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A No.

Q Third offense?

A No.

Q More than that?

A Yes.

Q So you knew that you were looking at 15 years?

A No, no one had explained that to me, but I knew that I was looking at some time if convicted.

Q You were also looking at a simple possession charge; is that correct?

A Yes.

Q And third or subsequent offense, do you know what the punishment is for that?

A I'm not -- no.

Q Did your attorney talk to you about a one to 20?

A No, he didn't.

Q Did you -- did your attorney talk to you about the habitual criminal statutes?

A No, he didn't.

Q You are aware that in Nevada, a third subsequent offense, you can receive what's called the habitual criminal statute?

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- 17
- 1 A Yes, I am.
- 2 Q Do you know what the punishment is for that?
- 3 A Not anymore, no.
- 4 Q Did you talk it over with your attorney?
- 5 A No, I haven't.
- 6 Q You don't know what it's punishable by?
- 7 A I know that there are different -- you know,
- 8 there is a little bitch and a big bitch. I don't know which
- 9 one would apply in this case.
- 10 Q Do you know if it could be life?
- 11 A I would imagine so, yes.
- 12 Q Now, you know a lady by the name of Cindy
- 13 Garcia, do you not?
- 14 A Yes, I do.
- 15 Q And what's your relationship with her?
- 16 A Friends.
- 17 Q Was she doing some time up in women's prison
- 18 back in 1993?
- 19 A Yes, she was.
- 20 Q And you corresponded with her?
- 21 A Yes, I did.
- 22 Q You found out that she was, in fact, housed
- 23 with Diana Hunt?
- 24 A No, not in the penitentiary.

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1 Q You didn't find that out?

2 A No, I didn't.

3 Q Did you talk to her about getting you a copy
4 of Diana Hunt's discovery?

5 A No, I didn't.

6 Q Did she, in fact, send you a copy of Diana
7 Hunt's discovery?-

8 A No, she didn't.

9 Q What's discovery mean to you?

10 A Ah, when I get arrested for something, you
11 go through a phase in your trial where you get discovery and
12 they give you all the information that the police have on
13 the case and the District Attorney's Office.

14 Q Police reports, statements, things like
15 that?

16 A Correct.

17 Q And you didn't ask her to get those for you?

18 A No, I didn't.

19 Q And she didn't send them to you?

20 A No.

21 Q Did you talk to Diana Hunt or write to Diana
22 Hunt while she was up there?

23 A Not in the penitentiary, no.

24 Q Have you talked to her since she got

001853

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1 arrested on this charge?

2 A Yes, I did.

3 Q But she wasn't in the penitentiary?

4 A No, she wasn't.

5 Q Where was she?

6 A In the Clark County Jail.

7 Q When was this?

8 A 1992.

9 Q What date?

10 A Oh, you've -- not real sure. I would say
11 right around June, July, somewhere in that time frame.

12 Q And you deny that you ever asked Cindy
13 Garcia to get you copies of this discovery?

14 A No. Diana Hunt is the one that --

15 Q She gave you the discovery?

16 A That's correct.

17 Q And then when did you decide to tell the
18 D.A. that I had heard this confession?

19 A When I was asked about it, when -- when I
20 spoke to Lukens in '93.

21 Q And you told them everything in 1993?

22 A That's correct.

23 Q And then you retold them -- everything to
24 Mr. Harmon a few weeks ago?

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1 A That's correct.

2 Q Had you told anyone else?

3 A Ah, I discussed it with my girlfriend.

4 Q Who would that be?

5 A Lori Tyler.

6 Q When?

7 A Right when it happened, in February of '92.

8 Q Now, I tried to have a meeting with you
9 during this break, did I not?

10 A I don't know if you did or not.

11 Q Weren't you sitting right out there in the
12 hall with your attorney when I tried to set it up?

13 A Yes.

14 Q It didn't come about, did it?

15 A No.

16 Q Didn't you send a message back through your
17 attorney that you were upset because we had been talking to
18 other witnesses about you?

19 A No, not exactly.

20 Q You never met with me?

21 A No, I didn't.

22 Q Now, you testified that when Mr. Rippo came
23 to your office the first time, he had asked for \$2,000, said
24 he needed money to get out of town.

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NR1P0-07058-R0001860

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- 1 A That's correct.
- 2 Q And then a couple hours later, he comes back
- 3 from the Marker Down -- was that it?
- 4 A Yes.
- 5 Q Who was he with?
- 6 A Diana Hunt.
- 7 Q Could it have been Roxanne?
- 8 A I don't know a Roxanne.
- 9 Q You don't know a Roxanne.
- 10 It was Diana Hunt?
- 11 A It was Diana Hunt.
- 12 Q And he had \$2500 cash, right?
- 13 A That's what he said he had.
- 14 Q I believe you indicated he showed you some
- 15 money.
- 16 A Yes.
- 17 Q So if he needed money to get out of town, he
- 18 had it?
- 19 A That's correct.
- 20 Q And I believe you testified that you don't
- 21 have any kind of a deal working in exchange for your
- 22 cooperation in this case.
- 23 A That's correct.
- 24 Q Just a concerned citizen wanting to do

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1 what's right.

2 A Well, I wouldn't say that.

3 Q Why didn't you tell the police what you knew
4 when they interviewed you in May of 1992?

5 A I think I have answered that question
6 several different times. I didn't want to be involved.

7 Q And your story hasn't changed at all since
8 October of 1993, when you talked to the District Attorney's
9 Office.

10 A No, it hasn't.

11 Q That was the first time you gave any
12 official -- any official -- that you gave any indications
13 that you knew more than what you told the Grand Jury?

14 A I suppose.

15 (Whereupon, a sotto voce at
this time.)

16 BY MR. DUNLEAVY:

17 Q Now these charges were filed against you in
18 May of 1993; is that correct?

19 A I believe so, yes.

20 Q They're still pending, aren't they?

21 A Yes, they are.

22 Q As a matter of fact, one time in 1995, you
23 even had a bench warrant issued for you on this case --

24 A Not to my knowledge.

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1 Q -- or worked with us.

2 You don't know about the bench

3 warrant --

4 A No.

5 Q -- June 28th, 1995, Justice Court 3 issuing

6 a bench warrant on all three counts?

7 A Wasn't aware of it.

8 Q You never even learned about it?

9 A Nope.

10 Q And obviously you weren't arrested on those
11 warrants?

12 A No.

13 Q And you didn't work any kind of a deal to
14 avoid going to jail.

15 A No.

16 Q So if the bench warrant got quashed, you
17 have no idea what happened?

18 A No. I had no idea a bench warrant was even
19 issued.

20 For what reason?

21 Q Were you present on June 28th, 1995 in
22 court?

23 A No, I wasn't.

24 Q Do you have any idea how many times this

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1 case has been in court?

2 A None whatsoever.

3 Q You don't even care?

4 A No, I don't.

5 MR. DUNLEAVY: Court's indulgence for just
6 one moment.

7 THE COURT: Okay.

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

10 BY MR. DUNLEAVY:

11 Q Do you know if your attorney has worked out
12 a deal where after you testify, you are going to get
13 probation on your charges?

14 A I don't know anything about it.

15 Q You haven't talked to your attorney about
16 this case?

17 A Not in quite some time.

18 Q Wasn't he sitting in court with you the last
19 time you were on the stand?

20 A Yes, he was.

21 Q Do you remember being asked questions about
22 your involvement in the drug business?

23 A Yes, I do.

24 Q Is there anything about that question --

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1 answer you'd like to change?

2 A You could reask me the question, if you'd
3 like.

4 Q Well, let's start in 1992: Were you
5 actively involved in the drug business?

6 A No, I wasn't.

7 Q Are you today?

8 A No, I'm not.

9 Q Don't have anything to do with stolen cars?

10 A No, I don't.

11 Q Never have?

12 A Never have.

13 Q And you don't know anything about
14 negotiations in your case to give you probation in exchange
15 for your testimony?

16 A No, I don't.

17 MR. DUNLEAVY: Thank you.

18 No further questions.

19 THE COURT: Redirect?

20 MR. HARMON: Thank you, Your Honor.

21

22 REDIRECT EXAMINATION

23

24 BY MR. HARMON:

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18

1 Q Mr. Sims, regarding the charges that have
2 been pending since May, 1993 --

3 A Uh-huh.

4 Q -- do you have an attorney who is
5 representing you?

6 A Yes, I do.

7 Q Who is the lawyer?

8 A Robert Archie.

9 Q Has Mr. Archie also represented you on other
10 matters?

11 A Yeah, Mr. Archie has been my attorney since
12 1978.

13 Q You have rather extensive experience with
14 the criminal justice system.

15 A Yes, I do.

16 Q Are you proud of your past, sir?

17 A Not at all, sir.

18 Q You were asked if you have made all of the
19 court appearances regarding the charges which have been
20 pending since May, 1993. And I think you indicated no, that
21 you hadn't gone to court each time.

22 A I -- my attorney lets me know when -- when
23 I'm needed in court and that's when I go to court. If he
24 tells me I need to go, I go.

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1 Q Have you been relying upon the
2 representation of Robert Archie, your attorney?

3 A Yes, I have.

4 Q Do you presume there are times he's gone to
5 court and your presence in court has been waived?

6 A Oh, I'm sure there have, yes.

7 Q Have you ever entered into any type of
8 negotiation with law enforcement, whether it's the Las Vegas
9 Metropolitan Police Department, or representatives of the
10 office of the District Attorney, regarding some type of
11 exchange for information or testimony you will provide in
12 the Rippo case in return for benefits on the charges you
13 have pending?

14 A No, sir.

15 Q Are you expecting any benefit?

16 A No, sir.

17 Q Have you been subpoenaed to be a witness in
18 this case?

19 A Several times.

20 Q If it was left up to you, that is, if you
21 had your choice, would you be here to testify?

22 A No, I wouldn't.

23 Q You were asked what the nature was of the
24 pending case.

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1 Are there three counts?

2 A I thought there were only two.

3 Q What do you recall the two counts being?

4 A Possession with intent and ex-felon in

5 possession of a firearm.

6 Q The possession would be possession with

7 intent to sell?

8 A That's correct.

9 Q Do you recall what type of controlled

10 substance it is alleged you were in possession of?

11 A It was marijuana.

12 Q Do you have a recollection that there is a

13 count involving phencyclidine?

14 A No. When I was arrested, there was no count

15 for phencyclidine.

16 Q Do you know, Mr. Sims, why the case is still

17 pending that you were arrested for in May, 1993?

18 Q Do you know why there have been various

19 postponements?

20 A No, I don't; just something my lawyer

21 handles.

22 Q Do you trust the judgment of your attorney,

23 Robert Archie?

24 A Totally.

001863

19

1 Q You indicated you've been involved with him
2 since the late 1970s?

3 A That's correct.

4 Q Does your pending case have anything
5 whatsoever to do with this case?

6 A No, it doesn't.

7 Q Is your testimony influenced in any way by
8 that fact?

9 A No.

10 Q Do you understand the seriousness of these
11 charges?

12 A Mine or his?

13 Q Yeah, I'm sorry. I must clarify.

14 I'm talking about the
15 seriousness of the charges lodged against Michael Ripppo.

16 A Yes, I do.

17 Q Do you understand the importance of giving
18 accurate and truthful testimony?

19 A Yes, I do.

20 Q You were asked if, in 1992 and 1993, you
21 were involved in the drug business.

22 A Yes, I was asked that.

23 Q As I recall, your answer was no.

24 A That's correct.

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1 Q Are you attempting to conduct a legitimate
2 life at this time?

3 A Yes, I am.

4 Q Are you a businessman?

5 A Yes, I am.

6 Q What is your business?

7 A I run a maintenance company.

8 Q Are you trying to run it within the laws
9 which govern legitimate business activities?

10 A Yeah. My -- my business is doing quite
11 well. It has been for the last four or five years.

12 Q What is quite well, sir?

13 A My company does probably 250 to \$300,000 a
14 year in business. I have been a -- I mean, it pays the
15 bills with no problems.

16 MR. HARMON: May we have the Court's
17 indulgence, Your Honor?

18 THE COURT: Yes.

19 MR. HARMON: May I approach the witness,
20 Your Honor?

21 THE COURT: You may.

22 BY MR. HARMON:

23 Q Mr. Sims, I'm showing you State's Proposed
24 Exhibit 78, a photograph.

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1 Are you able to recognize what
2 is depicted in the photograph?

3 A Yes.

4 Q What is shown in the picture?

5 A That's my shop.

6 Q Does this appear to be the picture taken of
7 the front of your shop, Tommy's Maintenance?

8 A That's correct.

9 Q This is the business located at Spring
10 Mountain and -- did you say -- Valley View?

11 A Yes, it is.

12 Q Does the photograph accurately portray the
13 appearance of your shop as it would have existed on February
14 the 18th, 1992?

15 A Yes, it does.

16 Q Can you see the area in the photograph where
17 the burgundy Nissan 300ZX was parked by Mr. Ripppo?

18 A Yeah, where the N is, yes.

19 Q The N, which is circled and the writing is
20 in red?

21 A That's correct.

22 Q Is that where you recall the vehicle being
23 when Mr. Ripppo came to your business, Tuesday, February, the
24 18th, 1992, between two and three o'clock in the afternoon?

001866

19
1 A Yes.

2 Q When you went out to inspect the car, is
3 that where it was parked?

4 A Yes.

5 Q Now when is it that you first observed that
6 the Nissan had been moved from that location?

7 A The next morning, when I arrived to work.

8 Q That would be Wednesday, February the 19th?

9 A That's correct.

10 Q Thank you. Did you see the car any more
11 after that?

12 A No, I didn't.

13 Q You testified before the Grand Jury in June,
14 1992.

15 A I believe that's when it was.

16 Q Do you recall at this time what types of
17 questions you were asked during the Grand Jury hearing?

18 A Yeah.

19 Q Was --

20 THE COURT: Is that yes?

21 THE WITNESS: Yes.

22 BY MR. HARMON:

23 Q Did the questioning go beyond your contact
24 with the defendant on February the 18th, 1992?

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19

1 A I didn't understand the question.

2 Q Was the questioning focused on your contact
3 with Mr. Rippo at your business Tuesday, February the 18th,
4 1992?

5 A Yes, it was.

6 Q Were you asked a number of questions about
7 the car which was there?

8 A Yes, I was.

20

9 Q Did you give testimony about the comment Mr.
10 Rippo gave about the car?

11 A Yes, I did.

12 Q What was it he said about the car?

13 A That someone died for it.

14 Q Did you mention to the Grand Jury that there
15 was conversation about him needing money?

16 A I don't remember.

17 Q Was there such conversation on Tuesday,
18 February the 18th?

19 A Yes, there was.

20 Q What did he say to you?

21 A That he needed \$2,000.

22 Q To do what?

23 A Leave town.

24 Q As you sit here now, do you recall any

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1 questions being directed to you about contact you had with
2 Michael Rippo on his birthday, February the 26th, 1992?

3 A No.

4 Q You were not asked such questions?

5 A No, I wasn't.

6 Q Now, before you came in to testify this
7 morning, were you given a copy of prior testimony you had
8 given at this trial?

9 A Yes, I was.

10 Q Was it your idea or someone else's idea that
11 you might read over it before you came in to testify?

12 A Someone else's.

13 Q Whose idea?

14 A Yours.

15 Q You were furnished a copy of the testimony
16 you had given up to this point in this trial?

17 A That's correct.

18 Q Did you have a chance to read over most of
19 it?

20 A Just about finished it.

21 Q Did you feel that you needed to read over
22 your prior testimony in order to remember what you had said?

23 A No.

24 Q Do you remember what Michael Rippo said to

001869

20

1 you on Tuesday, February the 18th, 1992, at your business?

2 A Yes, I do.

3 Q Do you remember essentially what he said to
4 you on his birthday, February the 26th, 1992?

5 A Yes, I do.

6 Q In the parking lot of the K-Mart store, did
7 he accept responsibility for the murder of two women?

8 A Yes, he did.

9 Q What specifically did he tell you in the
10 parking lot?

11 MR. DUNLEAVY: It's been asked and answered,
12 Your Honor.

13 THE COURT: Overruled.

14 You may answer.

15 THE WITNESS: You want to be more specific?

16 BY MR. HARMON:

17 Q Did he tell you how the killings occurred?

18 A Yeah. Yes, he did.

19 Q What did he say?

20 A He said that he had choked both those
21 bitches to death.

22 Q That part of the conversation occurred in
23 the parking lot?

24 A Yes, it did.

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1 Q And as you drove down Spring Mountain Road,
2 did you have other conversation to which you testified when
3 you were in court two weeks ago?

4 A Yes.

5 Q Was all of that testimony your best effort
6 to relate what you knew about this case?

7 A Yes, it was.

8 Q Do you have any interest in trying to add to
9 or embellish what Mr. Rippo actually said to you?

10 A None whatsoever.

11 Q You were asked, on cross-examination by Mr.
12 Dunleavy, if, during the break, you had spoken to counsel
13 for the defendant, Mr. Rippo.

14 A Yes.

15 Q Were you agreeable to meeting with and
16 speaking with the defense lawyers?

17 A Yes, I was.

18 Q Do you know why no actual meeting occurred?

19 A My attorney -- I spoke to him on Thursday --

20 Q Which Thursday?

21 A Of last week -- not this past Thursday, but
22 the Thursday prior to that. And I was available Friday and
23 Saturday of last week to talk to them. They never returned
24 my attorney's call.

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1 Q Do you have anything to hide from Mr. Rippo's
2 lawyers or anybody?

3 A No, I don't.

4 Q Who is Cindy Garcia?

5 A Ah, a girl that I met back in 1985.

6 Q Do you know where she is now?

7 A She's here in Las Vegas.

8 Q Do you have any type of relationship with
9 her now?

10 A We're just friends.

11 Q You were asked by Mr. Dunleavy if you are
12 just a concerned citizen who wants to do what is right.

13 How would you describe your
14 position here in this courtroom; that is, why are you here?

15 A I'm here because I'm subpoenaed to be here.
16 If I had my choice, I would be at work right now, with no
17 involvement whatsoever in this case. I don't like being
18 involved in it, but I'm subpoenaed and I have to be here.

19 Q Do you understand that you have to do your
20 best also to tell the truth?

21 A Oh, yeah, I understand that.

22 Q Is that what you are doing, sir?

23 A That's what I've done.

24 MR. HARMON: Thank you.

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1 Pass the witness, Your Honor.

2 THE COURT: Recross.

3

4 (Whereupon, as requested by
5 counsel, Defendant's Exhibit H
6 was marked for
7 identification.)

8 RECCROSS-EXAMINATION

9 BY MR. DUNLEAVY:

10 Q Mr. Sims, I'd like to show you what's been
11 marked as Defense proposed Exhibit H.

12 Ask if you are familiar with
13 that document?

14 A I'm not really familiar with it, but --

15 Q Weren't you given a copy of this when you
16 were arraigned in court?

17 A I doubt it. It was probably given to my
18 attorney.

19 Q And it charges you with three felonies; is
20 that correct?

21 A Yes, that is correct.

22 Q Count I is possession of controlled
23 substance with intent to sell cannabis, being marijuana,
24 correct?

25 A That's correct.

26 Q Count II, possession of phencyclidine; is

001873

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1

1 that correct?

2 A That's correct.

3 Q What is phencyclidine?

4 A Ah, PCP, to my knowledge.

5 Q And Count III was possession of a .383
6 caliber Davis ADK pistol by an ex-felon, to wit: Yourself;
7 is that correct?

8 A That's correct.

9 Q But you couldn't remember if you were
10 charged with two or three felonies earlier.

11 A I don't recall being -- I don't recall
12 Count II. When I was arrested, I was arrested for
13 possession with intent and possession of a firearm by an
14 ex-felon.

15 Q How much marijuana was found, do you know?

16 A Ah, it was like seven pounds.

17 Q Where was it found?

18 A Somewhere in my office.

19 Q Somewhere in your office?

20 A Or in my shop.

21 Q Same place the PCP was found?

22 A I don't know.

23 Q Same place the gun was found?

24 A I would assume they were all found somewhere

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1 in the business.

2 Q That's that legitimate business they just
3 showed you a picture of?

4 A That's correct.

5 Q Have you ever heard of people running the
6 business to launder drug money?

7 A Sure.

8 Q Now, did you authorize your attorney to
9 enter into negotiations on your behalf?

10 A Ah, I don't understand the question.

11 Q Did you authorize Mr. Archie to try and deal
12 your case?

13 A No, I didn't.

14 Q You never authorized him to do that?

15 A No, I didn't.

16 Q So if he's been trying to get you a deal
17 with the District Attorney's Office, it's against your
18 authorization?

19 A That's correct.

20 Q And you wouldn't go along with what he's
21 doing?

22 A No, not if he was making a deal in this case
23 for me to testify against Rippo, no.

24 Q Not at all.

001875

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1 You know that you could be
2 facing a life sentence, but you wouldn't go along with that;
3 you'd do it for nothing.

4 A No, I'll deal with my case as it comes
5 along.

6 Q Do you know who has the discretion to decide
7 whether or not you face the Habitual Criminal Act?

8 A I believe the District Attorney's Office --

9 Q Spelled out right in the statute, that it's
10 the decision of the District Attorney?

11 A I'm not real familiar with the statute.
12 That would be my guess.

13 Q Defense attorneys don't have any way to make
14 any kind of a deal, do they, relating to your cases?

15 A I don't understand your question.

16 Q I can't give you a deal; I can't give you
17 probation; I can't give you a walk on your cases, can I?

18 A No, you can't, no.

19 MR. DUNLEAVY: No further questions.

20 MR. HARMON: Nothing further, Your Honor.

21 THE COURT: Thank you.

22 You are excused, Mr. Sims.

23 (Whereupon, the witness
24 was excused.)

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1 THE COURT: Call your next witness.

2 MR. SEATON: I call Denny Mason.

3 THE CLERK: Please remain standing and raise
4 your right hand.

5
6 Whereupon,

7 DENNY R. MASON

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

12 THE CLERK: Thank you.

13 Please be seated.

14 Would you state your name and
15 spell it for record, please.

16 THE WITNESS: Denny Mason; D-e-n-n-y,
17 M-a-s-o-n.

18 THE CLERK: Thank you.

19
20 DIRECT EXAMINATION

21 BY MR. SEATON:

22 Q Mr. Mason, how are you employed?

23 A I own Big Screen City.

24 Q What is that?

001877

1

1 A A TV store.

2 Q You sell big screen TVs?

3 A Yes, sir.

4 Q That is here in Las Vegas?

5 A Yes, sir.

6 Q Prior to that employment, how were you

7 employed?

8 A I owned Security Enterprises.

9 Q What is Security Enterprises?

10 A It was a marketing firm.

11 Q What sort of things would it market?

12 A Printed items, such as baseball caps, pins,
13 things like that, T shirts.

14 Q Businesses would come to you to have you do
15 that kind of marketing for them?

16 A We would sell those things over the phone,
17 yes.

18 Q Was that a business which you owned?

19 A Yes, sir.

20 Q And do you own it still?

21 A It's no longer in business.

22 Q When did you own that particular business --
23 the Security Enterprises?

24 A I opened it in 1985.

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1 1 Q And when did you let it go?

2 A We closed it in approximately 1994.

3 Q And is it since 1994 that you owned Big

4 Screen TV?

5 A I owned Big Screen TV since about 1991.

6 Q Okay. Did you know an individual by the

7 name of Denise Lizzi?

8 A Yes.

9 Q And who was Denise Lizzi?

10 A She was a -- a very close friend of mine,

11 girlfriend on and off for four, five years.

12 Q When did you first meet her?

13 A I believe in 1985.

14 Q And under what circumstances did you meet

15 her; where were you?

16 A Excuse me?

17 Q Where were you when you met Denise Lizzi?

18 A I believe her roommate was a secretary of

19 mine, and through her, I -- I met Denise.

20 Q And when would that have been?

21 A Late 1985, 1986.

22 Q I'm showing you what has been marked as

23 State's Proposed Exhibit 2.

24 Do you recognize the individual

001879

MR: PPO-07058-ROR01884

1 depicted in that photograph?

2 A Yes.

3 Q And who is it?

4 A That's Denise.

5 Q Can you tell when that particular photograph

6 was taken?

7 A No, sir.

8 Q Is it a reasonable likeness of her?

9 A Yes.

10 Q Looking at that makes it easy to recognize

11 her?

12 A Yes.

13 MR. SEATON: Judge, has that been shown to

14 the jury? I don't recall.

15 THE COURT: I don't know.

16 MR. SEATON: I see some going yes and some

17 going no.

18 THE COURT: You may publish it to the jury.

19 Is that in evidence?

20 MR. SEATON: It is in evidence.

21 MR. DUNLEAVY: No objection.

22 THE COURT: All right.

23 You may publish it to the

24 jury.

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2

(Whereupon, Plaintiff's Exhibit
2 was published to the jury.)

BY MR. SEATON:

Q You described your relationship with her as
being boyfriend and girlfriend?

A Yes.

Q Did you -- the two of you ever reside
together?

A Yes, sir.

Q Where did that take place?

A Ah, I live at 3140 Waterside.

Q That's here in Las Vegas?

A Here in Las Vegas, yes.

Q And she lived there with you?

A Yes, sir.

Q Was that full time or was she there some of
the time and gone some of the time? How would you describe
it?

A I think Denise moved in with me in -- around
1986; and for two years, it was full time, and then after
that, maybe for a year, it was kind of off and on.

Q From '88 to '89 then, it would have been off
and on?

A Something like that?

001881

2

1 Q And what was your relationship, from that
2 time until her death?

3 A We were close friends, but not always
4 together.

5 Q Were you together some of that time?

6 A Yes, sir.

7 Q Okay. But you always remained close
8 friends?

9 A Yes, sir.

10 Q Did the boyfriend-girlfriend relationship
11 dwindle, become less than it had been before?

12 A Maybe less than it had been at times, but --

13 Q But was it still there?

14 A Still there.

15 Q And could that be said up to the time of her
16 death?

17 A Yes.

18 Q Did you know an individual by the name of
19 Michael Beaudoin?

20 A I think I talked to him on the phone, maybe
21 once or twice, and I actually saw him once.

22 Q And did you know the relationship that he
23 held with Denise Lizzi?

24 A Not really.

001882

2

1 Q Did you know Lauri Jacobson?

2 A I think I might have spoken to her on the
3 phone when she would call for Denise --

4 MR. DUNLEAVY: I would object to "I think,"
5 Your Honor. If he knows, fine; if he does not know, he
6 shouldn't say so.

7 THE COURT: Objection sustained.

8 BY MR. SEATON:

9 Q To the best of your recollection, you
10 believe you spoke to her on the phone?

11 A Yes.

12 Q And how about an individual by the name of
13 Michael Ripppo?

14 A No.

15 Q You don't know him?

16 A No.

17 Q Did you ever hear his name?

18 A No.

19 Q So to the best of your knowledge, you never
20 knew him?

21 A No.

22 Q The individual who is seated two people to
23 my left, to my left, and he just stood up, have you ever
24 seen that individual before, outside of court?

001883

1 A No.

2 Q Thank you.

3 And an individual by the name

4 of Diana Hunt, do you know who that might be?

5 A Just from the court proceedings.

6 Q Prior to the court proceedings --

7 A No.

8 Q And prior to Denise's death, had you ever

9 heard the name Diana Hunt before --

10 A No.

11 Q -- or met anyone who was told to you it was

12 Diana Hunt?

13 A No.

14 Q When you and Denise Lizzi were going

15 together, did you provide her with an automobile?

16 A Yes.

17 Q And what kind of a car was that?

18 A It was a 300ZX.

19 Q And the color?

20 A Red.

21 Q Who owned that particular car?

22 A The car was registered in our company's

23 name, Security Enterprises.

24 Q And was that something that you had control

001884

2

1 of?

2 A The car was Denise's. It was registered
3 under that for, you know, business purposes.

4 Q But, it was hers for all intents and
5 purposes?

6 A Yes.

7 Q Showing you what has been -- let me show
8 counsel first -- showing you what's been marked as State's
9 Proposed Exhibit 98, can you tell us what that purports to
10 be?

11 A This is the vehicle registration for
12 Denise's car.

13 Q Is there a license number --

14 A Yes, sir.

15 Q Well, before we get into that, does it
16 appear to be the same 300ZX that your company, Security
17 Enterprises, owned that you allowed Denise Lizzi to use as
18 her own?

19 A Yes.

20 MR. SEATON: I'd move for the introduction
21 of 98.

22 MR. DUNLEAVY: No objection, Your Honor.

23 THE COURT: 98 will be admitted.

24

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1 (Whereupon, Plaintiff's Exhibit
2 98 was admitted into
3 evidence.)

4 BY MR. SEATON:

5 Q And showing you 64 and 65 -- and these are
6 proposed -- do you recognize the automobile shown in that
7 particular photograph?

8 A Yes, sir.

9 Q What is it?

10 A It's Denise's car.

11 Q The same 300ZX that we've been talking
12 about?

13 A Yes, sir.

14 Q What color would you call it?

15 A Red.

16 Q Red.

17 In picture Number 64 -- and if
18 you'd look at the back just to make sure we're talking about
19 the same one -- do you see 64 there?

20 A Yes.

21 Q That is a full length picture of the
22 automobile?

23 A Yes, sir.

24 Q There is a white substance of some sort on
the left front fender?

001886

3

1 A Yes.

2 Q Are you familiar with that?

3 A No.

4 Q When you gave the car to Denise Lizzi, did
5 it have any markings like that on the left fender?

6 A No, sir.

7 Q And did you ever see such markings any time
8 during the period of time that she had the car and you were
9 able to see it?

10 A No, sir.

11 Q So those are unknown to you?

12 A Correct.

13 Q The picture 65 shows the rear and the
14 license number that is on it.

15 Do you recognize that?

16 A Yes, sir.

17 Q Is that the same license number which was
18 shown on the registration slip which was Exhibit Number 98?

19 A Yes, sir.

20 Q Just read that into the record, if you
21 would, please.

22 A 139 CUS.

23 Q And I'd -- does this car -- other than
24 the -- the white that's on the left front fender, does the

001887

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1 car appear to be the same car which you gave to Denise?

2 A Yes.

3 MR. SEATON: I'd move for the introduction
4 of 64 and 65.

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

7 MR. DUNLEAVY: No objection.

8 I thought they were already
9 admitted.

10 THE COURT: Well, if they weren't, they're
11 admitted now.

12 (Whereupon, Plaintiff's
13 Exhibits 64 and 65 were
14 admitted into evidence.)

15 BY MR. SEATON:

16 Q After the death of Denise Lizzi, did you get
17 that automobile back?

18 A Yes, sir.

19 Q Had it been out of your custody for quite
20 some time?

21 A Yes, sir.

22 Q After getting it back, did you dispose of
23 it?

24 A Her brother took it.

001888

1 Q Her brother, what is his name?

2 A Nick.

3 Q That is Denise Lizzi's brother Nick Lizzi?

4 A Yes.

5 Q All right. Thank you.

6 When was the last time that you
7 saw Denise Lizzi alive?

8 A Ah -- I believe it was, ah, about a week
9 before, ah, I -- I got a call that said that she might have
10 been killed.

11 Q A week before you got the call?

12 A Yes, sir.

13 Q And do you remember the dates?

14 A No, sir.

15 Q Do you know where you were when you last saw
16 her?

17 A Yes.

18 Q Where?

19 A In my house.

20 Q And do you remember what time of the day it
21 was?

22 A Around noon.

23 Q And what transpired at that time?

24 A Ah, she was, you know, going to the mall to

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1 do some shopping, and she -- when she left the house.

2 Q When she left the house to go to the mall to
3 go shopping, do you know how she was going to pay for
4 whatever she was going to buy?

5 A I gave her a credit card.

6 Q What kind of a credit card was that?

7 A I believe it was my VISA card.

8 Q Is that in your name?

9 A Yes, sir.

10 Q Under the name of Denny Mason?

11 A Yes, sir.

12 Q Did you give her any cash?

13 A I think I gave her \$20.

14 Q Do you know what the purpose of her going
15 shopping was?

16 A She was going to buy a couple things for the
17 house.

18 Q For your house?

19 A Yes, sir.

20 Q Did she do that often?

21 A Yes, sir.

22 Q That is -- I should be more specific: Did
23 she have your credit card with your permission to use it for
24 the purchase of various items?

001890

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1 that date that you think that this conversation with Denise
2 Lizzi from the Rio Hotel took place?

3 A It was the Saturday before that, so
4 approximately February 13th, whatever the Saturday was.

5 MR. SEATON: Do we have a calendar?

6 BY MR. SEATON:

7 Q I hand you State's Exhibit 4, which shows
8 February and March of 1992.

9 You indicated that you believed
10 that the -- that Denise Lizzi and Lauri Jacobson were found
11 on Thursday, the 20th of February --

12 A Yes, sir.

13 Q -- 1992?

14 When would be the time,
15 according to this calendar, that you believe you last spoke
16 to Denise Lizzi?

17 A February 15th.

18 Q That would be the Saturday prior to the time
19 the bodies had been found?

20 A Yes, sir.

21 Q All right. After talking with her on the
22 telephone, did you do anything in regards to a room there at
23 the Rio Hotel?

24 A Yes, sir.

001892

3 1 Q What did you do?
2 A Asked a host there to get them a room.
3 Q Do you know the host's name?
4 A I just remember his first name was Lenny.
5 Q And was a room secured for Denise Lizzi on
6 that evening?
7 A Yes, sir.
8 Q And she -- did she have the automobile at
9 that time, the red 300ZX?
10 A Yes, sir.
11 Q Did she have the credit --
12 MR. DUNLEAVY: Objection, Your Honor.
13 There is no way he would know
14 what she's driving, over the phone.
15 THE COURT: Sustained.
16 BY MR. SEATON:
17 Q Had you received the car back by that time?
18 A No, sir.
19 Q And had you received the credit card back by
20 that time?
21 A No, sir.
22 MR. SEATON: Court's indulgence.
23 THE COURT: Okay.
24

001893

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1 (Whereupon, a sotto voce at
2 this time.)

3 BY MR. SEATON:

4 Q I think we can get back to our testimony
5 now.

6 You indicated that you had a
7 Citibank VISA.

8 A Yes, sir.

9 Q And I'd like to show you State's Proposed
10 Exhibit 97, and ask if you recognize that particular three
11 page document.

12 A Yes.

13 Q What is it?

14 A It's the credit card statement for the VISA,
15 Citibank.

16 Q And this was a credit card that was in your
17 name?

18 A Yes, sir.

19 Q The name of Denny Mason?

20 A Yes.

21 Q This is the same credit card that you had
22 loaned to Denise Lizzi when the last you knew she was at the
23 Rio Hotel on the 15th?

24 A Yes, sir.

Q Did you receive a document -- I believe this

001894

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1 is a copy.

2 Did you receive an original
3 document in the mail that looked like this that was a
4 billing procedure from VISA, Citibank?

5 A Yes, sir.

6 Q And does this accurately reflect that bill?

7 A Yes, sir.

8 MR. SEATON: I'd move that 9 -- is it 98 or
9 97? -- 97 be admitted into evidence.

10 MR. DUNLEAVY: Where is the original?

11 MR. SEATON: I just moved to admit 97.

12 MR. DUNLEAVY: And I'm objecting, saying:
13 Where is the original?

14 MR. SEATON: We don't know where the
15 original is, Judge. This is a copy that he says is exactly
16 like the original.

17 MR. DUNLEAVY: Well, it's a hearsay
18 document. He can't authenticate it, unless he can testify
19 under oath and positively say this couldn't be an erroneous
20 bill; and there is no way he could do that.

21 MR. SEATON: Judge, the rule -- there is no
22 best evidence rule along these lines. The rule is if a
23 witness can authenticate a document by indicating that the
24 copy appears to be the same as the original, then it should

001895

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1 come in; and it goes to weight and not admissibility.

2 MR. DUNLEAVY: Your Honor, then it would be
3 a hearsay document. He didn't generate this document.

4 MR. SEATON: But he is familiar with it.
5 It's the billing that we all get our --

6 THE COURT: 97 will be admitted.

7 MR. SEATON: Thank you, Judge.

8

9 (Whereupon, Plaintiff's Exhibit
10 97 was admitted into
evidence.)

11 BY MR. SEATON:

12 Q Look at 97, if you would.

13 And you've seen this document,
14 not only when you first received it, but in my office as
15 well?

16 A Yes, sir.

17 Q Are you familiar with whether or not there
18 are legitimate and improper charges on there?

19 A Yes, sir, in the --

20 Q Could you distinguish those for us?

21 And let me give you --

22 MR. DUNLEAVY: Your Honor, I'm going to
23 object. This is clearly calling for hearsay. He doesn't
24 know who made these charges. He wasn't there. He just said

001896

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1 he loaned the card to somebody else.

2 There is no foundation whether
3 he knows she loaned it to a third party or what else might
4 have happened to it. There is no way in the world he can
5 testify to the question.

6 MR. SEATON: Well, if I might, Judge: What
7 I'm going to do is have the witness mark those charges on
8 there which he, of his own knowledge, knows are legitimate
9 charges, if he's able to do that.

10 THE COURT: What do you mean by legitimate;
11 that he authorized?

12 MR. SEATON: That he authorized or did
13 himself.

14 THE COURT: All right. You may do so.
15 BY MR. SEATON:

16 Q All right. Look that over, before I have
17 you mark it, and tell us whether or not you see, on there,
18 any charges which you know to be either charges that you
19 made or authorized to be made by any particular individual.

20 A Yes. The charges that I made --

21 Q Take this red pen and put some sort of a
22 mark off to the left-hand side -- or maybe this will be the
23 easy way:

24 Underline those charges which

001897

4 1 you made yourself and tell us what they are as you are doing
2 them.

3 A The Town Pump, I made that charge.

4 Q Continue.

5 A Ah, the Hush Puppy, I made that charge.

6 The Sports Authority, I made
7 that charge.

8 Charlie's Lakeside, I made that
9 charge.

10 The Hush Puppy, I made that
11 charge.

12 Q Those are charges which are on the first
13 page of the document marked 97?

14 A Yes, sir.

15 Q What are the dates that those charges were
16 made?

17 A 1/12 on the Town Pump.

18 Q Is that of 1992?

19 A Yes.

20 MR. DUNLEAVY: Your Honor, I again object.
21 He's just reading what's on this document. He's -- there is
22 no evidence that he can verify these dates, just a date that
23 appears on that document. They may or may not be the date
24 the charges were actually even incurred.

001898

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1 MR. SEATON: The document is in evidence
2 now, Judge.

3 THE COURT: Overruled.

4 THE WITNESS: 1/12, the Town Pump; 1/13 of
5 '92, the Hush Puppy; 1/14 of '92, the Sports Authority; 1/21
6 of '92, Charlie's Lakeside; and 1/27 of '92, the Hush Puppy.

7 BY MR. SEATON:

8 Q Those were all in January of 1992?

9 A Yes, sir.

10 Q Turn to the second page.

11 Do you see the charges on there
12 that you are able to account for yourself?

13 A No, sir.

14 Q And read to us the various companies from
15 which charges emanated.

16 A SunTeleGuide, Gold Coast; Gold Coast Hotel &
17 Casino; The Sunglass Company; Gold Coast Hotel & Casino;
18 SunTeleGuide, Gold Coast; Citgo, 7-Eleven; Texaco, Inc.

19 Q You don't know how those charges got on
20 there?

21 A No, sir.

22
23 (Whereupon, a sotto voce at
24 this time.)

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(Whereupon, as requested by
counsel, Plaintiff's Exhibits
93-A through 93-D were marked
for identification.)

BY MR. SEATON:

Q I am showing you what has been marked as
93-A. It appears to be from the Sungear Sunglass Company.

Do you see your name printed on
that, at about the third line down?

A Yes, sir.

Q How does that read?

A Ah, D. Mason.

Q Did you put that there?

A No, sir.

Q Did you make any purchases from the Sungear
Company?

A No, sir.

Q Did you authorize anyone to make any
purchases from the Sungear Company?

A No, sir.

Q Were you aware whether or not Denise Lizzi
intended on doing that?

A No, sir.

Q And I'm showing you now 93-B; and there are
actually two parts to that that were held together by a

001900

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1 staple.

2 If you would look at the two of
3 those -- I take that back. I'm wrong on that. Just look at
4 93-B.

5 Do you recognize that
6 particular document?

7 A No.

8 Q And it appears to be a charge card slip --

9 MR. DUNLEAVY: Objection, Your Honor.

10 I think the witness can testify
11 what it appears to be.

12 THE COURT: Sustained.

13 MR. SEATON: Thank you.

14

15 BY MR. SEATON:

16 Q What does it appear to you to be?

17 A It appears to be the carbon copy of a
18 receipt of a credit card charge.

19 Q And the total on that is, the total price?

20 A \$304.95.

21 Q And on 93-A, which I had shown you before,
22 is it the same total?

23 A Yes, sir.

24 Q All right. Thank you.

001901

5

1 Showing you now what has been
2 marked 93-D, a Gold Coast receipt, do you see your name on
3 that?

4 A Yes.

5 Q Did you put that there?

6 A No.

7 Q Did you authorize it being put there?

8 A No, sir.

9 Q What date is that shown to be?

10 A It's 2/19, arrival date; 2/21, departure
11 date.

12 Q Is there a year shown on that document any
13 place?

14 A I don't see one.

15 Q All right. And just to catch up on the
16 93-A, the Sungear -- Sunglass Company, the date on that in
17 the right-hand corner --

18 A Yes, sir.

19 Q -- what -- go ahead.

20 A 2/19/92.

21 Q The -- going back to the Gold Coast, 93-D,
22 did you authorize anyone else to make out that particular
23 document?

24 A No, sir.

001902

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1 Q Are you familiar with that document at all,
2 in terms of knowing that someone was going to make the
3 charge on that?

4 A No, sir.

5 Q And you don't know whether or not Denise
6 Lizzi had any plans on making such a charge?

7 A No, sir.

8 Q And 93-C, what does that appear to be?

9 A Ah, it appears to be a copy of a cash
10 advance.

11 Q Is it voided out?

12 A Yes.

13 Q Do you have any familiarity with that?

14 A No, sir.

15 Q Where does it come from?

16 MR. DUNLEAVY: Objection, Your Honor.

17 This is all hearsay as far as
18 he goes. He doesn't know where this stuff came from. He's
19 just reading the label and giving it to the D.A.

20 MR. SEATON: And I'm trying -- he has to do
21 that in order to say whether or not he has any knowledge
22 about it.

23 MR. DUNLEAVY: Not reading it to the jury,
24 he doesn't.

001903

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1 Your Honor, he can look at it
2 and say I know about this document or I don't. It's
3 improper to have him reading things to the jury when he
4 doesn't have a clue where they came from.

5 THE COURT: I believe he already stated he
6 didn't know anything about this.

7 MR. SEATON: All right. Let me finish up on
8 that subject.

9 YB MR. SEATON:

10 Q 93-C, you have no awareness of at all?

11 A No, sir.

12 Q Didn't cause it to be made out?

13 A No, sir.

14 Q Didn't authorize anyone to make it out?

15 A No, sir.

16 Q And don't know whether or not Denise Lizzi
17 had any intention on making out such a document?

18 A No, sir.

19 Q And on page three of Exhibit 97, did you
20 authorize that particular charge?

21 A No, sir.

22 Q The charges on page -- pages two and three,
23 which you did not authorize, what dates are those shown to
24 be by this document?

001904

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1 A SunTeleGuide is February 23rd.

2 Q 1992?

3 A Yes, sir.

4 Gold Coast is February 25th,
5 1992; Sunglass Company is February 19th, 1992; Gold Coast
6 Hotel is February 20th, 1992; SunTeleGuide, February 20th,
7 1992; Citgo, February 20th, 1992; Texaco, February 22nd,
8 1992; Gold Coast, February 21st, 1992.

9 Q Thank you.

10 Have you seen the card since
11 giving it -- last giving it to Denise Lizzi?

12 A No, sir.

13 Q Has that card been discontinued?

14 A Yes.

15 Q Did you give permission to anyone other than
16 Denise Lizzi to possess or to utilize that card?

17 A No, sir.

18 Q And looking again at the person two people
19 to my left, did you ever give him permission to possess or
20 to utilize that card?

21 A No, sir.

22 Q Did you have a Dillard's card as well?

23 A Yes, sir.

24 Q I'm going to show you Exhibit 105, proposed

001905

6

1 105.

2

Do you recognize that

3

particular document?

4

A Yes, sir.

5

Q What is it?

6

A It's -- the credit card statement.

7

Q From --

8

A Dillard's.

9

Q And when is that credit card statement from,

10 what period of time?

11

A 2/19/92 through -- I don't see the ending

12

date.

13

Q Does that appear to be the Dillard's credit

14

card which you owned?

15

A Yes, sir.

16

Q Would that have been in your name, Denny

17

Mason?

18

A Yes, sir.

19

Q Is that a credit card which Denise Lizzi had

20

access to?

21

A Yes, sir.

22

Q Prior to the time of her death -- let's go

23

back to the Saturday when you last saw her, the 15th of

24

February -- would she have had possession of this credit

001906

6

1 card at that time?

2 A Yes, sir.

3 Q And similarly to the credit card, the VISA
4 credit card, did she have your permission to utilize it?

5 A Yes, sir.

6 Q And did anyone else have permission to
7 utilize that particular credit card?

8 A No, sir.

9 Q The charge which is shown on the Dillard's
10 bill, which was sent -- was that sent to you, by the way?

11 A Yes, sir.

12 Q Is that a charge with which you are
13 familiar?

14 A No, sir.

15 Q And the date that was charged, you said
16 before, was --

17 A February 19th, '92.

18 MR. SEATON: Thank you.

19 I would move for the
20 introduction into evidence now of 105, the Dillard's credit
21 card billing.

22 MR. DUNLEAVY: No objection, Your Honor.

23 THE COURT: 105 will be admitted.

24

001907

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1 (Whereupon, Plaintiff's Exhibit
2 105 was admitted into
evidence.)

3 MR. HARMON: May we have the Court's
4 indulgence, Your Honor?

5 THE COURT: Yes.

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

8 BY MR. SEATON:

9 Q Do you know whether or not Denise Lizzi
10 possessed a Sears credit card?

11 A I believe she did.

12 Q Is that your best recollection?

13 A Yes.

14 Q Do you know if you've ever seen that card?

15 A No, sir.

16 Q You are not sure if you've seen it?

17 A I'm not sure.

18 Q Were you ever with her when she utilized it
19 at Sears?

20 A No.

21 Q And you say, to the best of your
22 recollection, you thought she had one.

23 Did she have one, to the best
24 of your recollection, just prior to her death?

001908

6

1 A Yes, sir.

2 Q I had asked you before about the gentleman
3 two people to my left, whether or not he had permission to
4 utilize the two credit cards, the Dillard's credit card and
5 the VISA credit card, which were in your name and being used
6 by Denise Lizzi, and you said that he did not; is that
7 correct?

8 MR. DUNLEAVY: Your Honor, I'm going to
9 object. This isn't a question. It's a long statement by
10 the District Attorney's Office. That's improper.

11 MR. SEATON: Just to lead in --

12 THE COURT: Overruled.

13 Is that correct?

14 THE WITNESS: That's correct.

15 BY MR. SEATON:

16 Q Do the same answers apply to the automobile,
17 the 300ZX, that was in the possession of Denise Lizzi for
18 her use? Had you ever given Mr. Rippo an opportunity to
19 possess that or to use it?

20 A No, sir.

21 Q Okay. How about an individual -- we
22 mentioned Diana Hunt before, and you said that you didn't
23 know her.

24 Did you ever, either directly

001909

6

1 yourself or through anyone else, give Diana Hunt permission
2 to possess or to use either of the two credit cards or the
3 car?

4 A No, sir.

5 Q And do you know whether or not Denise Lizzi
6 had ever given anyone permission to use the Sears credit
7 card?

8 MR. DUNLEAVY: Objection, as to hearsay,
9 Your Honor.

10 MR. HARMON: I asked him if he knew.

11 THE COURT: If he knew.

12 Do you know?

13 THE WITNESS: I don't know.

14

15 MR. SEATON: You don't know one way or the
16 other.

17 All right.

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

BY MR. SEATON:

20 Q Do you know the signature of Denise Lizzi?

21 A I've seen it before, yes.

22 Q On a number of occasions?

23 A Yes, sir.

24 Q If you were to see it now, would you be able

001910

6 1 to recognize it?

2 A I think so.

3 MR. DUNLEAVY: Your Honor, could I voir dire
4 very briefly on his familiarity with the signature?

5 THE COURT: Yes.

6
7 VOIR DIRE EXAMINATION

8
9 BY MR. DUNLEAVY:

10 Q How often did you see her sign her name?

11 A Often.

12 Q Regularly?

13 A Yes, sir.

14 Q When is the last time you saw her, four
15 years ago?

16 A At least.

17 Q Do you think you can identify it today from
18 other signatures?

19 A I think so.

20 Q Even if someone else tried to fake her name,
21 you could tell the difference?

22 A I think so.

23 Q And what training have you had in that area,
24 to learn to do that?

001911

7 1 A None.

2 MR. DUNLEAVY: None whatsoever.

3 No further questions.

4
5 DIRECT EXAMINATION (Resumed)

6 BY MR. SEATON:

7 Q I'm going to show you State's Proposed
8 Exhibit 94, which purports to be a Sears sales slip.

9 Does it appear to be that way
10 to you?

11 A Yes, sir.

12 Q Do you see a signature line on there?

13 A Yes, sir.

14 Q What name do you see?

15 A It looks like Denny Morgan.

16 Q Do you know anyone by the name of Denny
17 Morgan?

18 A No, sir.

19 Q Well, let me ask you this: Does that look
20 anything like Denise Lizzi's writing?

21 MR. WOLFSON: Objection.

22 Excuse me, Judge, the document
23 isn't in evidence; and we've been pretty loose with this so
24 far, but in order for a witness to testify from a document,

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1 it must be in evidence. It's not in evidence.

2 THE COURT: Sustained.

3 MR. SEATON: He is not testifying as to the
4 content, but whether he recognizes anything on the document
5 as being the handwriting of Denise Lizzi.

6 We are not yet moving for the
7 introduction into evidence of it; just while this witness is
8 on the stand, getting him to say whether or not he sees
9 Denise Lizzi's handwriting on that document.

10 In fact, let me ask the
11 question in that manner, Judge, and it may be better.

12 THE COURT: All right. You may.

13

14 BY MR. SEATON:

15 Q Looking at that document, at any writing on
16 it whatsoever, do you see any writing on it that you would
17 recognize as being the handwriting of Denise Lizzi?

18 A No, sir.

19 MR. SEATON: Thank you.

20 Pass the witness, Judge.

21 THE COURT: All right.

22 MR. DUNLEAVY: Your Honor, I'm fast, but I
23 don't know if I can do this in two minutes.

24 Does the Court want to take the

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7

1 noon break or --

2 THE COURT: Who is going to hold you to two
3 minutes?

4 MR. DUNLEAVY: Well, as long as --

5 THE COURT: How long do you think your cross
6 will be?

7 MR. DUNLEAVY: To be honest, I think if I
8 did it after the break, it would be shorter.

9 MR. SEATON: I'd even vote for that, Judge.

10 THE COURT: All right. Let's take a vote.

11 Ladies and gentlemen, do not
12 converse among yourselves or with anyone else on any subject
13 connected with this trial;

14 Read, watch, listen to any
15 report or commentary on the trial by any medium of
16 information, including, without limitation, newspaper,
17 television or radio;

18 Or form or express any opinion
19 on any subject connected with the trial until the matter is
20 finally submitted to you.

21 We'll begin again at 1:30.

22

23 (Proceedings recessed for
24 lunch.)

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001914

1 Las Vegas, Nevada, Monday, February 26, 1995, 1:50 p.m.

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3 * * * * *

4
5 THE COURT: Good afternoon.

6 Do you stipulate to the
7 presence of the jury?

8 MR. SEATON: Yes.

9 MR. DUNLEAVY: Yes.

10 THE COURT: Okay. We're going to recall Mr.
11 Mason.

12 MR. SEATON: Denny Mason is still on the
13 stand.

14 THE COURT: You finished direct; now we're
15 going to do cross.

16 MR. SEATON: That's correct, Your Honor.

17 MR. DUNLEAVY: Hours and hours of cross.

18 THE COURT: That's okay with me.

19 Do you understand you are still
20 under oath, sir?

21 THE WITNESS: Yes.
22
23
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CROSS-EXAMINATION

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BY MR. DUNLEAVY:

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Q Good afternoon, sir.

4

A Hello.

5

Q Now, you went over Exhibit 97 in some detail

6

with the District Attorney's Office. I would like to ask

7

you a couple questions.

8

Did you receive any other bills

9

on this credit card that included charges in the same time

10

period, something that perhaps didn't get on until the next

11

month's bill or something like that, but related to this

12

same time period?

13

A Not that I'm aware of.

14

Q And you never made any charges on this card,

15

once it disappeared with Denise Lizzi's possessions?

16

A Correct.

17

Q So as far as you recall, that's the last set

18

of charges you ever received on that bill?

19

A Yes.

20

Q Is there anything in there from Dillard's on

21

that list there or anything that would indicate the purchase

22

of perfumes or colognes?

23

A No.

24

Q You also indicated -- was it your Dillard's

001916

1 card or Denise's Dillard's card?

2 A It was mine.

3 Q It was your card that you had loaned to her?

4 A Yes.

5 Q And you got a bill on that that related to

6 the same time period, did you not?

7 A Yes.

8 Q And that would be State's Exhibit 105?

9 A Yes.

10 Q Does there appear to be charges on that bill

11 relating to the 19th, 20th of February?

12 A Yes.

13 Q And what was that for?

14 A Calvin Klein, Calvin Klein for Men.

15 Q Do you know if that would be cologne or

16 something like that?

17 A I don't know what it was.

18 Q And those charges were made on your

19 Dillard's card, not your MasterCard?

20 A Yes, sir.

21 Q So if someone had indicated they only had

22 one of your credit cards and that was your MasterCard, they

23 couldn't have made those charges?

24 A Are you referring to the VISA card?

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Q The VISA card. I'm sorry. Yes.

A Okay. What was the question?

Q If someone said they had gone to Dillard's and made purchases of cologne and so forth on your VISA card, that would be incorrect? It appears they used another card?

A Yes.

Q But that it does appear those purchases were made?

A Yes.

MR. DUNLEAVY: Court's indulgence one second.

(Whereupon, a sotto voce at this time.)

MR. DUNLEAVY: Okay. I have no further questions of this witness, Your Honor.

MR. SEATON: No questions.

THE COURT: Any redirect?

MR. SEATON: No.

THE COURT: Thank you, Mr. Mason.

You are excused.

(Whereupon, the witness was excused.)

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THE COURT: Call your next witness, please.

MR. HARMON: Allen Cabrales.

THE BAILIFF: I didn't get it.

MR. HARMON: Cabrales.

THE CLERK: Please remain standing and raise
your right hand.

Whereupon,

ALLEN CABRALES

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.

Would you be seated.

Would you state your name and
spell it for the record, please.

THE WITNESS: My name is Allen Cabrales;
A-l-l-e-n, C-a-b-r-a-l-e-s.

DIRECT EXAMINATION

BY MR. HARMON:

Q Mr. Cabrales, what is your business or
occupation?

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1 A I'm a crime scene analyst supervisor for the
2 Las Vegas Metropolitan Police Department.

3 Q What is a crime scene analyst?

4 A The crime scene analyst is an individual who
5 is responsible for investigating a crime scene; and their
6 primary responsibility is they're to gather and preserve
7 physical evidence and to document the crime scene with
8 photography.

9 Q You are employed by the Las Vegas
10 Metropolitan Police Department?

11 A Yes.

12 Q How long have you worked with that
13 department?

14 A Approximately 16 years.

15 Q How much of that time has been as a crime
16 scene analyst?

17 A All 16 years.

18 Q Did you have any type of formal training in
19 connection with your job?

20 A Yes. I have a Bachelor's of Science in the
21 field of biology; and after I hired on to the Department, I
22 was sent to numerous schools on crime scene investigation,
23 crime scene photography, homicide investigation.

24 Q Do you also have training and experience in

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1 1 processing the surfaces of crime scenes for the presence of
2 2 latent prints?

3 A Yes.

4 Q What is a latent print?

5 A A latent fingerprint is a -- what we refer
6 6 to as a fingerprint, which is left behind at a scene after a
7 7 crime. It's generally invisible and it requires some kind
8 8 of physical or chemical processing to make it visible to the
9 9 naked eye.

10 Q Mr. Cabrales, I want to direct your
11 11 attention to February the 20th, 1992.

12 On that date, did you have
13 13 occasion to respond to the Katie Arms Apartments at 3890
14 14 South Cambridge Street?

15 A Yes.

16 Q Is that location in Las Vegas, Clark County,
17 17 State of Nevada?

18 A Yes, sir.

19 Q What time approximately did you go to the
20 20 Katie Arms apartment complex?

21 A I arrived approximately 11:20 that morning.

22 Q What was your purpose in going there?

23 A I went there to assist crime scene analyst
24 24 Sheree Norman in the investigation of an apparent double

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1 homicide.

2 Q Did you go inside a particular apartment at
3 the Katie Arms?

4 A Yes.

5 Q To what apartment?

6 A It was Apartment 317.

7 Q Were other officers from the police
8 department on the scene?

9 A Yes. There was a Detective Scholl from
10 Homicide present.

11 Q Is Detective Scholl a homicide detective?

12 A He was, yes.

13 Q After your arrival, did you confer with
14 Detective Scholl and other officers who may have preceded
15 you to the scene?

16 A Detective Scholl was the only one I had
17 contact with at the time.

18 Q Did you speak with Detective Scholl?

19 A Yes.

20 Q Thereafter, did you and Sheree Norman carry
21 out various responsibilities in investigating and analyzing
22 the crime scene?

23 A Yes, we did.

24 Q Tell us what you did.

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2 1 A Primary functions are -- first of all,
2 Sheree Norman photographed the scene, taking photographs,
3 showing the scene as it existed when she arrived.

4 The next step would have been
5 to gather any kind of physical evidence that we observed at
6 the scene.

7 And then after that, we
8 processed the scene for latent fingerprints and collected
9 latents from throughout the apartment.

10 Q Was there also some effort to sketch
11 Apartment 317?

12 A Yes. A crime scene diagram was sketched
13 depicting the general layout of the scene.

14 MR. HARMON: Your Honor, with the Court's
15 permission, may we have the easel brought over? I'd like to
16 have the witness step to the easel.

17 THE COURT: Okay. You may step down, sir.

18 THE WITNESS: Thank you.

19 BY MR. HARMON:

20 Q Analyst Cabrales, would you take the pointer
21 that the Court has furnished.

22 Will you examine just for a few
23 moments -- and you may -- if it's in the way, just put the
24 podium back a little closer to the clerk of the court.

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1 Will you examine the diagram
2 which has been marked as Exhibit Number 3 for a few moments
3 and then tell us if you recognize what is shown in
4 Exhibit 3?

5 A Yes, I do.

6 This is a --

7 MR. WOLFSON: Objection. Excuse me. There
8 is no question before the witness.

9 BY MR. HARMON:

10 Q What is Exhibit 3?

11 A This is a representation of the crime scene
12 diagram of Apartment 317 at 3890 Cambridge.

13 Q As you stand here now, do you have a
14 recollection essentially of the condition of Apartment 317
15 when you arrived Thursday, February the 20th, 1992 at about
16 11:20 in the morning?

17 A Yes.

18 Q Using the pointer, will you explain to us
19 what is shown in Exhibit 3, beginning with the front door.

20 A This, as I mentioned, is a depiction of
21 Apartment 317, with the front door being located at the west
22 side of the apartment.

23 It's basically a small studio
24 apartment, with a living area, including two different day

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2 1 beds, (indicating), a snack coffee table, a little TV
2 entertainment center; a kitchen area located over in the
3 northwest corner, including a small stove, refrigerator,
4 counter space and a sink; a bathroom area, which included a
5 tub and toilet and a sink; a small dressing area; and then a
6 closet area, located out there near the -- that would be the
7 southeast corner of the apartment.

8 Q What was located inside the closet area?

9 A Located inside the closet were two victims,
10 two females, white females, as well as clothing and a table
11 with a TV.

12 Q Regarding the closet area, is this a walk-in
13 closet?

14 A Yes.

15 Q Will you describe for us the position of the
16 two victims.

17 A The two victims were both in the closet,
18 both lying on the floor, both of them face down. Their
19 heads were pointed to the south, their feet to the north.

20 Q Are there windows to Apartment 317?

21 A Yes. There is a window located on the west
22 side of the apartment, located approximately where this
23 table is here, this area where it's marked window,
24 (indicating), right near the front door.

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3 1 Q When you arrived, was Detective Scholl
2 inside or outside the apartment?

3 A I believe I talked to him inside the
4 apartment.

5 Q As part of your investigation, did you try
6 to pay attention to whether there appeared to be any sign of
7 a forced entry into Apartment 317?

8 A The window was examined; the condition of
9 the window was that it was closed and it was locked.

10 On the front door, there was a
11 locked lockout knob, which was on the exterior of the door,
12 but the door itself was unlocked, the doorknob itself.

13 Q Did you detect any damage to the front door?

14 A I don't recall seeing any kind of damage to
15 the door.

16 Q Other than the front door and the window,
17 which has been identified by you as we look at the diagram
18 as being just to the left of the front door, would there be
19 any other means of access into Apartment 317?

20 A No, sir.

21 Q Would it be correct to say then that you
22 found no evidence of forced entry into the apartment?

23 A There is no evidence observed of forced
24 entry.

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1 MR. HARMON: Thank you. You may return to
2 the witness chair.

3 May I approach the witness,
4 Your Honor?

5 THE COURT: You may.

6 MR. HARMON: Analyst Cabrales, I'm going to
7 show you now a series of photographs which are marked as
8 proposed Exhibits 5 through 22.

9 MR. WOLFSON: Your Honor, excuse me.

10 May counsel approach the bench?

11 THE COURT: Yes.

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

14 BY MR. HARMON:

15 Q Analyst Cabrales, showing you again proposed
16 Exhibits 5 through 22 -- and, at this point, since they are
17 not in evidence, would you avoid displaying them to the
18 Jury.

19 I simply want you, as quickly
20 as you can, to examine proposed Exhibits 5 through 22.

21 After you have gone through the
22 entire series, will you tell us if you recognize what is
23 shown in the photographs?

24 A (Complied.)

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1 Q Have you gone through proposed Exhibits 5
2 through 22?

3 A Yes, sir, I have.

4 Q Do you recognize the area shown in the
5 photograph?

6 A Yes.

7 Q What is the area depicted in these pictures?

8 A These areas depict the crime scene, the
9 general location, the condition and the contents of the
10 crime scene itself.

11 Q Are you referring to Apartment 317 of the
12 Katie Arms apartment complex?

13 A Yes.

14 Q Do each of the photographs, proposed
15 Exhibits 5 through 22, portray the scene at Apartment 317
16 substantially as you remember it existing when you arrived
17 Thursday, February the 20th, 1992?

18 A Yes.

19 Q To your memory the photographs are true and
20 correct?

21 A Yes.

22 Q You mentioned in addition to the photography
23 and also the sketching of the scene that certain items which
24 had potential evidentiary value were recovered.

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1 A Yes, sir.

2 Q Who was involved personally in impounding

3 items from Apartment 317 that day?

4 A That was crime scene analyst Sheree Norman.

5 Q Were you, however, working with analyst

6 Sheree Norman?

7 A Yes.

8 Q Were you aware at the time what items she

9 was recovering?

10 A Yes.

11 Q Did you know from where they had been

12 recovered?

13 A Yes.

14 MR. HARMON: May we have the Court's

15 indulgence?

16 THE COURT: Yes.

17 (Whereupon, as requested by

18 counsel, Plaintiff's Exhibit

19 106 was marked for

20 identification.)

21 MR. WOLFSON: Thank you, Mel.

22 BY MR. HARMON:

23 Q Analyst Cabrales, I'm showing you now a

24 three -- no, four page document, which the clerk has marked

as proposed Exhibit 106.

Are you able to tell us what

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1 this is?

2 A Yes. This is a copy of the evidence impound
3 report that was prepared by crime scene analyst Sheree
4 Norman concerning evidence that was recovered from the
5 scene.

6 Q Is it a report prepared and maintained
7 during the ordinary course of the investigation you and she
8 conducted on February the 20th, 1992, at the Katie Arms
9 apartment complex, Apartment 317?

10 A Yes.

11 Q Does it appear to be a true and accurate
12 copy of the impound report of Sheree Norman?

13 A Yes.

14 Q What type of information is contained on the
15 report?

16 A This report would, first of all, indicate
17 what object of evidence was recovered from the scene, giving
18 it a package and item number; also would indicate the
19 location from which that item was recovered from.

20 Q To your knowledge, does this impound report
21 by Analyst Norman contain every item which was recovered by
22 either you or she from Apartment 317 on February the 20th,
23 1992?

24 A Yes.

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1 Q And it also contains a description of the
2 specific location from which each item is recovered?

3 A Yes.

4 Q When evidence is impounded, do you know, as
5 a crime scene analyst, exactly what items at a location have
6 direct relevance to the commission of the crime?

4

7 A Not always. A lot of times, we don't have
8 all the details of the case. We don't have a lot of
9 information that might guide us to a specific item of
10 evidence, so we have to evaluate the whole crime scene, and,
11 at that time, decide what may be pertinent items that are
12 involved in a case.

13 Q Did you, on this date, February 20th, 1992,
14 attempt to recover all of the items that were believed
15 potentially to have relevance to the crimes perpetrated upon
16 the two young ladies found at the scene?

17 A At that time, yes.

18 MR. HARMON: Your Honor, the State offers
19 proposed Exhibit 106.

20 MR. WOLFSON: Counsel approach?

21 THE COURT: Yes.

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

24 MR. WOLFSON: Your Honor, I object to the

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1 admission of this document. It is hearsay. There is also a
2 stipulation that the parties have entered into, which is
3 outside of this document, and I believe this document, by
4 itself, in the manner in which counsel is attempting to
5 admit it, is hearsay.

6 And if I may take the witness
7 on voir dire, I think I can show that there is not a proper
8 foundation for its admission.

9 THE COURT: All right. You may do so.

10 MR. WOLFSON: May I have the document,
11 Mr. Harmon?

12

13

VOIR DIRE EXAMINATION

14

BY MR. WOLFSON:

15

Q Mr. Cabrales, were you Sheree Norman's
16 supervisor on February 20th, 1992?

17

A No.

18

19

20

Q Exhibit proposed 106 lists, literally -- I'm
going to guess -- 40, 50, 60, 70 pieces of physical
evidence, does it not, generally speaking?

21

A Yes.

22

23

Q Did you see Sheree Norman impound every
single piece of evidence that's listed on Exhibit 106?

24

A No.

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1 MR. WOLFSON: Judge, I -- I object to its
2 admission. I think I should be heard out of the presence of
3 the jury for further explanation.

4 MR. HARMON: Your Honor, he was present and
5 worked with the lady. He's testified this was a business
6 record, prepared in connection with the investigation of
7 this case.

8 MR. WOLFSON: That is not sufficient
9 foundation for the business record exception to the hearsay
10 rule.

11 MR. HARMON: Well, I think it is, Your
12 Honor. They worked together.

13 MR. WOLFSON: You know, business records
14 need to be -- there needs to be more information for their
15 admission, Judge, just more than him saying it's a business
16 record.

17 MR. HARMON: He was there at the scene.
18 This isn't like someone talking about records or evidence he
19 has no knowledge of, Your Honor.

20 MR. WOLFSON: If he was present when she
21 picked up every single piece, I think Mr. Harmon's position
22 would be stronger; but he doesn't have personal knowledge of
23 many of the retrieving of items from that list.

24 MR. HARMON: He may not have seen --

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1 MR. WOLFSON: For now, it is a document
2 which was not prepared, or perhaps was prepared, in
3 anticipation of litigation, and I don't think that the
4 proper foundation for a business record exception has been
5 made.

6 MR. HARMON: It was not prepared in
7 anticipating litigation. It's prepared because they always
8 do this, Judge. They always list the evidence that's
9 impounded.

10 MR. WOLFSON: I mean, if we were talking
11 about five or ten items, that's one thing; but there was 30
12 or 40, and he wasn't there when she retrieved much of them.

13 MR. HARMON: The point is, Judge, he knows
14 what was there.

15 MR. WOLFSON: Well -- he --

16 THE COURT: I don't know. Maybe could you
17 take him on voir dire and straighten that out? Right now,
18 I'm not satisfied.

19 MR. HARMON: May I ask a few additional
20 questions about proposed 106?

21 THE COURT: You may.

22 MR. HARMON: Does the Court have it still
23 or -- the clerk?

24 THE COURT: I have it here.

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4

DIRECT EXAMINATION (Resumed)

BY MR. HARMON:

Q Analyst Cabrales, will you look through the various items listed on the impound report, proposed Exhibit 106, and tell us if you do or do not recognize these items as evidence you observed at Apartment 317 of the Katie Arms apartment complex, Thursday, February the 20th, 1992?

A These were all items which I observed at the scene.

MR. HARMON: We renew our offer, Your Honor.

MR. WOLFSON: May I take him on voir dire once again?

THE COURT: Yes.

VOIR DIRE EXAMINATION

BY MR. WOLFSON:

Q Mr. Cabrales, in your opinion, was this crime scene protected?

MR. HARMON: Now, Your Honor, that's beyond the offer.

This witness, as he's going to yet say in his testimony, is not responsible for what happens before he gets there.

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1 All he's here to do is to
2 attest to the condition of Apartment 317 on and after 11:20
3 a.m., February the 20th.

4 He can't address, at this
5 point, what happened before that, Judge. So if the defense
6 is going to argue that these items are irrelevant, then I
7 suppose that argument can be made; but it is not pertinent
8 to the offer of proposed 106 for him to speculate now about
9 what happened before he arrived at the scene of the crime.

10 MR. WOLFSON: I'm not only speculating, and
11 I'm not only asserting what happened before he arrived but
12 I'm basing my questioning on a report authored by this
13 witness.

14 And the prosecution knows what
15 I'm talking about, and I think that Mr. Cabrales would
16 acknowledge that he authored a report wherein he says,
17 quote:

18 "Obviously the crime scene was
19 not protected and the integrity of all evidence
20 recovered from the scene has been compromised."

21 So when you combine that
22 assertion by this witness with the fact that he did not
23 personally retrieve some of this evidence, I don't think we
24 can find there is a reliability under an exception to the

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1 hearsay rule for the admission of this document, and that's
2 why it's important.

3 MR. HARMON: It all goes to weight, not
4 admissibility, Your Honor.

5 THE COURT: All right. State's 106 will be
6 admitted.

7 MR. HARMON: Thank you.

8 (Whereupon, Plaintiff's Exhibit
9 106 was admitted into
evidence.)

10 MR. HARMON: May I again approach the
11 witness, Your Honor?

12 THE COURT: You may.

13

14 DIRECT EXAMINATION (Resumed)

15 BY MR. HARMON:

16 Q Analyst Cabrales, I'm showing you proposed
17 Exhibits 79 through 81.

18 Will you examine those various
19 evidence bags and tell us if you recognize what they are.

20 A Yes, I do. These were items which were
21 recovered from the crime scene.

22 Q By the crime scene, are you again referring
23 to Apartment 317 of the Katie Arms apartment complex?

24 A Yes.

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1 Q Are these all items recovered by analyst
2 Sheree Norman?

3 A Yes, they are.

4 Q Was that done while you were present at the
5 apartment complex?

6 A Yes.

7 Q Let us begin with proposed Exhibit 79.

8 Are you able to tell, by
9 examining the markings on the outside of that bag, what was
10 placed in there?

11 A Yes.

12 Q What was placed inside proposed Exhibit 79?

13 A Placed in proposed Exhibit 79 was a Hamilton
14 Beach iron and a Clairol hair dryer.

15 Q Do you remember seeing these two items at
16 Apartment 317 on February 20th, 1992?

17 A Yes.

18 Q Where do you recall seeing them?

19 A The Hamilton Beach iron was located in a
20 trash bag in the kitchen area; and the Clairol hair dryer
21 was located underneath the east day bed.

22 Q Do you know why the iron and the hair dryer
23 were recovered?

24 A Well, the reason that we recovered those --

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1 or Sheree Norman picked those up -- was the fact that both
2 of them were missing a cord; the electrical cord was
3 missing.

4 Q Is proposed Exhibit 79 in a sealed condition
5 at this time?

6 A Yes, it is.

7 Q Using the scissors the clerk has furnished
8 us, and leaving the seals intact, will you open proposed
9 Exhibit 79.

10 A (Complies.)

11 Q Will you now remove the contents, describing
12 for the record what you have removed.

13 A Okay. I'm removing one blue colored hair
14 drier; also one electric iron.

15 MR. HARMON: Your Honor, may we have the
16 hair dryer marked as proposed 79-A and the iron as proposed
17 79-B?

18 THE COURT: You may.

19 BY MR. HARMON:

20 Q Officer Cabrales, are you able to identify
21 the hair dryer, which will be marked as proposed 79-A, and
22 the iron, which will be marked as proposed 79-B?

23 A Yes.

24 Q What is the basis of your identification?

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MRIPG-07058-R0001943

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1 A The basis of my identification is that
2 personnel number, which is placed upon each item, being that
3 of Sheree Norman.

4 Q Do you recognize these as items which you
5 observed at the locations you have already described inside
6 Apartment 317 on February the 20th, 1992?

7 A Yes.

8 Q Do both proposed Exhibits 79-A and 79-B,
9 except for markings that may have been placed upon them by
10 the investigative procedure, appear to be in substantially
11 the same condition now as they were on the date they were
12 recovered?

13 A Yes, except for the fact that there is some
14 black fingerprint powder on both of these items.

15 Q What is the black powder?

16 A The black powder is a fingerprint powder
17 that we used to examine surfaces for the presence of latent
18 fingerprints.

19 Q Do you recall now whether latent prints were
20 identified and lifted from proposed Exhibit 79-A and -B?

6

21 A As I recall, there are no latent prints
22 developed from these two items.

23 Q You've made reference to the items being
24 recovered because they were missing the cords?

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1 A We thought that was unusual, yes.

2 Q Do you see on both of the items where the
3 cord has been severed?

4 A Yes.

5 Q Does it appear now, focusing on those
6 particular areas, to be exactly as you remember the items
7 looking when you first saw them inside Apartment 317?

8 A Yes.

9 MR. HARMON: Your Honor, at this time, the
10 State offers proposed Exhibits 79, 79-A and 79-B.

11 MR. WOLFSON: I'd ask you to reserve until
12 after cross.

13 THE COURT: All right. I'll reserve.

14 BY MR. HARMON:

15 Q Direct your attention to proposed Exhibit
16 80.

17 Are you able to tell us what
18 item or items were placed inside this bag?

19 A Placed inside this bag were a black leather
20 strip, a telephone cord and two pieces of black shoelace.

21 Q Do you have a recollection now of seeing
22 these items on February the 20th, 1992 inside Apartment 317
23 of the Katie Arms?

24 A Yes.

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1 Q Do you remember where they were located?

2 A The black leather strip was found in a trash
3 can in the bathroom; the telephone cord was found by the
4 entertainment center in the living room; and the two pieces
5 of black shoelace was found on the carpet below one of the
6 victims in the closet.

7 Q Is proposed Exhibit 80 in a sealed condition
8 at this time?

9 A Yes.

10 Q Using the scissors once again, will you cut
11 open proposed Exhibit 80, leaving the seals intact.

12 A (Complies.)

13 Q Will you now remove the contents, sir?

14 A (Complies.)

15 Q For the record, what have you removed?

16 A I've removed three plastic ziplock bags, one
17 bag containing a piece of black leather strip, and another
18 bag containing a gray telephone cord, and a third bag
19 containing two pieces of a black shoelace.

20 MR. HARMON: Your Honor, may we have the
21 leather strip marked as proposed -- this is 80, is it? --
22 proposed 80-A, the cord as 80-B, and the pieces of shoelace
23 as 80-C?

24 THE COURT: Yes.

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1 BY MR. HARMON:

2 Q Analyst Cabrales, are you able to identify
3 proposed Exhibits 80-A, -B and -C?

4 A Yes. These were items that I saw at the
5 scene; and each of the plastic bags bears the initials of
6 Sheree Norman.

7 Q Were these items found at the locations you
8 have just described inside Apartment 317?

9 A Yes.

10 Q Do each of the items appear to be in
11 substantially the same condition now as they were on the
12 date they were recovered?

13 A Yes.

14 Q Let's start with proposed Exhibit 80-A, the
15 piece of -- the strip of leather material.

16 Why was that recovered?

17 A It was found in the trash can. And this
18 piece of leather is knotted and we weren't sure why it would
19 be in the trash can or what the purpose was?

20 Q Is it knotted in one place or looped, in
21 fact, at both ends?

22 A It's knotted at two different places.

23 Q What about proposed Exhibit 80-B, the cord?

24 A This was found in the living room area, by

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1 the entertainment center; and it was just recovered.

2 Q Regarding proposed Exhibit 80-C -- is it two
3 pieces of shoelace?

4 A Yes, it's two different pieces.

5 Q Why were they impounded?

6 A 'Cause this was found underneath one of the
7 victims in the closet.

8 Q Do you recall which of the bodies, as you
9 look at the diagram Exhibit 3 from the witness chair?

10 A It would have been the body which is the
11 west body identified as Denise Lizzi.

12 Q You are talking -- now there is one's
13 foot -- feet are extending out from the walk-in closet.

14 A Yes.

15 Q Are you referring to that individual?

16 A Yes.

17 MR. HARMON: Your Honor, the State offers
18 proposed Exhibits 80 and 80-A, -B and -C.

19 MR. WOLFSON: I ask you to reserve until
20 after cross.

21 THE COURT: I will.

22 BY MR. HARMON:

23 Q And I show you now the bag marked as
24 proposed Exhibit 81.

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1 Are you able to tell us what
2 items were placed inside this bag?

3 A Yes.

4 Q Please do.

5 A Placed inside this bag were a white shirt, a
6 blue bandana, a red button, and a white pair of Splatro
7 briefs.

8 Q Do you recall where those items were
9 located?

10 A The white shirt was located on the south day
11 bed in the living room; the blue bandana was found on the
12 living room floor; the red button was found on the kitchen
13 floor; and the white briefs were located in the trash can in
14 the bathroom.

15 Q Is proposed Exhibit 81 in a sealed
16 condition?

17 A Yes.

18 Q Once again, using the scissors the clerk has
19 furnished, will you cut open proposed Exhibit 81, leaving
20 the seals intact.

21 A (Complies.)

22 Q Will you remove the contents, please.

23 A (Complies.)

24 Q For the record, what have you removed?

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1 A I removed one white shirt. I've removed one
2 blue bandana in a plastic bag. I've removed one red button.
3 And also I've removed, in a plastic bag, a white pair of
4 briefs.

5 Q And the first item you said is a white
6 shirt?

7 A Yes.

8 MR. HARMON: Your Honor, may that be marked
9 as proposed Exhibit 81-A; may the blue bandana be marked as
10 proposed 81-B, the --

11 THE COURT: Red button.

12 MR. HARMON: -- the ziplock baggie with the
13 button as proposed 81-C, and the other ziplock baggie
14 with -- what did you say that was? --

15 THE WITNESS: They're white briefs.

16 MR. HARMON: -- with the white briefs, may
17 that be marked 81-D?

18 THE COURT: They will be so marked.

19 BY MR. HARMON:

20 Q Are you able to identify proposed Exhibits
21 81-A, -B, -C and -D?

22 A Yes. These are items which I saw at the
23 scene. All of these items bear the initials of Sheree
24 Norman.

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1 Q Do they all appear to be in substantially
2 the same condition now as they were on the date they were
3 recovered, which is February the 20th, 1992?

4 A Yes.

5 Q Specifically regarding proposed Exhibit
6 81-B, why was the blue bandana recovered?

7 A It was found on the living room floor, and
8 that -- and, at that time, we weren't sure of the
9 significance of it.

10 Q Was it knotted in any way?

11 A One end of it was knotted.

12 THE COURT: I would presume that counsel
13 wants the Court to reserve ruling on the 81 series as well?

14 MR. WOLFSON: Thank you, Mr. Harmon. Yes.

15 THE COURT: I'll reserve.

16 MR. HARMON: Your Honor, with the Court's
17 permission, may I have the witness step, once more, to the
18 easel?

19 THE COURT: Certainly.

20 Would you step down?

21

22 BY MR. HARMON:

23 Q You've identified a number of items.

24 Perhaps beginning with proposed

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1 Exhibit 79-A and 79-B, the hair dryer, which was 79-A, could
2 you locate where that was at and just put on Exhibit 3, the
3 diagram, 79-A, to identify the location.

4 A 79-A being the hair dryer?

5 Q Yes, yes.

6 A 79-A was found under this day bed.

7 Q You say it was found under the day bed?

8 A Yes.

9 Q On the floor?

10 A Yes.

11 Q What about proposed 79-B, which would be the
12 iron?

13 A 79-B was found in the trash. 79-B was found
14 in the trash bag located in the kitchen.

15 MR. DUNLEAVY: For the record, you wrote
16 79-B on the trash bag on the diagram.

17 THE COURT: Okay. The record will so
18 reflect.

19 BY MR. HARMON:

20 Q Now, Analyst Cabrales, regarding the 80
21 series, proposed Exhibit 80-A is the leather strap, which
22 was looped in two places?

23 A Yes.

24 Q Will you write 80-A to indicate the location

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1 in Apartment 317 of the leather strap.

2 A 80-A would be located in a trash bag -- or a
3 trash can right here. (Indicating)

4 Q Would you write trash can also in red just
5 below 80-A.

6 A (Complies.)

7 Q As I recall, the cord was proposed 80-B?

8 A Uh-huh.

9 Q Will you identify with an 80-B where that
10 was found.

11 A (Complies.)

12 Q Proposed 80-C, or are the two --

13 THE COURT: Would you state on the record
14 where you found 80-B?

15 THE WITNESS: 80-B was found by the
16 entertainment center in the living room.

17 MR. HARMON: Thank you, Judge.

18 BY MR. HARMON:

19 Q Proposed 80-C were the two pieces of
20 shoelace.

21 A (Complies.)

22 Q For the record, where have you indicated on
23 the diagram for proposed 80-C?

24 A This was found underneath the body of the

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7 1 female whose feet were sticking out from the closet.

2 Q Later identified as Denise Lizzi?

3 A Correct.

4 MR. DUNLEAVY: For the record, Your Honor,
5 80-A was found in the bathroom between the toilet and the
6 sink.

7 THE COURT: Okay. The record will so show.
8 BY MR. HARMON:

9 Q Now, Analyst Cabrales, regarding the 81
10 series, proposed 81-A would be the white shirt.

11 Would you indicate with 81-A on
12 Exhibit 3 where that was located.

13 A (Complies.) 81-A --

14 Q Please describe for the record where that
15 is.

16 A It's located on the south day bed.

17 Q Proposed 81-B is the blue bandana.

18 Where was that found?

19 A It was found on the living room floor.

20 Q You have written 81-B at that location?

21 A Yes.

22 Q And is it accurate to say that just to the
23 left of that bandana has already been written on Exhibit 3?

24 A Yes.

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1 Q And that's on the floor in the living room?

2 A Correct.

3 Q Regarding proposed 81-C, which is the red
4 button --

5 A Yes.

6 Q -- write 81-C to identify that location.

7 A That was found on the kitchen floor.

8 Q And finally the briefs, which are in the
9 ziplock baggie, 81-D, where was that located?

10 A That was also found in the trash can in the
11 bathroom.

12 Q While you were at the scene, did you observe
13 a denim jacket anywhere inside the studio type apartment?

14 A Yes, we did.

15 Q Perhaps just using the pointer, regarding
16 the denim jacket, will you identify where the jacket was?

17 A That was found on the coffee table, which
18 was in the living room area.

19 Q Could you determine whether there was a
20 telephone inside Apartment 317?

21 A Yes, there was.

22 Q Where was the telephone and what was its
23 condition?

24 A There was a telephone, which was located on

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1 a small black table by the -- I guess you would call it a
2 dining table. The telephone -- the base of the telephone
3 was resting on that small black table. The part that you
4 speak into was off the hook and laying on the floor.

5 Q You've already identified 79-B, which would
6 have been the iron, as coming from a trash bag in the
7 kitchen.

8 A Yes.

9 Q And that's located down in the lower
10 left-hand corner of Exhibit 3?

11 A Yes.

12 Q Is that an open or a closed trash bag?

13 A The trash bag was open.

14 Q What about the trash can that is in the
15 bathroom area, was that simply an open container?

16 A Yes.

17 Q Do you have any way of knowing for sure when
18 or under what circumstances items are deposited in the
19 location where you found them when you came to the
20 apartment?

21 A No.

22 Q Thank you. You may return to the witness
23 chair.

24 Analyst Cabrales, do you recall

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1 how the two victims were dressed at the time you arrived on
2 February the 20th, 1992?

3 Let us start with the victim
4 you have identified as Denise Lizzi.

5 A Denise Lizzi was clad in a pink pair of
6 underpanties, a white sweat shirt, and a black muscle shirt;
7 also a pair of white socks.

8 Q Did you observe the condition of the socks
9 on the bottom of the foot?

10 A They appeared to be soiled.

11 Q Did you subsequently identify the second
12 victim?

13 A Yes.

14 Q By name?

15 A The second victim was a Lauri Jacobson.

16 Q Do you recall how she was attired at the
17 time of your arrival, February the 20th?

18 A She had a white T shirt on; she had a pair
19 of blue sweat pants; and also a pair of white socks.

20 Q Regarding victim Denise Lizzi, did you
21 observe any type of bindings on her body at the scene?

22 A Yes.

23 Q What do you remember observing?

24 A On her left forearm, there was a big piece

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1 of cloth which was tied to her left forearm. Also around
2 her head and mouth area, there was another piece of dark
3 cloth, which was wrapped.

4 Q You've referred to her mouth area and her
5 left arm.

6 Were you able to see the right
7 arm of Denise Lizzi?

8 A No, it was underneath her body.

9 Q In terms of actually recovering the clothing
10 or any bindings that may have been on the body of either
11 victim, was that something you or Analyst Norman did at the
12 scene of the crimes?

13 A No.

14 Q Explain what happens in that regard.

15 A Anything that comes in contact or is part of
16 the body of the deceased, what we do, when an autopsy is
17 performed on that, a crime scene analyst is sent to the
18 coroner's office to be present during the autopsy, so that
19 any evidence that is present on the body is collected at
20 that time.

21 The body itself is a crime
22 scene in itself, so we try to have an analyst assigned to
23 the coroner's office to be responsible for all evidence that
24 is connected to the body.

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1 Q Regarding Lauri Jacobson, do you remember
2 seeing any evidence of bindings on her body?

3 A No.

4 MR. DUNLEAVY: Your Honor, could we have him
5 clarify, what that is; no, he didn't recall seeing or no,
6 there weren't any?

7 THE COURT: Could you clarify?

8 THE WITNESS: No, I did not see any.

9 BY MR. HARMON:

10 Q You've also mentioned that there was an
11 effort to process various surfaces inside Apartment 317 for
12 latent prints.

13 A That is correct.

14 Q Will you essentially tell us what type of
15 investigation was carried on in that respect.

16 A What we would do at a crime scene, as we did
17 in this crime scene, was to examine all the surfaces that
18 were present in the apartment and evaluate those which would
19 be conducive to fingerprint processing.

20 Not all surfaces are conducive
21 for processing. Mainly we're looking for surfaces that are
22 smooth, hard, non-porous. The reason we focus on those
23 kinds of surfaces is because a latent fingerprint is
24 produced or left behind when the moisture and oils from your

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1 hands are transferred onto a surface that you touch.

2 So these types of surfaces hold
3 the moisture and oil so it allows for us to process those
4 surfaces for fingerprints.

5 Now, in this case, what we did,
6 we've used a black fingerprint powder. We used a black
7 fingerprint brush and also textured surfaces like the walls.
8 We used a black magnetic powder with a magnetic wand, and
9 what we would do is we would examine the surface and then
10 apply the black powder or the magnetic powder to that
11 surface.

12 Now, if a latent fingerprint
13 was present, what will happen is that the powder that is on
14 the brush will adhere to the moisture and oil that was left
15 behind on the scene, making that print visible to us.

16 We would brush that area or
17 process that area as thoroughly as we could with the powder
18 and the brush to fully develop that fingerprint.

19 When we would look at that
20 print, if -- if there is present enough ridge detail -- in
21 other words, if you look at the end of your fingers, you'll
22 notice there is raised portions of the skin. We're looking
23 for that kind of ridged detail to be left behind on the
24 scene to determine if a print is identifiable.

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9 1 If we develop that print and we
2 see those ridges present, we would then go ahead at that
3 point and place a piece of fingerprint tape on that surface.
4 We would rub it down very secure to make sure it's a good
5 contact with the tape and the surface.

6 We would then lift that
7 fingerprint tape off of that surface; and what happens, the
8 powder that adheres to the moisture and oil that is left
9 behind now sticks to the sticky side of the tape and we, in
10 essence, lift off that powder in that configuration of the
11 ridges.

12 We would place that tape onto a
13 fingerprint card, and then we would fill out that latent
14 fingerprint card, indicating who the individual was that
15 lifted the print to begin with, and then the location from
16 where that latent fingerprint was recovered.

17 Q Were you able, in the manner you have
18 described, to develop and lift a number of latent
19 fingerprints from Apartment 317?

20 A Yes.

21 Q Do you remember from what surfaces?

22 A There were numerous --

23 MR. WOLFSON: Your Honor, excuse me. I just
24 want to advise a clarification, if you will.

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1 Is this Analyst Cabrales who is
2 doing the lifting or is it Sheree Norman under his
3 observation, or which, please?

4 THE COURT: Can you clarify that, Mr.
5 Harmon?

6 MR. HARMON: Yes.

7 THE WITNESS: Latent print processing was
8 conducted by myself as well as Sheree Norman throughout the
9 apartment.

10 BY MR. HARMON:

11 Q Are you able to recall now, in connection
12 with surfaces from which prints were developed and lifted,
13 whether it was yourself or Miss Norman who did the process?

14 A We divided the apartment up in certain
15 areas, and I was responsible for processing mostly the walls
16 and areas -- for example, in the kitchen, the contents of
17 the kitchen, the bathroom area, I processed that, as well as
18 the closet area, and the walls in the living room.

19 The items that Sheree Norman
20 would have processed would have been the smaller items that
21 were found in the trash can in the kitchen, in the trash can
22 that was in the bathroom, and any items that she would have
23 recovered that would have been conducive for processing, she
24 would have been responsible for those items.

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MRJEP-07058-ROA01962

9 1 Q As I remember, you've already testified that
2 both proposed Exhibit 79-A, the hair dryer, and proposed
3 79-B, the iron, were processed for latent prints.

4 A Yes.

5 Q And I think you indicated it was negative;
6 that is, you were not able to lift any identifiable latent
7 prints from those surfaces?

8 A Sheree Norman was not able to recover them.

9 Q Does it always occur that when a surface is
10 touched by a person or persons that latent prints will be
11 left behind on that surface?

12 A No.

13 Q Why is that?

14 A Well, a latent fingerprint is often
15 recovered from a chance print.

16 As I touched upon earlier,
17 first -- our first concern is the type of surface that was
18 handled. As I said, it has to be a -- pretty much a smooth,
19 hard, non-porous surface, because that moisture has to stay
20 on top of the surface for the powder to stick to.

21 If it's something that is
22 absorbent, the moisture and oil is soaked into that surface
23 and the powder would have nothing to adhere to.

24 So the first thing that limits

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1 us is the type of surface to deal with; second is the manner
2 in which the object was handled. Sometimes, items that were
3 handled may be taken with the individual, leaving no prints
4 at all upon that for us to deal with.

5 If an extreme amount of force
6 is exerted on that surface, the fingerprint will -- the
7 finger will actually flatten out, making it very difficult
8 to see the ridge detail, if not obliterating it altogether.

9 If -- if the finger touches a
10 surface and it slid across that surface, you have a sliding
11 motion that wipes out the ridge detail present in that
12 latent print, leaving you with just a smudging or a smear
13 with no identifying characteristics.

14 The condition of the
15 individual's hands plays an important part. As I stated
16 earlier, the latent fingerprint is mostly moisture and oil
17 that's left behind. If an individual has extremely dry
18 hands, very little moisture or oil is present. It makes it
19 very difficult to leave behind an identifiable latent print.

20 If the individual's hands are
21 extremely sweaty or moist, a lot of moisture could be
22 deposited on that surface. And if there is any kind of
23 slipping or anything like that, it makes it very difficult
24 to leave behind identifiable latent prints.

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1 Q Analyst Cabrales, in this case, when latent
2 prints were developed inside Apartment 317, was it possible
3 for you to determine when the print had been deposited on a
4 particular surface?

5 A No.

6 Q Under the right circumstances, based upon
7 your training and experience as a crime scene analyst, can
8 prints remain on a surface for a substantial period of time?

9 A Yes, depending upon the atmospheric
10 conditions.

11 Q Are you able to tell us, in court today,
12 precisely when or under what circumstances any of the prints
13 were placed upon the surfaces from which they were developed
14 by you and Analyst Norman February the 20th, 1992?

15 A There is no scientific means to determine
16 that.

17 Q Now, in addition to the items of evidence
18 you've already identified, either on February the 20th or
19 after that, were some glass fragments recovered?

20 A Yes.

21 Q Where were they located?

22 A The glass fragments were recovered -- they
23 were scattered about on the living room-kitchen floor area.

24 Q You said the living room-kitchen floor?

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1 A Yes.

2 Q On what date was that?

3 A That was done on the 24th of February.

4 Q Did you and Sheree Norman return to the
5 scene on February the 24th --

6 A Yes.

7 Q -- 1992?

8 A Yes.

9 Q What was the purpose for going once again to
10 the scene?

11 A Detective Scholl requested that we meet him
12 there and asked that some fragments of the brown glass be
13 collected.

14 Q To your knowledge, was Detective Scholl a
15 lead homicide detective assigned to the case?

16 A Yes.

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

19 THE COURT: You may.

20 BY MR. HARMON:

21 Q I'm showing you an evidence envelope which
22 had been marked as proposed Exhibit 82.

23 Are you able to tell us what
24 items were placed inside this envelope?

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MR: PPO-87058-R0001966

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1 A Yes. These were the glass fragments that
2 were found in the apartment.

3 Q Is this envelope also in a sealed condition?

4 A Yes.

5 Q Using the scissors, will you cut it open on
6 the side, leaving the seals intact.

7 A (Complies.)

8 Q Please remove the contents.

9 A (Complies.)

10 Q For the record, what have you removed?

11 A I've removed a plastic vial containing brown
12 glass fragments.

13 MR. HARMON: Your Honor, may we have the
14 plastic vial and its contents marked as proposed Exhibit
15 82-A?

16 THE COURT: You may.

17 BY MR. HARMON:

18 Q Are you able to identify these as glass
19 fragments which look like the fragments recovered on
20 February the 24th, 1992?

21 A Yes, based upon Sheree Norman's initials.

22 Q Do they appear to be in substantially the
23 same condition now as they were on the date they were
24 recovered?

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1 A Yes.

2 Q Did you see glass fragments in the floor
3 area of the kitchen and living room?

4 A Yes, I did.

5 MR. HARMON: Your Honor, if we may, I'd like
6 the witness to step once more to the easel.

7 THE COURT: Mr. Cabrales, will you do so?

8 MR. HARMON: I've lost track of the pointer,
9 Judge.

10 Right in front of me.

11 BY MR. HARMON:

12 Q Will you simply point, Analyst Cabrales, to
13 the area generally where the glass fragments were recovered
14 from, which are inside proposed 82-A.

15 A The glass fragments were found in the living
16 room and on the floor of the kitchen area and in this
17 general area here. (Indicating)

18 Q Will you draw us a circle with the red
19 marker encompassing that general area and please write
20 inside the circle, glass fragments.

21 A (Complies.)

22 Q Thank you. Now, down in the lower left-hand
23 corner of Exhibit 3, will you put your initials.

24 A (Complies.)

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1 Q Thank you. And you placed A.L.C.?

2 A Yes.

3 Q Please return to the witness chair.

4 A (Complies.)

5 Q Analyst Cabrales, on February the 21st,
6 1992, did you have occasion to photograph and examine a 1978
7 Datsun, which bore Nevada license number 108 DSA?

8 A Yes.

9 Q Where was this vehicle when you examined it?

10 A It was in our garage at the criminalistics
11 bureau.

12 Q Do you have any recollection, the preceding
13 day, February the 20th, 1992, of seeing it in the area of
14 the Katie Arms apartment complex?

15 A Yes.

16 Q Where was it?

17 A It was located in the west parking lot of
18 the Katie Arms apartments.

19 Q I'm showing you two photographs, which are
20 marked as proposed Exhibit 66 and 67.

21 Are these photographs of the
22 Datsun that you examined the next day at the crime lab
23 garage?

24 A Yes.

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1 Q Do these photographs depict the vehicle in
2 the location where you originally saw it February the 20th,
3 1992?

4 A Yes.

5 Q Are the photographs true and accurate?

6 A Yes.

7 MR. HARMON: Your Honor, the State offers
8 proposed Exhibits 66 and 67.

9 MR. WOLFSON: No objection.

10 THE COURT: They will be admitted.

11 MR. HARMON: Thank you.

12 THE CLERK: They're already admitted.

13 MR. WOLFSON: I don't have any objection.

14 THE COURT: That's what happens when you get
15 a two week layoff.

16 BY MR. HARMON:

17 Q Did you examine the interior of Exhibit 66
18 and of the vehicle portrayed in Exhibits 66 and 67?

19 A Yes, I did.

20 Q Did you impound any items that you found
21 inside the Datsun?

22 A Yes, I did.

23 Q Did you determine ownership of that
24 particular car?

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1 A No, I did not.

2 Q What items did you recover?

3 A There are two items found within the
4 vehicle. On the right front passenger seat area, there was
5 a receipt from Discount Tire Company, I believe it was; also
6 underneath the driver's seat was a rent receipt in the name
7 of Lauri Jacobson.

8 Q When you examined the car, what was its
9 condition?

10 A It was pretty filthy and unkempt; the
11 exterior was banged up.

12 Q What about the doors and windows; do you
13 remember if they were up or down, if the vehicle was locked
14 or unlocked?

15 A The driver's door was unlocked and the
16 window was down. The passenger side, the door was locked
17 and the window was up.

18 Q Did you find keys inside the car?

19 A Yes. There was a set of keys in the
20 ignition switch.

21 Q I'm still talking about the Datsun which is
22 shown in Exhibits 66 and 67.

23 A Yes.

24 Q You said the keys were in the ignition?

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1 A Yes.

2 Q Simply an ignition key or other keys?

3 A There was one ignition key and there was a
4 second key on that ring.

5 Q I'm showing you now what has been marked as
6 proposed Exhibit 84.

7 Are you able to identify the
8 evidence envelope?

9 A Yes, I am.

10 Q Are these items personally recovered by you?

11 A Yes, they were.

12 Q Will you remove the contents?

13 You will find that they have
14 been marked as proposed Exhibit 84-A and 84 B.

15 Are you able to identify them?

16 A Yes, I am.

17 Q What is proposed Exhibit 84-A?

18 A Proposed Exhibit 84-A is the Katie Arms
19 apartment rent receipt that I found underneath the driver's
20 seat of the Datsun.

21 Q Is that item in substantially the same
22 condition now as it was when you recovered it February the
23 21st, 1992?

24 A Yes.

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MRIPPO-87058-ROR01972

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1 Q Regarding proposed 84-B, what is that?

2 A This is a Discount Tire Company receipt,
3 which was located on the right front passenger seat area.

12

4 Q Is the Discount Tire receipt, proposed 84-B,
5 in substantially the same condition now as it was on the
6 date you recovered it, February the 21st, 1992?

7 A Yes.

8 MR. HARMON: Your Honor, the State offers
9 proposed Exhibits 84, 84-A and 84-B.

10 MR. WOLFSON: I don't have an objection to
11 that.

12 THE CLERK: 84-A has already been admitted.

13 MR. HARMON: They are already in.

14 THE COURT: 84 is admitted and 84-B. 84-A
15 already was admitted. If not, it is now.

16 (Whereupon, Plaintiff's
17 Exhibits 84, 84-A and 84-B
were admitted into evidence.)

18 MR. HARMON: Thank you.

19 BY MR. HARMON:

20 Q Analyst Cabrales, on February the 24th,
21 1992, were you involved in photographing and examining a
22 1987 red Nissan, 300ZX, which bore the Nevada license number
23 139 CUS?

24 A Yes.

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1 Q Where were you when you conducted that
2 examination?

3 A I conducted that examination at our
4 criminalistics bureau garage.

5 Q What was your purpose in examining the red
6 Nissan?

7 A To examine it for any kind of evidence that
8 may be present in the vehicle, basically fingerprints,
9 hairs, fibers, anything that could tie it in.

10 Q Were you able to develop and lift any latent
11 prints from the red Nissan?

12 A No.

13 Q Did you find any evidence that a portion of
14 the vehicle had been wiped?

15 A On the exterior -- exterior of the driver's
16 door window, it appeared that something wet had been wiped
17 across that surface.

18 Q Regarding this surface, if a surface is
19 wiped down, will that have an effect upon the latent prints
20 which may have been left behind?

21 A Yes.

22 Q What happens to the latent?

23 A A latent fingerprint is very fragile
24 evidence. As I mentioned earlier, it's mostly moisture, and

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12 1 so anything that comes across -- in contact with that latent
2 print could easily obliterate it or smudge it, making it
3 unable to identify.

4 Q I'm showing you Exhibits 64 and 65.

5 Are these photographs of the
6 Nissan you examined on February the 24th, 1992?

7 A Yes.

8 Q Is it your testimony that you were unable to
9 develop any identifiable latent prints from this vehicle?

10 A Yes.

11 Q Did you examine both the interior and
12 outside of the car?

13 A Yes.

14 Q When you observed the car, did it have
15 primer paint on it somewhere?

16 A Yes, it did.

17 Q Where?

18 A It was located on the right front fender.

19 Q Is that depicted on the photograph you are
20 looking at, Exhibit 64?

21 A I meant to say --

22 THE COURT: You mean left --

23 THE WITNESS: I meant to say left front,
24 left front, left front driver's fender -- and yes, it is

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depicted.

BY MR. HARMON:

Q Somewhat later, on March 11th, 1992, did you examine a Ford Pinto?

A Yes, I did.

Q Where were you when you examined the Pinto?

A That was at the criminalistics bureau garage.

Q What was your purpose in examining the Pinto?

A To photograph it, fingerprint it for fingerprint evidence, and collect anything out of the vehicle that was applicable to the investigation.

Q I'm showing you proposed Exhibits 71, 72 and 73.

Are those photographs of the Ford Pinto?

A Yes, they are.

Q Do they depict the vehicle as you saw it on March the 11th, 1992?

A Yes.

Q Are the photographs true and accurate?

A Yes.

Q You've mentioned that you had an interest in

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1 processing this car for the presence of latent prints?

2 A Yes.

3 Q Did you develop and lift any prints?

4 A Yes. They were latent prints recovered from
5 this vehicle.

6 Q Do you remember, from the interior only or
7 from both the interior and exterior?

8 A Interior and exterior.

9 Q In connection with any of the latent print
10 processing that you did, did you get involved in the next
11 step, which is the comparison of latents lifted with the
12 known prints of any person or persons?

13 A No.

14 Q Who was the latent print examiner at the Las
15 Vegas Metropolitan Police Department, to your knowledge, who
16 did the comparison work?

17 A Latent print examiner Munson Moser was
18 assigned to the case.

19 Q Will you spell the names for the record,
20 please?

21 A Munson, M-u-n-s-o-n; Moser, M-o-s-e-r.

22 Q Did you recover anything which you thought
23 might have evidentiary value from inside the Ford Pinto,
24 which is portrayed in proposed Exhibit 71, 72 and 73?

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MR:Po-07058-ROA01977

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1 A Yes, I did.

2 Q What did you recover?

3 A I recovered, from inside the vehicle, a
4 plastic sunglass case -- it was an Oakley M frame sunglass
5 case -- as well as there were three cloth gloves recovered
6 from inside of the vehicle.

7 Q Where did you find the sunglass -- the box?

13

8 A That box was found on the floorboard of the
9 driver's rear area, rear driver's floorboard area.

10 Q I'm showing you a bag marked as proposed
11 Exhibit 85.

12 Are you able to identify the
13 bag?

14 A Yes.

15 Q What is the basis of your identification?

16 A It bears my signature and personnel number.

17 Q Did you place something inside this bag on
18 March the 11th, 1992?

19 A Yes.

20 Q What did you put inside?

21 A I placed a sunglass box inside this bag.

22 Q Will you now remove the contents?

23 A (Complies.)

24 Q The contents have been marked as proposed

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1 Exhibit 85-A.

2 Are you able to identify that
3 proposed exhibit?

4 A Yes.

5 Q What is the basis of your identification?

6 A It bears my initials on the item.

7 Q Where did you recover the item from?

8 A This was the left rear floorboard area of
9 the Ford Pinto.

10 Q The vehicle depicted in proposed Exhibits
11 71, 72 and 73?

12 A Yes.

13 Q Is this sunglass box or the case in
14 substantially the same condition now as it was on the date
15 you found it, March the 11th, 1992?

16 A Yes, except for the fact that there is now
17 black fingerprint powder on this item.

18 Q Do you recall if any latent prints were
19 recovered from proposed Exhibit 80- -- is it 85?

20 THE COURT: 85.

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22 BY MR. HARMON:

23 Q -- from 85-A?

24 A Yes, there was a latent print recovered from

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1 this item.

2 Q A single latent print?

3 A Yes.

4 MR. HARMON: Thank you.

5 Your Honor, the State offers
6 proposed Exhibits 85 and 85-A.

7 MR. WOLFSON: No objection.

8 THE COURT: 85 and 85-A are admitted.

9 (Whereupon, Plaintiff's
10 Exhibits 85 and 85-A
were admitted into evidence.)

11 BY MR. HARMON:

12 Q Do you have any way of knowing when or under
13 what circumstances the single latent print, which you were
14 able to lift, was deposited on Exhibit 85-A?

15 A No.

16 MR. HARMON: May we have the Court's
17 indulgence, Your Honor?

18 THE COURT: Certainly.

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

21 MR. HARMON: We'll pass the witness, Your
22 Honor.

23 THE COURT: All right. Let's take a short
24 recess.

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IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL RIPPO,

Appellant,

-vs-

E.K. McDANIEL, et al.,

Respondent.

No. 53626

FILED

OCT 19 2009

TRACEY K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
CHIEF DEPUTY CLERK

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1 THE COURT: In reference to this case,

2 MR. LUKENS: Thank you.

3
4 Whereupon,

5 ROBERT ARCHIE

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

10 THE CLERK: Thank you.

11
12 DIRECT EXAMINATION

13 BY MR. WOLFSON:

14 Q Good morning, sir.

15 Would you please state your
16 name and spell it for the record.

17 A Robert Archie; A-r-c-h-i-e.

18 Q Mr. Archie, how are you employed?

19 A I'm an attorney at law.

20 Q Pursuant to your occupation, do you
21 currently represent a gentleman by the name of Tom Sims?

22 A I do.

23 Q Are you aware that he is a witness in this
24 case, styled State of Nevada versus Michael Rippo?

13

1 A Yes, I am.

2 Q When did you first become aware that client
3 Sims was a witness in this case?

14

4 A I don't recall the date or even the year. I
5 believe at the time that he contacted me that he might be a
6 witness in this case. I don't believe that he was a client
7 at the time.

8 I'm not for sure. I have to
9 check the dates, but I don't believe at the time that he was
10 a client.

11 Q I can represent to you that there has been
12 some testimony that you came into play in this matter in the
13 fall and winter of 1993 or thereabouts.

14 My question is: Do you recall
15 having discussions with John Lukens concerning Tom Sims?

16 A Yes, I do.

17 Q And could you tell us what those discussions
18 were?

19 A Basically, I first recall a telephone
20 conversation from Mr. Lukens, asking me if I represent Tom
21 Sims. And I had indicated to him that in the past I had,
22 and if he needed representation, yes, I would be
23 representing him.

24 And he indicated to me at that

14 1 time that he wished to discuss the facts of this particular
2 case with Mr. Sims.

3 I asked him not to do so until
4 I had debriefed Tom to find out what this was all about.

5 Q And did you, in fact, have a debriefing with
6 Mr. Sims?

7 A Yes, I did.

8 Q From that, did you eventually have further
9 discussions with the District Attorney's Office?

10 A Yes. I told them they were free to
11 interview Mr. Sims, but he felt more comfortable if I was
12 present when the interviews took place.

13 Q Were you present?

14 A Yes, I was.

15 Q Do you remember how many meetings Mr. Sims
16 had with representatives of the District Attorney's Office
17 in your presence?

18 A Two.

19 Q If I told you that these meetings took place
20 somewhere in the fall or winter of 1993, does that sound
21 accurate?

22 A It -- it does.

23 Q I take it these meetings took place in John
24 Lukens' office.

14 1 A Yes. One meeting was in John Lukens' office
2 with Teresa Lowry present, myself and Tom Sims.

3 The other meeting that I recall
4 took place in Mr. Harmon's office; and I was in there just
5 briefly and I left that meeting to go into another meeting
6 with the State's co-counsel.

7 Q The meeting with Mr. Harmon was just a
8 couple of weeks ago?

9 A Yes, that is correct.

(Whereupon, a sotto voce at
this time.)

10 BY MR. WOLFSON:

11 Q Do you recall what your client Tom Sims told
12 Mr. Lukens -- and let me back up.

13 Who else was present during
14 that first face-to-face meeting?

15 A John Lukens, Teresa Lowry, Tom Sims, Robert
16 Archie.

17 Q Do you recall what Tom Sims told District
18 Attorneys Lukens and Lowry during that meeting?

19 And let me help you, Bob. We
20 are focusing on what Tom Sims may have said to the District
21 Attorney's Office reference what he, meaning Sims, says
22 Michael Rippe admitted to him concerning the case.

23 A It was a rather extensive conversation. I
24

14
1 did not take notes of what he said. I don't remember how
2 long we were there and exactly what took place.

3 I had no reason to take notes.
4 My client was not a suspect and the investigation was not
5 focusing on him.

6 So basically I simply sat there
7 so that he felt more comfortable talking to the District
8 Attorney's Office, and I can only tell you in a most
9 general -- in very general terms what that conversation was
10 about.

11 Q Did you perceive this to be just that, an
12 investigation?

13 A I -- I perceived it as an investigation.

14 Q Conducted by District Attorneys Lukens and
15 Lowry?

16 A No. I didn't consider they were
17 investigating. I considered that they were simply trying to
18 verify information that had been submitted to them from
19 other sources. That's the feel I got from what I was
20 listening to.

21 Q Do you recall whether or not Tom Sims told
22 the District Attorney that Michael Rippo had confessed to
23 the killings?

24 A I wouldn't characterize it as that. I'd

14 1 characterize it that Mr. Sims had indicated that Rippo had
2 told him pertinent facts about the homicide. That was the
3 way I recalled it.

4 Whether -- to use the term
5 confession or not, I don't -- I'm not sure. But I do recall
6 that there was a conversation about what Mr. Rippo had
7 allegedly told Mr. Sims about facts pertaining to this
8 particular case, that only a person involved in the case
9 would have had knowledge of. That's the way I perceived it
10 from my sitting there for those number of hours.

11 Q Did you feel that your client was an
12 essential witness to the State's case?

13 A It wasn't for me to make that determination.
14 The District Attorney's Office said that they wanted to
15 interview him. After I had interviewed my client and
16 concluded that he was not involved in the incident, I simply
17 told him to go to the D.A.'s Office with me and tell them
18 the truth.

15 19 Q Do you recall whether or not Mr. Sims said
20 to the District Attorneys that Mr. Rippo had told him that
21 he, meaning Mr. Rippo, had accidentally killed the one girl
22 so he had to kill the other?

23 A I recall that conversation taking place.
24 And I can't tell you if it was at the first debriefing that

15

1 I had with Mr. Sims or it was with the first full
2 conversation that he had with Mr. Lukens.

3 Q Did -- or do you recall Mr. Sims relating
4 that alleged statement by Mr. Ripppo to District Attorney
5 Lukens and Lowry?

6 A I recall him relating that statement. I
7 don't recall if he made that statement to me or he made it
8 at a later time to me in the presence of Mr. Lukens, but
9 that conversation had been related to me at some time.

10 Q Might he have related it to Lukens and
11 Lowry?

12 MR. HARMON: Objection; this calls for
13 speculation.

14 THE WITNESS: I don't know.

15 THE COURT: Sustained.

16 THE WITNESS: I don't know.

17 BY MR. WOLFSON:

18 Q Do you recall whether Mr. Sims related to
19 District Attorneys Lukens and Lowry that in reference to the
20 girls, that Ripppo said both of them were fine, he could have
21 fucked both of them, but I, meaning Ripppo, didn't and that
22 Mr. Ripppo said that means I'm cured?

23 A I do recall a conversation concerning the
24 statement I am cured.

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Q In Mr. Lukens' office --

A I'm not sure --

Q -- or in your pretrial with your client?

A I'm not sure where that happened.

I do recall the statement was made because I asked the question: What does that mean?

Q And did Mr. Sims respond?

A Yes, he did. But -- just --

Q I didn't ask you what he said.

Did he respond?

A Yes, he did respond.

Q From your recollection of these events, Bob, as you sit here today, do you believe that there were great discrepancies between what Mr. Sims may have told you in attorney/client consultations and what he told the representatives of the District Attorney's Office?

A No.

Q As you sit here today, do you believe he told the District Attorney's Office, in essence, everything he told you in your attorney/client conversations?

A I'd have to fudge on that a little bit.

Tom answered every question that they asked of him. He did not volunteer information. He didn't want to be there and he basically asked me how he

15

1 should conduct himself.

2 And I said if they ask you a
3 question, answer it, and that's basically what he did do.

4 He didn't just walk in, give
5 them a narrative. If they asked him a question, he gave
6 them what he considered -- well, he gave them an answer. If
7 they didn't ask a question, he didn't volunteer anything.

8 MR. WOLFSON: Your indulgence, please.

9 BY MR. WOLFSON:

10 Q Before -- well, at some point in time, did
11 you become aware of what your client had told both the
12 police in a voluntary statement and to the Grand Jury?

13 A Yes.

14 Q Did you learn of those interviews and
15 testimonies before your debriefing with your client?

16 A No. I would have learned of all of that
17 after my debriefing of my client.

18 Q Before your meeting with Lukens and Lowry?

19 A I'll have to explain it this way: I had my
20 debriefing with Tom. That was before he was interviewed by
21 Lukens. It was before he went to the Grand Jury.

22 Does that answer your question?

23 Q It certainly helps, yes.

24 The Grand Jury met in this

15

1 case, I believe, in June of '92. So we're backing up almost
2 12 to 15 months.

3 You do know though that your
4 meeting with your client and Lukens and Lowry was after the
5 Grand Jury?

6 A I -- I don't have any idea.

7 Q Okay.

8 A It is my perception that they wouldn't have
9 called me -- in other words, when they called me concerning
10 talking to Tom Sims, I assumed it was before the case went
11 to Grand Jury.

12 I don't know for sure. I'm
13 simply speculating. I don't know.

(Whereupon, a sotto voce at
this time.)

14
15 BY MR. WOLFSON:

16 Q Did there come a time when you had
17 discussions with representatives of the District Attorney's
18 Office concerning any agreements or plea bargains or
19 settlements with regard to Mr. Sims' pending cases?

20 A Yes, there came a time when I discussed the
21 possibility of favorable treatment for my client with John
22 Lukens.

23 Q Who brought up the subject?

24 A I did.

HR100-07000-01613

15 1 Q Could you tell us about that conversation;
2 and when, in relation to what we're talking about, would
3 this have occurred?

4 A I don't recall when it took place.

5 When I found out that the
6 District Attorney's Office might want my client to testify
7 at some future proceeding, I asked them if there was a
8 possibility that we could negotiate the case that I had
9 pending --

10 Q Let me interrupt for just a moment.
11 Would this have occurred,
12 though, after his meeting with the District Attorneys?

16 13 A I would assume it did, yes.

14 Q Thank you. Please go on.

15 What did you do?

16 A Discussed the matter with Mr. Lukens. And I
17 don't recall if I did it on the phone or in person, because
18 I run into these deputy D.A.s in the hall every day, and if
19 you happen to think of what you want to talk to them about,
20 you grab them right there because you can't reach them on
21 the phone.

22 And --

23 Q I'm with you a hundred percent on that one.

24 A So wherever I found him, I discussed it

16

1 momentarily, and he said he'd think about it and get back to
2 me; and at a later time, he got back to me and said, no,
3 can't make you any deal or any agreement for favorable
4 treatment. It would be inappropriate.

5 And that was the end of the
6 conversation that I had with him, except he asked me: In
7 light of that, what are you going to do?

8 And I said I'm going to have my
9 client just tell the truth and we'll deal with my case
10 whenever we have to in Justice Court.

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

13 BY MR. WOLFSON:

14 Q I believe Mr. Sims testified that the pending
15 charge arose out of events in early to mid 1993, I believe,
16 is what he said.

17 He also said that his case,
18 wherein he is charged with possession with intent to sell
19 and ex-felon possession of firearm, is still pending.

20 Do you represent him on that
21 case?

22 A Yes, I do.

23 Q Was there any understanding between yourself
24 and the District Attorney's Office to continue that matter?

16

1 A No. There was no understanding. I just
2 used the circumstances to my advantage to try to continue
3 the case as long as I could.

4 Q What circumstances?

5 A That -- one, that I was ill. I'm a terminal
6 cancer patient. I'm not going to die tomorrow, but I won't
7 live out my entire life span.

8 Because of that, I was on
9 radiation and cancer treatment and I had to continue a
10 number of cases a number of times because of my reaction to
11 radiation.

12 Q You are talking your personal circumstances?

13 A My personal circumstances.

14 So I continued the case.

15 And there were -- this wasn't
16 the only case. There are a number of cases that were
17 continued as a result of my medical condition.

18 Q Is that the primary reason why Tom Sims'
19 case has been continued for almost years when, I think you
20 would agree, a case like that normally doesn't last that
21 long in our system?

22 A It depends on who the attorney is. I have a
23 number of cases that are that old in the system. I'm a past
24 master at continuing cases.

16

1 Q How about -- not a present master?

2 A It is one of the complaints of the D.A. that
3 if anybody can think of an excuse to continue a case, Robert
4 Archie can. And I guess that is an indictment of me, but I
5 found the older a case gets, the better the chances are for
6 the defense under most circumstances.

7 And I have not violated the law
8 in any way. I have simply taken advantage of circumstances,
9 when the judges have allowed me to and the District
10 Attorney's Office hasn't complained too much about it.

11 Q Would it be fair to say, Mr. Archie, that
12 you really don't specifically recall what Tom Sims said to
13 Lukens and Lowry in their discussions concerning what Mr.
14 Rippe may have said, when comparing that to what Mr. Sims
15 may have told you in attorney/client consultations?

16 A I can re- -- I can recall it in general
17 terms; a specific line by line statement, no. But I can
18 tell you generally -- I can give a general summary of what
19 Mr. Sims said to me, what he said to the D.A.'s Office in my
20 presence, and how I recollect that; as line for line, I
21 cannot.

(Whereupon, a sotto voce at
this time.)

22
23 BY MR. WOLFSON:

24 Q Do you remember any discussion with your

16

1 client and Lukens and Lowry concerning phone numbers and
2 whether or not Mr. -- Mr. Sims knew of whose phone number
3 was this and whose phone number was that?

4 A I recall a conversation where, I believe it
5 was John Lukens asking me a couple questions about phone
6 numbers, but I don't recall what the response was, whether
7 he recognized phone numbers or he did not, but I do recall
8 such a conversation taking place.

9

10

(Whereupon, a sotto voce at
this time.)

11

BY MR. WOLFSON:

12

Q Do you remember any discussions, in your
13 meeting with Lukens and Lowry and Mr. Sims, wherein Mr. Sims
14 told Lukens and Lowry about him disposing -- him meaning
15 Sims -- disposing of some personal property Mr. Rippo
16 allegedly had brought to his business, such as a suitcase
17 and some cassette tapes?

18

A I remember that conversation taking place
19 between myself and Sims, but I don't recall if that
20 conversation took place between -- at the meeting that
21 Lukens had with me and Sims. But I definitely recall that
22 conversation taking place between myself and Sims.

23

MR. WOLFSON: Thank you very much, Mr.

24

Archie.

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That concludes my examination.

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THE COURT: Cross-examination?

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4

CROSS-EXAMINATION

5

BY MR. HARMON:

6

Q

Mr. Archie, we've had the testimony thus far

7

in these proceedings that your client Tom Sims gave a

8

statement to Detective Scholl of the Las Vegas Metropolitan

9

Police Department on March the 2nd, 1992.

10

A

Yes.

11

Q

And, furthermore, that on June the 4th,

12

1992, he provided testimony to the Clark County Grand Jury.

13

A

Yes.

14

Q

Except for the sworn testimony given at the

15

Grand Jury hearing and the formal statement given to

16

Detective Scholl, as Mr. Sims' attorney, do you have any

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knowledge of other written or recorded statements?

18

A

I have no knowledge of any written

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statements by the D.A.'s Office, and I did not prepare any

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written statements because I felt that my client was not a

21

target; therefore, there was no need for me to make a record

22

of these meetings.

23

Q

I gather from what you've just said that in

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connection with conversations you had with Mr. Sims in the

1 context of the attorney/client relationship, you didn't have
2 any written or recorded statements prepared that you
3 submitted to the office of the District Attorney.

4 A That is correct.

5 Q Whenever it was that you met in the office
6 of Mr. Lukens, in his presence and that of Teresa Lowry and
7 your client Tom Sims, to your recollection, did anyone, in
8 connection with that discussion, tape record or memorialize
9 in a formal way anything that was said?

10 A No. It struck me as peculiar at the time.
11 I did make a statement to Mr.
12 Sims when we left: You are evidently not a very important
13 witness because nobody took notes and they didn't make a
14 tape recording.

15 It sort of surprised me that
16 they didn't memorialize it in some form in our presence.

17 MR. HARMON: Thank you.

18 That's all, Your Honor.

19 THE COURT: Anything else?

20

21 REDIRECT EXAMINATION

22 BY MR. WOLFSON:

23 Q Is it your testimony that the subject matter
24 that Mr. Sims related to the District Attorney could have

17 1 been valuable to their case, but for their lack of taking
2 notes, you surmised then it perhaps wasn't valuable?

3 A Yes. I surmised it wasn't valuable because
4 they didn't take notes.

5 But, you know, I don't know how
6 they conduct their business. Sometimes I don't take notes
7 when I have a client in the office because I'm afraid he'll
8 stop talking, and then as soon as they leave the office, I
9 might record it all down.

10 I just don't know what their
11 method was and why they conducted themselves as they did.

12 MR. WOLFSON: Thank you, sir. No further
13 questions.

14 MR. HARMON: Nothing further, Your Honor.

15 THE COURT: Thank you, Mr. Archie.

16 You are excused.

17 (Whereupon, the witness
18 was excused.)

19 THE COURT: All right. We'll be in recess
20 until one o'clock.

21 MR. WOLFSON: Your Honor, the discussion we
22 had at the bench before the break, are we going to make
23 arrangements for that information to be provided to the
24 Court?

17

1 MR. HARMON: We'll take care of that, Your
2 Honor. We'll make it available as soon as possible.

3 THE COURT: All right. Okay.

4 MR. DUNLEAVY: Your Honor, I brought -- I
5 didn't have time to write a brief, but I brought the two
6 cases that I'm citing. They are both United States Supreme
7 Court cases. I will mark the books.

8 THE COURT: Copy them and then give them to
9 my law clerk.

10 MR. WOLFSON: Thank you, sir.

11

12

(Whereupon, a recess was had in
the proceedings, at the
conclusion of which the
following was had:)

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Las Vegas, Nevada, February 8, 1996, 1:25 p.m.

* * * * *

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

THE COURT: We're outside the presence of
the jury.

Mr. Lukens is again on the
stand.

MR. WOLFSON: Thank you, Judge. I'd like to
continue with my examination.

THE COURT: Okay.

Whereupon,

JOHN LUKENS

recalled as a witness on behalf of defendant,
having been previously duly sworn, resumed
the stand, and testified further as follows:

REDIRECT EXAMINATION (Resumed)

BY MR. WOLFSON:

Q Good afternoon, Mr. Lukens.

RENEE SILVA6GIO, CCR 122 391-0379

1 A Good afternoon.

2 MR. WOLFSON: I think it would be
3 appropriate, subject to any problem by the District
4 Attorneys, to have a document marked as an exhibit.

5 MR. SEATON: We don't have a problem with
6 that.

7 (Whereupon, as requested by
8 counsel, Defendant's Exhibit A
9 was marked for identification
10 by the court reporter.)

11 MR. WOLFSON: This is Defendant's A, Judge.

12 THE COURT: Okay.

13 MR. WOLFSON: Mr. Lukens, I want to show you
14 what's been marked for identification as Defendant's
15 Proposed Exhibit Number A; and I'll represent to you that
16 this was provided to both parties minutes ago, after the
17 Court had a chance to peruse the case of State of Nevada
18 versus Thomas Edward Sims, Mr. Sims' underlying pending
19 criminal case.

20 And I would ask the parties to
21 stipulate that this is an authentic group of pages from the
22 case history notes of the District Attorney's file.

23 MR. SEATON: That's correct.

24 BY MR. WOLFSON:

Q This is the only copy I have, so I'm going
to have to look over your shoulder.

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If I can ask you some

questions?

A Okay.

Q Do you recognize that as a set of documents that is normally utilized in almost every single case as an internal document in your office?

A I do.

Q What is a case history?

A These are the case notes that are kept on the left-hand side of the file, and every time the case appeared in court or there is something to do with that case, a notation is made on this portion of it. It's sort of like a diary of the case.

Q Isn't it true that there didn't necessarily have to be a court appearance for an entry to be made?

A That's correct.

Q A District Attorney, who wants to note something about a case, would normally make a note on these case history forms.

Generally speaking --

A When you say normally, I don't know -- normally, but I will occasionally make notes in this section even though it doesn't appear in court.

So with reference to me, what

1 my practice is, yes, I will occasionally make notes and --
2 whether I've sub'd the case or had a telephone conversation
3 with a victim, yes.

4 Q Okay. Would you take just a few moments to
5 peruse those sets of documents -- and I took the liberty of
6 putting red stars, if you will, at certain portions that I'm
7 going to ask you questions about, so focus on those areas;
8 and I tried to put those in the order of chronological
9 entries.

10 A Oh, okay. They're backwards from the way
11 they would normally appear in the file then.

12 MR. WOLFSON: Correct.

13 MR. DUNLEAVY: And if I haven't already, I
14 move for the admission of this exhibit.

15 MR. SEATON: No objection.

16 THE COURT: Defendant's A will be admitted.

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

19 THE WITNESS: Okay.

20 BY MR. WOLFSON:

21 Q Have you had a chance to review all of those
22 documents, Mr. Lukens?

23 A I have.

24 MR. WOLFSON: For the purposes of speeding

1 up the process, Judge, I'm going to have to point Mr. Lukens
2 to certain entries.

3 THE COURT: Okay.

4 BY MR. WOLFSON:

5 Q Let me direct your attention to the entry
6 that I believe is September 14th of 1993.

7 Would you please interpret that
8 entry that is made by a deputy in to Mr. Thomas Sims' file?

9 In fact, if you can verbatim
10 read what it says.

11 A The date is 9/14/93. It appears the
12 reference is to Judge Ahlstrom's Court, which would be
13 Justice Court Number 3. The initials appear to be that of
14 another deputy in our office.

15 Q If I told you that that might be the
16 initials of -- or markings that a deputy District Attorney
17 Lynn Robinson might make, would you think that that might be
18 accurate?

19 A I don't know. I certainly wouldn't have any
20 reason to doubt you. I -- I don't know. I'm not familiar
21 with Lynn's handwriting.

22 Q What entry did that deputy put?

23 A Defendant not present, but Bob Archie was
24 present. Says: Stipulate to a continuance per John Lukens.

1 This defendant, a witness in Lukens' Rippo murder trial.

2 Q Okay.

3 A And then it goes on: Preliminary hearing
4 reset 10/20/93, nine a.m.; and then the notation for Justice
5 Court Number 3.

6 Q Please interpret what that means to you.

7 What happened and why?

8 A That would mean that the defendant was not
9 present in court. Bob Archie appeared on his behalf.

10 Bob Archie and -- if you say
11 that it was Lynn Robinson, I have no reason to doubt that.
12 Bob Archie and Lynn Robinson stipulated to a continuance and
13 that that was okay.

14 In other words, she's saying
15 she did that in accord with a request from me because Sims
16 is a witness in the Rippo murder trial.

17 Q Fair to say you probably had a conversation
18 with Lynn Robinson where you confirmed that, yes, it's okay
19 to continue this case; he's a witness for the State of
20 Nevada in a murder case?

21 A That's correct.

22 Q Okay. Moving on to the next page -- and
23 would you please interpret the next entry, date, court,
24 deputy and what is written verbatim first?

2

1 A It says October 14th, 1993. Under
2 department, I can't make that out, but according to the
3 context of the note, it does appear that the -- I can't make
4 it out what it says under department. But according to the
5 context of the note, it doesn't appear it was a court
6 appearance.

7 Again, the same attorney's
8 initials. I'll accept it's Lynn Robinson. And I seem to
9 remember that she was one that I spoke to with reference to
10 this case, so that would be consistent.

11 It says I spoke with Bob Archie
12 with reference to this case.

13 And then there is --

14 Q As per prior note?

15 A That looks like --

16 Q I'm better at this than you.

17 A Yes, you are.

18 As per prior note of 9/14/93,
19 defendant is -- and then it says: May be working with John
20 Lukens on a murder trial. We need to continue this as far
21 out as possible per my conversation with Lukens, the feds,
22 i.e. Terry -- something of ATF.

23 Q Perhaps does that say i.e., comma, Terry
24 Clark with ATF?

2

1 A I don't know about the Clark, but it says
2 i.e. Terry if or of ATF are cooperating with -- and
3 cooperating with, and then the LUEJ, and then my initials,
4 the way I enter cases on each case.

5 Q Would you please interpret what that means
6 to you.

7 A I -- I don't -- I mean, I don't know that it
8 needs interpretation.

9 At this time, I remember that
10 the feds were investigating Sims or something of that
11 nature, and I simply advised them that we had this case in
12 the office and that he was a witness in a double homicide.

13 Q Did you have conversations with federal
14 authorities concerning Tom Sims?

15 A I don't remember. It may have been possible
16 that I did, but I don't remember.

17 I think that Lynn Robinson had
18 a conversation with them, evidently, but I don't -- I don't
19 remember whether I did or not. I don't -- I certainly don't
20 remember any meetings that I had with them, if there were
21 any meetings. I don't think so.

22 Q I'm not trying to think so, but when you say
23 you don't remember, don't recall, is it safe to say you
24 might have had telephone conversations with federal agents

2

1 concerning Tom Sims?

2 A It's possible, but I -- I have no
3 recollection of it.

4 Q Would you please read the next entry
5 verbatim?

6 A 10/18/93. Again, it appears -- oh, those
7 now look like they're initials of Lynn Robinson.

8 It says: Deputy, please
9 stipulate to a continuance in this case in the ordinary
10 course or as long as possible. The defendant is working as
11 a witness in a murder case with John Lukens. Status check
12 negotiations, 1/19, eight a.m., Number 3.

13 But that doesn't appear to be
14 entered at the same time as the note.

15 Q Would you please interpret, as best as you
16 can, what that -- what caused that note to be written?

17 A I probably talked to Lynn, because, as you
18 asked me this morning, did I handle the case, no, I was not
19 handling the case, but I was aware of the case. The case
20 was on another track. Lynn Robinson was obviously the
21 deputy on that track.

22 So I asked her, it's okay to
23 stipulate to set this out as far as possible.

24 Q Why?

2 1 A Why set it out as far as possible?

2 Q Uh-huh.

3 A Because I would rather deal with Mr. Sims
4 after the Ripppo case.

5 Q When you say deal with Mr. Sims, what does
6 that mean?

7 A That means that I would rather address the
8 problem with Mr. Sims and how to handle his case after the
9 Ripppo case.

10 Q So it was your intent at that time to leave
11 this case hanging over his head until after he testified?

12 That's my choice of words, but,
13 in essence, that's accurate?

14 A I -- the answer to the question is I will
15 answer it then in my words. I did not want to resolve the
16 Tom Sims case prior to the resolution of this case.

17 Q Why?

18 A Mr. Sims was an essential witness in this
19 case in that Mr. Sims had information with reference to this
20 case.

21 Mr. Sims' availability as a
22 witness to testify in this case and to be available, he
23 would be much more likely to be available to testify if he
24 still had a case that he had to come back to court for.

3
1 In other words, if this case
2 were simply resolved one way or another and it was closed,
3 there would be nothing to keep Mr. Sims in this community.

4 Q Did you have -- I'm sorry.

5 A So that was a major factor in my
6 consideration.

7 Q Do you recall whether Mr. Sims had any prior
8 felony convictions?

9 A I do.

10 Q Did you know that he had prior felony
11 convictions at the time of your handling this, in the way
12 you've described, by agreeing to continuances?

13 A I'm sorry. What do you mean?

14 Q During this time frame --

15 A Oh, I understand. Not only did I know that
16 Mr. Sims had prior felony convictions, I knew that Mr. Sims
17 had been in prison and had been in prison with Mr. Rippe,
18 and that there was a rather close association between Mr.
19 Rippe and Mr. Sims. So I was certainly aware of that, yes.

20 Q If this case had proceeded without
21 continuances and Mr. Sims were to acquire a felony
22 conviction, as a result of this case, would it be entirely
23 possible that Mr. Sims could have received a prison
24 sentence?

3
1 A You are asking me a possible question. It's
2 certainly possible.

3 Q And, therefore, his availability would have
4 certainly been guaranteed in that fashion, wouldn't it?

5 A If I could guarantee a conviction in a
6 criminal case, you are absolutely correct.

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

8 BY MR. WOLFSON:

9 Q Mr. Sims could have also been a recipient of
10 the habitual criminal statute in addition to whatever
11 potential punishment for these felonies; isn't that true?

12 A I don't know.

13 Q Okay. Let me ask you to move on to the next
14 entry, same question, date and verbatim reading.

15 A 1/19/94. Defendant not present; Ashby for
16 Archie; status check negotiations and continuance due to
17 work with Lukens on murder case.

18 Q Do you know who made that entry?

19 A It appears to be Steve Owens.

20 Q Do you recall -- and who is he?

21 A A deputy in our office.

22 Q Do you recall having any conversations with
23 Steve Owens concerning this case?

24 A Absolutely not.

3

1 Q Is it uncommon for a deputy handling a case
2 that's set for preliminary hearing, who is familiar with the
3 case history of a case, to come to you in this environment
4 and ask you, John, what's the status of this case? This guy
5 is a witness in a murder case. What's the status? What
6 should I do? Is that a common practice in the D.A.'s
7 Office?

8 A Should be.

9 Q Is it?

10 A It should be.

11 Q Does it happen on a regular basis?

12 A Probably.

13 Q Okay. Could Mr. Owens have called you and
14 made that inquiry of you, which would have caused him to
15 have made that entry?

16 A That's one way. And if I were still
17 involved in the case at that time, I would -- that's -- I
18 would have said that.

19 Q Involved in what case?

20 A If I were still involved in the Rippe case
21 at that time, I would have said that.

22 MR. WOLFSON: Now I think that the Court
23 would advise you that you are disqualified from further work
24 on the Rippe case in March of 1994.

1 Is that what our court clerk
2 advised us?

3 THE COURT: That's correct.

4 THE CLERK: Yes.

5 BY MR. HOLIFSON:

6 Q March 24th of 1994.

7 A Okay.

8 Q Do you accept that as a correct
9 representation?

10 A Well, I'm not going to sit here and argue
11 with the judge and the clerk. Of course, I --

12 Q Okay. And the date of this last entry again
13 was --

14 A January 19th, '94.

15 Q Which precedes the order disqualifying you
16 from working on the Rippo case?

17 A Yes.

18 Q Okay. Let's move down to the next entry,
19 please.

20 And what is the date of that
21 entry?

22 A 3/21 --

23 Q I'm sorry, the date where I have a red star.

24 A 4/19/94.

3 1 Q Okay. So this is about a month and two
2 weeks, roughly, after you are ordered disqualified from
3 working the case of State of Nevada versus Michael Rippe.

4 A Correct.

5 Q Okay. Would you please read verbatim what
6 that says?

7 A Ahlstrom; and then the initials are LUKJ,
8 but that's not my writing; defendant not present with
9 Archie; status check on negotiations.

10 And then there is an arrow
11 that -- from a previous entry, that is also not in my
12 handwriting, that says possible 30 days; must find out what
13 negotiations are to tell Judge for next time; return file to
14 deputy Rojas; and then a date, 11/28/94, at eight o'clock.

15 Q Okay. Now, are you saying that you don't
16 believe you appeared at that court proceeding, which is
17 labeled April 19th, 1994?

18 A I don't know. I don't have a recollection
19 of appearing at that court hearing.

20 Q You knew --

21 A And my initials are not in my hand.

22 Q Okay. The initials would show what deputy
23 normally appears.

24 Indicates your initials, but

4 1 they're not in your writing?

2 A Correct.

3 Q Okay. And you don't have an independent
4 recollection whether you did or did not?

5 A I do not.

6 Q Could you have?

7 A I may have. I may have been there.

8 Q All right. I'm going to ask you to go down
9 to the next entry and do the same thing, please.

10 A 11/28/94. Those initials would indicate
11 Jansen for Ahlstrom. I can't read the deputy's initials.
12 Defendant not present, without --

13 Q Does it say not present?

14 A I don't know. Does it say -- it says
15 defendant not present, but there is some lines through the
16 N, so I don't -- I don't know.

17 Q Okay.

18 A And there is a thing that says something --
19 an initial that says check negotiations, and then -- I can't
20 read the next.

21 It says return file to Rojas.
22 And I can't read what's next. Something else is crossed
23 out. Archie says negotiations by Lukens, 12/28.

24 Q Can you give us a reasonable interpretation

4

1 of what that means?

2 A Evidently the case was in court on November
3 20th -- or on November 28th in Jansen's, who was sitting for
4 Ahlstrom, and the case was continued to December 2nd, with
5 the note to return the file to deputy Rojas, who is a deputy
6 in our office, and Archie made some negotiations with
7 reference to negotiations by me.

8 Q Do you have a recollection of talking with
9 Bob Archie about negotiating that case?

10 A No.

11 Q And would you please read this entry?

12 A 7/11/95. Ahlstrom --

13 MR. DUNLEAVY: I'm sorry. I didn't hear the
14 date.

15 THE WITNESS: 7/11/95; Ahlstrom's court; and
16 the deputy appears to be Doug Herndon.

17 BY MR. WOLFSON:

18 Q Or perhaps Craig Hendricks. I couldn't
19 tell.

20 A I don't know.

21 Q Okay.

22 A No, must have been Doug Herndon, because
23 there was a D instead of C.

24 Defendant is present with

4
1 Archie; status check per Archie: He and Lukens have been
2 passing this case because defendant is witness in double
3 homicide case set for trial. Status check 11/7, eight a.m.,
4 Justice Court 3.

5 Q Would you interpret that, please?

6 A I don't know what about it needs
7 interpretation.

8 Q Well, who said what because of -- what was
9 said to them?

10 A Evidently, according to -- evidently -- if I
11 interpret it -- I don't think it needs it, because the note
12 says that according to Bob Archie, he and Lukens have been
13 passing this case because defendant is a witness.

14 Q Okay. And then would you please read this
15 entry? (Indicating)

16 A 12/2/94. Does that look like a --

17 Q You know, I'm not the one testifying, but
18 that's what I thought it looked like.

19 A 12/2/94, but the entry under it is 2/5/96.
20 So there is some question as to the date. Ahlstrom's court.
21 I cannot make out the deputy that appeared.

22 Defendant not present with
23 Archie; status check negotiations, 6/28, eight a.m.,
24 Department Number 3. Supposed per Archie defendant to

4 1 testify in murder case for Lukens. Return file -- and says
2 return the file to me.

3 Q And how would your interpretation be of that
4 entry?

5 A Again, I -- it seems to be fairly
6 straightforward.

7 Q Thank you. Not to be redundant, but do you
8 have any recollection of any conversations with any federal
9 authorities --

10 A No.

11 Q -- concerning a potential federal
12 prosecution of Tom Sims?

13 A I do not. I remember a discussion with
14 someone -- and I don't know whether it was a deputy in our
15 office or could have been a federal authority -- but it had
16 something to do with the fact that there were some drugs and
17 a weapon was found with the drugs and that is why the feds
18 were interested in it.

19 But whether that came from a
20 federal officer or a -- or was relayed third hand through
21 somebody else in our office, I don't know. I don't
22 remember.

23 Q Regarding the entry made, reference the
24 October 14th of '93 entry, would it be a fair conclusion to

5 1 draw from your experience in the D.A.'s Office, in how
2 deputies communicate amongst each other, that the deputy who
3 was handling the Tom Sims matter on this date had a
4 conversation with you and that you related that you had been
5 in touch with the federal government concerning Tom Sims?

6 I mean, read it again out loud
7 for the record.

8 A I spoke with Bob Archie with reference to
9 this case, as per the prior note of September 14th of 1993.
10 Defendant is working with John Lukens on a murder trial. We
11 need to continue this as far as possible to --

12 Q Now, who made that note?

13 A I'm accepting your representations that
14 that's Lynn Robinson.

15 Q Or another deputy in the office, correct?

16 A Correct.

17 Q Okay. And then below that is --

18 A Right. Per my conversations with Lukens,
19 the feds, i.e., Terry Clark, ATF, are cooperating with LUKJ
20 on this case.

21 Q Now, would you --

22 A That would seem to indicate that I have --
23 that I had related to them that I had a conversation with
24 Terry Clark of ATF.

5
1 Q Okay. Thank you.

2 A If I did, I do not at this time remember
3 that conversation.

4
5 (Whereupon, a sotto voce at this time.)
6

7 BY MR. WOLFSON:

8 Q Quickly, Mr. Lukens -- I know you've looked
9 at that pretty extensively -- does your handwriting appear
10 anywhere on any of these sets of documents that are part of
11 proposed Exhibit A?

12 A If my handwriting appears anywhere, it would
13 be on the entry of 4/19/94, with reference to the date and
14 the time.

15 In other words, part of that
16 entry may be in my handwriting, but part of it is not in my
17 handwriting.

18 So -- and the part that I think
19 could be, I don't -- I don't know.

20 Q Anywhere else?

21 A No. That's the only time that I see my
22 handwriting appearing on this.

23 MR. WOLFSON: Thank you.

24 (Whereupon, a sotto voce at this time.)

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BY MR. WOLFSON:

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Q Mr. Lukens, I believe I asked you earlier today if you kept any notes or any records of your interviews with Mr. Sims, any contacts with Mr. Sims or anything of a recorded nature concerning your work -- with relation to your work on the Mike Rippo case, vis-a-vis Tom Sims.

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A Yes.

Q What type of notes or work would you have?

A If I would have -- I kept -- I created at

one time a com- -- I kept notes on computer; and with reference to the phone records, I remember entering the phone records that I got from Tom Sims into the computer.

I subsequently printed those out and they became, I think, part of the file. Any notes that I had with reference to witnesses would have been printed out and made part of the Rippo file.

Q Do you recall making notes of your discussions with Mr. Sims that we spoke about this morning?

A I did not make or take contemporaneous notes.

Q Would you have put together a document that memorialized your discussion with Mr. Sims pertaining to

1 what he knows about this case?

2 A Not in the nature of a final witness
3 interview notes prior to trial. It hadn't progressed to
4 that point in time.

5 But there would have been some
6 rough notes from my review of the Grand Jury transcripts and
7 previous statements and who was who in the case.

8 Q Do you have those notes available?

9 A Those notes were printed out and were made
10 part of the Rippe file. Whether they still exist or not, I
11 do not know.

12 Q You don't have them personally anymore?

13 A I do not. Everything that I have or had was
14 in the file.

15 Q Is it still available on a disk, vis-a-vis
16 your computer?

17 A It is not. I checked last night and I
18 have -- I reused and recycled that disk.

19 MR. WOLFSON: Thank you very much.

20 MR. SEATON: No questions.

21 THE COURT: Thank you, Mr. Lukens.

22 You are excused.

23 THE WITNESS: Thank you.

24 (Whereupon, the witness

was excused.)

MR. WOLFSON: Teresa Lowry, please.

Whereupon,

TERESA LOWRY

Whereupon,

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

DIRECT EXAMINATION

BY MR. WOLFSON:

Q Miss Lowry, I'm going to ask you some questions, please.

Will you please state your name for the record.

A Teresa, T-e-r-e-s-a, Lowry, L-o-w-r-y.

Q How are you employed and in what capacity?

A I work for the Clark County District Attorney's Office. I am a deputy District Attorney.

Q When did you go to work for the D.A.'s

6

1 Office?

2 A March of 1991.

3 Q Did you go to work there in March of 1991 as
4 a deputy District Attorney?

5 A Yes, I did.

6 Q You are currently employed in what unit of
7 the D.A.'s Office?

8 A The Crimes Against Women and Children.

9 Q When did you go to work in that unit?

10 A I think it was July of '94.

11 Q Did there come a time when you became
12 involved in the prosecution of State of Nevada versus
13 Michael Rippo?

14 A Yes.

15 Q Would it be fair to say that you were one of
16 the first prosecutors on the case?

17 A Yes.

18 Q And you were the first prosecutor, along
19 with William Hehn, were you not?

20 A Yes.

21 Q How long were you a prosecutor on the case?

22 A Until your motion to disqualify me got me
23 off.

24 Q Okay. I think that it has come out in these

6

1 proceedings that that occurred on March 6th -- March 9th of
2 1994.

3 We can represent that the
4 prosecution began somewhere in March of 1992; is that a fair
5 statement?

6 A Yes.

7 Q So from March of 1992 until March of 1994,
8 you remained on the case, did you not?

9 A Yes.

10 Q At some point in time, District Attorney
11 Hehn no longer worked on the case and another deputy came to
12 work; and that's John Lukens; is that right?

13 A Yes.

14 Q And you and John worked on the case
15 together; is that right?

16 A Yes.

17 Q Was one of you a lead prosecutor and the
18 other a second chair, if you will?

19 A I would describe John Lukens as the lead
20 prosecutor.

21 Q He had more experience and seniority than
22 you?

23 A Yes.

24 Q Were you present during the presentation of

1 the Grand Jury?

2 A Yes.

3 Q Were you present the entire presentation?

4 A I believe I was. I'm not certain.

5 Q Did there come a time when you conducted

6 interviews with some of the witnesses on the case?

7 A Yes.

8 Q Did you interview any of the witnesses

9 before the Grand Jury?

10 A I'm sure that I did.

11 Q Bad question.

12 Did you interview some of the

13 witnesses up in your office before they were presented to

14 the Grand Jury?

15 A To the best of my recollection, I'm sure I

16 spoke to some of the witnesses before the Grand Jury.

17 Q Did you have occasion to interview Tom Sims?

18 A I don't have any specific memory of whether

19 I interviewed Mr. Sims before the Grand Jury.

20 Q Do you have any specific memory of sitting

21 down with Mr. Sims at all in working on this case?

22 A Yes.

23 Q Do you have any type of time frame when that

24 would have occurred?

6

1 A I recall December of 1993.

2 Q Did we have a trial date then in place on
3 this case?

4 A We've had several trial dates on this case,
5 so I'm not sure what the trial date was at that time.

6 MR. WOLFSON: May I ask Your Honor to ask
7 your clerk to tell us when the trial date was scheduled
8 subsequent to December of 1993.

9 THE COURT: Do you have that?

10 MR. WOLFSON: She must have been
11 anticipating the question.

12 THE COURT: The question?

13 MR. WOLFSON: When, after December of 1993,
14 was the next trial date?

15 THE CLERK: February 22nd of 1994.

16 MR. WOLFSON: Okay.

17 BY MR. WOLFSON:

18 Q Accepting that as being accurate, would it
19 be fair to say then when you were meeting with witness Sims
20 in December of '93, it was in anticipation of going to trial
21 in February of '94?

22 A That would be fair to say.

23 Q Okay. Do you have a specific recollection
24 of your meeting with Mr. Sims?

6

1 A I recall the meeting with Mr. Sims, yes.

2 Q And who was present?

3 A Mr. Lukens, myself, Mr. Archie, his
4 attorney, and Mr. Sims.

5 Q Was there more than one meeting?

6 A There could have been more than one meeting.

7 Q What was the purpose of having this meeting?

8 A Preparation for the case, working on the
9 case.

10 Q Would it be fair to say that you were
11 certainly aware of what Mr. Sims had previously provided to
12 both the Las Vegas Metropolitan Police Department, in the
13 form of a voluntary statement, as well as Grand Jury
14 testimony?

15 A Yes, I was aware of that.

16 Q Do you recall what Mr. Sims said to you
17 regarding the narrow issue of what Michael Rippo said to him
18 concerning this case?

19 A Mr. Sims said -- you are asking for Mr.
20 Rippo's statements to Mr. Sims?

21 I believe one of the statements
22 was that Mr. Rippo told Mr. Sims that someone had died for
23 this car.

24 Q No, that's in the voluntary statement and

6

1 the Grand Jury proceedings. It's clear that he has said
2 that prior to your meeting in public.

3 other than that, what else did
4 he say Mr. Ripppo said?

5 A He said that Mr. Ripppo said that Tom, I'm
6 cured; those bitches were fine and I didn't even rape them.

7 Q Now, you seem to have a pretty good memory
8 of what Tom said in December of '93 as to what Michael told
9 him.

10 A Yes.

11 Q How is it that you have a pretty good memory
12 of those statements?

13 A 'Cause I wrote it down.

14 Q Did you write it down at the time,
15 contemporaneous with Mr. Sims telling you these things?

16 A If -- if not at that very moment, soon
17 afterwards.

18 Q Did Mr. Sims say that Mr. Ripppo said
19 anything else concerning admissions or confessions, if I can
20 use that word, on this case?

21 A That was the primary statement that stuck in
22 my mind.

23 Q Do you recall whether Mr. Sims said that Mr.
24 Ripppo said, quote, that he, meaning Mr. Ripppo, had

7
1 accidentally killed the one girl, so he had to kill the
2 other?

3 A I don't recall that, no.

4 Q Do you have your notes with you?

5 A No.

6 Q Do you have them available?

7 A They're in my office.

8 Q Did you bring them to Mr. Harmon and Mr.
9 Seaton as part of their job in taking over this case?

10 A I don't think I did. I had lots of notes
11 and scraps of paper and all of my own details that I was
12 keeping on the case, and I -- I think I had that in my
13 office.

14 Q You don't recall making a photocopy of
15 anything and giving them to either Mr. Harmon or Mr. Seaton?

16 A No.

17 Q Do you recall Mr. Sims saying that Mr. Rippe
18 said that both of them were fine, he could have fucked both
19 of them, but I didn't, and, quote, that means I'm cured.

20 Does that sound familiar?

21 A Yes.

22 Q During your discussions with Mr. Sims, did
23 Mr. Sims ever tell you anything about personal property that
24 he may have disposed of relative to Mr. Rippe and this case?

7
1 A I don't recall that.

2 Q Specifically, did Mr. Sims say that he
3 disposed of a suitcase and cassette tapes that had been left
4 behind by Mr. Rippo?

5 A I don't recall anything being said about him
6 disposing of them.

7 I do remember that he mentioned
8 that Mr. Rippo brought a suitcase and some tapes that had
9 D.L. on them, and that Mr. Sims described that property that
10 Mr. Rippo brought him.

11 As far as disposition of it, I
12 don't remember anything about that.

13 MR. WOLFSON: Court's indulgence.

14 BY MR. WOLFSON:

15 Q When is the last time you reviewed your
16 notes that we spoke of just a few moments ago?

17 A Today.

18 Q That was at the request of Mr. Harmon or Mr.
19 Seaton?

20 A No.

21 Q It was in connection with you being told
22 that you might have to testify in this case?

23 A Yes.
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(Whereupon, a sotto voce at this time.)

MR. WOLFSON: Your Honor, we would ask the Court to ask Miss Lowry to make those notes, or a copy of them, available for our in camera review.

(Whereupon, a sotto voce at this time.)

MR. WOLFSON: Well, in camera meaning the parties in camera review it.

MR. SEATON: No, Judge.

This is a fight that is ongoing. We have work product. We do that for our own personal needs.

THE COURT: I knew this was coming. Okay.

MR. SEATON: You bet. And they are not entitled to it. They'll never be entitled to it.

And he can cross-examine her to her -- his heart's delight, but he cannot have her work product.

MR. WOLFSON: Okay. Then I'll just ask another question.

BY MR. WOLFSON:

Q In your review of those notes -- this morning, you said?

A Yes.

7
1 Q -- did you see anywhere where you noted that
2 Tom Sims said that Michael Rippo said that he accidentally
3 killed the one girl, so he had to kill the other?

4 A No.

5
6 (Whereupon, a sotto voce at
this time.)

7 MR. WOLFSON: Your Honor, that concludes my
8 examination. I believe Mr. Dunleavy has a representation to
9 make regarding a request for the notes.

10 MR. DUNLEAVY: Your Honor, I realize the
11 State's position is that this is privileged, but I would ask
12 not us, but the Court be allowed to review those notes in
13 camera. If there is anything relating to these statements
14 by the defendant and so forth, then we're entitled to that
15 information.

16 It would be perjury and clearly
17 not be covered by work product or anything else. If it's
18 not in there, then it's not in there, and we'll never see it
19 and that will be it.

20 MR. SEATON: Is he calling a deputy District
21 Attorney a liar? That's what I want to know.

22 This is an officer of the
23 Court. Not only is she embarrassed by being brought in here
24 and have to swear under oath, rather than just making

7 1 representations, now he's saying that he doesn't trust her
2 reflections.

3 Let him ask every question he
4 wants to about whether or not what she's saying here is
5 reflected in those notes. He doesn't -- he's not entitled
6 to those notes, never has been and never will be.

7 MR. DUNLEAVY: Your Honor, we are entitled
8 to find out if there is impeaching evidence out there. And
9 they're saying that that is privileged, that it's protected.

10 That's why I'm saying, okay, we
11 won't look; have the Court look in camera. If there is
12 something there, fine; if there is not, fine. I'll accept
13 that word; no problem.

14 THE COURT: Do you have any objection to the
15 Court conducting an in camera inspection of Miss Lowry's
16 notes?

17 MR. HARMON: What is the Court going to be
18 looking for?

19 Miss Lowry has already said the
20 notes relate to the interview with Tom Sims. She's already
21 describing what the notes reflect.

22 So what is the Court going to
23 be looking for in addition to what she's testified to from
24 the witness stand?

1 THE COURT: Maybe something she forgot.

2 I don't know how many notes she
3 had. If I had 20 pages of notes, I'm sure I wouldn't be
4 able to remember everything on 20 pages.

5 MR. HARMON: She was advised that she, in
6 all probability, would be a witness, Your Honor, in this
7 matter.

8 She knew what the focus was of
9 the hearing, that it related to Mr. Sims. With that in
10 mind, it's -- it's not likely that she overlooked notes that
11 relate to the interview with him.

12 Judge, this is a very reckless
13 precedent, whether it's in camera or otherwise. The work
14 product of our office, notes that are made during
15 conferences with witnesses, may reflect trial strategy.
16 They are ours.

17 We discussed earlier that the
18 witness, Mr. Sims, is not ours. We have no proprietary
19 interest over him, never will have. The defense has as much
20 access to him as we do.

21 But our notes are ours. That
22 represents our work product. There is nothing to suggest
23 that her memory is in error. She's testifying under oath;
24 she's here subject to cross-examination.

RENEE SILVAGGIO, CCR 122 391-0379

8

1 But we're unwilling to agree to
2 give up any of our personal notes prepared in connection
3 with preparation of the Rippe case or any other case.

4 MR. DUNLEAVY: Your Honor, specifically, Tom
5 Sims suggests that she has forgotten something. Now it's
6 nice that the State would like to discount his testimony.

7 MR. HARMON: Tom Sims didn't suggest she
8 forgot anything. He gave his version of what he had said.

9 MR. DUNLEAVY: And not consistent.

10 MR. HARMON: He didn't make any suggestion
11 about Miss Lowry or Mr. Lukens.

12 MR. DUNLEAVY: This is the only person who
13 made contemporaneous notes. It shouldn't be too difficult
14 to look to see if it's there.

15 MR. HARMON: She has and she so testified.

16 MR. DUNLEAVY: Well, you can never impeach a
17 witness if you can never find out what they wrote down.

18 MR. HARMON: She's an officer of the Court,
19 Judge.

20 THE COURT: I understand that.

21 When did you review your notes,
22 Miss Lowry?

23 THE WITNESS: Today.

24 THE COURT: This morning?

8

1 How many pages of notes were
2 there?

3 THE WITNESS: Well, my actual personal notes
4 on this file -- on this case, I have a couple legal pads,
5 and then lots of scraps of paper.

6 I believe I reviewed it -- I
7 may have glanced at it this morning, but then I looked at it
8 at lunch time.

9 MR. SEATON: May I ask her a question?

10 THE COURT: Yes.

11
12 CROSS-EXAMINATION

13 BY MR. SEATON:

14 Q You say you have a couple of legal pads
15 worth of notes?

16 A On this case.

17 Q Is there a particular segment of those notes
18 which pertains only to the meeting with Mr. Sims?

19 A Yes.

20 Q Is that easily segmented from the rest of
21 the two legal pads that you have?

22 A Yes.

23 Q First of all, did you review all of the two
24 legal pads?

8
1 A I glanced through them, looking for
2 materials specifically as to Mr. Sims.

3 Q And did you see this one portion that you
4 have referred to --

5 A Yes.

6 Q -- that refers to Mr. Sims and your meeting
7 with him?

8 A Yes.

9 Q Did you see any references to meetings with
10 Mr. Sims in the other portions of the two legal pads?

11 A No, I didn't find anything else.

12 Q How many pages would you say relate to the
13 meeting with Mr. Sims?

14 A The meeting as to Mr. Sims, the case notes
15 in your file on the one side of the file, it's one of those,
16 a full one of those. That's it.

17 Q Just one page?

18 A Yes.

19 Q Like what I'm holding up? (Indicating)

20 A Yes.

21 Q And is that what you reviewed just before
22 coming in here today?

23 A Yes.

24 Q Did you review it carefully?

8

1 A Yes.

2 Q You've heard the discussion among counsel
3 and the Court.4 Is there any doubt in your mind
5 that you have remembered all of what is on that single page
6 in your notes?7 A There is no doubt in my mind that I've
8 remembered what was on that page.

9 MR. SEATON: Thank you very much.

10 We would suggest again that
11 there is absolutely no need for the Court to interfere with
12 her personal notes at this point in time.13 THE COURT: All right. The Court is
14 satisfied.15 MR. WOLFSON: No more questions of this
16 witness.

9

17 Thank you, Miss Lowry.

18 THE COURT: Thank you, Miss Lowry.

19 You may step down.

20 (Whereupon, the witness
21 was excused.)22 MR. DUNLEAVY: We would call Mel Harmon,
23 Your Honor.

24 THE COURT: Mr. Harmon.

9 1 Whereupon,

2 MELVYN HARMON

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

8
9 DIRECT EXAMINATION

10
11 BY MR. DUNLEAVY:

12 Q Please state your name and occupation for
13 the record.

14 A Melvyn T. Harmon, deputy District Attorney.

15 Q How long have you been with the District
16 Attorney's Office?

17 A For 28 years.

18 Q And you are the attorney on this case,
19 right?

20 A I am one of the attorneys on this case.

21 Q And did you conduct an interview of Tom Sims
22 in trial preparation?

23 A Yes.

24 Q When roughly, do you know?

9 1 A Previously, I represented to the Court it
2 was on Friday prior to the beginning of the trial. I
3 checked my desk calendar earlier today and discovered I was
4 off by one day; in fact, it was Thursday afternoon, January
5 the 25th, 1996.

6 Q How long was the interview?

7 A I didn't specifically time it, but I'm going
8 to estimate about two hours.

9 Q And I presume you had read the police report
10 and the Grand Jury testimony prior to meeting with Mr. Sims?

11 A I had, and specifically everything regarding
12 Tom Sims.

13 Q Did you have information other than the
14 statement --

15 A Well, I had the entire file.

16 Q Is there information about Tom Sims in other
17 parts of the file?

18 A No, no. I'm just telling you, Mr. Dunleavy,
19 that I focused on the Sims material, but I'd read the whole
20 file, so I could put that in context.

21 Q And there was nothing in the police report
22 or the Grand Jury testimony to indicate anything about a
23 confession by our client?

24 A Well, perhaps we have to define our words.

1 There, most definitely, in both
2 the statement of Tom Sims given March the 2nd, 1992 and in
3 his Grand Jury testimony, was reference to a statement by
4 your client, which was referencing the red Nissan, someone
5 died for this car; that was in the prior statements.

6 Q And that could be true whether Mr. Rippe was
7 present when they died or not?

8 A Well, I'm not in the position to interpret
9 the remark, but some people might think that was a
10 confession.

11 Q Did you see anything else in there that you
12 considered a confession?

13 A I haven't, in terms of Mr. Sims, seen
14 anything yet that, in my definition of confession, I would
15 call a confession.

16 Q Would you define confession in your
17 definition?

18 A My definition is when you sit down and you
19 are interviewed by police officers, or anyone in law
20 enforcement for that matter, and it's a formal statement,
21 presumably recorded by video or audio tape, and you answer
22 questions; and if you are the target and you admit to a
23 crime, then you have confessed. To me, that's a confession.

24 Q So if somebody is talking to the police, and

9 1 they are not tape recording it, and says I did it, that's
2 not a confession?

3 A And if they were not tape recording it?

4 Q Uh-huh.

5 A Well, then, that may be a confession.

6 Q Now, would you accept that there was nothing
7 in there indicating that Mr. Sims had ever been told by my
8 client that he had committed this crime, other than your red
9 Nissan references?

10 A That's the only thing I remembered.

11 Q Was there anything in there about him having
12 cassettes with D.L.'s initials on them?

13 A You're referencing again now his prior
14 statement?

15 Q His prior Grand --

16 A And his Grand Jury testimony?

17 Q And the police.

18 A No, there was nothing about tapes.

19 Q Anything in there about a suitcase?

20 A No.

21 Q Anything in there about someone accidentally
22 dying?

23 A No. That's out of context, however.

24 Q But there was nothing in there on that

9

1 subject?

2 A Knowing about him admitting to having killed
3 anyone.

4 Q And you had no notes in your file indicating
5 that he had ever made statements like that to anyone else?

6 A To anyone else? To anyone you are talking
7 about?

8 Q Anybody connected with this case.

9 Did you have anything that says
10 Tom Sims told me that this had happened?

11 A Oh, no, no. But your client, there were
12 references in the file that he had made admissions to other
13 persons.

14 Q Nothing that Tom Sims said he had heard?

15 A No.

16 Q Was there anything in the file that
17 indicated that Mr. Lowry -- or Mr. Lukens and Miss Lowry had
18 interviewed him previous to this?

19 A No. I suppose if I thought about it, which
20 I didn't, I would have presumed they interviewed him, but
21 there weren't any notes in the file that I recall.

22 Q Did you ask him if he had been interviewed
23 by other deputy District Attorneys during your interview?

24 A No, I didn't. I wasn't interested in what

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1 others had discovered. I wanted to know what he would tell
2 me.

3 Q Now, you are aware he says he only answered
4 specific questions. So, obviously, you must have asked
5 specific questions on that subject --

6 A Well, I didn't necessarily, no, when I met
7 the man. I met him Thursday, January the 25th. I didn't
8 know what his attitude was.

9 Q But today you heard him.
10 Was it consistent --

11 A I did hear it today.

12 Q Was his attitude, in your office, consistent
13 with what he's testified to?

14 A Well, I believe it was. I asked him very
15 specific, very direct questions.

16 Q Was Mr. Archie present?

17 A Mr. Archie was present originally in the
18 lobby outside my office on the fourth floor with his client.
19 He was not there when I conducted the interview of his
20 client Tom Sims.

21 Q During your interview with Tom Sims, did he
22 tell you that our client had made some inculpatory
23 statements?

24 A Yes.

10

1 Q And you'll accept that definition?

2 A Most definitely, they were inculpatory
3 statements.

4 Q Did he tell you something to the effect of
5 strangled the bitches?

6 A Yes. He said that occurred in the parking
7 lot close to the K-Mart store.

8 Q Did he tell you about the cassettes with the
9 initials on them?

10 A Yes, in the suitcase --

11 Q This is the first time you had ever heard
12 this?

13 A -- name tag with Lauri Jacobson.

14 Q On the suitcase?

15 A That was the first time I had heard those
16 things or read them.

17 Q Did he tell you that someone had
18 accidentally died and that he then had to kill the other
19 person?

20 A Well, the accidentally died is in the
21 context of Mr. Rippe strangling this person, who then,
22 quote, accidentally, unquote, died.

23 Q Did he say accidentally died or something to
24 that effect?

1 A Yes.

2 Q In fact, when you questioned him on the
3 stand, you asked him whether there was something about an
4 accident, did you not?

5 A Well, he slid over that and I wanted it to
6 come out. I certainly did attempt, by rephrasing a
7 question, to refresh his memory.

8 Q Did you ask, did he ever, in the
9 conversation you had as you proceed from the K-Mart area to
10 the Stardust, mention anything about an accident?

11 A That's right. I was trying to be
12 non-leading.

13 Q So you knew --

14 A I wanted to direct the subject matter. I
15 did ask that.

16 Q So you knew there was some information
17 regarding an allegation of an accidental death involved in
18 this case?

19 A I knew there was something about his
20 admitting that he killed two people, and he said to Sims one
21 was an accident and the other I had to do that.

22 Q And you knew that?

23 A I cer- -- well, I don't know anything. I
24 know what Tom Sims told me.

10

1 Q You heard it at that time on the 25th?

2 A I heard it from Tom Sims.

3 Q On January 25th?

4 A Yes.

5 Q You are familiar with Brady?

6 A Well, I don't know Brady personally, but --

7 Q Brady versus United States Supreme Court?

8 A Yes.

9 Q You are familiar with the Kyles case?

10 A I have read the case.

11 Q You are familiar with Giglio?

12 A The case.

13 Q You are familiar that the Court signed an
14 order in this case that we got all Brady materials?

15 A To be quite candid with you, I wasn't real
16 familiar with the order until I saw it yesterday. I have
17 since become quite familiar with the order.

18 Q And you are also aware that when there is
19 exculpatory information, there doesn't even have to be a
20 request for it; it's supposed to be turned over?

21 A I know that.

22 Q And Brady says that it could be either
23 exculpatory or relevant to punishment.

24 A Well, you have to show me where Brady says

10

1 that.

2 Q I don't have Brady with me, but I have --
3 where is your brief? It's in your brief.

4 A We discussed the two prongs of the Brady
5 case.

6 Q You know the Brady case has two, either
7 exculpatory or relevant to punishment; are you familiar with
8 that?

9 A Well, I think material is the second prong;
10 but material, in the context of the Brady case, is a word of
11 art, Judge.

12 Q I would agree with that. But let me see if I
13 can find it real quick. I think it's quoted in here.

14 I'll show you what I represent
15 to you is advance sheets from the United States Supreme
16 Court Reports, Lawyers Edition. It's the Kyles case, but
17 it's quoting Brady.

18 Would you accept that as a
19 reliable source?

20 A I see the language you have highlighted. In
21 any opinion by the United States Supreme Court, I accept
22 that as a reliable source in terms of case law.

23 Q And it says where the evidence is material
24 either to guilt or to punishment.

11

1 A Yeah, I -- I read that and I agree with
2 that, but material is a word of art.

3 Q Well, one of the things they talk about in
4 these cases is the fact that the prosecutor has to make that
5 call; isn't that true, in order to decide whether or not to
6 turn things over?

7 A Has to make many decisions.

8 Q Quoting from the Kyles case, the prudent
9 prosecutor would resolve doubtful questions in favor of
10 disclosure.

11 A Oh, I agree with that.

12 Q As it should be.

13 Prosecution is not that it
14 shall win a case, but that justice shall be done.

15 A I don't have to be lectured on that
16 principle.

17 Q I'm just asking if you agree with that in
18 the case?

19 A Definitely, sir.

20 Q Have you ever defended a case?

21 A You mean a criminal case?

22 Q As a defense attorney, yes.

23 A No.

24 Q But you decided that a statement that

11

1 someone died accidentally was not something that could be
2 turned over?

3 A It is not exculpatory, nor is it material --

4 Q Someone's on trial --

5 A -- in the sense contemplated by the United
6 States Supreme Court.

7 Q So your testimony is someone who is on trial
8 for murder, who has admitted that he accidentally killed
9 someone, that's not exculpatory or relevant to punishment?

10 A You don't kill people accidentally with your
11 hands or a ligature around their necks choking them. That
12 is not an accident.

13 Q You were there; you know?

14 A No.

15 Q So --

16 A If you are doing it that way, Mr. Dunleavy,
17 that isn't accidental.

18 Q So you made the call that that had had no --

19 A I most definitely did make the call, sir.

20 MR. DUNLEAVY: Thank you.

21 No further questions of this
22 witness, Your Honor.

23 THE COURT: Any questions?

24

CROSS-EXAMINATION

BY MR. SEATON:

Q Based on the examination just conducted by Mr. Dunleavy, is there anything else you wish to explain, Mr. Harmon?

MR. DUNLEAVY: Talk about an objection to an open ended question.

THE WITNESS: I thought you were after the truth.

Well, the truth is, in the absolute sense -- and I think, after my years of practice, I have a good grasp of what is implied by Brady and Giglio and Kyles -- that there has been no suppression of exculpatory evidence.

An oral statement made in the context of a pretrial conference by a witness, who is telling me what the defendant said to him outside of the courtroom, is not covered by our statutes on discovery, nor is it mandated by any case authority whatsoever in this state.

The Brady case is two pronged. It makes discoverable anything which is, A, exculpatory, or, B, which is material. And material means was there a reasonable probability that had it not been disclosed, the

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1 outcome of the case would have changed?

2 I cannot imagine that it would
3 ever affect the outcome of this case where the State has
4 alleged various theories. We have alleged that Mr. Rippo
5 may have been the actual physical murderer of two young
6 women; or, in the alternative, that he aided someone else in
7 the commission of these murders; or that the killings
8 occurred as part of a felony murder, in which case if it's
9 robbery-murder, it's murder of the first degree, whether the
10 killings were accidental, intentional or unintentional.

11 And in the context of this
12 case, where there are two victims, and where we have
13 photographs which eloquently address the manner of death,
14 and there are ligature marks around the necks and the arms
15 and the ankles, I'll never be persuaded, nor do I think
16 there is ever a chance that a jury is somehow going to be
17 persuaded, that the statement by Mr. Rippo, that the first
18 time he killed, the first time -- the first victim he killed
19 was an accident, and so he had to kill the other victim.

20 That's just not exculpatory in
21 the sense contemplated by our cases. That's a very
22 inculpatory statement, very inconsistent with the position
23 he has to be taking in this trial, which is that he not only
24 was not present, but was not an aider in any way in a

11

1 robbery or offenses perpetrated against Lauri Jacobson and
2 Denise Lizzi.

3 BY MR. SEATON:

4 Q And in the context of U.S. Supreme Court
5 cases, would that -- would such a statement be material?

6 A It is not material.

7 Q For what reason?

12

8 A Because there is no reasonable probability
9 that a failure to disclose that type of information -- by
10 the way it was disclosed, it came out in the opening
11 statement that was presented to the jury a week ago
12 tomorrow -- but material, by the definition, is it is not
13 material unless the failure to disclose it had a reasonable
14 probability of changing the outcome of the case.

15 Q And why did it? Why does the lack of
16 disclosure not have an effect on the case?

17 A The lack of disclosure?

18 Q It wasn't --

19 A I think we're talking now about a
20 hypothetical situation.

21 Q In this case, the statement that you heard
22 from Mr. Sims in your office on the 25th of February --

23 A The 25th of January of this year.

24 Q -- of January, that was not disclosed to the

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1 defense attorneys, that's what they are complaining about.

2 A Well, it's not material in the phrase of art
3 because it -- in the sense there are other witnesses who are
4 going to say that Mr. Rippe made inculpatory statements to
5 them. It's just not something which would explain away the
6 charge. It's not something that has a reasonable
7 probability of impacting how this case turns out.

8 If he's there, if he's got a
9 cord or a rope around their bodies, and if he's physically
10 choking them, he can say anything he wants to another
11 witness, but the physical evidence indicates that's what
12 happened to these two young ladies, and it just isn't going
13 to be a defense.

14 It's not a defense to felony
15 murder. It's not a defense to premeditation. You can't get
16 to the point. That sounds like the defense he was offering
17 to Diana Hunt. Those ladies are hurt real bad. No, I just
18 cut off their air.

19 You can't stop at that point.
20 You can't say it's -- it's accidental when he put the first
21 victim in the position of dying that way. You can't stop
22 then, not when you pursued this heinous offense to that
23 extent.

24 MR. SEATON: Thank you.

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I have no further questions.

MR. DUNLEAVY: Just a few, Your Honor.

REDIRECT EXAMINATION

BY MR. DUNLEAVY:

Q We've been talking about the Kyles case and I read to you: The prudent prosecutor will resolve doubtful questions in favor of disclosure.

Do you remember that?

And then the next sentence was the prosecutor's duty.

Do you have any disagreement with the next sentence, which says:

"And it will tend to preserve the criminal trial, as distinct from the prosecutor's private deliberations, as the chosen forum for ascertaining the truth about criminal accusations."

A Well, it's pretty hard to make distinctions.

Q For you?

A For anyone, Mr. Dunleavy.

Obviously, if you form opinions about the manner in which a crime was perpetrated, if you form opinions about the identity of the perpetrators, it's

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1 Just human nature that it's going to influence your whole
2 approach to the case.

3 Q Have you ever met anybody who was open
4 minded and didn't form opinions?

5 A In the true sense of the word actually
6 ideally, no, no; we're all the product of our experiences.

7 Q I'd like to show you what's been marked as
8 proposed Exhibit B. You are familiar with that document?

9 A Yes.

10 Q When was that document generated by the
11 police department?

12 A According to the date, which appears just
13 before -- just below Las Vegas Metropolitan Police
14 Department Memorandum, the date was February the 24th, 1992.
15 I had no personal knowledge of that.

16 Q And what is that document?

17 A It's a police department memorandum, written
18 to Captain Barbara Connett, C-o-n-n-e-t-t; the subject is
19 crime scene contamination; and it's signed Alan Cabrales.

20 Q Would you say there is anything in there
21 that might have exculpatory value?

22 A Yes.

23 Q And when was it provided to the defense?

24 A It was provided the very day to the defense

12 1 that the office of the District Attorney acquired it.

2 I asked my secretary to make
3 sure, as we approached the trial date in this matter --

4 Q What day was that, sir? That's the
5 question.

6 A I'll have to have a little help. If you
7 tell me what day you got it, I'm going to tell you that's
8 the day we got it.

9 I wanted to know if we had all
10 of the crime lab reports --

11 Q Well, you didn't provide it to me.

12 MR. SEATON: Could the witness be allowed to
13 finish his answer before being interrupted?

14 THE COURT: Yeah.

15 MR. DUNLEAVY: I asked him a date, not an
16 area.

17 THE COURT: He says it's the same date you
18 got it. You don't know?

19 MR. DUNLEAVY: He never gave it to me. He
20 gave it to my co-counsel.

13 21 MR. WOLFSON: Excuse me for a second.

22 THE COURT: Same day Mr. Wolfson got it.

23 MR. WOLFSON: Excuse me a second.

24

(Whereupon, a sotto voce at
this time.)

BY MR. DUNLEAVY:

Q Could it have been last Wednesday or
Thursday?

A It may very well have been.

Q It was while we were going through jury
selection?

A I don't distinctly remember that.

Mr. Dunleavy.

Q We started jury selection last Wednesday.

MR. WOLFSON: No, I'm sorry. As an officer
of the Court, let me just make a representation. I believe
it was the preceding Thursday before we started the trial.

THE WITNESS: That would be more consistent
with my recollection.

BY MR. DUNLEAVY:

Q I didn't know what would you say to the
context in case it says the State is held to disclosure
standards based on what all State officers knew at the time.

A Well, I would say that's very fine for
Judges to write about that, but it's a legal fiction because
just because Cabrales knew it and just because Captain
Connett knew it, that doesn't mean that Seaton and Harman
know it.

13

1 Q But you are aware that the United States
2 Supreme Court has put the burden on the prosecution to seek
3 this information out.

4 A We did seek it out. I had no idea that that
5 would be something authored by Cabrales that tended to be
6 exculpatory.

7 He already had submitted -- I
8 had a number of Cabrales' reports that indicated presence at
9 the crime scene. We had the complete recitation of the
10 findings of Sherree Norman, his partner, and we knew Cabrales
11 examined the black Datsun that presumably was owned by Lauri
12 Jacobson.

13 I didn't know anything about
14 this; had no reason to think there was some internal police
15 department memorandum.

16 Q And hadn't asked for one until just before
17 the trial.

18 A No, hadn't asked; had assumed that we
19 probably had everything.

20 I, in fact, went through
21 personally the Las Vegas homicide -- the police department
22 homicide folder. I don't recall this being in there either.

23 But there was something about
24 the comparison of what I had, and even what the homicide

13

1 folder had, that led me to wonder if perhaps there still
2 weren't crime lab reports that weren't in either folder.

3 So I asked my secretary to
4 contact the lab; have them copy every report that related to
5 the Rippe case. She did. They copied them, and as I
6 remember, I discovered two reports that we didn't have.
7 This is one of them. (Indicating).

8 And on that same day, we made
9 it -- perhaps it wasn't yourself Mr. Dunleavy, Mr.
10 Wolfson -- someone from the defense team aware of the
11 additional reports.

12
13 (Whereupon, a sotto voce at
14 this time.)

15 MR. DUNLEAVY: I would move for the
16 admission of the exhibit, Your Honor.

17 MR. SEATON: No objection.

18 MR. DUNLEAVY: Nothing further.

19 THE COURT: They will be admitted.

20 (Whereupon, Defendant's Exhibit
21 B was admitted into evidence.)

22 MR. SEATON: No further questions.

23 THE COURT: You may step down, Mr. Harmon.

24 MR. WOLFSON: The defense would request a
five-minute recess.

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THE COURT: We'll be in recess.

(Whereupon, a recess was had in the proceedings, at the conclusion of which the following was had:)

THE COURT: Let the record reflect we're still outside the presence of the Jury. All counsel are present. The defendant is present.

Mr. Wolfson.

MR. WOLFSON: Thank you, Judge.

Judge, you've listened very graciously to about three hours of testimony concerning a number of issues, some relating to one another and some not, but I believe totally interrelated. And I'm not going to review the evidence in its entirety, but I certainly want to highlight a number of things.

First and foremost, with all due respect to counsel and this Court, my impression of this case is that it is so infected now that Mr. Rippe can no longer get a fair trial with this Jury in this environment.

What we now know is that Tom Sims stated that he told Lukens and Lowry certain inculpatory and exculpatory things that D.A.s Lukens and

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13 1 Lowry say didn't happen.

2 Witness Tom Sims provides what
3 I'm going to call a confession to this Jury.

4 District Attorneys Lukens and
5 Lowry rebut that. They testified that Mr. Sims never said
6 that Rippe said anything about an accidental killing.

7 Now, I heard Mr. Harmon's
8 recitation of the law, and I agree that that's what's
9 written in the books, but if this Jury were to hear Michael
10 Rippe accidentally killed his first victim, and if we had
11 been put on appropriate notice -- that's the key -- they
12 might not convict of first degree murder.

14 13 And if and when we get to a
14 punishment stage, they might consider that information to be
15 material in their decision-making process as to what
16 punishment. I believe that the prosecutors have an ethical
17 obligation to seek justice and not to convict. That's what
18 the rules say.

19 I believe that certain
20 prosecutors in this case, whether through negligence or
21 inadvertence, failed to provide the defense with certain
22 information on a timely fashion. N.R.S. 174.235 says -- it
23 is titled Defendant's Statements or Confessions -- and it
24 says:

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1 Upon the request of the
2 defendant, which we certainly did, initially, when our -- or
3 when my office requested discovery on this case, and then
4 followed up by a formal discovery motion -- upon request of
5 the defendant, the District Attorney shall permit the
6 defense to inspect or copy written or recorded statements or
7 confessions made by the defendant.

8 I believe a fair interpretation
9 of this statute is that it should be applied in the
10 disjunctive, meaning written or recorded statements or
11 confessions, parenthetically, of any kind. The statute says
12 written or recorded statements or confessions.

13 Now, the legislature went to
14 the trouble of distinguishing between confessions and
15 statements. They must have had a reason.

16 I submit that they didn't care
17 whether the confessions were in an oral or a written form.
18 If it's a confession, if it's a statement where a target
19 says to someone that he committed the crime, that's a
20 confession.

21 So I think the argument could
22 be safely made that 174.235 forces the State of Nevada to
23 provide us with any statements or confessions, whether oral
24 or not, made by Mr. Rippo.

14

1 You've heard representations
2 made to Your Honor that during the course of these
3 proceedings, the District Attorney learned that jailhouse
4 informants had come forward and had made representations to
5 law enforcement that Mr. Rippo allegedly gave inculpatory
6 statements. District Attorneys sent investigators and
7 detectives to record those conversations.

8 Well, we have a discrepancy now
9 between Mr. Sims and D.A.s Lukens and Lowry as to what did
10 Sims really say? The philosophy of the discovery statutes
11 is to provide notice and to prevent ambush, and we have been
12 ambushed.

13 Look at the pattern here. Look
14 at the pattern: Made a representation to the Court the
15 other day that one of the reasons for a continuance two
16 years ago was that we were provided with a stack this high
17 (indicating) -- and I stood at the table and went like this
18 (indicating) -- by District Attorney Lukens at calendar
19 call.

20 We came in here and everybody
21 is upset this case is getting continued so many times, me,
22 Mr. Rippo, Mr. Dunleavy, given a copy of things 12 inches
23 high at calendar call.

24 Mr. Harmon, I believe

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1 everything he says. He wasn't sure whether they had
2 everything from the lab, so they requested everything.

3 And we got, from Mr. Harmon --
4 I believe it was the Thursday before our trial date of
5 January 29th, so that would make it January 25th --
6 Defendant's Exhibit B. (Indicating)

7 Mr. Harmon candidly said that
8 there is potentially exculpatory documents authored by Alan
9 Cabrales. Alan Cabrales is a witness in this case. Alan
10 Cabrales gathered a lot of evidence in this case, probably
11 more evidence than any other police officer.

12 He states, in his closing
13 paragraph: Obviously, the crime scene was not protected and
14 the integrity of all evidence recovered from the scene has
15 been compromised.

16 We find this out four days
17 before.

18 We do have the right to
19 interview witnesses and we do have the ability to do a lot
20 of things, but we were handed a 165 numbered witness list in
21 this case. We can't interview every witness. We don't have
22 those resources. I don't have investigators on the payroll.

23 We have a court appointed
24 investigator, who has been diligently working -- in fact, I

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1 think we've had three sets of court appointed investigators
2 on this case, but we don't have budgets that allow us to
3 interview 165 witnesses.

4 I'm not going to go out and
5 interview Cabrales about, well, is there anything else --
6 are there any other internal memos?

7 Once again, I don't fault
8 Messrs. Harmon and Seaton. I fault the State of Nevada for a
9 faulty system.

15

10 Your Honor, now we have two
11 additional witnesses in this case. We have deputy District
12 Attorneys Lukens and Lowry.

13 We were very persistent when we
14 asked Mr. Sims: Did you tell Lukens and Lowry X, Y and Z?
15 Did you tell Lukens and Lowry that Michael Ripppo told you,
16 on February 26th, that he accidentally killed the first
17 girl, so he had to kill the other?

18 Yes, I did.

19 And I don't need to repeat the
20 other statements. Sims said he told them. We asked Lukens
21 and Lowry and they said no. So now we have to call Lukens
22 and Lowry in our case.

23 And Messrs. Harmon and Seaton
24 have the ability to cross-examine. They would then arguably

15 1 be vouching for the credibility of their own colleagues.

2 This case is tainted. Through
3 no fault of Mr. Rippo, this case is tainted.

4 I think the appropriate remedy,
5 and Mr. Dunleavy is going to get to the more legal aspect,
6 is a mistrial and a disqualification of the District
7 Attorney's Office.

8 I'm not asking for a six month
9 continuance. I'm not asking for one year. I'm asking for
10 60 days. Let's do it again with new prosecutors.

11 All due respect to Mr. Seaton
12 and Mr. Harmon, and I mean that, but look at the environment
13 this case is in now.

14 We have to call Lukens and
15 Lowry; we have to. They weren't read in the original
16 witness list because -- and we made the motion -- they would
17 be vouching for the credibility, if you will, by reading off
18 their names, and they agreed. So we didn't call their
19 names, but now we've got to call them as witnesses.

20 What's this Jury thinking now?
21 They've been out for 27 hours or thereabouts, 23 hours.

22 Mr. Rippo may be convicted one
23 day, but that hasn't happened yet, and he's entitled to fair
24 proceedings; and I submit that at this point, he is not

15

1 getting a fair proceeding.

2

Mr. Dunleavy.

3

MR. DUNLEAVY: Very briefly, Your Honor.

4

5 You've got the case low, Brady
6 and Giglia. It's not a close call. The District Attorney
7 has an affirmative duty to go out, find potential
8 exculpatory evidence, if it's in the possession of a
9 government agency, such as the police department, that
they're working with.

10

11 They did so, days before trial
12 on a four year old case. That's not giving us time to
prepare a defense based on that information.

13

14 They interviewed a witness that
15 gave what we are contending is potentially exculpatory and
16 absolutely clearly the kind of information that can be used
in a penalty phase.

17

18 Juries are not as likely to
19 kill somebody who killed somebody accidentally as they are a
20 premeditated murder, whether it's a felony murder trial or
21 not. That's the kind of things juries look at: Gee, the
22 person died as an accident. Maybe they will believe that;
maybe they won't.

23

24 But we're sure as hell entitled
to know that before we make an opening statement, before we

15

1 cross-examine the key witness in the State's case.

2 If we had known that, we might
3 have asked different questions. We might have tried to
4 structure the case differently.

5 With all respect to Mr. Harmon,
6 he has never defended a case; and to defend a case,
7 sometimes you have to get pretty creative and you need this
8 kind of information in advance, not dropped on you in the
9 fourth day of trial or whatever it was.

10 The problems are horrendous in
11 this case. The case law -- and Mr. Harmon sat up there and
12 said it's legal fiction; Judges can write whatever they
13 want; it just doesn't happen in the real world.

14 The Supreme Court says it does,
15 and if it doesn't, it's error, and if it's error, remedies
16 have to be imposed.

17 In this case, we had problems
18 before with this case where I suggested the Attorney
19 General's Office should have been brought in to avoid
20 conflicts. That didn't happen.

21 Once again, we've got problems
22 where deputy District Attorneys are coming back in as
23 witnesses. It's improper for the District Attorney's
24 Office -- now we have to call them. The defense has to call

15 1 these District Attorneys, and the D.A. is going to be able
2 to sit there and vouch for their credibility and put our
3 client at a disadvantage in this case. That's not proper.

4 The proper thing to do is
5 mistry this case before it costs any more money to the
16 6 State, to the government or to Mr. Rippo's rights. And
7 despite what Mr. Harmon says, I submit the 14th Amendment
8 and due process in the Nevada constitution all agree
9 he's entitled to a fair, impartial trial, not tainted with
10 the kind of problems that we have in this case today, and
11 the case law does say that.

12 The Nevada statute on discovery
13 doesn't say it, no, but everybody agrees that's why Brady
14 and Giglio -- and that's why they are cited, because they
15 expand what the State has to do beyond that small statute.

16 And it's clear, this is error
17 in this case. The error is significant. They've
18 classified -- in one part of their brief, they said Mr. Sims
19 was a secondary witness; in another place, they point out
20 that he's a material witness.

21 The bottom line is: Next to
22 Diana Hunt, he's probably the most damaging witness in this
23 case. Those are pretty horrible statements he made to the
24 State.

16

1 But there was also some
2 exculpatory information there. We never knew about it. And
3 that's not the way a case is supposed to be tried.

4 I would submit that the only
5 appropriate remedy is to dismiss this case, with a mistrial,
6 and appoint another prosecutor, appoint -- the Attorney
7 General's Office can step in and pick this case up.

8 THE COURT: Response?

9 MR. HARMON: Your Honor, perhaps I should
10 begin at that point.

11 If John Lukens and Teresa Lowry
12 are, in fact, called as witnesses -- and, by the way, the
13 State still does not intend to proffer them as witnesses
14 before the Court and the Jury -- but if this should happen,
15 there is nothing really striking or unusual about that.

16 I've handled, through the
17 years, many cases where, for one reason or another, a deputy
18 District Attorney has material testimony to offer.

19 It's not nearly the problem
20 described by counsel, particularly in the context of this
21 case, because if they are called, it will be by Mr. Rippe's
22 counsel, and they will be calling them only because their
23 perception will be that Mr. Lukens and Miss Lowry will
24 contradict the State's witness Tom Sims. So they will be

16 1 called as impeaching witnesses.

2 We will not be vouching for
3 their credibility. I can assure the Court of that. If
4 anything, we will be put in the position of being in an
5 adversarial relationship to attorneys from our own office.

6 Frankly, the way it's going to
7 happen, if they testify, is that we're going to essentially
8 be in the position of having to swallow what it is they have
9 to testify, because we're not going to attack them. But
10 we're certainly going to have no reason to vouch for them
11 since they will be called as impeaching witnesses, if that
12 comes to fruition.

13 Judge, the defense uses a whole
14 series of harsh sounding words. They say this case is so
15 infected, they say there is an environment now that makes it
16 impossible for the defendant to get a fair trial. They talk
17 about the things which have happened in this case as being
18 horrendous. They talk about a pattern of misconduct. They
19 talk about being ambushed.

20 And with due respect to the
21 barristers on the other side of the courtroom, I would like
22 more particularity. I want to know what it is that has
23 occurred so far in this case that is so infected that Mr.
24 Rippo can't get a fair trial.

16

1 We, by the way, don't disagree
2 that it is imperative that he get a fair trial. He's
3 entitled to that as a human being, as a citizen of this
4 country. Any person who is part of the criminal justice
5 system is entitled to that, and it doesn't matter how
6 horrendous the allegations may be.

7 Judge, we haven't done anything
8 to impair his ability to have a fair trial.

9 The defense talks about
10 receiving a list of witnesses, 165 names. I'd like to make
11 what I consider to be a very salient point. This case went
12 to the Grand Jury. Typically, in a Grand Jury case, the
13 only notice the defense gets are the list of witnesses who
14 testified before the Grand Jury.

15 When Mr. Seaton and I came on
16 the case in early March, 1994, we thought it was important
17 that the defense get a full list of the witnesses described
18 in this investigation, and so we caused to be filed -- on
19 March the 17th, 1994, eight days after Mr. Lukens and Miss
20 Lowry were disqualified, we submitted the list.

21 I haven't counted the names.
22 It might be 165. But that is not consistent with a pattern
23 of misconduct. It is consistent with efforts on our part to
24 insure that the defendant gets a fair trial and that his

1 attorneys know from whom the witnesses are going to be
2 called.

3 So when it got closer to the
4 trial, the formal commencement of these proceedings, we were
5 approached by counsel for the defendant and they indicated,
6 well, that's a lot of names on the list and so can you
7 narrow it down; and, Judge, we agreed to do that.

8 But it is a fact that we have
9 other cases to handle, just as they do, and we prepared as
10 expeditiously as we could.

11 I won't speak for Mr. Seaton,
12 but already in January, I've gone to trial on a case where
13 it potentially was a capital case. We had to have a penalty
14 hearing.

15 I spent considerable time on
16 that case, and went from that in to other matters, and
17 prepared as quickly as we could on this one. But the
18 realities of this world are that we can't spend an
19 inordinate amount of time on one case.

20 So, there was a time when it
21 was -- sometime during the week preceding the commencement
22 of this trial, we furnished to the defense a very shortened
23 list, which we represented to them contained the list of
24 people that we expected to call as witnesses, to help so

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1 that they could focus their energies, and we have since
2 supplemented that list, as it became apparent that there
3 were additional people.

4 And, furthermore, Judge,
5 consistent with what is the true pattern in this case, and
6 not the pattern they allege of misconduct, we have advised
7 the defense on a daily basis of our order of witnesses.
8 We've told them who they could expect the following day, so
9 that they could be prepared for their cross-examination.

10 So, once again, I want to know
11 rhetorically, where is the infection; just what is so
12 horrendous that has happened in this case?

13 The defense says that Tom Sims
14 is probably the second most important witness in the case,
15 and I agree.

16 I don't read minds with the
17 jury. Perhaps that's going out on a limb. But I think Tom
18 Sims probably, in terms of the substance of his information,
19 is the second most important witness; most important next to
20 Diana Hunt, the accomplice.

21 And I would have said that even
22 before he came into my office for the interview, because
23 Sims, before the Grand Jury, and in the statement he gave
24 almost four years ago, had indicated that on the very day

17
1 when we believed these murders occurred -- in fact, within
2 on hour or so -- he appeared at the business of Mr. Sims.

3 Now, there may be no direct
4 evidence that he drove the victim's car there, but there is
5 really no other reasonable inference. He came in there and
6 he wanted to borrow money to leave town and he wanted Sims
7 to look at a car. And he mentioned then, in those initial
8 declarations, that the defendant said to him somebody died
9 for this car.

10 It's very devastating
11 information. Now, I highlight that, Judge, and I know that
12 different counselors have a different approach to trial
13 preparation. But, Judge, Mr. Sims gave a statement March
14 the 2nd the defense had; they knew what he said then. He
15 testified before the Grand Jury in June 1992. He was on the
16 witness list that we filed on March the 17th, 1994. He was
17 on the short continued list. We didn't own him in 1992 and
18 we don't own him now.

19 And the fact is, I did not
20 know -- I mean, the U.S. Supreme Court, the Nevada Supreme
21 Court, district courts, justice courts can trumpet this
22 legal fiction that what one person in a large office knows
23 is imputed to others, but, Judge, in all candor, Mr. Seaton
24 and I did not know until we talked with John Lukens, after

17 1 our session yesterday afternoon, what information, if any,
2 he had acquired from Tom Sims.

3 We were hearing it for the
4 first time from the witness stand when Mr. Sims said, back
5 in October, 1993, I disclosed this information to Teresa
6 Lowry and John Lukens.

18 7 Our file has been open. Our
8 efforts have been ongoing to provide the defense with the
9 discovery they're entitled. I cannot understand why the
10 defense is suggesting that somehow someone tried to hide
11 this memorandum.

12 I can only speak for Mr. Seaton
13 and I. We came to have it in our possession for the very
14 reason I described on the witness stand. And I think there
15 is evidence in that memorandum that tends to be exculpatory
16 if Al Cabrales thought that the integrity of the crime scene
17 had been compromised by the way that certain officers
18 conducted themselves at the scene. That was something we
19 knew the defense was entitled to. They got it beforehand,
20 Judge.

21 When Officer Johnson, the
22 State's second witness, testified, the defense -- for a
23 witness we thought would take five minutes -- conducted
24 extensive cross-examination regarding how he conducted

18 1 himself and how other officers conducted themselves at the
2 scene.

3 There is nothing to suggest
4 that the defense was somehow impaired in the way that they
5 could cross-examine him. It's not as though we provided the
6 memorandum after Al Cabrales has testified. He's on the
7 list, Judge. He'll be a witness.

8 The defense is going to be
9 entitled to exploit the statement he made in the memorandum.
10 There is nothing at this point to taint the proceedings.

11 The defense says, in so many
12 words, our client is presumed to be innocent. He may be
13 convicted some day, but he hasn't been convicted yet.

14 Well, I -- it's true, I haven't
15 been a defense attorney; and it's quite true, someone
16 argued, I've lost my objectivity regarding this case. But
17 it has occurred to me, in my somewhat biased point of view,
18 that with the testimony of Miss Hunt and with the testimony
19 of Mr. Sims, that things haven't been going that well for
20 the defense. It does occur to me that they want to postpone
21 what seems like the inevitable.

22 If this case goes to trial with
23 this now, just because prejudicial evidence has come out,
24 that doesn't mean that Mr. Rippe is being deprived of a fair

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1 trial.

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Judge, I've been doing this for

a long time and I truly want to be educated at this time in this case if it is improper to conduct pretrial conferences in the manner in which I've been doing them throughout my career.

This witness, Mr. Sims, came in on a Thursday afternoon, January the 25th. I had no idea whether he would have evidence which would supplement the information we already had, but I can assure the Court I did ask direct questions, because I knew Mr. Sims had known the defendant for a long time, I knew they met in the slammer, and I wanted to know if there had been statements afterwards, after these crimes occurred.

And I asked him direct questions about precisely what the defendant was doing when he came to his business and whether he brought with him anything in his possession or whether he just walked in empty handed, and I got the answers.

And, quite candidly, Your Honor, it never once occurred to me that -- when this guy told me that the defendant admitted in a parking lot that he strangled these two bitches to death, and then when he further told me, in continuing that conversation, and as

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1 they drove down Spring Mountain Road: Were you alone? No,
2 I was with Diana. Do you trust her?

3 Well, yeah, I do, because she
4 initiated the action, because she, in fact, hit Lauri
5 Jacobson over the head with a bottle. He asked about trauma
6 to the face and, according to Sims, the defendant said,
7 well, while I was carrying or dragging one of the women to
8 the back, she hit her face or head on a coffee table, and he
9 told me -- at some point, I -- I asked him why it happened.

10 And it never once occurred to
11 me, Judge -- but when he essentially described that this
12 fellow was saying, well, I was strangling the first victim,
13 but then, by accident, she died, and so I had then to kill
14 the other victim -- never once occurred to me that that was
15 Brady material, because I knew that the defense at this
16 point was totally inconsistent with that; that, if anything,
17 Mr. Rippe was saying I was not there, I did not participate
18 in any robbery, or murder.

19 And, Judge, even after serious
20 reflection, my opinion is still the same: That is not
21 exculpatory evidence.

19

22 Now, the defense may talk about
23 punishment. If we ever have a penalty hearing in this case,
24 that's on down the road. If the defense needs more time to

19 1 digest that information, then they certainly have it already
2 by the built in procedures of this case, but it is not
3 exculpatory.

4 And it is not material in the
5 sense that the failure to disclose would somehow change the
6 outcome in this case. By the way, these other cases all
7 talk about a case where it never was divulged.

8 These gentlemen have now known
9 for almost two weeks -- it will be two weeks tomorrow, they
10 have known from my lips what Mr. Sims would say on the
11 witness stand.

12 Now, Judge, they were oral,
13 inculpatory statements, not covered in the cases pronounced
14 by the U.S. Supreme Court, not covered by anything our
15 legislature intended, and not covered by our Nevada case
16 law.

17 The statute, N.R.S. 174.235,
18 specifically talks upon motion of a defendant, the Court may
19 order the District Attorney to permit the defendant to
20 inspect and copy or photograph any relevant, one, written or
21 recorded statements or admissions made by the defendant or
22 copies thereof.

23 Well, the precise issue the
24 defense raises in this case concerning oral statements --

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1 because I didn't tape record the interview, I didn't have
2 Mr. Sims write anything out, I did make notes -- but from my
3 way of thinking, it would be impractical and ridiculous to
4 say every time, in every case, when a witness comes into our
5 office and supplements, in the context of direct
6 questioning, previous statements he's uttered, that we're
7 under an obligation to pick up the telephone and call the
8 defense, when they have equal access to the witnesses -- and
9 there was no surprising anyone. This is not a case where we
10 produced a witness who was unknown to the defense. They've
11 known since they got on this case that Mr. Sims was probably
12 the second most important witness in the case.

13 What happens with these inmate
14 informants the defense has alluded to? Suppose when we
15 interview them, they supplement the statements that they've
16 made before, which they impute to this defendant? Does that
17 mean we have to advise them of that as well? And I think
18 the answer is no.

19 And, Judge, in Thompson v.
20 State, T-h-o-m-p-s-o-n, reported at 93 Nevada 342, quoting
21 from page 343, a 1977 Nevada Supreme Court case, the Court
22 holds, quote:

23 "Appellate next argues that he
24 was denied due process because the State failed to

1 sua sponte disclose to defense counsel oral
2 inculpatory statements made by the appellant."

3 They then quote from Mears v.
4 State, M-e-a-r-s.

5 "Pretrial discovery of the
6 accused's statements is not constitutionally
7 compelled by the 14th Amendment."

8 Well, that's the state of the
9 law in this case. They say the State doesn't have to do it
10 sua sponte.

11 Judge, the order -- the only
12 order that we're with -- we know about, the one which is
13 filed in November -- I can't tell if it's the 10th or the
14 18th of November, 1992 -- has a list of seven categories.
15 It does not address oral inculpatory statements of the
16 defendant.

17 We're not in violation of Brady
18 or Kyles or Giglio. We're not in violation of the discovery
19 statutes or case law in this state. We aren't in violation
20 of your order.

21 Your Honor, there is no
22 infected environment in this case. There is no pattern of
23 misconduct. All that has happened, at the very worst, is
24 that the Court and the defense and the jury have heard that

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1 there were inculpatory statements made to Mr. Sims from one
2 more witness than perhaps they had anticipated.

3 And it's not something
4 strikingly dissimilar to the scene of the crime. There is
5 certain physical evidence in this case that the crime scene
6 analyst will describe and which has been memorialized in
7 their lab reports.

8 The defense has known all that
9 for years. They've known what the medical examiner
10 discovered. They've known the finding was these were manual
11 or ligature strangulations. They've known where it
12 happened. That's the worst that has happened.

20

13 And so we argue to the Court
14 that the Court has really already ruled correctly on this
15 issue. The defense made a motion for a mistrial after our
16 opening statement; the Court denied it, and properly so; and
17 it hasn't changed anything.

18 If some members of the office
19 of the District Attorney knew, prior to that, whether it was
20 one week or a year or ten years, if it's not discoverable,
21 then there hasn't been any violation.

22 The fact remains that the
23 defense has always had the option of doing exactly what we
24 did. They've always had the option of interviewing Sims.

20

1 They talk about 165 -- no, it has narrowed down considerably
2 from that.

3 The defense has to have known
4 that he was a crucial witness. They could have interviewed
5 him. You can't call someone else sandbagging. You can't
6 say it's trial by ambush when you have access to the
7 witness, when the witness is fully known to you.

8 So, Your Honor, we're urging
9 the Court to deny the motion for a mistrial. The family is
10 anxious to have this case resolved. We are anxious to have
11 it resolved. Some family members have come from out of
12 state.

13 I'm not saying that their
14 considerations should be the paramount factor that the Court
15 wrestles with, but I think the public is entitled to a
16 resolution at last of this case, and we don't think there is
17 any basis whatever for granting the motion for a mistrial.

18 However, if the Court does have
19 some lingering concern because of -- perhaps it is an
20 inability, or perhaps the defense, up to this point, just
21 hasn't seen the importance of personally interviewing Mr.
22 Sims, then we would suggest, as a fall-back position, rather
23 than discharge the jury we took three days to pick -- and if
24 the defense is going to argue they can't unring a bell,

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1 Judge, unless he gets hit by lightning or run over by a
2 train, whenever there is a trial, Sims is going to testify,
3 and he's going to describe these things. So it really
4 matters not in that sense whether it's in February of this
5 year or later on.

6 But if the defense needs more
7 time to interview him, then perhaps the Court would
8 consider -- no, not a mistrial, not discharging this jury --
9 recessing the merit; give them an extra week if they need
10 that; give them the time to interview. That would give them
11 three weeks since they first learned about the inculpatory
12 statements given by the defendant. And, surely, if there is
13 any semblance of error, it would be cured by that procedure.

14 But, Your Honor, we implore
15 you, don't delay these proceedings unnecessarily. Don't buy
16 in to the talk about a pattern of misconduct of an infected
17 trial, when there is no reason whatever at this point why we
18 can't proceed with the jury both sides labored diligently to
19 pick. There is no reason why they can't be fair and
20 impartial. Nothing has happened up to this point to
21 preclude a fair disposition of this case.

22 Mr. Sims is still here. He's
23 still being examined. If the Court should think that it's
24 necessary, let the defense collect their thoughts, let us

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1 come back in about a week and pick up wherever we are at
2 this time.

3 But we certainly urge the
4 Court, based upon the state of the evidence, the testimony
5 at this evidentiary hearing, and the law which applies to
6 discovery, to deny the motion for a mistrial.

7 THE COURT: Counsel.

8 MR. WOLFSON: I'll try and be brief, Judge.

9 Mr. Harmon, it was six days
10 ago, not two weeks ago, that we learned for the first time
11 of this confession. It was six days ago, in your own
12 statement in this courtroom, that I learned for the first
13 time that Tom Sims would say my client confessed.

14 I --

15 MR. HARMON: No, the extra week would make
16 two weeks.

17 MR. WOLFSON: Well, then you said three
18 weeks. So if you are off a week, which I'm not accepting,
19 that would give us two weeks, not three weeks.

20 After Mr. Harmon gave his
21 statement, I was the defense counsel who had to respond in
22 an opening. I was astonished. I didn't know what to say to
23 this jury about Tom Sims testifying about a confession --
24 about a confession I learned minutes before -- minutes

1 before of a confession.

2 The Tolson case, which counsel
3 refers to, is 20 years old. The Kyles case, which is the
4 U.S. Supreme Court holding, was months ago, in 1995.

5 That court said that a
6 prosecutor, anxious about tacking too close to the wind will
7 disclose a favorable piece of evidence. The prudent
8 prosecutor will resolve doubtful questions in favor of
9 disclosure.

10 The prudent prosecutor will
11 resolve doubtful questions in favor of disclosure. This is
12 as it should be. And it will tend to preserve the criminal
13 trial as distinct from the prosecutor's private
14 deliberations.

15 Why is the case contaminated?

16 Here's why: Your Honor, with
17 all due respect, you've been a trial Judge for a while now.
18 How many cases have you heard where District Attorneys have
19 been called as witnesses?

20 It's not unheard of, but it is
21 certainly rare. It is certainly uncommon.

22 Four days before trial, we get
23 the Cabrales document. (Indicating). Sure, I knew, from
24 the other discovery, that there were evidence gathering

1 problems, but I didn't know that their main criminalist
2 opines in writing that the integrity of the crime scene
3 gathering has been compromised.

4 The witness list, Mr. Harmon,
5 you were ordered by the Court to provide. So you, yes, you
6 folks, were gracious.

7 MR. HARMON: We would have done it anyway.

8 MR. WOLFSON: You did provide us on a daily
9 basis with the few witnesses that you would be calling the
10 next day. That is gracious; that is professional.

11 MR. HARMON: I always do that.

12 MR. WOLFSON: But the witness list was
13 ordered by the Court to be provided, that large witness
14 list. Interestingly enough, John Lukens was ordered off the
15 case, but he continued to work for the State of Nevada
16 against Michael Rippe. He did things for Tom Sims that were
17 disfavorable to Michael Rippe.

18 His memory came back about the
19 ATF agent. Perhaps I talked to him, yes. Tom Sims' case
20 was perpetually continued, at John Lukens' doing.

21 Prejudice? Do I have to show
22 prejudice? I don't think so. I don't think so. Brady and
23 Giglio requires me to show prejudice?

24 Learning of a confession in the

1 State's opening statement, is that prejudicial?

2 Let's start over with a new
3 jury so that we can properly provide a fair trial to Mr.
4 Rippo.

5 MR. HARMON: What's going to change, Your
6 Honor, if we start over? What changes?

7 MR. WOLFSON: I might give a different
8 opening statement. I might be able to respond to the State
9 when they say: And you will learn from Tom Sims that the
10 defendant confessed.

11 How much time did I have for
12 that, Mr. Harmon, a couple minutes?

13 That will change. I will
14 interview Mr. Cabrales. I got this Thursday. You handed
15 this to Mr. Dunleavy; he handed it to me. I got it Thursday
16 or Friday before trial.

17 THE COURT: Okay. I've heard enough.

18 Motion for mistrial is denied.

19 Now, I will offer you time. If
20 you need to interview Cabrales and Mr. Sims, I'll allow you
21 some time to do that.

22 MR. WOLFSON: I'd like five minutes to
23 confer with counsel.

24 THE COURT: All right. We'll be in recess.

1 (Whereupon, a recess was had in
2 the proceedings, at the
3 conclusion of which the
4 following was had:)

5 THE COURT: Do we have something outside the
6 presence of the Jury?

7 MR. WOLFSON: I don't really think we need
8 to put much on the record other than the agreement reached
9 in chambers; and obviously --

10 THE COURT: Let's put that on the record
11 outside the presence.

12 MR. WOLFSON: Your Honor, yes, the defense
13 would like a continuance, a recess, in order to give us an
14 opportunity to conduct certain investigations.

15 We've spoken with Mr. Harmon
16 and Mr. Seaton, and taking into consideration their
17 schedules, I believe the parties will request this Court
18 continue this matter until ten a.m. on the 20th of February.

19 THE COURT: Is that correct?

20 MR. HARMON: Yes.

21 MR. SEATON: That is correct.

22 THE COURT: That will be the order of the
23 Court.

24 MR. WOLFSON: Additionally, the defense
would request the courtesy and the accommodations of the

1 State in making certain witnesses available to us.

2 MR. DUNLEAVY: Or providing us with
3 recent -- all the addresses we have are 1993 addresses, and
4 this is about as transitory a group as you can find, so if
5 they have recent addresses they would provide to us, it
6 would help us find these people.

7 MR. HARMON: Your Honor, we don't know
8 exactly which names are on the list. Tom Sims, we are sure,
9 is one of those persons. He is available.

10 MR. DUNLEAVY: We talked to him and made
11 arrangements already.

12 MR. HARMON: We'll fully cooperate to the
13 extent that we know where witnesses are.

14 MR. DUNLEAVY: That's all.

15 THE COURT: And all subpoenas for witnesses
16 will be continuing.

17 MR. WOLFSON: Thank the Court for its
18 courtesy as well.

19 THE COURT: Bring the jury in the courtroom.

20 THE BAILIFF: Yes, sir.

21 MR. WOLFSON: May we approach?

22 THE COURT: Yeah.
23
24

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1 (Whereupon, side-bar conference
2 at bench was had.)
3

4 (The following proceedings were
5 had in open court in the
6 presence of the jury:)

7 THE COURT: Counsel stipulate to the
8 presence of the jury?

9 MR. SEATON: Yes, Judge.

10 MR. WOLFSON: Yes, Your Honor.

11 MR. DUNLEAVY: Yes, Your Honor.

12 THE COURT: Okay. Ladies and gentlemen,
13 again, I'd like to apologize on behalf of the Court and the
14 parties interested in this case for how things have been
15 dragging along.

16 There seems to be many more
17 matters that we're going to have to take care of outside
18 your presence. So what we've all agreed upon doing is
19 continuing the trial until February 20th, we'll resume the
20 trial.

21 So I'm going to excuse you all
22 until February 20th, and then from that date on, this trial
23 should go pretty quickly.

24 I'm very sorry that this has

2 1 happened, but it's something that had to be done. So at
2 this time, I'm going to admonish you again:

3 Not to converse among
4 yourselves or with anyone else on any subject connected with
5 this case;

6 Read, watch, listen to any
7 report or commentary on this case by any medium of
8 information;

9 Or form or express any opinion
10 on the case until the matter is finally submitted to you.

11 MR. DUNLEAVY: Will that be 10:30 on the
12 20th?

13 THE COURT: You will be excused until 10:30
14 on February 20th, Tuesday.

15 That's a Tuesday?

16 MR. POTTER: That's a Tuesday.

17 THE COURT: Ten o'clock, February 20th.

18 I'm very sorry for this.

19
20 (Whereupon, the jury was
21 excused and the following
22 proceedings were had outside
23 their presence.)
24

THE COURT: The Court will be in recess.

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ATTEST: Full, true and accurate transcript of proceedings.


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

RENEE SILVAGGIO, CCR 122 391-0379

COPY

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

Monday, February 26, 1996, 10:45 o'clock a.m.

Reporter's Transcript of Proceedings

JURY TRIAL

VOLUME I

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

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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

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I N D E X (Continued)

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EXHIBITS ON BEHALF OF THE STATE:

Marked

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19 Photograph

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21 Photograph

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64 Photograph

47

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79 Evidence Bag

177

79-A Hair Dryer

177

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79-B Iron

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80 Evidence Bag

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80-A Leather Strap

177

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80-C Shoelace

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81 Evidence Bag

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81-A White Shirt

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81-B Blue Bandana

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84 Evidence Bag

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85-A Sunglass Box

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93-A Charge Card Statement

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93-B Charge Card Statement

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93-C Charge Card Statement

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16

93-D Charge Card Statement

59

97 Credit Card Statement

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17

98 Vehicle Registration

45

105 Credit Card Statement

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18

106 Evidence Impound Report

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97

19

EXHIBIT ON BEHALF OF DEFENDANT:

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H Information

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1 Las Vegas, Nevada, Monday, February 26, 1995, 9:00 a.m.

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* * * * *

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THE COURT: Welcome back.

6

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8

9

I'd like to apologize. We had a week trial that we were going to squeeze in when this was **necessitated, and that wound up taking two weeks. I apologize.

10

11

This is Case Number C106784, State of Nevada versus Michael Daman Ripppo.

12

13

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15

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

16

17

Counsel stipulate to the presence of the Jury?

18

19

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21

22

MR. SEATON: Yes, Your Honor.

MR. DUNLEAVY: Yes, Your Honor.

THE COURT: Call your witness.

MR. HARMON: We'll recall Tom Sims, Your Honor.

23

24

THE COURT: Okay. This -- we were going to begin cross-examination?

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1 MR. HARMON: Cross-examination.

2 THE COURT: Mr. Sims.

3 MR. HARMON: Cross-examination had started,
4 Your Honor.

5 THE BAILIFF: No one responding.

6 MR. WOLFSON: Mr. Seaton, there is no one
7 responding.

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

10 MR. HARMON: I've been asked by Mr. Seaton
11 if I know where he is. I just know that he has been outside
12 since about ten o'clock.

13 THE COURT: Do you want to go look for him?
14 Do you want to go take a look?

15 THE CLERK: Remain standing and please raise
16 your right hand.

17
18 Whereupon,

19 THOMAS SIMS
20 having been previously been called as a witness by
21 the Plaintiff and having been first duly sworn to
22 tell the truth, the whole truth and nothing but the
23 truth, was examined and testified as follows:

24 THE CLERK: Thank you. Please be seated.

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CROSS-EXAMINATION

BY MR. DUNLEAVY:

Q Good morning, Mr. Sims.

A Hello.

Q You were waiting outside?

A Yeah.

Q Were you reading documents relating to this case?

A Yes, I was.

Q What were you reading?

A What I testified to when I was here before.

Q Where you didn't remember what you said or --

A Well, I don't know; Just to, I guess, refresh my memory.

Q Well, I'll go over a few things very briefly with you.

I believe you testified that you had told Mr. Lukens and Mrs. Lowry, back in October of '93, about statements my client supposedly made.

A Yes.

Q And that part of that statement was something to the effect of that he had accidentally killed

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16

1 one girl and so he had had to kill the other.

2 A That's correct.

3 Q And this was a conversation that took place
4 at K-Mart, or in the K-Mart parking lot area?

5 A Yes.

6 Q Now, I believe you had also testified that
7 you had prior felony convictions; is that correct?

8 A Yes, sir.

9 Q How many?

10 A Three.

11 Q And then you picked up this other charge?

12 A That's correct.

13 Q Now, you gave a statement to the police, not
14 long after this crime occurred; is that true?

15 A Are you talking about --

16 Q Statements you gave to the police
17 specifically on March 2nd, 1992.

18 A Oh, yes.

19 Q Do you remember talking to them then?

20 A Yes.

21 Q And I believe you had said that, gosh, you
22 knew this information, but they didn't ask any specific
23 questions, so you didn't give it to them.

24 A Correct.

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16 1 Q And then you testified before the Grand Jury
2 on this case in June of 1992; is that correct?

3 A Yes.

4 Q You didn't mention any of this at that time?

5 A No.

6 Q Didn't you pick up three felony charges
7 against yourself in May of 1993?

8 A Yes.

9 Q And what were those charges?

10 A Ah, possession of a controlled substance
11 with intent, ex-felon in possession of a firearm, and
12 possession of a controlled substance.

13 Q Those are all felonies?

14 A Yes, sir.

15 Q Do you know what they are punishable by?

16 A I have a good idea.

17 Q The ex-felon in possession of a firearm, are
18 you aware that it's punishable by one to six years in the
19 state penitentiary?

20 A Yes, sir.

21 Q And the possession with intent to sell,
22 would this be your first offense on a drug case?

23 A No.

24 Q Second offense?

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