couldn't talk to him right away.
7 You know, I had employees coming and going; people were
8 moving around the shop quite a bit; and it finally came to a
9 point to where I got done doing what I was doing and I was
10 able to talk to Mr. Rippo.

11 He said he had a car that he
12 wanted me to look at. He wanted to know if I wanted to buy
13 it or if I knew someone that would want to buy the car.

14 Q Did you have any interest at that time in
15 buying a car from him?

16 A Ah -- I mean, I -- I possibly would have
17 bought a car from him if -- if the deal would have been
18 right.

19 Q Where were you, inside or outside of the
20 shop, when Mr. Rippo indicated he had a car he wanted you to
21 look at?

22 A We were sitting inside, in my office.

23 Q Do you recall if he had brought in to the
24 shop any items which he had in his possession?

1 A Not at that particular time.

2 When I finally got to deal with
3 him, I mean, I -- I would guess that maybe 10 or 15 minutes
4 had elapsed since he had been in the shop. There was a
5 suitcase, and I -- and I believe a box, but I'm not positive
6 about the box. I know there was a suitcase for certain.

7 Q When did you first notice the suitcase --
8 and you're saying perhaps a box also?

9 A I would say I noticed it almost immediately
10 because I -- you know, I saw him going through it on a couch
11 behind my desk.

12 Q When you say that you noticed it almost
13 immediately, are you talking about in terms of when he
14 arrived?

15 A No. I think that maybe he might have come
16 in and saw I was busy and went back out. He was with my
17 employees. I don't know if he was interacting with them or
18 not.

19 But at some point in time,
20 before I got -- before I was able to start dealing with
21 Mr. Rippe, he had come in with a suitcase.

22 Q Were you able to describe the suitcase?

23 A It was -- in color, it was like a beige --
24 brownish beige suitcase.

5
1 I would say it was maybe 36
2 inches by maybe 24 inches. That's just a guess. It was a
3 good sized suitcase.

4 Q Did you say a few moments ago that, at some
5 point, you saw him going through the contents of the
6 suitcase?

7 A Yes.

8 Q Where was he when he was doing that?

9 A Directly behind me on a couch.

10 Q After you finished whatever you were doing
11 and you were able to devote some attention specifically to
12 Michael Rippo, did you have any conversation about the
13 suitcase and its contents?

6
14 A I don't think we did right away because he
15 wanted to go outside and look at the car.

16 Q Did you go outside to look at the car he had
17 referred to?

18 A Yes, I did.

19 Q Tell us what happened.

20 A Well, I remember we were walking through the
21 shop and that's when I asked him where the car had come
22 from, and he told me that someone had died for the car.
23 This was prior -- this was while we were still in the shop.

24 And then we exited the shop and

6

1 the car was sitting directly in front of my roll up door.

2 Q Will you describe the car that you saw
3 parked at that location.

4 A It was a 300ZX, I would say, burgundy in
5 color.

6 Q When you say a 300ZX, will you elaborate
7 further regarding the make of the vehicle.

8 A Nissan, 300ZX.

9 Q Was it a vehicle you remembered having seen
10 before?

11 A No.

12 Q Did you examine the car at that time?

13 A I walked around the car, yes.

14 Q Did you have any further conversation with
15 Mr. Rippe after you had walked around the car and looked at
16 it?

17 A Um, yeah, I'm sure we had more of a
18 discussion. I don't really recall what we -- you know, I
19 mean, I told him that I didn't want the car there anymore,
20 to get it away from my shop.

21 Q Why would you --

22 A What exactly we discussed, I don't really
23 recall.

24 Q Why would you tell him that?

6

1 I thought you had mentioned a
2 little bit ago that when he first brought up that he had a
3 car he'd like you to look at, he felt perhaps you would be
4 interested.

5 A Well, I mean, the simple fact that he said
6 someone died for the car, which, you know, could have meant
7 basically anything, I -- the car was not legal.

8 Had it been a legal deal that I
9 could have done with Mr. Rippo on the car, then I would have
10 been interested in it, but I realized at this point that it
11 wasn't and it was something I wasn't interested in.

12 Q When he said someone had died for the car,
13 did you question him further about what that meant?

14 A No. I didn't really take him literally when
15 he said it.

16 Q However, you apparently told him you didn't
17 want the car on the premises.

18 A Yes.

19 Q Did you tell him why you didn't?

20 A 'Cause I didn't want any involvement in any
21 kind of problems.

22 Q Was there ever any discussion with Mr.
23 Rippo, that afternoon, about what the price would be for the
24 vehicle should you want to purchase it?

6

1 A Yeah. He was -- he -- he had told me
2 earlier, when we -- when he was discussing the car before we
3 actually went out and looked at it, there was a really good
4 deal, that he wanted \$2,000.

5 Q Did he tell you why he wanted \$2,000?

6 A He needed to leave town.

7 Q He told you that?

8 A Yes.

9 Q Well, what was his reaction, if any, when
10 you advised him that you weren't interested in the car?

11 A He didn't really push the issue. It -- we
12 kind of just went on, you know, to -- I wasn't interested in
13 it and he would get rid -- he would get it away from my shop
14 as soon as he had an opportunity.

15 Q Did he tell you how he happened to be in
16 possession of this burgundy Nissan?

17 A No. Just all that was ever said was that
18 someone had died for the car.

19 Q Was there a time, after you had viewed the
20 car, that you did have a conversation with Mr. Rippe about
21 the suitcase and its contents?

22 A Yes.

23 Q Where was it that that occurred?

24 A It was back in the shop on the same couch

6

1 where he had been going through the suitcase.

2 Q Still on Tuesday, February the 18th?

3 A That's correct.

4 Q Now you mention there might have been a box,
5 in addition to the suitcase.

6 As you think back about it, was
7 there a box?

8 A I'm not real sure. It seems like there were
9 a bunch of cassette tapes, and I don't really know if they
10 were in a box or if they were also in the suitcase. It
11 seems to me there was a small box that they were in.

12 Q What was the conversation you had with Mr.
13 Rippe about the suitcase and if there was a box, the box and
14 some tapes?

15 A Well, he had told me that most of the tapes
16 in the box were soul music, and that he knew I liked soul
17 music, and that he really didn't enjoy soul music, that he
18 liked rock and roll, and did I want the tapes.

19 Q What did you say to him?

20 A I said yes, I will take them.

21 Q Did you, in fact, accept a number of tapes
22 from him?

23 A Yes, I did.

24 Q What kind of tapes are you referring to?

6
7
1 A Rap music, R and B music. I couldn't give
2 you any exact artist really of the -- it was a little more
3 rap-type music than I'm -- than what I really enjoy.

4 Q Were these cassette tapes?

5 A Yes, they were.

6 Q About how many were there that he gave you
7 that afternoon?

8 A I would guess maybe 50.

9 Q Maybe 50?

10 A Yeah, about 50.

11 Q What happened to the suitcase?

12 A When I left the shop that evening, I took it
13 with me.

14 Q So he left that behind as well?

15 A Well, after he gave me the tapes, he asked
16 me if I wanted the suitcase and I said yeah. And so I threw
17 all the tapes in the suitcase and just waited until I closed
18 the shop that day to take them home with me.

19 Q Did Mr. Rippo leave immediately or did he
20 stay there at Tommy's Maintenance for a period of time?

21 A He stayed there. He actual -- actually both
22 of us left together.

23 Q Tell us what happened.

24 A I would say, you know, we were maybe there

7
1 maybe 15, 20, maybe 30 minutes. And there were things
2 around the center that I had to tend to.

3 So I told Mike that I had to --
4 you know, there was things that I had to do and that he
5 couldn't stay at the shop, but he was welcome to come with
6 me if he wanted to.

7 I remember we went to one of
8 the job sites where I had a tenant improvement going on at
9 the time, and I distinctly remember Mike climbing up a
10 ladder and helping one of my employees install an AC grill
11 in an acoustic ceiling.

12 And then I remember him and I
13 both going into the leasing office, which is the people that
14 I work for on the property, and then I remember returning to
15 the shop.

16 You know, we just basically ran
17 around the center there, tending to what needed to be --
18 what I needed to look at and take care of at the time, and
19 then I returned back to the shop with Mike.

20 Q Did there come a time when Mr. Rippo did
21 leave your business?

22 A Yes.

23 Q Will you estimate about what time that was?

24 A I would say quarter to five, five o'clock.

7 1 somewhere in that time frame.

2 Q When he left, did he take the vehicle with
3 him; that is, the burgundy Nissan 300ZX?

4 A No, he didn't.

5 Q Did he leave it behind, parked directly in
6 front of your business, Tommy's Maintenance?

7 A Yes. It remained exactly where it had been.

8 Q How long would you estimate that you spent
9 in the presence of Mr. Rippe that Tuesday afternoon,
10 February the 18th?

11 A I would say two, three hours.

12 Q You mentioned already that you had known him
13 since 1985.

14 A That's correct.

15 Q Did you notice anything unusual about the
16 way he was acting during the two to three hours you were
17 with him that afternoon?

18 A Nope.

19 Q You mentioned at one point he even got up
20 and helped out in the work that was being performed.

21 A That's correct.

22 Q This was in connection with, did you say, an
23 air conditioning unit?

24 A That's correct.

1 Q Did you notice that he had any problem with
2 his balance?

3 A No. I didn't really -- you know, pay close
4 attention to exactly what he was doing.

5 I was more or less in there
6 checking out the -- the job. But I just distinctly remember
7 him climbing up that ladder. It just -- I don't know.
8 He -- he was always helpful, you know. When he did work for
9 me, he was good. It's just something that I really
10 remembered him doing that, getting up on the ladder, because
11 it wasn't something I expected him to do.

12 Q When you spoke with him did you notice
13 anything unusual about his manner of speech?

14 A No.

15 Q Did you form any opinion that afternoon
16 regarding whether Mike Rippe would have been under the
17 influence of any type of controlled substance?

18 A I thought there was a possibility he could
19 have been using crank. He seemed a little like that, but I
20 couldn't say for sure, no.

21 Q Well, what is crank, sir?

22 A Methamphetamine.

23 Q You said he seemed a little like that.

24 A Yeah, he seemed a little fast, like he was

7 1 moving a little fast.

2 Q When you talked with him, could you
3 understand what he was saying?

4 A Oh, yeah.

5 Q Was he coherent in his conversation?

6 A Oh, yeah.

7 Q What, if you remember, were your business
8 hours back on February the 18th, 1992?

9 A I was getting in the shop at -- I would open
10 up for business at eight a.m. and I would shut down six,
11 seven. It just depended. I was working late then.

12 Q After Mr. Rippo left by himself, did you
13 have occasion to see him again --

14 A Yes.

15 Q -- later that evening?

16 A Yes, I did.

17 Q About how long after he had left was it that
18 you saw him again?

19 A I would say an hour, hour and 30 minutes.

20 Q When would that have been, in relation to
21 the time you were going to close down for the day?

22 A It was right as I was closing.

23 Q When he reappeared was he alone or with
24 someone else?

8 1 A No. He was with somebody else.

2 Q Did you know that person?

3 A Yes, I did.

4 Q You had met the individual before?

5 A Yeah, I had met her maybe a week prior to

6 that.

7 Q Who was Mr. Rippo with when he reappeared

8 just before closing time?

9 A Diana Hunt.

10 Q Did you have a conversation with Miss Hunt

11 and Mr. Rippo at that time?

12 A No, I didn't speak to Diana at all.

13 I did speak to Mike, yes.

14 Q What was your purpose in speaking to Mr.

15 Rippo?

16 A Well, first -- I mean, the first thing that

17 was real noticeable was he had a stack of hundred dollar

18 bills. He said he had just won a Royal Flush at the Marker

19 Down, and that he had won \$2500, and we discussed that

20 somewhat. You know, he discussed that with me.

21 And then I just emphasized to

22 him that by the time I came to work the next morning, I

23 wanted that car gone.

24 Q When you refer to that car were you talking

1 about the car he'd showed you, the burgundy Nissan?

2 A That's correct.

3 Q What is the Marker Down?

4 A It's a bar. I guess you would call it a bar

5 with a -- it's got a restaurant. It serves food and liquor

6 and -- Just a bar right there in the center where I work.

7 Q So it is right in the neighborhood of your

8 business?

9 A Yes, it is.

10 Q Within easy walking distance?

11 A Oh, yeah.

12 Q About what time was the business actually

13 closed down that evening?

14 A I would say 6:15, 6:30, right in that area

15 somewhere.

16 Q At about that time, did you leave the

17 business?

18 A Yes, I did.

19 Q Did you leave the area of Valley View and --

20 A Yes, I did.

21 Q -- Spring Mountain Road?

22 A Yes.

23 Q When you left were the defendant and Diana

24 Hunt still there?

- 1 A No, they weren't..
- 2 Q They had left?
- 3 A We all kind of left at the same time.
- 4 Q What about the car, was it still there?
- 5 A Yes, it was.
- 6 Q As a result of the car still being there,
- 7 did you have any type of discussion with one of your
- 8 employees about it?
- 9 A Yes, I did.
- 10 Q Who did you talk to?
- 11 A Ron Harmon.
- 12 Q What was your purpose in talking to your
- 13 employee Ron Harmon?
- 14 A He was living at the shop at the time. I
- 15 had a one bedroom apartment upstairs in my shop. And I told
- 16 Ron that Rippe was supposed to be coming to pick up that car
- 17 that evening, and that I wanted him to call me the minute
- 18 that car was removed from my shop. I wanted to know about
- 19 it.
- 20 Q Did you come to your business the following
- 21 day, Wednesday, February the 19th, 1992?
- 22 A Yes, I did.
- 23 Q About what time did you arrive the following
- 24 day?

8 1 A I would say probably 7:30, quarter to eight.

2 Q Was the burgundy Nissan still there or was

3 it gone at that time?

4 A It was gone.

5 Q Did you have any personal knowledge at that

6 point regarding the whereabouts of the car?

7 A No, I didn't.

8 Q Mr. Sims, did there come a time when you,

9 either through talking with other persons or by some

10 newscast or information, learn about the killing in Las

11 Vegas of two young women?

12 A Yes, I did.

13 Q Do you remember about how long after the day

14 that you had seen Mr. Rippe with the burgundy Nissan it was

15 that you heard about the killings?

16 A It was Friday following that Tuesday.

17 Q Would that be on or about February the 21st,

18 sir?

19 A Yes.

20 Q How did you learn about the killings of two

21 women?

22 A I saw it on the news. I just had caught the

23 very tail end of the newscast when I got home from work on

24 Friday.

1 Q Are you talking about a television newscast?

2 A That's correct.

3 Q At your residence?

4 A That's correct.

5 Q What newscast was it? Are you talking about
6 late news, early evening news or when?

7 A I couldn't be sure.

8 I watch Channel 8 all the time.
9 So I would say it was Channel 8, but it could have been
10 another newscast.

11 Q Do you recall when in the evening it was?

12 A Oh, it was the six o'clock news. I just
13 caught the end of it, so maybe 6:30, quarter to seven,
14 something like that.

15 Q As a result of the newscast, did you have
16 occasion to re-examine any of the property that you had
17 acquired back on Tuesday, February the 18th from the
18 defendant?

19 A Yes.

20 Q What did you re-examine and why did you do
21 it?

22 A Well, the -- on the end of the newscast, I
23 had -- I mean, all I caught was the name Denise Lizzi. And
24 all the tapes -- or not all the tapes, but a majority of the

9

1 tapes had DL in -- in black magic marker written on the
2 tapes.

3 I went and looked at the tapes
4 again to see if, in fact, that they did say DL, but, you
5 know, I had looked at them enough that I knew it. That's
6 what got me looking. That's what got my attention was the
7 fact that the one girl's name was Denise Lizzi, which
8 matched the DL on the tapes.

9 Q As a result of the matching letters, which I
10 think you indicated were not on all, but were on a majority
11 of the cassette tapes --

12 A That's correct.

13 Q -- did you also have a concern about the
14 suitcase?

15 A Yeah. The suitcase had a name tag on it
16 that I had remembered. I never really looked at the name
17 tag, but, at this time, that's when I did go look at the
18 name tag on the suitcase.

19 Q What name was on the name tag?

20 A Lauri Jacobson.

21 Q Did you, at that point, know the name of the
22 second victim --

23 A No, I didn't.

24 Q -- in the case?