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1 Q What were you looking for when you analyzed
2 them?

3 A When I looked at the fingernail scrapings, I
4 was looking for the presence of any blood evidence or any
5 skin evidence that might have been present, perhaps from an
6 assailant.

7 I also noted, as I looked
8 through the evidence, because I looked at it under a
9 stereoscope -- in other words, I look at some of the
10 evidence under magnification -- I noticed that some of it
11 was white and crystalline in nature, so I also did some,
12 what we call, presumptive drug tests. Those are tests that
13 just indicate if a drug or controlled substance might be
14 present.

15 So I did not only a test
16 looking for the presence of blood or skin, but I also did a
17 few of the tests looking for the presence of controlled
18 substances.

19 However, I identified nothing
20 of serological value. In other words, I didn't find any
21 blood or skin or any substance that had serology value, that
22 I spoke of before, serology being the analysis of biological
23 fluids. I didn't identify anything of serological value in
24 any of those ten scrapings from each separate package.

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I have no further questions.

(Whereupon, a sotto voce at
this time.)

CROSS-EXAMINATION

BY MR. WOLFSON:

Q Did your investigation in this case stop there?

A No, sir, I did a number of additional examinations.

Q Forgive me. Did your investigation of the fingernail scrapings stop there?

A After I examined them?

Q Yes.

A And I completed my examination, that's when it stopped.

Q Okay. So we don't know what was under these fingernails then, do we?

A Well, yes and no.

I looked at some substances that were what I would consider typical of what dirt would look like, a few very small substances.

There were a number of things

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11 1 that I looked at that were so small, they might be small
2 black specks, that I couldn't even manipulate them; in other
3 words, I couldn't move them around to even perform an
4 analysis on.

5 So we know that there wasn't --
6 blood wasn't indicated on any of them that I performed the
7 tests on, that I could actually manipulate.

8 And I do know that probably
9 there was some dirt like particles, and the white
10 crystalline material was not controlled substances; what it
11 was though, I don't know.

12 Q Did you perform any further tests on these
13 white particles to determine what it may have been?

14 A No. And quite honestly, I don't think I had
15 enough substance to even attempt that.

16 Q What about the pieces of dirt or other
17 substance, did you perform any other tests to see if you
18 could determine what their exact nature was?

19 A No. And, once again, they were of such
20 limited quantity, I don't believe I really could have done
21 anything further.

22 MR. WOLFSON: You need a drink of water?

23 THE WITNESS: Yes, please.

24 Thank you.

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1 BY MR. WOLFSON:

2 Q Do you know why fingernail scrapings are
3 obtained from a person's hands?

4 A In association with criminal cases?

5 Q Yes.

6 A The purpose of it is to look for the
7 presence of any substances that might be associated with a
8 crime scene, perhaps; perhaps an assailant.

9 Q Isn't it common in many cases to find
10 evidence that can link an assailant to a victim through
11 fingernail scrapings?

12 A Not in my experience, no.

13 Q You've never found anything of serological
14 value in fingernail scraping?

15 A I can only remember, in doing 16 years of
16 bench work -- and also this is combined probably with other
17 people in the laboratory -- maybe a handful, maybe not even
18 five cases, where I think there has been some serological
19 value associated with fingernail scrapings, which I say is a
20 limited amount, considering I had performed these type of
21 analyses for 16 years.

22 Q Would it be fair to assume that you examined
23 each scraping from each vial pertaining to each finger?

24 A I examined -- there are ten clear plastic

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11 1 vials. That would correspondence to ten fingers. And I
2 examined -- each one had an applicator stick, which is a --
3 Just a small stick, a little bit fatter than what maybe a
4 toothpick would be, so that the fingernails can be scraped
5 underneath -- and I examined each one that was associated
6 with each one of the fingers. So if there is ten vials, you
7 would assume there is ten fingers.

8 Q Did you not examine 20 vials, 10 for each?

9 A Certainly, one -- ten from each victim.

10 Q So you examined the scraped material from
11 each of the fingers from each of the girls?

12 A Yes, sir.

13 Q You did some other work in this case, did
14 you not?

15 A Yes, sir, I did.

16 Q Isn't it true that on April 9th, 1992, you
17 did some work in association with hair and fiber evidence?

18 A On April 9th of '92, I examined a number of
19 items to re- -- collect fiber related evidence.

20 Q All right.

21 A I think the gist of that examination was
22 fibers.

23 Q Would you please tell the jury what you did.

24 A Sure.

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1 Q And I have a copy of your April 9th, '92
2 report. That's what I'm referring to.

3 A Okay.

4 Q What did you do that caused you to draft
5 this report?

6 A I opened a number of pieces of evidence and
7 I cut the parts of fabric samples out of them and placed
8 those in another package so that they could be analyzed by
9 another criminalist in the laboratory for the presence of
10 fibers and to perform a fiber comparison on.

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11 I also removed some items that
12 I had collected from the sexual assault kit of Lauri
13 Jacobson, which were -- had fibers associated with them for
14 the same purpose, and I put those items in one package, so
15 that this criminalist who was going to do the fiber analysis
16 could examine that one package.

17 And I collected a number of
18 items -- I honestly don't remember the gist of the fiber
19 exam, other than I was to collect the dark colored fibers
20 and take the -- a representative sample. I took like a two
21 inch by two inch square of the various materials and put
22 them into the envelope so that he could look at them.

23 Q Do you have a copy of your April 9th, 1992
24 evidence impound report?

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1 A Yes.

2 Q Would you please pull it out?

3 A Sure. It's right here.

4 Q I'd like to ask you some questions about it.

5 Regarding items one and two,
6 would it be fair to say that you removed from the sexual
7 assault kits -- pertaining to Lauri Jacobson -- certain
8 hairs and fibers for the purposes of your examination or
9 somebody else's examination?

10 A Oh, for someone else's examination.

11 Q Okay. And who would that someone else be?

12 A Well, it was going to be one of the
13 criminalists who was doing fiber analysis at the time. I
14 did not -- I'm not trained in fiber analysis. I have no
15 background in that area and I don't consider myself a real
16 expert in fiber analysis, so I wouldn't do the examination.

17 It would be assigned to someone
18 who had done fibers in the laboratory, and that would be one
19 of two individuals, probably Terry Cook or Scott Hardy also
20 does them. And I think Mr. Cook performed the examinations
21 in this case.

22 Q So you, in essence, helped prepare some of
23 the impounded physical evidence for a lab person to perform
24 his or her examination?

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1 A Yes.

2 Q Now, referring to item three from your April
3 9th report, could you please tell us what you did in regard
4 to that?

5 A Sure. I'm referring to my notes on the
6 case.

7 Is that all right?

8 Q Why do you have to refer to your notes? Are
9 they different from your report?

10 A Yes. My handwritten notes would give me a
11 little more detail than what this report says.

12 MR. WOLFSON: Okay. Please.

13 Is it okay, Judge, if she
14 refers to the notes?

15 THE COURT: That's fine with me.

16 THE WITNESS: Item number three is from
17 LTE-3, which was a package that was booked by Officer Scholl
18 that contained a piece of a black knit ribbed fabric.

19 And I cut a piece of that
20 fabric out of the larger piece and I placed that in to a
21 container and then placed that container into the manila
22 envelope, so that it could be analyzed by someone who
23 performs fiber analysis.

24 Q What was going to be per- -- what analysis

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1 was going to be performed; analysis on the knit fabric or an
2 analysis on the hairs and fiber that were on the knit fabric
3 or both?

4 A I believe that it was perhaps both.

5 I don't -- at the time, I don't
6 recall that -- since I wasn't doing the fiber analysis, I
7 really don't remember, other than the gist of the -- the
8 gist was to be fiber analysis.

9 Q When we talk about fiber analysis, does that
10 include hair analysis as well?

11 A Not necessarily.

12 Q Did somebody direct you to do these things?

13 A Yes.

14 Q Who?

15 A I don't remember.

16 Q Is it common for an assigned lead detective
17 to ask you to do work on a case?

18 A It's common for a detective to ask for a
19 number of analyses by what we call a request form. When we
20 get a request form, those are analyzed by various
21 criminologists in the laboratory.

22 I do serology, so I might get a
23 serology request. I might be next in rotation.

24 Since I don't do fibers,

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1 someone else had to do the fiber exam, if a detective
2 requested it or if another member of the court, or, for
3 example, if you requested it.

4 Q Please tell us what you did with regard to
5 item number four.

6 A Item number four was another item that was
7 described in my notes as a black scarf that was booked by
8 Connell.

9 And, once again, I took a piece
10 of that and placed it in the package for use in the fiber
11 analysis.

12 Q Do you know where that black scarf came
13 from?

14 A I have, in my notes, written, "According to
15 the booking sheet," and those are the exact no- -- words in
16 my notes; and then I have in quotes:

17 "From the left wrist of the
18 initial D," as in dog, "Lizzi," end of quotes.

19 Q What did you do with relation to item number
20 five, please? What is it and what did you do with it?

21 A It was -- item number five was the knit
22 fabric recovered from an area identified on the package. It
23 was booked by Officer Scholl at a Cambridge Avenue address.

24 And, once again, I just took a

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1 piece of that off and placed that in a petra dish for
2 subsequent analysis in relation to fiber.

3 Q And then, finally, item six, please. Miss
4 Errichetto.

5 A Once again, that was another standard piece
6 of fabric; and that item was LTE-4, which is the -- I'm
7 sorry. Wait a minute.

8 Item number six is the scarf
9 that's from the left wrist of D. Lizzi, identified as the --
10 the scarf. I'm sorry. I think I said that was item number
11 three. I stand corrected.

12 Q And do you have personal knowledge of who in
13 your crime lab actually did hair and fiber analysis on the
14 items that you have just described that you prepared for
15 such an analysis?

16 A Yes, I do.

17 Q Who did it?

18 A I handed those items to criminologist Terry
19 Cook on 4/9 of '92 at approximately 1530 hours.

20 Q I want to jump you up to October of 1994.

21 Did you have occasion to do
22 some further work in this case?

23 A Yes, I did.

24 Q So you did work in -- your indulgence for

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1 one moment, please.

2 THE COURT: Okay.

3 BY MR. WOLFSON:

4 Q You did work in February of 1992, April of
5 1992, and now we're jumping to October of 1994; is that
6 right?

7 A Yes, sir, that's correct.

8 Q And who requested you to do the work in
9 October of 1994?

10 A Mr. Dan Seaton.

11 Q The prosecutor seated three times to my
12 right; is that right?

13 A Yes, sir.

14 Q I have a copy of your forensic laboratory
15 report of exam, and I can't make out the date stamp, but it
16 refers to an apparent examination of a pillow case.

17 Do you have that report
18 available?

19 A Yes, sir, I do.

20 Q Would you please tell the jury what you did
21 and what was the result of your test?

22 A Certainly.

23 Once again, I was looking at
24 the item of evidence as a serological examination. I was

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1 looking at it for the presence of biological fluids.

2 And I examined this pillow case
3 for the presence of blood and semen and the results were
4 negative. I performed a number of tests looking for both of
5 those substances; however, the tests were all negative.

6 Therefore, I reported that the
7 presence -- the examination for the presence of both blood
8 and semen, the results were negative.

9 Q So you found no blood and no semen on a
10 pillow case that you examined for such substances.

11 A That's correct. It was a black satin pillow
12 case.

13 Q Finally, I have a supplemental report
14 wherein you did some work on October 25th, 1994.

15 A That is correct.

16 Q Again, at Mr. Seaton's request --

17 A Yes, sir.

18 Q -- regarding a -- trying to find it --
19 pillow from day bed.

20 Do you know what report I'm
21 talking about?

22 A Are you talking about my report --

23 Q Yes.

24 A -- dated October 25th, 1994?

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I don't mention a day bed in my report.

Q May I see your report to see if it's the same thing that I have?

A Sure.

MR. WOLFSON: May I, Judge?

THE COURT: You may.

MR. WOLFSON: Same one.

BY MR. WOLFSON:

Q My question, Miss Errichetto is: What item did you use for this examination?

A I used an item number identified as item 17. It was a coin envelope containing one piece of fabric, bearing several blood-like stains and several yellowish stains.

Q Do you know where that piece of fabric -- piece of fabric came from?

A No, sir, I don't.

I know that it came from a package booked by Norman, but I don't know anything other than that.

Q Do you know how big the fabric was?

A Yes, I do. I measured it approximately eight and a half by five and three-quarters inches.

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1 Q Have you ever learned where that fabric came
2 from?

3 A No, sir, I have not.

4 Q And did you perform a serology test on that
5 fabric?

6 A Yes, I did.

7 Q What was the result of your testing?

8 A There were not only blood-like stains on it,
9 which I would have examined for the presence of blood
10 obviously, but there were also several yellowish stains on
11 it, which I felt could possibly be seminal in nature.

12 So I performed both tests to
13 identify or to indicate the presence of semen and also tests
14 to indicate the presence of blood.

15 The semen tests were negative.

14

16 I then attempted to blood type
17 the item number 17, and my attempts to blood type that item
18 were negative, and I have, in my notes, that it didn't even
19 extract.

20 When we do a serological
21 examination and there is what appears to be a blood-like
22 material on a piece of clothing, for instance, the test
23 takes on several steps:

24 The first step would be: Is

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1 this stain blood?

2 The second step is: If it is
3 blood, is it human blood?

4 And, finally, the third step
5 is: If it is human blood, can we type this blood? Can we
6 assign a genetic profile for the donor of this blood?

7 Well, when I attempted to move
8 ahead, after I got an indication that it might be blood, I
9 attempted to extract it or pull the blood-like material from
10 the cloth and it didn't extract very easily at all.

11 Therefore, I wasn't able to
12 pull that substance out of the cloth, so I wasn't really
13 able to do much else with it, other than have an indication
14 that it could possibly be blood, but I could get no further.

15 Q So you did determine that it was blood or
16 it -- it had indications --

17 A Indications of, sir.

18 Q -- of -- of being blood?

19 A I did not confirm the presence of blood.

20 Q But you could not even go to that next step
21 for typing?

22 A That's correct.

23 Q Do you have knowledge of how long blood will
24 remain identifiable if it spills onto a fabric and it is not

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1 tested for years? Do you have any expertise to be able to
2 answer that type of question?

3 A Sure, I can answer that question.

4 I've examined numerous stains
5 for the presence of blood over my career, 16 years. I have
6 identified stains that were fresh, what you would consider
7 fresh blood stains, fresh blood, whole blood samples; and
8 I've also, in the course of my 16 years as a bench chemist
9 and also my years as a lab director, been able to read
10 articles and books and things on the analysis of biological
11 evidence in general.

12 A lot of things depend on the
13 sample itself, how it's stored. For example, if we had a
14 blood sample that was taken and it was stored in a plastic
15 bag while it was still wet and put in the trunk of someone's
16 car here in Las Vegas in August, it would probably be
17 untypable within several days, probably a week or less, I
18 would guess, and that's an educated guess.

19 However, if it were a sample
20 that were dried and frozen, it would obviously be typable
21 longer because we've preserved that -- because we preserved
22 that evidence differently.

23 I had -- just several months
24 ago had occasion to listen to the expert testimony of

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1 someone who is a DNA analyst, who testified in these courts,
2 here in the district courts of Clark County, and he stated
3 that he had seen an analysis done on a sample that was 12
4 years old, and was still able to get what he considered very
5 good DNA results, from a blood stain that was 12 years old.

6 So there is no cut and dried
7 answer to when blood evidence cannot be examined. It just
8 depends on the method of storage, how old the sample is and
9 what it's on.

10 I've seen cases of very fresh
11 blood on blue jean material that I can't extract. The dye
12 sometimes in blue jean material can have a deleterious
13 effect on the blood stains, sometimes not. It just depends.
14 So there is no formula that we can use that says at this
15 point blood is no longer good.

16 Q Thank you.

17 Now, with relation to this
18 piece of fabric that you examined in October of 1994, do you
19 know how it was stored for these two and a half years?

20 A It would be longer than -- you mean, until I
21 performed the examination or until today?

22 It's longer than two and a half
23 years.

24 Q I thought you said --

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1 A It's four -- today it's four and a half --

2 Q You performed the exam on October 24th,
3 1994.

4 A Yeah, from when it was taken to October, I
5 don't know. It was -- I received it from the evidence
6 vault, and if it was in the evidence vault, I doubt it was
7 refrigerated, quite frankly.

8 Q So, therefore, the environment was not as
9 conducive to preserving it for serology testing as we'd
10 like?

11 A Well, I wouldn't necessarily say that.

12 I don't --

13 Q Was it in a refrigerator?

14 A No, but as I stated earlier, we can get
15 results from samples that are properly dried, that aren't
16 refrigerated, for a long period of time, too. It just
17 depends on the sample.

18 If I had my choice, I think the
19 best way would be to freeze everything that's biological,
20 but that doesn't even indicate that something that's frozen
21 for four years is going to give you a result. There --
22 there is just not -- you are just not able to predict that.

23 Q You, as an expert, can only work with things
24 as you find them and as they are presented to you; is that

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1 right?

2 A Right; and as they are collected. I mean --

3 Q So if there was a two and a half year delay
4 in the request for you to examine a piece of evidence, you
5 have to live with, better or worse, that delay.

6 A That's correct.

7 Q Is Metro's lab considered a modern crime
8 lab?

9 You being the director, I think
10 I know what your answer is going to be.

11 A I think we're a modern crime lab, but I -- I
12 think that would be a matter of opinion whether you would
13 think it's a modern crime lab. I have no idea what you mean
14 when you say modern crime lab.

15 Q Do you have state of the art equipment?

16 A What do you consider state of the art
17 equipment?

18 Q Equipment that is recognized by your field
19 to be of the highest of quality for a city of this size.

20 A I would have to say that answer can be
21 answered -- can't be answered with just a yes or a no
22 answer. I would have to say it's both yes and no.

23 We don't perform DNA analysis
24 yet. I think a crime lab in a city this size should be

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1 performing DNA analysis; and as a result of my feelings on
2 that subject, we are now remodeling the laboratory.

3 Currently, as I'm sitting here,
4 the laboratory is being remodeled so that we can, in fact,
5 perform our own DNA analysis. So I think we're behind the
6 times from that respect.

7 However, in other instances,
8 performing conventional serologies, we have the equipment
9 that's anticipated to perform conventional serology, which
10 is different than DNA analysis.

11 Q Are you familiar, generally speaking, with
12 how an expert, a hair and fiber comparison expert, conducts
13 his examination?

14 A Yes.

15 Q Is it as simple as comparing one known hair
16 to one questionable hair under a microscope to determine if
17 they have similarities?

18 A It can be just one hair. I wouldn't perform
19 a hair comparison using standards of just one hair. That
20 would be, in my opinion, improper.

21 Q Do you know -- do you know if any hair
22 comparisons were done with the hair of my client, Michael
23 Rippe?

24 A I didn't do any hair comparisons.

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1 Q Do you know if anybody in your lab did any
2 hair comparisons using a known sample of Michael's hair?

3 A Well, since I was doing the serology case,
4 and I perform hair examinations, I would probably have been
5 the one to perform those, if I felt they were necessary; and
6 I did not perform any.

7 And Terry Cook performed the
8 fiber analysis. He's also performed hair analysis, and he
9 didn't perform any hair analysis, other than to look at, I
10 think, a hair that was in the group of items that he looked
11 at when he looked at the fiber analysis, and I believe it
12 was an animal hair.

13 Q Are you saying that, to your knowledge,
14 Ter- -- Terry Cook didn't conclude that certain hairs that
15 were recovered from the crime scene were human hairs?

16 A I don't believe he had any opportunity to do
17 that. I don't believe he looked at evidence of that nature.

18 I looked at evidence that was
19 hair evidence in a sexual assault kit. I examined several
20 pubic hairs for the presence of seminal material and a white
21 material --

22 Q So you don't know if Terry Cook did any hair
23 comparisons between unknown hairs retrieved from the crime
24 scene and hairs of Michael Ripppo?

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1 A No, I do know that; and as I stated, he did
2 not.

3 MR. WOLFSON: Okay. Thank you very much.

4 THE COURT: Redirect?

5 MR. SEATON: Yes.

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7

REDIRECT EXAMINATION

8 BY MR. SEATON:

9 Q In your report where you did work on October
10 the 25th, 1994, on the manilla envelope booked by Sheree
11 Norman, package four -- do you have that report?

12 A Yes, sir, I do.

13 Q That was one that Mr. Wolfson asked you
14 about.

15 A Yes, I do.

16 Q And it showed that you received items 16 and
17 17.

18 A That's correct.

19 Q And Mr. Wolfson asked you if you knew where
20 the piece of fabric in item 17 came from.

21 A Yes. And I said I did not.

22 Q And you did not know --

23 A Other than it came from Norman's package
24 four.

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1 Q Is there a particular way that crime scene
2 analysts package their packages so that you can relate to
3 their packaging system?

4 A They package their evidence prior to our
5 examination of the evidence.

6 Q Yes.

7 A So they perform their packaging duties with
8 no regard for my subsequent examination.

9 Q Right. When you get their packaging and it
10 says Sheree Norman's package four, item 16 and 17, is that
11 a --

12 A I assume she can identify where she got
13 package four.

14 Q All right. Let me show you what has been
15 marked in evidence as State's Exhibit 106.

16 Do you recognize -- yeah, in
17 reading that evidence envelope -- evidence impound sheet --

18 A Uh-huh.

19 Q -- or can you understand what it's about?

20 A Sure. This is an evidence impound report.
21 (Indicating) It states a number of different items that
22 were recovered, what they are, a description of the
23 evidence, the location recovered, with the description of
24 where things were recovered.

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1 Q And -- go ahead.

2 A I'm sorry. I was going to say this is a
3 report that is signed by Sheree Norman and approved by a
4 crime scene analyst named David Raffino.

5 Q All right. And has she, in this report,
6 numbered, by package and item number, the various things
7 that she collected?

8 A Yes, sir, she did.

9 Q And on the front page, where does it say
10 that these items were collected from?

11 A The location is given as 3890 Cambridge
12 Street, Apartment 317.

13 Q And on what date were they obtained?

14 A The date listed on the evidence impound
15 report says: On 2/20/92, at approximately 1400 hours, I
16 recovered the following items as evidence reference this
17 incident.

18 Q And does it name the victims in this
19 particular case on the top of that report?

20 A Yes, sir, it does.

21 Q And who are they?

22 A Denise Lizzi and Lauri Jacobson.

23 Q Could you look in there to see if there is a
24 package four, items 16 and 17.

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1 A Yes, sir.

2 Q Is there one?

3 A Yes, there is.

4 Q And could you tell us -- Mr. Wolfson's
5 concern was on item 17, I believe, trying to determine --

6 A Oh, okay.

7 Q -- where it was that the eight inch piece of
8 fabric that you had in your possession came from.

9 Does this report indicate that?

10 A It re- -- it indicates that it was recovered
11 from a pillow located on the -- I'm assuming this is for
12 south -- day bed.

13 Q And --

14 A The initial -- I'm sorry. Let me clarify
15 that that was the initial on her report. I'm assuming that
16 means south day bed.

17 Q And just to clarify the record, how about
18 item 16, what was it and where did it come from?

19 A This is a possible blood sample and control.
20 It says: Recovered from the SE -- I'm assuming that means
21 southeast -- edge of the bathroom sink bowl.

22 Q Thank you. And the item 17, which was the
23 piece of fabric that came from a pillow on one of the day
24 beds, was what you had found the existence of blood on, but

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1 were unable to type; is that correct?

2 A I found an indication that the substance was
3 blood. I did not confirm that.

4 Q Okay. You don't know for sure that it was
5 blood?

6 A That's correct.

7 Q Did the condition of Exhibit 17, as you
8 viewed it, hurt your ability in any way, because of its
9 condition, to properly examine that?

10 A I think it was definitely influenced by the
11 fact that it didn't extract.

12 Q What does that mean?

13 A That means I couldn't remove the substance
14 that could have been the blood-like substance off the clot.
15 It was -- as blood ages, it frequently becomes difficult to
16 remove from a piece of fabric.

17 And that's one of the problems
18 with aging blood stains, is that it does become difficult to
19 actually remove that from a fabric.

20 And what we do is we might take
21 a piece of fabric and soak it in a liquid, like either
22 distilled water or saline; and when blood is very fresh, as
23 long as it's not been heated to high temperatures --
24 sometimes that adversely affects your ability to get blood

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1 to extract also.

2 What we want to do is soak the
3 proteins and things in that blood stain into the liquid so
4 then we can manipulate that liquid and attempt to form a
5 genetic profile or type that liquid.

6 And what happens is that as
7 blood ages it becomes more and more difficult to extract,
8 and I think that my difficulty in blood typing this was
9 definitely hampered by the fact that it did not extract.

17

10 Q It was your job in those days to do hair
11 analysis; is that correct?

12 A Yes, I did hair analysis.

13 Q And did you tell us that you did no hair
14 analysis in this particular case?

15 A Well, I did -- I did a hair analysis, in
16 that I looked at some hairs for the presence of seminal
17 material.

18 I did not do a hair comparison,
19 which is the comparison of hairs from one source to another,
20 under a microscope.

21 Q Tell us a little bit about the hair
22 comparisons.

23 A Hair comparisons in general?

24 Q First of all, have you qualified as an

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1 expert in courts of this state as an expert in comparisons
2 of hairs?

3 A Yes, I have.

4 Q All right. Give us a little education, if
5 you would, about how you go about doing that.

6 A Hair comparisons are basically that:
7 They're a comparison of sources, different sources, of
8 hairs.

9 For example -- and I'll just
10 use a sexual assault sample, where we expect some sexual
11 contact between two pubic regions, the victim and the
12 suspect both having -- perhaps having hair, I have had cases
13 where there haven't been hairs from victims or suspects;
14 however, these regions are typically hairy areas and perhaps
15 some violent contact could cause an exchange of the hairs
16 from victim to assailant or vice versa.

17 In the -- in the case of
18 finding hairs, which might be foreign to a victim, you would
19 then need the hair standards from a suspect for comparison
20 purposes.

21 Hair comparisons are not like
22 fingerprint comparisons, they're not even like DNA
23 comparisons, in that hairs -- in the first place, if you
24 just look around the room, you can see a large variety of

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1 people's hairs; even among hairs on your head, you can find
2 a variety of hairs. So there is no way to put hairs in to
3 what we would call population frequencies.

4 For example, there is no way to
5 know how many people in the Las Vegas Valley or Clark County
6 have brown hair, because what I might look at and call
7 brown, someone else might call dishwater blond, for example.
8 So there is no way to specify population numbers for hair
9 analysis.

10 In addition to that, hairs can
11 be radically changed very quickly. People can shave their
12 heads. They can change the color of their hair over a
13 period of years.

14 People become -- as they get
15 older, they become graying; and you can see that in just
16 looking around the courtroom, the variety of hairs. So that
17 also affects hair comparisons.

18 So there is no way to state
19 this hair definitely came from this person's head when you
20 are doing a hair comparison, a microscopic hair comparison
21 of the morphology or the characteristics of a hair.

22 Now that we have DNA analysis,
23 if there is a root or follicular tag present, you can, in
24 fact, do that.

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1 But when you talk about a hair
2 comparison, you can't -- the most positive thing we can say
3 about a hair, when we do a hair comparison, is this hair is
4 similar to the hair from this individual's standards, and
5 that's the most positive thing we can say.

6 We can occasionally exclude
7 people, say this hair could not have originated from this
8 person's head.

9 But hair comparisons are also
10 rather tedious.

11 Q What do you mean by tedious?

12 A They can be long and involved hair analyses;
13 and, quite frankly, I find that when you look at the
14 analysis itself, from a management standpoint, I just don't
15 think when you do a hair comparison -- I think in all my
16 years as an expert, I found only several cases where I think
17 the hairs were so unusual that they were what I would
18 consider extremely guilt linking evidence; in other words,
19 evidence that linked victims or suspects or crime scenes.

20 Q Is that because the best you can do with a
21 hair comparison is just say that one is similar to another?

22 A Right.

23 Q I'm not going to be able to take two hairs
24 off of my head and examine them and say positively that they

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1 came from the head of the same person?

2 A No. I -- I couldn't -- I could not do that
3 from a microscopic standpoint, even if I removed them
4 myself, compare them and say these hairs are definitely from
5 Dan Seaton's head, based on my microscopic examination.

6 Only if I had plucked them
7 myself could I say that, because hair analysis doesn't lend
8 itself -- the comparison of hairs doesn't lend itself to
9 that type of answer.

18

10 Q Are you suggesting then that the value of
11 hair analysis is something less than that of DNA or
12 fingerprint analysis?

13 A Oh, it's definitely -- when you talk about
14 value in terms of identifying it to a person, it's
15 definitely less than fingerprints and DNA. That doesn't
16 mean that it can't be helpful in a case, of course.

17 But it doesn't have the
18 identifying -- the discriminating power of some of the other
19 analyses, like fingerprints or DNA analyses even.

20 Q Let me give you a hypothetical:

21 A woman lives in an apartment,
22 a rather unkempt apartment, and another woman is visiting
23 her. Two other people are there, a man and a woman, and
24 there is a fight of some sort that goes on.

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1 Both of the women, the first
2 two women that I mentioned, end up as victims of a homicide
3 and are taken to a particular closet, a walk in closet, and
4 laid on the floor of this fairly dirty apartment.

5 Does that have anything, any
6 import to you, in terms of whether or not hair analysis, in
7 this case, hairs taken from either of the victims or their
8 clothing, would be of any value?

9 A You have to consider that in order to --
10 when you perform a hair comparison -- once again, the word
11 comparison is crucial, because you need standards or
12 reference materials from people who would be donating or
13 perhaps originators of some of that evidence.

14 So the more -- the more people
15 that you have who could donate it, then obviously the larger
16 circle you have to get of standard material.

17 But what happens is -- for
18 example, we've had -- I've had cases where we collect hairs
19 from the scene of a motel. Since we have so many
20 hotel-motel rooms here in Las Vegas, well, you could have
21 hairs in that motel room from any number of people who have
22 stayed in that hotel room, who may have changed or bathed or
23 what have you.

24 So I think that that also --

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1 that the crime scene itself would definitely have an impact
2 on it, but I think that you have to also consider what I
3 said before, hairs aren't -- we don't have given groups of
4 hairs. It can change. Um, hair analysis is not anything
5 that we can pinpoint to an individual person.

6 So that all has an effect on
7 the value of hair evidence, I think, in general, when you
8 are talking about hair comparisons.

9 Q Let me add to my hypothetical -- and in the
10 hypothetical, I have mentioned women and one male -- and
11 let's assume in that hypothetical that the male is the
12 suspect in the killings, and, further, that that male has
13 been in that apartment before on days other than the
14 killing.

15 If you collected hair and you
16 had his known hair sample and you found one of his hairs
17 anywhere in that apartment or on either one of the victims,
18 and you could make a -- this is a similar kind of a hair
19 match, would you know -- first of all, you won't know
20 positively that it came from that individual, would you?

21 MR. WOLFSON: Objection. That is based upon
22 a hypothetical with facts not in evidence. There were no
23 known hairs taken from Michael Rippo and that's part of his
24 hypothetical.

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1 MR. SEATON: Well, we don't know if there
2 were or not. We've had no testimony that way.

3 MR. WOLFSON: That's exactly right. We've
4 had no testimony, so it's not a proper hypothetical.

5 MR. SEATON: She is allowed to go into
6 hypotheticals of this nature.

7 THE COURT: Overruled, I'll allow it in.

8 BY MR. SEATON:

9 Q Do you need me to rephrase it?

10 A I need you to repeat it.

11 Q I'll only be able to rephrase it.

12 In my hypothetical, there is a
13 male and that male is suspected of having committed the
14 murders.

15 A Okay.

16 Q That male, further, has been known to have
17 been in that apartment on a day other than the day that the
18 killings took place; and we have -- and hairs have been
19 taken from his head and they are compared to all the hairs
20 that are found at the scene --

21 A Uh-huh.

22 Q -- and one comes up similar, at least one,
23 we'll say.

24 First of all, would you be able

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1 to tell us from that similarity that that particular male
2 belonged positively to the hair that was found at the scene?

3 A No.

4 Q Even assuming that that hair was his hair,
5 would you be able to tell whether or not that hair was
6 deposited at the time of the killing or the day before or
7 whenever he was there at some other time?

8 A Certainly not.

19

9 MR. SEATON: Thank you.

10 I have nothing further.

11 THE COURT: Recross.

12

13

RE CROSS-EXAMINATION

14

BY MR. WOLFSON:

15

Q But if you don't have the known donor's hair
16 to use in a comparison, you can't make that kind of
17 comparison; you can't conduct that kind of comparison, can
18 you?

19

A Well, prior to having a known donor's hair,
20 you have to have hair that has some evidentiary value; and
21 that's the first step. And, then, yes, if you have hair
22 that you feel has evidentiary value for some reason, then
23 you have to definitely have hair for comparison purposes,
24 because there is no other way to do a hair comparison than

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1 to compare it to standards from people's heads, from their
2 pubic region.

3 I've compared finger hairs.

4 I've compared hairs from, you know, a variety of different
5 body areas.

6 Q Is color of hair something that is
7 considered by the examiner in determining whether there is
8 similarities or dissimilarities?

9 A Certainly.

10 Q You can exclude people, though, can you
11 not --

12 A Yes, you can.

13 Q -- in hair comparison work?

14 A Yes.

15 Q And then, finally, you said something about
16 if the root of the hair is available, then there can be some
17 DNA analysis done?

18 A Well, there can be.

19 I've -- we've sent out a number
20 of cases for DNA analysis on hairs and had limited success.
21 It's been reported in the literature that it can be done,
22 but it has to be done with what we call the root or a
23 follicular tag, which are actually pieces of skin -- cells
24 there that would have DNA in them. You can't get DNA, like,

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1 from the tip of my hair.

2 Q I remember as a kid, I used to pull out a
3 piece of hair, and I'd see that little piece of white thing
4 at the end of it.

5 Is that the root of the hair
6 we're talking about?

7 A That probably was a follicular tag. The
8 root doesn't necessarily have to have those pieces of skin
9 on it, but that's a follicular tag. But that's not to say
10 that just because you have that, the DNA analysis would
11 definitely be a positive outcome.

12 Q Have you ever seen Dan Connell's evidence
13 impound report wherein he noted certain hairs and hair
14 strands being retrieved from the clothing of Denise Lizzi
15 and Lauri Jacobson?

16 A I -- I don't recall if I did or didn't,
17 quite honestly.

18 Q So you don't know whether the hairs and hair
19 strands that were obtained by Analyst Connell had the roots
20 on them, do you?

21 A No, I don't. I would have to look at them
22 microscopically to determine that, or with the naked eye.

23 Q What is DNA?

24 A DNA is a substance that is present in cells.

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1 It's the genetic material that is passed on that determines
2 who we are and what we are. It makes us human.

3 Q In your opinion, is DNA testing and
4 comparison as reliable as fingerprint testing?

5 A I think you'll have to be more specific for
6 me.

7 What do you mean when you say
8 reliable?

9 Q Is it accepted in most courts of law?

10 A Which one, DNA?

11 Q Yes.

12 A It's accepted in a number of courts.

13 Q Is it accepted in the Clark County courts?

14 A Yes, it has been.

15 Q Do you know if any DNA testing was done in
16 this case?

17 A I don't think it was -- I don't think any
18 DNA testing was done, no.

19 MR. WOLFSON: Thank you.

20 No further questions.

21 MR. SEATON: Nothing further.

22 THE COURT: Thank you, ma'am.

23 You are excused.

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(Whereupon, the witness
was excused.)

THE COURT: Call your next witness.

MR. SEATON: Carlos Caipa.

MR. DUNLEAVY: Your Honor, can we approach?

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

THE COURT: Will the Jury kindly step
outside for a few minutes.

And don't talk among yourselves
about this case or with anyone else; or form any opinions
about the case.

I got to keep you on your toes.

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

THE COURT: The record will reflect we're
now outside the presence of the Jury.

MR. WOLFSON: I'm sorry, Judge.

(Whereupon, a sotto voce at
this time.)

THE COURT: Can we swear in the witness?

MR. SEATON: Judge, I'm sorry?

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1 THE COURT: Can we swear in the witness?

2 MR. SEATON: Well, I just suggested to
3 counsel that we have a testimonial offer of proof. Their
4 preference is that we just make a proffer of what his
5 testimony is going to be.

6 MR. HARMON: But our preference is the
7 witness is here, why don't we just hear from him.

8 THE COURT: Swear in the witness, please.

9 THE CLERK: Will you please stand and raise
10 your right hand.

11
12 Whereupon,

13 CARLOS CAIPA

14 having been called as a witness by the Plaintiff and
15 having been first duly sworn to tell the truth, the
16 whole truth and nothing but the truth, was examined
17 and testified as follows outside the presence of the
18 jury:

19 THE CLERK: Thank you.

20 Please be seated.

21 Will you state your name and
22 spell it for the record.

23 THE WITNESS: Carlos Caipa; last name
24 C-a-i-p-a.

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DIRECT EXAMINATION

BY MR. SEATON:

Q Mr. Caipa, where do you work?

A I work for Sears.

Q Is that Sears-Roebuck?

A Yes.

Q Is it here in Las Vegas?

A Yes. It's the Boulevard Mall store.

Q The Boulevard Mall?

A Yes.

Q How long have you worked there?

A Going on 13 years.

Q In -- right now, what is your capacity?

A I'm sales manager.

Q Of what department?

A I handle six departments: Hardware,
sporting goods, lawn and garden.

Q In February of 1992, did you work for Sears?

A Yes.

Q And in what capacity?

A I was a sales associate.

Q In what department?

A In hardware.

Q Is that still of the Boulevard Mall store?

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20

1 A Correct.

2 Q I want to show you -- let me show it to
3 counsel first -- I'll show you what has been marked as
4 State's Proposed Exhibit 94, and ask if you are familiar
5 with that document?

6 A Yes.

7 Q How are you familiar with that document --
8 Well, first of all, what is
9 that document?

10 A It's a sales -- sales slip that we ring up
11 sales on.

12 Q At Sears?

13 A Yes.

14 Q And how are you familiar with that document?

15 A My associate number.

16 Q What is an associate number?

17 A That's a number that we ring up to track all
18 of our sales to get -- when -- when -- at the time I was on
19 commission, so each associate has a sales associate number
20 that they ring under.

21 Q And the Exhibit 94 that you've got there is
22 a sale that you rang up?

23 A Correct.

24 Q Would you look this document over carefully

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20 1 and tell us if, in all respects, it corresponds to the
2 typical sales slip that is created by transactions in Sears?

3 A Yes. The sales check number is on them and
4 each item, itemized out, so, yes.

5 Q Do you have an independent recollection of
6 this particular sales transaction?

7 A Yes.

8 Q And you were the person doing the selling?

9 A Right.

10 Q Is this -- this is obviously a copy of your
11 sales transaction, is it not --

12 A Correct.

13 Q -- with the sales slip?

14 Is it a fair and accurate
15 representation of what the sales slip looked like in this
16 particular transaction?

17 A Yes.

18 MR. SEATON: I would move for its admission,
19 Judge.

20 THE COURT: We shouldn't do it now.

21 MR. DUNLEAVY: Will you reserve until after
22 we've had a chance to cross?

23 THE COURT: I'll reserve.

24 MR. SEATON: I'm going to have him testify

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20 1 from it though for the purposes of this hearing.

2 MR. DUNLEAVY: Well, when the jury is here.

3 THE COURT: Yeah.

4 BY MR. SEATON:

5 Q When did this particular transaction take
6 place?

7 A It was the 19th of February, '92.

8 Q 1992?

9 A Uh-huh.

10 Q At the Boulevard Mall?

11 A Right.

12 Q Sears-Roebuck store?

13 A Right.

14 Q Do you know what time of day it was?

15 A It was in the evening.

16 Q Evening.

17 And do you know who the
18 individual was -- do you remember the individual who came to
19 the store and created this transaction?

20 A Yes.

21 Q Was it a man or a woman?

22 A It was a man.

23 Q Do you remember how that person was dressed?

24 A He had jeans on, kind of like lumberjack

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20 1 type of shirt, I believe it was open, and a T shirt
2 underneath that.

3 Q Was he tall or short --

4 A No, he was medium build, um, five four, five
5 five; shorter than I was, and I'm not very tall.

6 Q How tall are you?

7 A I'm five eight.

8 Q And what did he buy?

9 A He purchased these items here, a compressor,
10 a sander, spray gun, couplings, and an extended warranty on
11 them.

12 Q What was the total cost?

13 A And it was 819.80.

14 Q Did he use a credit card?

15 A Yes.

16 Q And was the credit card in a particular
17 name?

18 A Um, yes. It's stamped here the holder is
19 Denise Lizzi, and the signature on this is different.

20 Q What is the signature on the card?

21 A Denny Morgan, that I can see.

22 Q All right.

23 A Uh-huh.

24 Q Did you end up taking the items to this

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1 individual's automobile?

2 A Yeah, for some reason, I did. I don't know
3 why. It must have been a busy night. But I did help him
4 load it up into the -- into the car.

5 Q What kind of car was it?

6 A It was a Pinto, and it was either beige or
7 white with, like, blue interior in it.

8 (Whereupon, as requested by
9 counsel, State's Exhibits 71
and 72 were marked for
identification.)

10 BY MR. SEATON:

11 Q Showing you what's been marked as State's
12 Proposed Exhibits 71 and 72, can you recognize the
13 automobile in that particular picture? Does it look
14 familiar to you?

15 A Yeah. I saw it really from behind. He had
16 the hatch up.

17 Q That's Exhibit 71 you are looking at.
18 Now you are looking at 72,
19 which is the picture from the rear.

20 Does that help at all?

21 A Um, yeah. I mean, like I've seen -- this is
22 a picture of that, yeah.

23 Q Does that look like the same car into which
24 you loaded the items that are listed as having been sold

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1 from Sears on -- in Exhibit 94?

2 A Um, yeah.

3 THE COURT: Is that yes?

4 THE WITNESS: Yes.

5 THE COURT: You have to say yes.

6 THE WITNESS: Yes.

7 MR. SEATON: Okay. Thank you.

8 BY MR. SEATON:

9 Q Would you look about the courtroom and tell
10 us if you recognize the individual --

11 A Well, it's kind of hard. That was four
12 years ago. Totally different looking kind of guy there,
13 longer hair, scraggly kind of looking, you know.

14 Q Did the person have longer hair that you
15 sold it to --

16 A Right.

17 Q -- than the individual -- are you -- are you
18 thinking about a particular person in court today as we're
19 here now?

20 A Well, if I could -- trying to picture him
21 with longer hair and things, yeah.

22 THE COURT: Yes.

23 THE WITNESS: Yes.

24

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1 BY MR. SEATON:

2 Q Showing you what's been marked as State's
3 Exhibit 99.

4 Do you recognize that person?

5 A Yeah.

6 Q Does that person look anything like the
7 person to whom you sold the items that you have described in
8 your sales slip?

9 A Yes. It's very -- very possible, yes.

10 MR. SEATON: Judge, could the defendant be
11 requested to stand so that --

12 THE COURT: Mr. Rippo, please stand.

13 BY MR. SEATON:

14 Q And, Mr. Caipa, would you come down; just
15 stand in this area here so you can see relative heights; and
16 I'm just asking you to look at the height of the defendant.

17 A (Complies.)

18 Q Now having done that and looked at the
19 photograph that was numbered 99 -- you can sit down and you
20 can resume your seat, too -- can you tell us whether or not
21 you believe that the defendant in this action is the same
22 individual who came in and did the credit card transaction
23 at Sears?

24 A Just very -- very possible. It looks a lot

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1 like that could have been him at that time, because that was
2 four years ago, so --

3 Q Does the photograph, Number 99, look more
4 like the individual who came before you that day --

5 A Yes.

6 Q -- on the 19th of February, 1992?

7 A Uh-huh, yes, it does.

8 Q All right. Thank you.

9 Is the height of the defendant,
10 as he stood here in court today, about the same?

11 A Yes. He was a little bit more slumped over,
12 not as good posture at that time, but, yes.

13 MR. SEATON: All right.

14 Judge, for the purposes of this
15 hearing, I think that is all the State has.

16 THE COURT: Cross-examination.

17
18 CROSS-EXAMINATION

19 BY MR. DUNLEAVY:

20 Q Are you saying that positively you can
21 identify this man or just that he looks similar?

22 A Um, like I said, it's four years ago. At
23 that time, at that look -- I mean, that's -- that picture,
24 that was the person, yes.

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1 1 Q Positive about it?

2 A Yes.

3 Q No doubt?

4 A Yes.

5 Q How many customers a day did you serve four

6 years ago?

7 A Oh, no telling.

8 Q But you remember this one customer?

9 A Yes.

10 Q Why?

11 A Um, it's -- I don't know. It's just one

12 thing that stands out in my mind.

13 Q When is the first time somebody contacted

14 you and asked if you could identify this individual?

15 A Um, I don't remember; just -- it was about

16 two weeks ago, two weeks ago.

17 Q Two weeks ago?

18 A That I talked to Mr. Seaton.

19 Q So nobody talked to you for four years about

20 this?

21 A No, it came up before that, that this

22 gentleman -- that that happened with this credit card,

23 sometime after that, but, yeah, I could remember the whole

24 thing.

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1 1 Q Did you look at a photo lineup?

2 A No.

3 Q Did you look at an actual lineup?

4 A No.

5 Q Ever asked to identify him before today here

6 in court?

7 A No.

8 Q Now, what was -- your job at the time was a

9 salesman?

10 A I was a sales associate, yes.

11 Q And the person who bought this -- the credit

12 card was in the name of Denise Lizzi?

13 A Right.

14 Q And the name was Denny Morgan?

15 A The signature on there is Denny Morgan.

16 Q Did you ask for any I.D. for Denise Lizzi or

17 Denny Morgan?

18 A Yes, I did.

19 Q What were you shown?

20 A I was shown a driver's license. I called up

21 our credit central. I got an approval on it, to go ahead

22 and take it.

23 Q What driver's license?

24 A That's one thing that's fuzzy, that I --

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1 1 that I don't actually remember what happened there, but I
2 2 did ask for some type of I.D., and I did call up --

3 3 Q And that's documented somewhere?

4 4 A Um, no, it's not on here, huh-uh.

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

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

9 9 MR. DUNLEAVY: For the purposes of this
10 10 hearing, Your Honor, we have nothing further. We want to be
11 11 heard on our argument on the motion.

12 12 THE COURT: Okay. Argument?

13 13 MR. SEATON: Judge -- I'm sorry.

14 14 THE COURT: Do you have any other questions
15 15 first?

16 16 MR. SEATON: Not at this time, no.

17 17 THE COURT: All right.

18 Argument?

19 19 MR. WOLFSON: Judge, the heart of our
20 20 argument is that this witness --

21 21 MR. HARMON: Your Honor, may the witness be
22 22 excused for a moment?

23 23 THE COURT: Okay. You may have leave, sir.
24 Wait outside.

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2 1 THE WITNESS: Okay.

2 THE COURT: Just in case.

3 (Whereupon, the witness
4 was excused.)

5 MR. WOLFSON: Your Honor, the construction
6 of our argument is that this testimony and evidence comes
7 under Chapter 48, other bad act type evidence.

8 If Your Honor would review the
9 amended Indictment, Michael is charged with, in essence, two
10 counts of credit card fraud, neither of the counts
11 pertaining to a transaction at Sears. And that's the key
12 here: He's charged with transactions other than Sears.

13 So my first objection is to
14 relevance. It's not relevant what he did with another
15 credit card at another location.

16 This comes under Chapter 48 of
17 the Nevada Revised Statutes, which says evidence of other
18 bad acts is in admissible.

19 Further, Judge, if the State
20 wanted to introduce this evidence, they should have filed,
21 pursuant to the local rules, a motion in limine. I believe
22 it's Rule 3.40 of EDCR, which talks about a party moving
23 to -- moving for a pretrial order for the Court to introduce
24 evidence.

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2 1 This is more prejudicial than
2 probative. It's other bad act evidence. It shouldn't come
3 in.

4 MR. HARMON: Your Honor, the defense also
5 could have filed a motion in limine on that subject.

6 When we, in 1994, submitted the
7 list -- now whether it was our idea, as we quibbled a little
8 bit earlier in the proceedings, or whether because this was
9 an Indictment and we did it pursuant to your order -- the
10 fact is we listed all of the persons who were potential
11 witnesses in this case and we identified a custodian of
12 records from Sears. We made that very clear. The defense
13 has known that since early in 1994.

14 And as I'm sure they remember,
15 and as I'm confident the Court remembers, when Diana Hunt
16 was on the witness stand, we asked her about conversations
17 she had on February the 19th with Mr. Rippe about his use of
18 a credit card recovered in connection with these crimes, and
19 she said there was such a conversation, and he told her he
20 bought a compressor.

21 And he indicated -- she said,
22 first, it came from Service Merchandise; and then she was
23 asked, well, could that have been Sears?

24 And as I remember, she said,

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1 well, she thought they were the same, that Service
2 Merchandise and Sears would have been the same business.

3 Well, we know that they aren't.
4 But that's the state of the record already, Your Honor.

5 The State's witness, Hunt, has
6 already alluded to this transaction. There is also evidence
7 before the jury that an admission was made by Mr. Rippo to
8 her that he used the credit card at Service Merchandise or
9 Sears.

10 Now, Your Honor, 48.054 is the
11 pertinent statute, and there isn't any requirement that we
12 have alleged this unlawful act in one of our counts.

13 To make it admissible, Your
14 Honor, as the Court knows, we don't have to allege that in
15 the Indictment. We have to prove that the probative value
16 outweighs the prejudicial effect, because it is evidence of
17 other unlawful conduct.

18 Your Honor, what .054 describes
19 are a whole series of categories where evidence of our
20 unlawful acts, if sufficiently related to the primary
21 offense, will be admissible.

22 And it talks about evidence of
23 motive. We've alleged, Your Honor, that robbery is one of
24 the motives in this case for these crimes.

002362

2 1 We've had evidence from Hunt
2 that property was taken from the scene of the crime. We've
3 had evidence that the credit card was used at the Meadows
4 Mall at the Sunglass Company by Mr. Rippo, in her presence,
5 and that she used the credit card at the Boulevard Mall, and
6 then at the Gold Coast.

7 If we're permitted to introduce
8 the evidence of the use of a Denise Lizzi credit card at
9 Sears, it's further evidence, Your Honor, of motive.

10 If Mr. Rippo had just stolen
11 the item, then did he want simply a souvenir? Did he want
12 just some property of Lizzi to remind him of her?

3 13 No, it isn't limited to that,
14 because there is evidence, if we are permitted to present
15 it, that he went ahead and used it. In fact, the very next
16 day -- and it's very approximate in time and place to the
17 perpetration of these crimes -- he bought over \$800 worth of
18 merchandise, evidence that -- not as to the total amount,
19 but at least as to the compressor and other equipment, that
20 has already come before this jury from the testimony of
21 another witness.

22 In addition to motive, Your
23 Honor, 48.054 talks about it being admissible to prove
24 intent, to prove knowledge, to prove absence of mistake and

002363

3 1 to prove identity.

2 In this case, it certainly is
3 relevant on the issue of identity. Not only has the
4 witness -- and we appreciate that any reference to Mr.
5 Rippo, either in court or to the photograph of him when he
6 has the longer hair, is subject to whatever weight the
7 Court -- the jury might choose to give it.

8 But in any event, this man, who
9 is on commission, had reason to pay enough attention to this
10 transaction that he described someone, at least in height,
11 who sounds very much like Mr. Rippo. He said about five
12 feet four, five five.

13 He furthermore said the
14 equipment was loaded into a vehicle he described as a Pinto.

15 And he looked at the
16 photographs, 71 and 72, and indicated at least the view from
17 the back of the vehicle, it appeared to be the same car into
18 which the property was loaded.

19 Diana Hunt has already
20 identified Exhibits 71 and 72 as being not only the Ford
21 Pinto of the defendant Mr. Rippo, but the precise car that
22 she and Mr. Rippo rode in when they went on tour February
23 the 18th, 1992, to the Katie Arms apartment complex.

24 And, furthermore, Your Honor,

002364

3 1 it is not only highly relevant on the issues of motive and
2 identity and intent, it's probative because she's already
3 testified about this, and because anything that either tends
4 to discredit her or tends to buttress the accuracy and the
5 reliability of her testimony is certainly pertinent to these
6 proceedings.

7 So for all those reasons,
8 Judge, it just seems elementary that if we can show that Mr.
9 Rippo, within one day, within approximately 24 hours, is
10 connected to a credit card belonging to one of the homicide
11 victims, that is evidence so overwhelming, so probative, it
12 obviously outweighs any prejudice to the defendant, and Mr.
13 Coipa should be permitted to identify the document and
14 describe the transaction.

15 MR. WOLFSON: Briefly.

16 If it is so overwhelming and so
17 probative, why didn't they charge him with the crime? They
18 didn't charge him with the crime.

19 You know, there are purposes
20 for local rules, and the local rules do say that the party
21 should file a motion in limine.

22 Now, if I were to follow Mr.
23 Harmon's suggestion, I would have had to have filed a motion
24 in limine addressing the witness list -- for example, on

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1 page three, Hal, last name unknown.

2 Your Honor, I move to limit his
3 testimony.

4 And then, I'd have to go to
5 page five, Mike, last name unknown.

6 Your Honor, I'm asking you to
7 limit his testimony.

8 I mean, where do I start and
9 where do I stop?

10 160 witnesses, as my co-counsel
11 points out.

12 It's uncharged acts. The
13 general rule is that uncharged acts are inadmissible. It's
14 the exception that Mr. Harmon is talking about, and I think
15 he should have complied with the local rule and sought
16 pretrial permission for its introduction.

17 MR. HARMON: Your Honor, it was over two
18 weeks ago that Diana Hunt testified. Her testimony about
19 the admission regarding purchase of the compressor with the
20 stolen credit card, the reference to either Service
21 Merchandise or Sears, when that is taken together with the
22 reference to the Sears witness on the witness list filed
23 back in 1994, there isn't any surprise.

24 At least if there is surprise,

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it's because the defense didn't take the initiative to follow up.

THE COURT: I'll allow him to testify.

MR. HARMON: Thank you.

THE COURT: Bring in the witness and the jury.

THE BAILIFF: Thank you.

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

THE CLERK: Will you stand, please, and raise your right hand.

Whereupon,

CARLOS CAIPA

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

THE CLERK: Thank you.

Please be seated.

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

THE COURT: Counsel stipulate to the presence of the jury?

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MR. SEATON: Yes, Judge.

MR. DUNLEAVY: Yes, Your Honor.

THE COURT: Would you state your name and spell it for the court reporter, please.

THE WITNESS: Carlos Caipa; last name is C-a-i-p-a.

DIRECT EXAMINATION

BY MR. SEATON:

Q Mr. Caipa, how are you employed?

A I work for Sears. I'm a sales manager there.

Q And at what Sears?

A At the Boulevard Mall.

Q And how long have you been employed with Sears at the Boulevard Mall?

A For 13 years.

Q And you are the manager of what department now?

A I have six departments; main ones are hardware, lawn and garden, sporting goods.

Q In February of 1992, were you employed by Sears at that time?

A Yes.

002368

4 1 Q And in which department did you work then?

2 A I was a sales associate for hardware.

3 Q A sales associate is, like, a salesman,
4 salesperson?

5 A Right.

6 Q Let me show you what has been marked as
7 State's Proposed Exhibit 94.

8 And I want to ask if you can
9 look at that and recognize that document?

10 A Yes.

11 Q What is that document?

12 A It's a sales check that we ring sales under.
13 I recognize it because it has my associate number on it.

14 Q Does each associate have their own number?

15 A Correct.

16 Q What was yours?

17 A 12443.

18 Q And that's the number you used whenever you
19 rang up sales?

20 A Right; that's how we tracked our commission.

21 Q And that number appears on Exhibit 9 --
22 proposed Exhibit 94?

23 A Yes.

24 Q Would you look that document over carefully

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4 1 and tell us whether or not it appears to be a -- a fair and
2 accurate copy of the sales transaction that took place
3 regarding that 94?

4 A Yes, it is.

5 Q Do you have an independent recollection of
6 that particular transaction?

7 A Yes, I do.

8 MR. SEATON: All right.

9 Judge, I would move for the
10 introduction into evidence at this time of State's Proposed
11 Exhibit 94.

12 MR. DUNLEAVY: I'd ask the Court to reserve
13 until after cross, Your Honor.

14 THE COURT: I'll reserve.

15 MR. SEATON: May I be permitted to discuss
16 the document with the witness?

17 THE COURT: You may.

18 MR. SEATON: I can do it from here.

19 BY MR. SEATON:

20 Q When did the particular transaction take
21 place?

22 A February 19th, 1992.

23 Q And --

24 A It was an evening.

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4 1 Q The evening hours of February the 19th,
2 1992?
3 A Yes.
4 Q You were working in which department at that
5 time?
6 A Hardware.
7 Q Did someone come to you and want to ring up
8 items that are described in this document?
9 A Yes. What -- they were looking at certain
10 merchandise, and we -- I approached them.
11 Q When you say they, was there more than one?
12 A No, I'm saying just one person.
13 Q Was that a male or a female?
14 A It was a male.
15 Q Can you describe that male?
16 A Okay. At that time, um, it was a white
17 male, sandy blond hair type, down to the shoulder length;
18 you know --
19 Q How tall would you say that individual was?
20 A Five six, five five, right around there.
21 Q How tall are you?
22 A Five eight.
23 Q They were maybe a little shorter -- that
24 individual was a little shorter than you are?

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1 A Yes.

2 Q What age would you -- say that that person
3 was?

4 A Maybe early 20s, 19. I don't know,
5 somewhere around there.

6 Q And what would you -- how would you describe
7 their build?

8 A Um, kind of stocky for that size, you know,
9 kind of muscular.

10 Q All right. Is the -- I'd like you to look
11 around the courtroom and tell us whether or not the
12 individual who made that transaction is here in court.

13 A Um, it's very possible. I'm going back from
14 four years ago, how they looked back then, and --

15 Q When you say very possible, are you looking
16 at a particular individual in court now?

17 A Yes.

18 Q Where is that person seated as we speak?

19 A In the middle there, on the table there.

20 Q The table next to me?

21 A Yes.

22 Q Would that be the individual who is in the
23 blue sweater?

24 A Yes.

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1 Q Who is now standing up?

2 A Yes.

3 Q All right. And while he is standing, could
4 you step down for just a moment and observe this
5 individual's height and his build.

6 A (Complies.)

7 Q Have you seen it adequately?

8 A Uh-huh.

9 MR. SEATON: All right. You may both
10 return.

11 BY MR. SEATON:

12 Q Is there anything different about this
13 individual's build from the person that you saw that -- on
14 February the 19th at Sears?

15 A Um, no.

16 Q What about the hair?

17 A Yeah, the hair was longer then -- had longer
18 hair back then.

19 Q Than the defendant's hair here in court?

20 A Yes.

21 MR. SEATON: And, Judge, may the record
22 reflect that the defendant stood up and the witness was
23 talking about that particular individual?

24 THE COURT: The record will reflect the

002373

4 1 identity -- that the witness has identified the defendant.

2 BY MR. SEATON:

3 Q And I'm showing you now State's Exhibit 99.

4 Does that photograph appear to
5 be more similar, less similar to the person that you
6 observed in the store than the individual you just
7 identified now?

8 A Yes.

9 MR. DUNLEAVY: I'm sorry, Your Honor, which
10 is it?

11 THE WITNESS: Yeah, this is the person that
12 I helped at that time.

13 THE COURT: The photograph of the defendant?

14 MR. SEATON: I'm sorry.

15 THE WITNESS: A photograph of the defendant.

16 MR. SEATON: Have you seen that photograph?

17 MR. DUNLEAVY: Yeah.

18 BY MR. SEATON:

19 Q The photograph, 99, that you just looked at,
20 are you telling us that that is the individual who you sold
21 the items on Exhibit 94 to on February the 19th, 1992?

22 A Yes.

23 Q I'll take that. Thank you.

24 What were the items --

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1 A It was --

2 Q -- that Mr. Rippo bought that evening?

3 A It was a compressor, a spray gun, an air
4 sander, I believe, and some couplings to fit it, and a
5 service warranty on it.

6 Q What was the total price?

7 A It was \$819.80.

8 Q Were all of these items bought within the
9 store, at a cash register?

10 A Yes.

11 Q And how did the defendant take them out of
12 the store -- are they big and heavy, bulky?

13 A The compressor would have went through what
14 we call customer car pick up. The other items were taken
15 with --

16 Q Meaning that the other items are small
17 enough for the customer to --

18 A Yes, small enough to where we can bag them
19 and the customer can take them.

20 Q Okay. And the other one was a car pick up,
21 you said?

22 A Yeah, customer car pick up, and it's a
23 compressor, a heavy item.

24 Q All right.

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1 Did you help at all in the
2 securing of that item into this individual's car?

3 A Yes. Either, for some reason, we were
4 backed up back there or he was in a hurry and I wanted to
5 make sure that the sales -- I got my commission off of that.

6 So I -- yeah, I assisted him
7 out to the car and helped him load it up.

8 Q What kind of a car did he have?

9 A Um, it was a Pinto. It was either white or
10 beige with blue lining.

11 Q And where in that automobile did you place
12 the air compressor?

13 A In the back -- the hatch was up.

14 Q Showing you what's been marked as State's
15 Proposed Exhibit 71, first of all, and 72 -- 71 being the
16 front portion of the automobile and 72, the rear -- looking
17 at those photographs, can you identify them -- the car
18 depicted in that photograph as being the same car into which
19 you loaded the air compressor for the defendant?

20 A Yes.

21 Q How did the defendant pay for the items in
22 Exhibit 94?

23 A It was paid on a Sears card, Sears credit
24 card.

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1 Q Credit card?

2 A Yes.

3 Q Did the Sears credit card look like all
4 other credit cards in terms of shape and size?

5 A No. This one was a -- it was an older one.
6 It was a white one. And they're like half the size of the
7 new type credit cards.

8 Q It's smaller then?

9 A Yes.

10 Q Was there a particular name on this credit
11 card?

12 A Yes. It's stamped Denise Lizzi, and it's
13 signed by Denny Morgan.

14 Q You are telling us that the man depicted in
15 this photograph (indicating) bought --

16 MR. DUNLEAVY: Your Honor, can we have him
17 identify the photograph for the record?

18 MR. SEATON: It is --

19 THE COURT: The number.

20 MR. SEATON: Yes, Number 99, previously
21 identified as a photograph of the defendant, Mike Rippo.

22 BY MR. SEATON:

23 Q You are telling us that the man in this
24 photograph (indicating), Number 99, Mr. Rippo, is the

002377

5 1 individual who used a credit card with the name Denise Lizzi
2 2 on it --

3 3 A Yes.

4 4 Q -- to purchase the items that you've told us
5 5 about here today?

6 6 A Yes, it is.

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

9 MR. SEATON: Pass the witness, Judge.

10 THE COURT: Cross-examination.

11

12 CROSS-EXAMINATION

13 BY MR. DUNLEAVY:

14 14 Q How many customers did you serve a day?

15 15 A There is no telling.

16 16 Q One?

17 17 A Could -- um, depends on -- evenings, slow
18 18 evenings, could have been one to ten.

19 19 Q I believe you said it was busy that night.

20 20 A It's possible; could have been, yes. Car
21 21 pick up may have been busy, but my area may not have been
22 22 busy.

23 23 Q Now, when were you first contacted by the
24 24 police and asked about this case?

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1 A Um, well, I was never contacted by them. I
2 was contacted by our loss prevention manager on it, about
3 this, because I told him something about it and then --

4 Q When was this?

5 A It could have been two years ago maybe, two,
6 three years ago.

7 Q So about two years after the crime?

8 A It's possible, sure.

9 Q And were you shown a lineup of some kind?

10 A No.

11 Q Photographs of anybody?

12 A No.

13 Q Have you ever been shown a lineup?

14 A No.

15 Q Photographs by anybody?

16 A No.

17 Q But four years later, you remember this one
18 customer?

19 A Yes.

20 Q Was there something really unique about this
21 customer that just drove it into your memory?

6

22 A Um, just one of those wierd things that
23 happens; just something you sense that's just not right,
24 just weird.

002379

6 1 Q So a man gives you a credit card in the name
2 of Denise and what did you do to check it out?

3 A Called up credit central --

4 Q Asked them if Denise was a man, five foot
5 five?

6 A Well, no. I asked about the signature on
7 the back that was on there, and it was -- it was a buyer on
8 that credit card.

9 Q What was a buyer on that credit card?

10 A It was signed -- a different name. It was
11 not Denise Lizzi's signature on there. It was signed by -- a
12 gentleman's name.

13 Q And you have documentation on this?

14 A No, I don't.

15 Q Just remember that conversation too?

16 A Um, I -- I can remember that, yes.

17 Q Now, a little while ago, you were talking
18 about how long his hair was?

19 A Uh-huh.

20 Q And you talked about that was the
21 distinguishing difference between 1992 and now, is that you
22 noticed the hair was different?

23 A Right.

24 Q But in the picture you identified here, he's

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1 also got a moustache and beard, doesn't he?

2 A He has a goatee.

3 Q Right, a goatee. (Indicating)

4 A Uh-huh.

5 THE COURT: Yes?

6 THE WITNESS: Yes. I'm sorry.

7 BY MR. DUNLEAVY:

8 Q So four years ago, you saw a man with long
9 hair, moustache and a goatee; nobody ever asked you about
10 this identification again for four years; and you have no
11 problem walking in saying, oh, yeah, that's the same guy?

12 A On that picture, that's who that was, yeah.

13 Q How long did this transaction take?

14 A It could have took a half hour.

15 Q Four years ago?

16 A Yeah.

17 Q How many customers have you had since then?

18 A Couldn't tell you; many.

19 Q Thousands?

20 A Absolutely.

21 Q How many of those can you identify four
22 years later?

23 A Um, I have -- I couldn't tell you. I have a
24 lot of people come in and see me.

002381

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1 Q You even remember what the credit card
2 looked like.

3 A Yeah, there is two different --

4 THE COURT: Yes.

5 THE WITNESS: Yes. There is several
6 different types of looking credit card.

7 BY MR. DUNLEAVY:

8 Q And four years ago, this was such an
9 important event that you remembered the card itself?

10 A Well, I just know what kind of credit card
11 it was, being that I had been there for some time.

12 Q And how do you know that?

13 A Um --

14 Q Is it reflected on that document in front of
15 you?

16 A Um, yes -- well, I -- I can tell what --
17 what ty- -- what type it was.

18 Q Are you testifying that you remember the
19 card, like you said a little while ago, or that you
20 recognized because it's on the piece of --

21 A Well, I can tell you what kind of card it
22 was, yes.

23 Q The car, was there anything unusual about
24 this car you saw?

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1 A No, just a beat up Pinto, beat up car type.

2 Q Any idea how many Pintos there are in the
3 world?

4 A I'm sure there is quite a bit.

5 Q But you have no problems today testifying
6 under oath that this is the same car? (Indicating)

7 A That is the car that I loaded it up into,
8 yes; from behind, yes.

9 MR. DUNLEAVY: Admirable memory. Thank you.

10 No further questions.

11 MR. SEATON: I would ask that his gratuitous
12 comment be struck.

13 THE COURT: His comment will be struck. His
14 remarks will be disregarded.

15

16 REDIRECT EXAMINATION

17 BY MR. SEATON:

18 Q Mr. Caipa, you indicated that you had spoken
19 to your loss prevention manager; is that right?

20 A Yes.

21 Q Is that someone in the company that
22 handles --

23 A Yes. At that time, it was Bruce Burgess.

24 Q Can you spell that for our --

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1 A I believe it's B-u-r-g-e-s-s; Chris Burgess.

2 Q Did you talk to him about this particular
3 transaction?

4 A Yes. I mentioned something to him about it,
5 and then he told me -- well, first, he had told me what had
6 happened, and then I told him exactly what happened; that he
7 told me that this gentleman that purchased -- made this
8 purchase was indicted for something --

9 MR. DUNLEAVY: Objection; hearsay, Your
10 Honor.

11 THE COURT: Sustained.

12 BY MR. SEATON:

13 Q Did you ever learn --

14 THE COURT: The jury will disregard that.

15 BY MR. SEATON:

16 Q Did you learn from your own knowledge that
17 there was a killing that had -- or two killings that had to
18 do with this particular credit card?

19 A Not by my own knowledge, no.

20 Q Okay.

21 A No.

22 Q Were -- Mr. -- let me change that.

23 You were asked whether or not
24 you had any specific recollection about this, and whether or

002384

6 1 not your memory was accurate of these particular events.

2 Is there something, some
3 knowledge that you have, that causes this particular event
4 to be branded into your memory?

5 A Um, just one of those things that just stick
6 out. I don't know why, just -- it does. It just -- I can
7 see the whole transaction going down and --

8 Q Well, did you sometime later learn things
9 that caused you never to forget it?

10 A Yes. Like I said, our loss prevention
11 manager had told me what had happened and, you know,
12 something -- and it just rang it right up to me.

13 Q You learned about the murders?

14 A He told me -- yeah.

15 MR. SEATON: Thank you. I have nothing
16 further.

17 Oh, yeah, Judge, one other.

18 BY MR. SEATON:

19 Q You recognize the seriousness of what we're
20 doing here, do you not?

21 A Absolutely.

22 Q This man who stood up and you looked at a
23 little earlier (indicating), the man whose picture you
24 identified in 99, is charged with two murders.

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1 That's pretty serious, is it
2 not?

3 A Yes.

4 Q Would you come into court and make things
5 up?

6 A No.

7 Q Any reason for that at all?

8 A No.

9 Q Do you harbor --

10 MR. DUNLEAVY: Your Honor, they are asking
11 the witness to verify his own veracity.

12 MR. SEATON: I'll ask a different question.

13 BY MR. SEATON:

14 Q Do you harbor any grudges against Mr. Rippe?

15 A No.

16 Q And have you told us the truth?

17 MR. DUNLEAVY: Objection, Your Honor. He
18 knows that's an improper question.

19 MR. SEATON: I have nothing further.

20 THE COURT: Recross.

21

22

23 RECROSS-EXAMINATION

24 BY MR. DUNLEAVY:

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7 1 Q When did you talk to this loss prevention
2 man?

3 A Um, like I said, it was about two, three
4 years ago.

5 Q Which was it, two years ago, three years
6 ago?

7 A I'm not sure.

8 Q Was it within weeks or days of this event?

9 A Um, I don't know. I couldn't tell you.

10 Q Can you give us a description of the last
11 customer you waited on?

12 A Today, no -- nobody. I was on the computer
13 all day.

14 Q What about yesterday?

15 A I was in Riverside.

16 Q What about last year?

17 MR. SEATON: Judge, I'm going to object to
18 the nature of these questions.

19 THE COURT: Sustained.

20 MR. DUNLEAVY: No further questions, Judge.

21 MR. SEATON: Nothing further.

22 THE COURT: Thank you.

23 You are excused, sir.

24 (Whereupon, the witness

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was excused.)

THE COURT: The State is moving to admit
Exhibit 94?

MR. SEATON: Yes, Judge.

THE COURT: That will be admitted.

MR. SEATON: Thank you.

(Whereupon, State's Exhibit 94
was admitted into evidence.)

THE COURT: That's it for tonight, folks.
We'll get started tomorrow at
10:30.

Remember: Do not converse
among yourselves or with anyone else on any subject
connected with the trial;

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

Form or express my opinion on
any subject connected with the trial until the matter is
finally submitted to you.

Have a good evening.

002388

(Proceedings recessed until Thursday,
February 29, 1996, at 10:30 a.m.)

* * * * *

ATTEST: Full, true and accurate transcript of proceedings.

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

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RENEE SILVAGGIO, CCR 122 391-0379

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-FILED IN OPEN COURT-
 FEB 28 1996 19

By *[Signature]* LORETTA BOWMAN, CLERK
 Deputy

10 DISTRICT COURT
 11 CLARK COUNTY, NEVADA
 12

13 * * *

14 THE STATE OF NEVADA)
)
 15 Plaintiff,)
)
 16 Lvs-)
)
 17 MICHAEL DAMON RIPPO,)
)
 18 Defendant.)

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

3-1-96

19 MOTION TO BAR THE ADMISSION
 20 OF CUMULATIVE VICTIM IMPACT EVIDENCE
 21 IN VIOLATION OF THE DUE PROCESS CLAUSE

22 COMES NOW the defendant Michael Damon Rippo, by and through
 23 his attorneys of record, Philip H. Dunleavy, and Steven B.
 24 Wolfson, who respectfully requests this Honorable Court to bar
 25 the admission of cumulative victim impact evidence.

26 This motion is made and based upon the attached points and
 27 authorities, all the papers and pleadings on file herein, and
 28

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1 upon such other and further evidence as made to be adduced at the
2 hearing on this matter.

3 DATED this 28TH day of February, 1996.

4 Respectfully submitted,

5 
6 PHILIP H. DUNLEAVY, ESQ.
7 State Bar No. 000598
8 Attorney for Defendant

9 ORDER SHORTENING TIME


10 Good cause appearing therefore,

11 IT IS HEREBY ORDERED that the time for hearing of the
12 above-entitled matter be, and the same will be heard on the 1st
13 day of March, 1996, at the hour of 9:00
14 o'clock, A. M. in Department No. IV.

15 DATED this 28TH day of February, 1996.

16 
17 DISTRICT COURT JUDGE

18 Respectfully submitted,

19 
20 PHILIP H. DUNLEAVY, ESQ.
21 State Bar No. 000598
22 2810 W. Charleston
23 Suite G-67
24 Las Vegas, Nevada 89102
25 Attorney for Defendant
26
27
28

POINTS AND AUTHORITIES

The defendant is charged with first degree murder and related offenses in the above-captioned matter.

The State has filed a Notice of Intent to Seek the Death Penalty in the above-captioned matter.

The U.S. Supreme Court in PAYNE V. TENNESSEE, 501 U.S. 808, 115 L.Ed.2d 720, 111 S.Ct. 2597 (1991), has held that the Eighth Amendment erects no per se bar to the admission of certain victim impact evidence during the sentencing phase of a capital case. The Court, however, has acknowledged that victim impact evidence can be so unduly prejudicial as to render the sentencing proceeding fundamentally unfair and violative of the Due Process Clause of the Fourteenth Amendment. Id. at 2608, 115 L.Ed.2d at 735.

The victim impact evidence which the State may produce at the sentencing phase may be so cumulative, redundant and oppressive in nature as to encourage a shifting of the focus of the sentencing proceedings away from the defendant and on to the victim and his/her family. Such a result was not intended by the Court in PAYNE which repeatedly reasoned that the sentencing authority was entitled to see only "a quick glimpse of the life petitioner chose to extinguish." Id. at 2611, 115 L.Ed.2d at 739. [quoting MILLS V. MARYLAND 486 U.S. 367, 397, 100 L.Ed.2d 384, 108 S.Ct 1860 (1988)], (Rehnquist, C.J., dissenting).

The introduction of such cumulative, redundant and oppressive victim impact evidence is so unduly prejudicial as to violate the principles of fundamental fairness and the constitutional requirements of the Due Process Clause of the

1 Fourteenth Amendment of the United States Constitution and Nevada
2 Constitutional Declaration of Article I, Section 8 of the Due
3 Process Clause.

4 For these reasons and others to be raised at the time of the
5 hearing on this Motion, the defendant's Motion to bar the
6 admission of victim impact evidence must be granted.

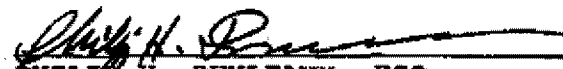
7 WHEREFORE, the defendant respectfully requests:

8 A. That a hearing be held on this Motion, and,

9 B. That this Honorable Court grant the defendant's Motion
10 to bar the admission of victim impact evidence; and,

11 C. That this Court grant such additional relief as the
12 nature of this case may require.

13 Respectfully submitted,

14
15 
16 PHILIP H. DUNLEAVY, ESQ.
17 State Bar No. 000598
18 2810 W. Charleston
19 Suite G-67
20 Las Vegas, Nevada 89102
21 Attorney for Defendant
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 8 WOLFSON & GLASS
 9 Steven B. Wolfson
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 14 Las Vegas, Nevada 89101
 15 (702) 385-7227

—FILED IN OPEN COURT—

FEB 28 1996

19

LORETTA BOWMAN, CLERK

By *Josephine St.*

Deputy

DISTRICT COURT
 CLARK COUNTY, NEVADA

THE STATE OF NEVADA)
)
 Plaintiff,)
)
 Lvs-)
)
 MICHAEL DAMON RIPPO,)
)
 Defendant.)

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

3-1-96

MOTION TO REQUIRE A PRETRIAL JUDICIAL REVIEW
OF ALL VICTIM IMPACT EVIDENCE THE STATE
INTENDS TO INTRODUCE AT THE PENALTY PHASE

COMES NOW the defendant Michael Damon Ripppo, by and through his attorneys of record, Philip H. Dunleavy and Steven B. Wolfson, who respectfully requests this Honorable Court issue an order requiring the State to provide to the court for review any and all victim impact evidence the State intends to introduce in the penalty phase.


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This motion is made and based upon the attached points and authorities, all the papers and pleadings on file herein, and upon such other and further evidence as may be adduced at the hearing on this matter.

DATED this 28th day of February, 1996.

Respectfully submitted,


PHILIP H. DUNLEAVY, ESQ.
State Bar No. 000598
Attorney for Defendant

ORDER SHORTENING TIME


Good cause appearing therefore,

IT IS HEREBY ORDERED that the time for hearing of the above-entitled matter be, and the same will be heard on the 1st day of March, 1996, at the hour of 9:00 o'clock, M., in Department No. IV.

DATED this 28th day of February, 1996.


DISTRICT COURT JUDGE

Respectfully submitted,


PHILIP H. DUNLEAVY, ESQ.
State Bar No. 000598
2810 W. Charleston
Suite G-67
Las Vegas, Nevada 89102
Attorney for Defendant

1 POINTS AND AUTHORITIES IN SUPPORT OF MOTION

2 The defendant is charged with first degree murder and
3 related offenses in the above-captioned matter.

4 The State has filed a Notice of Intent to Seek the Death
5 Penalty.

6 The U.S. Supreme Court in PAYNE V. TENNESSEE, 501 U.S. 808,
7 115 L.Ed.2d 720, 111 S. Ct. 2597, (1991), has held that the
8 Eighth Amendment erects no per se bar to the admission of certain
9 victim impact evidence during the sentencing phase of a capital
10 case.

11 The PAYNE Court, however, acknowledged that victim impact
12 evidence can be so unduly prejudicial as to render the sentencing
13 proceeding fundamentally unfair and violate the Due Process
14 Clause of the Fourteenth Amendment. Id. at 2609, 115 L.Ed.2d at
15 735.

16 Justice O'Connor, in her concurring opinion in PAYNE,
17 recognized that evidence which is unduly inflammatory may "so
18 infect[s] the sentencing proceeding as to render it fundamentally
19 unfair" and require the defendant to "seek appropriate relief
20 under the Due Process Clause of the Fourteenth Amendment." Id.
21 at 2612, L.Ed.2d at 735.

22 Justice Souter, in his concurring opinion, similarly
23 acknowledged that "[E]vidence about the victim and survivors and
24 any jury argument predicated on it, can of course be so
25 inflammatory as to risk a verdict impermissible based on passion,
26 not deliberation." Id. at 2614, 115 L.Ed.2d at 734.

27 Justice Souter further states, "[w]ith the command of due
28 process before us, this Court and the other courts of the state

1 and federal systems will perform the 'duty to search for
2 constitutional error in painstaking care,' an obligation 'never
3 more exacting than it is in a capital case.'" *Id.* at 2615, 115
4 L.Ed.2d at 743. [quoting BURGER V. KEMP, 483, U.S. 776, 785
5 (1987)].

6 In accordance with the PAYNE decision, it is, therefore,
7 incumbent upon the trial court to preliminarily determine if the
8 victim impact evidence which the State intends to introduce at
9 the capital sentencing proceeding is beyond the scope of that
10 which has been constitutionally sanctioned by the PAYNE Court,
11 and/or is so unduly prejudicial and/or so inflammatory as to
12 violate the principles of fundamental fairness and the
13 constitutional requirements of the Due Process Clause.

14 In making this determination, the trial court must first be
15 advised of the exact nature of the victim impact evidence which
16 the State intends to present. A proffer by the Deputy District
17 Attorney of the potential victim impact evidence is insufficient.
18 Such evidence by its nature is highly personal and emotional and
19 can neither be effectively communicated nor effectively
20 summarized by a third party. If the evidence which is to be
21 introduced is in written form, the court must review the actual
22 documents or victim impact statement which the State intends to
23 submit. If the evidence which is to be introduced is in the form
24 of live victim impact testimony, the court must observe the
25 victim's family members' actual oral testimony outside the
26 presence of the jury. It is the trial court's obligation to make
27 an informed decision as to the admissibility of any evidence in a
28 sound, thoughtful and judicious manner, giving full weight to the

1 circumstances of the particular case. It is only after a
2 thorough review of the evidence that the court can reasonably
3 determine whether the evidence that the State intends to
4 introduce is within constitutional and statutory limitations, is
5 of probative value, and is not potentially outweighed by the
6 prejudicial and/or inflammatory nature.

7 There are numerous examples of courts conducting a judicial
8 review of the admissibility of certain evidence prior to its
9 submission to the jury. A presiding judge at a capital
10 sentencing proceeding must exercise "great caution" in
11 determining the admissibility of victim impact testimony before
12 the sentencing jury.

13 Without a thorough pretrial review by the court of the exact
14 nature of the victim impact evidence which the State intends to
15 introduce at the sentencing proceedings, there will be no method
16 by which to prevent the jury from hearing potentially
17 inadmissible evidence which could cause irreparable harm to the
18 defendant and render the sentencing proceedings fundamentally
19 unfair and a violation of due process.

20 For these reasons and others to be raised at the time of the
21 hearing on this Motion, the defendant's motion to require a
22 pretrial judicial review of all victim impact evidence the State
23 intends to introduce at the capital sentencing proceeding should
24 be granted.

25 WHEREFORE, the defendant respectfully requests:

26 A. That a hearing be held on this Motion; and,

27 B. That this Honorable Court grant the defendant's Motion
28 to Require a Pretrial Judicial Review of all victim Impact

1 Evidence the State Intends to Introduce at the Capital
2 Sentencing.

3 C. That this Court grant such additional relief as the
4 nature of this case may require.

5 Respectfully submitted,

6 
7 PHILIP H. DUNLEAVY, ESQ.

8 State Bar No. 000598

9 2810 W. Charleston

10 Suite G-67

11 Las Vegas, Nevada 89102

12 Attorney for Defendant

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 WOLFSON & GLASS
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—FILED IN OPEN COURT—

FEB 28 1996 19

By *Josephine J. [Signature]* LORETTA BOWMAN, CLERK
 Deputy

DISTRICT COURT
 CLARK COUNTY, NEVADA

13 THE STATE OF NEVADA)
 14)
 Plaintiff,)
 15)
 Lvs-)
 16)
 MICHAEL DAMON RIPPO,)
 17)
 Defendant.)

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

3-1-96

MOTION TO PRECLUDE THE CONSIDERATION
OF VICTIM IMPACT EVIDENCE PURSUANT
TO NRS 175.552, 200.033 AND 200.035

22 COMES NOW the defendant Michael Damon Rippon, by and through
 23 his attorneys of record, Philip H. Dunleavy and Steven B.
 24 Wolfson, who respectfully requests this Honorable Court to
 25 preclude the consideration of victim impact evidence in this
 26 case.

27 This motion is made and based upon the attached points and
 28 authorities, all the papers and pleadings on file herein, and



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1 upon such other and further evidence as made to be adduced at the
2 hearing on this matter.

3 DATED this 28th day of February, 1996.

4 Respectfully submitted,

5
6 
7 PHILIP H. DUNLEAVY, ESQ.
8 State Bar No. 000598
9 Attorney for Defendant

10
11 ORDER SHORTENING TIME

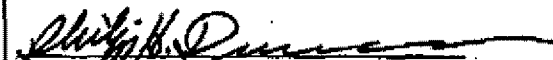
12 Good cause appearing therefore,

13 IT IS HEREBY ORDERED that the time for hearing of the
14 above-entitled matter be, and the same will be heard on the 1st
15 day of March, 1996, at the hour of 9:00
16 o'clock, A M. in Department No. IV.

17 DATED this 28th day of February, 1996.

18 
19 DISTRICT COURT JUDGE

20 Respectfully submitted,

21
22 
23 PHILIP H. DUNLEAVY, ESQ.
24 State Bar No. 000598
25 2810 W. Charleston
26 Suite G-67
27 Las Vegas, Nevada 89102
28 Attorney for Defendant

1 POINTS AND AUTHORITIES IN SUPPORT OF MOTION
2 TO PRECLUDE THE VICTIM IMPACT TESTIMONY

3 The U.S. Supreme Court in PAYNE V. TENNESSEE, 501 U.S. 808,
4 115 L.Ed.2d 720, 111 S. Ct. 2597 (1991), has held that the
5 Eighth Amendment erects no per se bar to the admission of certain
6 victim impact evidence during the sentencing phase in a capital
7 case. The PAYNE Court did not however mandate the introduction
8 of victim impact evidence nor did it suggest that such evidence
9 should be admitted in all capital cases. Justice O'Connor in her
10 concurring opinion clarified "we do not hold today that victim
11 impact evidence must be admitted, or even that it should be
12 admitted." Id. at 2612, 115 L.Ed.2d at 739. The PAYNE Court
13 simply held that a State may, pursuant to its own statutory
14 scheme, legitimately determine that victim impact evidence is
15 relevant to a capital sentencing proceeding. To the extent that
16 such evidence is not constitutionally prohibited, it is left to
17 the State to determine whether to permit the introduction of
18 victim impact evidence. The Court emphasized that:

19 Under our constitutional system the primary
20 responsibility for defining crimes against
21 the state law, fixing punishments for the
22 commission of these crimes, and establishing
23 procedures for criminal trials rests with the
24 State. The state laws respecting crimes,
25 punishments, and criminal procedures are of
26 course subject to the overriding provisions
27 of the United State Constitution. Where the
28 State imposes the death penalty for a particular
crime, we have held that the Eighth Amendment
imposes special limitations upon that process...
but, as we noted in CALIFORNIA V. RAMOS, 463
U.S. 992, 1001, 77 L.Ed 2d 1171, 103 S. Ct. 3446
(1983), "[b]eyond these limitations...the Court
has deferred to the State's choice of substantive
factors relevant to the penalty determination."

"Within the Constitutional limitations defined by
our cases, the States enjoy the traditional

1 latitude to prescribe the method by which those
2 who commit murder should be punished."
3 BLYSTONE V. PENNSYLVANIA, 494 U.S. 299, 309, 108
4 L.Ed 2d 255, 110 S. Ct. 1078 (1990). The State
5 remains free, in capital cases, as well as others,
6 to devise new procedures and new remedies to meet
7 its needs...[A] State may legitimately conclude
8 that evidence about the victim and about the
9 impact of the murder on the victim's family is
10 relevant to the jury's decision as to whether or
11 not the death penalty should be imposed.
12 *Id.* at 2607-09, 115 L.Ed.2d at 734-36."

13 The pertinent issue then becomes whether Nevada has
14 established a statutory scheme relating to the relevance of
15 victim impact testimony. NRS 175.552 (3) states in
16 pertinent part "in the hearing, evidence may be presented
17 concerning aggravating and mitigating circumstances relative to
18 the offense, defendant or victim and on any other matter which
19 the court deems relevant to the sentence, whether or not the
20 evidence is ordinarily admissible.

21 It is also important to note NRS 200.033 "circumstances
22 aggravating first degree murder.. The only circumstances by which
23 murder of the first degree may be aggravated are:" Nowhere in
24 the twelve categories set forth is there anything relating to
25 victim impact. NRS 200.035 which is circumstances mitigating
26 first degree murder (7) "any other mitigating circumstances."
27 does not apply to victim impact testimony which is clearly non
28 exculpatory for the purposes of mitigation.

29 Therefore, we can see that the nature of the evidence which
30 the legislator has determined to be admissible in a capital
31 sentencing proceedings can be found in NRS 175.552, 200.033 and
32 200.035. Therefore the question is whether or not victim impact
33 is aggravating circumstances. Evading circumstances are

1 specifically enumerated in NRS 200.033. Mitigating circumstances
 2 are set forth in NRS 200.035. A comparison of these two sections
 3 reveals a significant difference in legislative desires; namely,
 4 that the legislator has chosen to provide for the consideration
 5 of both statutory and non statutory mitigating circumstances in
 6 the weighing process, but has chosen to severely limit the
 7 consideration of aggravating circumstances to only those
 8 explicitly cited in the statute. Distinction illustrates the
 9 legislature's clean intent to restrict the aggravating
 10 circumstances which may be consideration of invalid aggravating
 11 circumstances.

12 The U.S. Supreme Court has repeatedly held that "in a State
 13 where the sentencer weighs aggravating and mitigating
 14 circumstances, the weighing of an invalid aggravating
 15 circumstance violates the Eight Amendment." ESPINOSA V. FLORIDA,
 16 504 U.S._____, 120 L.Ed.2d 854, 858, 112 S. Ct. 2926, (1992).
 17 See also, SOCHOR V. FLORIDA, 504 U.S. 527, 532, 119 L.Ed.2d 326,
 18 337, 112 S.Ct. 2114, 2119, (1992); STRINGER V. BLACK, 503 U.S.
 19 222, 237, 117 L.Ed. 2d 367, 383-4, 112 S. Ct. 1130, (1992);
 20 PARKER V. DUGGER, 498 U.S. 308, 112 L.Ed.2d 812, 824-5 111 S. Ct.
 21 731, 738 (1991); CLEMONS V. MISSISSIPPI, 494 U.S. 738, 108
 22 L.Ed.2d 725, 110 S. Ct. 1141 (1990).

23 The U.S Supreme Court recently held:

24 [t]here is Eighth Amendment error when the
 25 sentencer weighs an "invalid" aggravating
 26 circumstance in reaching the ultimate decision to
 27 impose a death sentence. See CLEMONS V. MISSISSIPPI,
 28 494 U.S. 738, 752, 110 S. Ct. 1441, 1450, 108
 L.Ed.2d 725 (1990). Employing an invalid
 aggravating factor in the weighing process
 "creates the possibility...of randomness,"
STRINGER V. BLACK, 503 U.S. _____, 117 L.Ed.2d

1 367 112 S. Ct. 1130, 1139, (1992), by placing a
2 "thumb [on] death's side of the scale," *Id.* at
3 _____, 112 S. Ct., at 1137, thus "creat[ing] the
risk [of] treat[ing] the defendant is more
deserving of the death penalty," *Id.* at _____,

4 112 S. Ct., at 1139. Even when other valid
5 aggravating factors exist as well, merely
6 affirming a sentence reached by weighing an
7 invalid aggravating factor deprives a defendant of
"the individualized treatment that would result
from actual reweighing of the mix of mitigating
factors and aggravating circumstances."

8 *CLEMONE, SUPRA*, 494 U.S., at 752, 110 S. Ct.,
9 at 1450 (citing *LOCKETT V. OHIO*, 438 U.S. 586,
10 98 S. Ct. 295, 57 L.Ed.2d 973 (1978), and
11 *EDDINGS V. OKLAHOMA*, 455 U.S. 104, 102 S. Ct.
869, 71 L.Ed.2d 1 (1982); see *PARKER V. DUGGER*,
498 U.S. _____, 111 S. Ct. 731, 739, 112
L.Ed.2d 812 (1991). *SOCHOR V. FLORIDA*, 504 U.S.
527, 112 S. Ct. 2114, 2119 (1992)."

12 Thus, the statutory provisions which address the nature of
13 the evidence to be admitted in a capital sentencing proceeding
14 are in conflict with those which address the nature of the
15 evidence to be relied upon by the sentencing authority in making
16 a decision of whether to impose life or death. When such a
17 conflict exists it is incumbent upon the Court to do an analysis
18 and determine which one will properly fulfill the legislative
19 scheme and not violate due process under the United States
20 Constitution or the Nevada Constitution. NRS 200.033 contains no
21 ambiguity it states in relevant part "the only circumstances by
22 murder of the first degree may be aggravated are. Therefore the
23 only question left is whether or not victim impact is an
24 aggravating circumstance.

25 Victim Impact evidence is aggravating evidence. Justice
26 Scalia, in the concurring opinion in *PAYNE*, acknowledges the
27 aggravating nature of the victim impact evidence when he writes,
28 "the court correctly observes the injustice of requiring the


1 exclusion of relevant aggravating evidence during capital
 2 sentencing, or regarding the admission of all relevant mitigating
 3 evidence..." *Id.* at 2613, 115 L.Ed.2nd at 741. Therefore, where
 4 a state such as Nevada has a scheme limiting aggravating
 5 circumstances and the Supreme Court has stated that Victim Impact
 6 as an aggravating circumstance or aggravating evidence it should
 7 be excluded to avoid a violation of my client's constitutional
 8 rights.

9 Wherefore, the defendant respectfully requests:

10 A. That a hearing be held on this Motion; and,

11 B. That this Honorable Court grant the defendant's motion
 12 precluding the consideration of victim impact evidence.

13 Respectfully submitted,

14 
 15 PHILIP H. DUNLEAVY, ESQ.
 16 State Bar No. 000598
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 20 Attorney for Defendant
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7 STEVEN WOLFSON
 8 STATE BAR #3001565
 9 302 E. CARSON
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 11 LAS VEGAS, NEVADA 89101
 12 (702) 385-7227
 13 ATTORNEYS FOR DEFENDANT

-FILED IN OPEN COURT-

FEB 28 1996 19

By Loretta Bowman CLERK
 Deputy

DISTRICT COURT

CLARK COUNTY, NEVADA

10 THE STATE OF NEVADA,
 11 Plaintiff,
 12 -VS-
 13 MICHAEL DAMON RIPPO,
 14 Defendant.

CASE No. C106784
 DEPT No. IV
 DOCKET No. "C"

HEARING DATE: 3/9/96
 HEARING TIME: _____

MOTION FOR DISCLOSURE OF EXCULPATORY EVIDENCE
 PERTAINING TO THE IMPACT OF THE DEFENDANT'S
 EXECUTION UPON VICTIM'S FAMILY MEMBERS

18 Comes now the Defendant MICHAEL DAMON RIPPO, by and
 19 through his attorney PHILIP H. DUNLEAVY, ESQ., and STEVEN
 20 WOLFSON, ESQ., and respectfully requests this Honorable
 21 Court to issue an Order directing the State to furnish the
 22 defendant with any and all information known by the State
 23 and/or by any individual or agency acting on behalf of the
 24 State, which may be in any way, or to any degree,
 25 exculpatory to the defendant and which pertains to the
 26 impact upon the victim's family members of the State's
 27 decision to pursue the imposition of the death penalty and
 28

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1 thereby the execution of the defendant.

2 This Motion is made and based upon the attached Points
3 and Authorities, all of the papers and pleadings on file
4 herein, and upon such other and further evidence as may be
5 adduced at the hearing on this matter.

6 DATED this ____ day of February, 1996

7 Respectfully submitted,

8
9 
10 PHILIP H. DUNLEAVY, ESQ.
11 STATE BAR #000598
12 ATTORNEY FOR DEFENDANT

13 ORDER SHORTENING TIME


14 Good cause appearing therefore,

15 IT IS HEREBY ORDERED that the time for hearing of the
16 above-entitled matter be, and the same will be heard on the
17 1st day of March, 1996, at the hour of
18 9:00 o'clock, 9 a.m. in Department No. IV.

19 DATED this 28 day of Feb., 1996.

20 
21 DISTRICT COURT JUDGE

22 Respectfully submitted,

23 
24 PHILIP H. DUNLEAVY, ESQ.
25 STATE BAR# 000598
26 2810 W. CHARLESTON
27 SUITE G-67
28 LAS VEGAS, NEVADA 89102
ATTORNEY FOR DEFENDANT

POINTS AND AUTHORITIES

1
2
3 1. The defendant is charged with open murder and
4 related offenses in the above-captioned matter.

5 2 The State has filed a Notice of Intent to Seek a
6 Sentence of Death.

7 3. Evidence which pertains to a victim's family
8 member's characterizations and opinions about the crime, the
9 defendant, and/or the appropriate sentence are inadmissible
10 in a capital sentencing proceeding. PAYNE V. TENNESSEE, 501
11 U.S. 808, 115 L Ed 2D 720, 111 S. Ct. 2597 (1991); BOOTH V.
12 MARYLAND, 482 U.S. 496, 96 L Ed 2d 440, 107 S Ct/ 2529
13 (1987).

14 4. Evidence, however, which establishes that a victim's
15 family member would experience anxiety, guilt, depression,
16 blame, trepidation, doubt, or moral indignation in the event
17 the defendant was executed for the murder of his/her loved
18 one is exculpatory in nature and tends to mitigate the
19 punishment of the defendant. Such evidence is admissible
20 substantively during the defense case or in rebuttal as
21 information which tends to counter, refute, negate, or
22 lessen victim impact evidence.

23 5. The case law requiring the State to provide
24 potentially exculpatory evidence to the defense is long and
25 well recognized; as an example, BRADY V. MARYLAND, 337 U.S.
26 83, 10 L Ed 2d 215, 83 S Ct 1194 (1963), GIGLIO V. UNITED

1 STATES, 405 U.S.150, 31 L Ed 2d 104, 92 S Ct 763 (1972),
 2 KYLES V. WHITLEY, U.S., 131 L Ed 2d 490, (1995).

3 6. The defendant's right to rebut victim impact
 4 evidence was explicitly recognized by the United States
 5 Supreme Court in PAYNE, supra. The Court stated:

6 Booth reasoned that victim impact evidence must be
 7 excluded because it would be difficult, if not
 8 impossible, for the defendant to rebut such
 9 evidence without shifting the focus of the
 10 sentencing hearing away from the defendant thus
 11 creating a "mini-trial" on the victim's character.
 12 "Booth, supra at 506-5-7. In many cases, the
 13 evidence relating to the victim is already before
 14 the jury at least in part because of its relevance
 15 at the guilt phase of the trial. But even as to
 16 additional evidence admitted at the sentencing
 17 phase, the mere fact that for tactical reasons it
 18 might not be prudent for the defense to rebut
 19 victim impact evidence makes the case no different
 20 than others in which a party is faced with this
 21 sort of a dilemma. As we explained in rejecting
 22 the contention that expert testimony on future
 23 dangerousness should be excluded from capital
 24 trials, "the rules of evidence generally extant at
 25 the federal and state levels anticipate that
 26 relevant unprivileged evidence should be admitted
 27 and its weight left to the fact finder, who would
 28 have the benefit of cross examination and contrary
 evidence by the opposing party" BAREFOOT V.
ESTELLE, 463 U. S. 880, 898 (1983). ID. AT 2607.

7. It is indisputable that a jury who believes that the
 execution of the defendant will cause sorrow and hardship
 for a member of the victim's family as a result of his/her
 beliefs and/or the personal beliefs of the victim may well
 consider the imposition of a less severe punishment.

8. The State, in its unique relationship with the
 victim's family, is therefore required to provide the
 defense, in writing or by way of proffer in open Court, with

1 any information which indicates that the State's decision to
2 pursue the execution of the defendant has impacted upon a
3 victim's family member in such a way as to cause anxiety,
4 guilt, depression, distress, blame, trepidation, doubt, or
5 moral indignation.

6 9. For these reasons and others to be raised at the
7 time of hearing on this Motion, the defendant's motion for
8 disclosure of exculpatory evidence pertaining to the impact
9 of the defendant's execution upon victim's family members
10 should be granted.

11 WHEREFORE, the defendant respectfully requests:

12 A. That a hearing be held on this motion; and

13 B. That this Honorable Court grant the defendant's
14 Motion for Disclosure of Exculpatory Evidence Pertaining to
15 the impact of the Defendant's Execution Upon Victim's Family
16 Members; and

17 C. That this Court grant such additional relief as the
18 nature of this case may require.

19 Respectfully submitted,

20 
21 PHILIP H. DUNLEAVY, ESQ.

22 STATE BAR#000598
23 2810 W. CHARLESTON
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25 LAS VEGAS, NEVADA 89102
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27 ATTORNEY FOR DEFENDANT
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4 WOLFSON & GLASS
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 5 State Bar No. 001565
 Jacalyn Glass
 6 State Bar No. 225
 7 302 E. Carson Avenue, Suite 400
 Las Vegas, Nevada 89101
 8 (702) 385-7227

—FILED IN OPEN COURT—
 FEB 28 1996 19

LORETTA BOWMAN, CLERK
 By *[Signature]* Deputy

DISTRICT COURT
 CLARK COUNTY, NEVADA

* * *

13 THE STATE OF NEVADA)
 14)
 Plaintiff,)
 15)
 vs.)
 16)
 MICHAEL DAMON RIPPO,)
 17)
 Defendant.)

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

3-1-96

MOTION TO PRECLUDE THE INTRODUCTION
OF VICTIM IMPACT EVIDENCE PERTAINING TO
VICTIM FAMILY MEMBERS' CHARACTERIZATIONS AND
OPINIONS ABOUT THE CRIME, THE DEFENDANT,
AND/OR THE APPROPRIATE SENTENCE

22 COMES NOW the defendant Michael Damon Rippo, by and through
 23 his attorneys of record, Philip H. Dunleavy and Steven B.
 24 Wolfson, who respectfully requests this Honorable Court to issue
 25 an order precluding victim impact testimony pertaining to the
 26 characterizations or opinions about the crime, the defendant,
 27 and/or the appropriate sentence.

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1 This motion is made and based upon the attached points and
2 authorities, all the papers and pleadings on file herein, and
3 upon such other and further evidence as made to be adduced at the
4 hearing on this matter.

5 DATED this 28th day of February, 1996.

6 Respectfully submitted,

7 
8 PHILIP H. DUNLEAVY, ESQ.
9 State Bar No. 000598
Attorney for Defendant

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12 ORDER SHORTENING TIME

13 Good cause appearing therefore,


14 IT IS HEREBY ORDERED that the time for hearing of the
15 above-entitled matter be, and the same will be heard on the 1st
16 day of March, 1996, at the hour of 9:00
17 o'clock, A M. in Department No. IV.

18 DATED this 28th day of February 1996.

19 
20 DISTRICT COURT JUDGE

21 Respectfully submitted,

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23 
24 PHILIP H. DUNLEAVY, ESQ.
25 State Bar No. 000598
26 2810 W. Charleston
Suite G-67
Las Vegas, Nevada 89102
Attorney for Defendant

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2 POINTS AND AUTHORITIES

3 The Defendant is charged with first degree murder and
4 related offenses in the above-captioned matter.

5 The State has filed a Notice of Intent to Seek the Death
6 Penalty.

7 In BOOTH V. MARYLAND, 482 U.S. 496, (1987), the U.S. Supreme
8 Court addressed the admissibility of two distinct forms of victim
9 impact evidence:

- 10 A. Evidence directly relating to the personal
11 character of the victim and the impact of
12 the victim's death on the family;
13 B. Evidence pertaining to victim's family
14 members' characterizations and opinions
15 about the crime, the defendant, and the
16 appropriate sentence.

17 Both forms of victim impact evidence were held to be
18 inadmissible.

19 The U.S. Supreme Court in PAYNE V. TENNESSEE, 501 U.S. 808,
20 115 L.Ed.2d 720 111 S. Ct. 2597, (1991), has held that the Eighth
21 Amendment erects no per se bar to the admission of evidence
22 directly relating to the characteristics of the victim in the
23 impact of the victim's death on the victim's family. The PAYNE
24 COURT, however explicitly did not address the admission of
25 evidence pertaining to the victim's family members'
26 characterizations and opinions about the crime, the defendant,
27 and the appropriate sentence as no evidence of that type was at
28 issue in the case.

Therefore, to the extent that the BOOTH decision was not
overruled by the PAYNE Court, the introduction of evidence
pertaining to the victim's family members' characterizations

1 concerning the crime, the defendant, and the appropriate sentence
2 remains unconstitutional as a violation of the Eighth Amendment.

3 Furthermore, the introduction of evidence of the victim's
4 family members' characterizations and opinions about the crime,
5 the defendant, and the appropriate sentence would be so
6 prejudicial and inflammatory as to render the sentencing
7 proceedings fundamentally unfair and create an impermissible risk
8 that the sentencing decision would be made in an arbitrary and
9 capricious manner.

10 Justice O'Connor, in her concurring opinion in PAYNE,
11 recognized that evidence which is unduly and inflammatory may "so
12 infect[s] the sentencing proceedings as to render it
13 fundamentally unfair" and require the defendant to "seek
14 appropriate relief under the Due Process Clause of the Fourteenth
15 Amendment." Id. at 2612, 15 L.Ed.2d at 740.

16 In PAYNE, supra, the Court noted that the traditional guard
17 against the introduction of inflammatory evidence is in the trial
18 judge's authority and responsibility to control the proceeds in a
19 manner consistent with due process. Accordingly, it is incumbent
20 upon the trial court to carefully limit the substance of victim
21 impact evidence only to that which specifically has been held
22 constitutional under the PAYNE decision.

23 For these reasons and others to be raised at the time of the
24 hearing on this Motion, the defendant's motion to preclude the
25 introduction of victim impact evidence pertaining to the
26 victim's family members' characterizations and opinions about the
27 crime, the defendant, and the appropriate sentence, should be
28 granted.

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WHEREFORE, the defendant respectfully requests:

A. That a hearing be held on this Motion, and,

B That this Honorable Court grant the defendant's Motion to Preclude the Introduction of Victim Impact Evidence Pertaining to the Victim's Family Members' Characterizations and Opinions About the Crime, the Defendant, and the Appropriate Sentence; and,

C. That this Court grant such additional relief as the nature of this case may require.

Respectfully submitted,


PHILIP H. DUNLEAVY, ESQ.
State Bar No. 000598
2810 W. Charleston
Suite G-67
Las Vegas, Nevada 89102
Attorney for Defendant

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

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
CHIEF DEPUTY CLERK

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DISTRICT COURT
CLARK COUNTY, NEVADA

The State of Nevada,)	
)	
Plaintiff,)	
)	
Vs.)	Case No. C106784
)	Dept. No. IV
)	Docket No. "C"
Michael Damon Rippo,)	
#0619119)	
Defendant.)	
)	
)	

Before the Honorable Gerard J. Bongiovanni
Wednesday, February 28, 1996, 10:30 o'clock a.m.
Reporter's Transcript of Proceedings

JURY TRIAL

VOLUME I

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

002193

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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Las Vegas, Nevada, February 28, 1996, 10:30 o'clock a.m.

* * * * *

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

THE COURT: Good morning.

State of Nevada versus Michael
Damon Rippo.

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

Do counsel stipulate to the
presence of the jury?

MR. SEATON: Yes, Your Honor.

MR. WOLFSON: Yes, Your Honor.

THE COURT: You may call your next witness.

MR. SEATON: Ed Moser.

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Whereupon,

MUNSON EDWIN MOSER

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

THE CLERK: Thank you. Please be seated.

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

THE WITNESS: Munson Edwin Moser; last name
M-o-s-e-r; first name, M-u-n-s-o-n.

DIRECT EXAMINATION

BY MR. SEATON:

Q Mr. Moser, how have you been employed
throughout your life?

A For the last 37 years as a latent print
examiner.

Q Are you now retired?

A I am.

Q When did you retire?

A May, 1995.

Q And prior to that time for whom did you
work?

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1 A For the Las Vegas Metropolitan Police
2 Department.

3 Q And your capacity with them, you said, for
4 the last 36 years, was what?

5 A A latent print examiner.

6 Q What is a latent print examiner?

7 A Primarily, that is in the comparing of
8 submitted fingerprints, palm prints, with known inked
9 exemplars, or sets of prints, to determine the identity of
10 the latent prints.

11 Q What is a latent print?

12 A A latent print is a print that is present
13 but not always visible. The ones that are visible are the
14 ones we all know, such as on glass or chromium, where you
15 can see it.

16 These prints are made by the
17 transferring of moisture from the fingers or palms of the
18 hands to the object touched; and this moisture comes from
19 sweat ducts that are located in the apex of the ridge skin
20 on the fingers and palms that form the patterns, so that
21 when something is touched, it's much like making a mark with
22 a rubber stamp, where you put ink on the stamp.

23 This moisture transfers in the
24 same manner, but most often requires some form of

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1 development to be seen.

2 Q And is it true then that people out in the
3 field, the crime scene analysts, can lift those latents from
4 crime scenes and give them to you to be examined against
5 other prints?

6 A Yes.

7 Q And the other prints are --

8 MR. WOLFSON: Your Honor, I'm going to
9 object. Counsel is leading the witness.

10 THE COURT: Rephrase, Mr. Seaton.

11 MR. SEATON: I will be happy to do it the
12 other way.

13 BY MR. SEATON:

14 Q Where then do you get the known fingerprints
15 from, that you were speaking of?

16 A In the office I worked, the prints are
17 submitted in envelopes. The latent prints are submitted in
18 envelopes daily, received by the persons in that office, and
19 they are then, upon request, compared to any known person
20 that a detective or officer wishes them to be compared
21 against.

22 Prints of a certain quality can
23 also be entered into an available automated fingerprint
24 identification system, a computer, to attempt to find the

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1 identity.

2 Q When you -- when you have known fingerprints
3 of particular individuals, that you have been asked to
4 compare against the latents that have been taken from
5 scenes, where do you get those known fingerprints from?

6 A The -- there are two locations.

7 Primarily they're in the office
8 I worked in. They're submitted -- when the person is inked
9 and rolled by their -- on the right hand on a single card
10 and the left hand on a single card, separately, and they're
11 filed there by identification number.

12 Q All right. Did you get training and
13 education along these lines?

14 A I did.

15 Q Could you tell the Jury what education and
16 training you've had that allows you to testify in court as a
17 latent print examiner.

18 A Well, basically when I -- I was employed
19 formerly by the Los Angeles Police Department and my
20 original training was in that department. I was trained by
21 persons who were already court qualified in the field of
22 fingerprints.

23 I did take courses, when they
24 were available to me, in school or by the F.B.I. Later, I

002201

4

1 obtained a credential and did teach the subject in the
2 community college system in California.

3 I have given fingerprint
4 testimony in the Municipal and Supreme courts in California,
5 in the District and Justice courts in Nevada, the federal
6 courts. I have testified once on fingerprints in front of
7 the Nevada Gaming Commission. I've also given testimony in
8 the states of Arizona, South Dakota and Florida on the
9 subject of fingerprints.

10 Q In each of those occasions, were you
11 qualified as an expert in that field?

12 A Yes, sir.

13 Q And you've been doing that for, did you say,
14 36 years?

15 A Thirty-seven years.

16 Q Thirty-seven years.

17 And did you do certain
18 examinations pertaining to this particular case that we're
19 here today for?

20 A I did.

21 Q In that regard were you given the latent
22 fingerprints that had been developed from various scenes
23 having to do with this case?

24 A Yes.

002202

4 1 Q Did you, as an example, receive fingerprints
2 taken from the actual scene of the crime on Cambridge Street
3 at the Katie Arms Apartments?

4 A Yes.

5 Q Did you receive fingerprints taken from a
6 certain Ford Pinto?

7 A I did.

8 Q And also from a sunglass box?

9 A I don't recall that specifically; however,
10 it could have been among the prints submitted.

5 11 Q To the best of your knowledge, were you
12 given all of the available latent prints that were
13 associated with this case?

14 A Yes.

15 MR. WOLFSON: Objection, Judge, I guess as
16 to the form of the question. It's not improper, but he
17 wouldn't necessarily know what was available for submission
18 to him and whether he received all of it.

19 THE COURT: Sustained.

20 BY MR. SEATON:

21 Q Then did you have the known fingerprints of
22 various individuals?

23 A Some were on file and some were submitted, I
24 believe.

002203

5

1 Q Were you asked to compare certain named
2 individuals' fingerprints to all of the latents that you had
3 been given?

4 A Yes.

5 Q All right. Do you have a list of those
6 names?

7 A I do.

8 Q Is it a lengthy list?

9 A Fairly.

10 Q Do you have it committed to memory?

11 A No.

12 Q If you looked at your list, would you be
13 able to tell us all of the names that you compared
14 fingerprints against?

15 A Yes.

16 Q All right. Would you look at the list,
17 please, and -- if defense counsel wishes it, would you make
18 it available to them -- but go ahead and read the names of
19 the people that you made comparisons against.

20 A Lauri Jacobson, Denise Lizzi, Darrell
21 Flenner, Stephen Scholl, Richard Goslar, Jerry Carr, and one
22 name that I didn't have a last name for, but it is Tony,
23 initial R, David Ose, O-s-e, Sr., Jack Clark, Darryl
24 Johnson, Antonio Morales, Andrea Smythe or Smythe, Diana

002204

5

1 Hunt, Michael Rippo, Danny Barton, Hector Vasquez, Hector
2 Cusinato, Harrell Heckman, Kevin McDermott --

3 MR. WOLFSON: May I ask you to pause with
4 all due respect?

5 THE WITNESS: Yes, sir.

6 MR. WOLFSON: I think we're all trying to
7 write these names down, and go just a little slower, please.

8 THE WITNESS: Do you want me to repeat?

9 MR. WOLFSON: Cusinato and go on.

10 THE WITNESS: Harrell Heckman, Kevin
11 McDermott, Christopher Lloyd, Wayne Hooper, Mack Holloway,
12 David Gibbons, and John Ladoucer, L-a-d-o-u-c-e-r.

13 MR. WOLFSON: May counsel approach the
14 bench?

15 THE COURT: Yes.

16

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

18

19 THE COURT: Would the jury kindly step out
20 in the hallway for a few minutes. Don't go far. It doesn't
21 take too long. We have to hear something outside your
22 presence.

23 Remember: Don't converse among
24 yourselves or with anyone else on any subject connected with

002205

5

1 this trial;

2 Read any commentaries on this;
3 or form any opinions; and don't run away.

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

7 THE COURT: The record will reflect we're
8 outside the presence of the jury.

9 MR. WOLFSON: Judge, the purpose of my
10 request -- thank you -- to be heard out of the presence is
11 to inquire as to whether or not we have all of the discovery
12 regarding this witness.

13 I represent to the Court that I
14 have two reports with Munson Moser's name on them: One
15 dated March 2nd, 1992; and one dated February 24th, 1992.

16 And the upshot of these reports
17 is that Mr. Moser did a comparison of about one-third of the
18 number of the names that he just read off.

19 A lot of names that Mr. Moser
20 read off, he said he included in his latent print comparison
21 work. I was unaware that any work had been done.

22 So for the purposes of getting
23 to the point, what I would like to do is ask Mr. Moser how
24 many reports he prepared; and also ask the State if they
have more reports than what I have, because if there is

002206

5 1 something out there that I don't have, that I'm entitled to,
2 I'm asking for them now.

3 So we can proceed by me asking
4 the State if they have anything more than what I have.

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

7 THE COURT: Does the State have additional
8 reports that have not been submitted to Mr. Wolfson?

9 MR. HARMON: Well, if they haven't been
10 submitted, we're unaware of that. Your Honor. Our file has
11 been open. They're welcome any time to come.

12 But we have reports -- in
13 addition to the March 2, 1992 and February 23, 1992 reports,
14 we have reports in addition to those.

15 MR. WOLFSON: May I quickly see what you are
16 speaking about, Mr. Harmon?

17 MR. HARMON: Certainly.

18 I personally have a total of
19 four reports. It's a little hard to tell what is simply
20 request for examination and what might be the results of
21 examinations performed. So you might also want to peruse
22 what Mr. Seaton has, who, of course, is examining this
23 witness.

24 MR. WOLFSON: Your Honor, I will represent

002207

5 1 to the Court that in my quick perusal there are three
6 2 documents that apparently the State has that I don't have,
3 which indicate latent print comparison work being done by
4 Mr. Moser or Mr. Scarborough, who is another latent print
5 examiner, to my knowledge.

6 May I have your indulgence for
7 a moment?

8 THE COURT: Do the parties wish me to have
9 those copied now and give them to the defendant?

10 MR. WOLFSON: Please, please.

11 THE COURT: Mr. Potter, would you do that?

12 MR. SEATON: Could you identify which ones?

13 MR. WOLFSON: The documents that were not
14 supplied to the defense is a crime laboratory report dated,
15 I believe -- it's either April 23rd or September 23rd -- I
16 can't read Munson's writing -- involving the comparison of a
17 Kevin McDermott.

18 The other one is a March 30th,
19 1992 similar report authored by Mr. Moser, wherein the
20 prints of Mr. Lloyd, Hooper, Holloway, Gibbons and Ladoucer
21 were used in a comparison.

22 And then the third report is
23 one authored by Steve Scarborough, dated October 5th, 1994,
24 wherein Mr. Rippe's prints were apparently utilized.

002208

1 THE COURT: Okay. Mr. Potter --

2 MR. POTTER: How many does he have that you
3 don't have?

4 MR. WOLFSON: Mr. Moser, I asked you before
5 court -- may I inquire, Judge?

6 THE COURT: Yeah.

7 MR. WOLFSON: I asked you before court if
8 you brought any of your reports with you and I believe you
9 told me you did not.

10 THE WITNESS: No, I didn't have them.

11 MR. WOLFSON: Okay. But you did tell me you
12 brought some notes with you; is that right?

13 THE WITNESS: Yes, sir.

14 MR. WOLFSON: All of your testimony today is
15 based upon your notes from your reports; is that right?

16 THE WITNESS: Just based upon the names that
17 I wrote down when I checked to see who I had compared from
18 the originals -- the original latents, and these were the
19 ones that I have. Beyond that, I don't know.

20 MR. WOLFSON: Okay. You didn't bring any
21 reports with you today; is that right?

22 THE WITNESS: No, sir.

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

6

1 MR. WOLFSON: Judge, could I ask if Mr.
2 Moser would allow us to make a copy of his list of names as
3 well?

4 THE WITNESS: Sure.

5 MR. WOLFSON: Then counsel --

6 MR. SEATON: No problem.

7 THE COURT: Does the State want a copy also?

8 One copy for the State.

9 MR. SEATON: Judge, at this time, I want to
10 make it abundantly clear that we have had these reports for
11 some time. I've -- I've been aware of them. I want to make
12 it equally abundantly clear that these reports have always
13 been in the file, and when these gentlemen came over to our
14 office they had must have missed them because they've always
15 been there.

16 Now, we've got boxes of
17 material that they went through, and I think it's just --
18 these reports all look alike and they -- they probably
19 missed them.

20 They're all here; and,
21 additionally, they're all negative reports. I don't think
22 they really offer much in the way of interesting testimony.

23 MR. DUNLEAVY: Your Honor, I would just
24 respond.

002209

6

1 The D.A. always ducks back and
2 says, oh, we've got an open discovery policy, so no harm, no
3 foul.

4 So other courts have ordered
5 them to adopt some kind of system to show what they have
6 turned over because they always do this when they get
7 surprised with something.

8 Mr. Wolfson and I went over; we
9 went through and tagged a large number of items, over a
10 thousand pages of items, that we didn't have when new
11 counsel came on board, Mr. Harmon and Mr. Seaton. We made
12 every effort we could.

13 If we had seen these, we would
14 have clearly tagged them because we didn't have them; and we
15 brought our file over, opened our files, and tried to
16 compare.

17 Maybe they were in there, maybe
18 they weren't, but the State has an affirmative obligation to
19 turn over what they have, not to say come and search for it
20 and if you can find it we'll give it to you.

21 And there is case law that says
22 the fact error may not be major significance of itself,
23 there is a cumulative effect.

24 In this case the cumulative

002210

6 1 effect is definitely building in this case. It's a point
2 where there should be some sanctions involved, something to
3 show that the State can't just blatantly go along and say,
4 well, we're not responsible for it; they can come look at
5 our file and maybe they can find it.

6 MR. HARMON: Your Honor, what could be
7 better than inviting counsel, so they don't have to take
8 anyone's word for it, to come over?

7 9 We turned over the file to
10 them. They had the option of tagging anything they wanted.
11 If they don't have these reports, that comes as a surprise
12 to us. That was our primary statement for the record.

13 Yeah, there were additional
14 reports from the two identified by Mr. Wolfson, but we
15 didn't know that the defense didn't have all of the Moser
16 reports.

17 MR. WOLFSON: I think what I would ask that
18 we do is when the copies come back, that we proceed in front
19 of the jury.

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

22 THE COURT: The reports you don't have came
23 up negative, they are of no evidentiary value in this case;
24 is that correct?

002211

7

1 MR. SEATON: That's my understanding.

2 MR. WOLFSON: Well, that's their
3 perspective.

4 MR. HARMON: Well, I wouldn't say it doesn't
5 have evidentiary value --

6 THE COURT: Well, I don't know --

7 MR. HARMON: -- but it is important to the
8 case in the investigation that certain persons' prints have
9 been examined and either matched or eliminated.

10 THE COURT: Well, the defense could always
11 recall Mr. Moser in their case if they wish to do some
12 investigation as to persons listed on these reports that
13 they had no knowledge of.

14 MR. DUNLEAVY: Your Honor, there is one
15 other very small matter we would like to inquire now instead
16 of doing it in front of the jury.

17 THE COURT: Okay.

18 MR. DUNLEAVY: You indicated one person you
19 looked for as a comparison was a Tony R.

20 Did somebody give you
21 fingerprints to compare by the name to Tony R.?

22 THE WITNESS: At the moment I cannot recall.
23 I just know that that was the name I copied off of the
24 article that I compared, and there wasn't a last name

002212

7

1 written out, and I just took that and did it and that's how
2 that name got on there.

3 MR. DUNLEAVY: Do you remember if he was a
4 police officer or a civilian?

5 THE WITNESS: No. The police officers were
6 listed as police officers.

7 MR. DUNLEAVY: Is that pretty unusual to
8 just have a last initial?

9 THE WITNESS: It is unusual. I don't recall
10 having that very often.

11 THE COURT: Do you remember preparing a
12 report for every name you have on that list?

13 THE WITNESS: Your Honor, I don't recall
14 each report I made. My habit was usually when I completed a
15 request I'd make a report showing what I did.

16 In this case, these names came
17 from the list that I had there.

18 THE COURT: May we bring the Jury back?

19 MR. SEATON: As far as the State's
20 concerned.

21 MR. DUNLEAVY: Yes.

22 THE COURT: Okay.

23 (The following proceedings were
24 had in open court in the
presence of the Jury:)

002213

7 1 THE COURT: Do counsel again stipulate to
2 the presence of the jury?

3 MR. SEATON: Yes.

4 MR. DUNLEAVY: Yes, Your Honor.

5 THE COURT: Okay. Continue, Mr. Seaton.

6 MR. HARMON: Thank you.

7 BY MR. SEATON:

8 Q Mr. Moser, when we last spoke you had just
9 given us the list of names of all of the people for whom you
10 had identifiable fingerprint cards, and you were going to
11 compare those people against the latent fingerprints that
12 come from the various scenes.

13 A Yes.

14 Q Is that correct?

15 A Yes.

16 Q Without alluding to any one of these in
17 particular, tell us briefly how you go about making that
18 test.

19 A The latent print is compared, first, by
20 using a magnifying glass, about approximately five power.
21 We look, first, for pattern, if there is a pattern available
22 or present in the print, and try to find a corresponding
23 pattern in the exemplar print, or the inked and rolled set.

24 If we find a corresponding

002214

7

1 pattern, we then go to the individual ridges that make up
2 the pattern.

3 Q There are ridges on our fingerprints -- on
4 our fingers?

5 A Yes. They are like corrugations.
6 They're -- they -- they're what forms the actual fingerprint
7 is this ridge.

8 When we find a pattern that is
9 the same, we then go to the individual ridge
10 characteristics, which are where a ridge will divide -- a
11 single ridge will divide or bifurcate and form two ridges at
12 that point. That is a pointer characteristic.

13 Another would be where a single
14 ridge simply ends, or there may be, instead of a whole
15 ridge, just a dot, and many variations of these.

16 We then -- we then locate or
17 try to locate these characteristics to see if any in the
18 latent print are found in the inked print in the same
19 location and in the same numbers, and that the
20 characteristics are all the same.

21 If we find that all of those
22 characteristics in the latent print, that are visible and in
23 sufficient numbers, are also present in the same manner on
24 the inked print, we then can declare an identification.

002215

7 1 Q Those characteristics that you spoke of, do
2 we carry those with us all of our life?

3 A Yes. They're formed -- excuse me. They're
4 formed in the fourth month of gestation and remain the same,
5 except for the growth in life. As you get older, the prints
6 get larger, but these characteristics remain the same
7 throughout life and can only be altered through trauma or
8 disease, something like that.

9 Q So if you fingerprint a four year old and
10 then that same person, when they're 80 years old, those
11 fingerprints will match always?

12 A They should be the same, yes.

13 Q And from person to person, in our universe,
14 do everyone's fingerprints differ from other people's?

15 A To date they've never found two fingerprints
16 from separate people or even on the same hand to be
17 identical. And this is especially true now since the advent
18 of computers, where these prints are -- are entered into
19 computers and are compared that way and they still haven't
20 found any two that are identical.

21 Q In your efforts to look at all of the named
22 known fingerprints that you had and examining them against
23 the latents that came from the various scenes, were you able
24 to find any matches?

002216

8

1 A Yes.

2 Q Could you tell us the names of those people
3 who matched and where those fingerprints were located.

4 MR. WOLFSON: Excuse me. I'm going to
5 interpose an objection because I don't think this witness
6 knows where the fingerprints were located.

7 He doesn't have any personal
8 knowledge of where a print was located. He just did a
9 comparison between an unknown and an example and said they
10 matched.

11 THE COURT: I have to sustain the objection.
12 BY MR. SEATON:

13 Q When you receive the latent fingerprints
14 from the scenes, what is written on them?

15 A Usually they -- they have the -- the address
16 and the location of where the latent print was found.

17 Q Do you mean as to a particular room within
18 that address?

19 A Or item.

20 Q Or item?

21 A Yes.

22 Q Is that done on all latent fingerprint
23 cards?

24 A Yes.

002217

8 1 Q Has that always been the policy, as long as
2 you've been there, of the Las Vegas Metropolitan Police
3 Department?

4 A Yes.

5 Q And are those kept as a normal course of
6 business as a business record within the Las Vegas
7 Metropolitan Police Department?

8 A Yes.

9 Q And are those things upon which you rely in
10 order to keep your own records and make your own judgments?

11 A Yes.

12 MR. SEATON: Judge, I would now suggest that
13 the business record exception has been established where
14 this witness should be allowed to say what he noted on those
15 cords sent to him by Cabrales or Norman, or whoever it was,
16 as to the general location of the fingerprint which he was
17 comparing.

18 THE COURT: Okay. I believe he can, under
19 the business record exception.

20 MR. SEATON: Thank you.

21 MR. WOLFSON: I'm going to object as to
22 whatever Norman said.

23 Now we've got Norman talking to
24 Cabrales, who is talking to Moser. Norman didn't come in

002218

8

1 and testify, so we've got double and triple hearsay.

2 I understand the business
3 record exception, but he interjected Norman as well.

4 MR. DUNLEAVY: Your Honor, I would also
5 submit the business record exception may go to some extent
6 it came from this crime scene, but the specifics of where it
7 came from in that crime scene is just stretching it too far.

8 MR. SEATON: Judge --

9 MR. DUNLEAVY: That's not the kind of
10 information that he relies upon. He doesn't care what part
11 of a room something was found in. He wants to know if it
12 matches. That's his job.

13 MR. SEATON: To make it easier, Judge, let
14 me -- I understand the Court's former ruling, but rather
15 than to do that, I will just simply establish the crime
16 scene in general that it came from, rather than the
17 particular location.

18 THE COURT: Okay.

19 BY MR. SEATON:

20 Q Were there identifiable -- let's do it this
21 way: One of the names you gave us was a Lauri Jacobson --

22 A Yes.

23 Q -- is that correct?

24 Did you -- were you able to

002213

8 1 match any of her known fingerprints to any of the latent
2 fingerprints that came from the Katie Arms location?

3 A Yes.

4 Q How many?

5 A Thirty-three.

6 Q So in 33 different places, she had touched,
7 and her latent fingerprints were found within that
8 apartment?

9 A It would -- should be 33, yes.

10 Q All right. Were there any other individuals
11 on that list whose fingerprints were found within that
12 apartment?

13 A Yes.

14 Q Who?

15 A An Officer Darrell Flenner.

16 Q Is that a Las Vegas Metropolitan Police
17 Department officer?

18 A Yes, sir.

19 Q And that was Darrell Flenner?

20 A --

21 Q How many fingerprints of Officer Flenner
22 were found within the Katie Arms apartment?

23 A Oh, I have the location of where those were
24 found.

002220

8 1 Q Well, without giving us the location, just
2 tell us how many.

3 A Let's see, there was --

4 MR. WOLFSON: Excuse me, with all due
5 respect, Mr. Moser, are you going off the list you provided
6 us, your handwritten notes?

7 THE WITNESS: Yes, I am.

8 MR. WOLFSON: Okay.

9 THE WITNESS: I count the -- let me see,
10 one, two, three -- eight fingerprints, partial fingerprints,
11 and partial palm prints of Mr. Flenner.

12 BY MR. SEATON:

13 Q Mr. Moser, I'm sorry, I did not hear that
14 answer.

15 A Oh, it was eight partial fingerprints and
16 three partial palm prints from Darrell Flenner.

17 Q All right. And those were prints found at
18 the Apartment 317 of the Katie Arms Apartments?

19 A Yes.

20 Q All right. And were there any other police-
21 officers' fingerprints found?

22 A Yes. Officer Stephen Scholl, S-c-h-o-l-l.

23 Q And how many --

24 A One -- one fingerprint identified to him.

002221

9

1 Q And that was within the Apartment 317 --

2 A In that apartment.

3 Q And?

4 A Officer Richard Goslar, G-o-s-l-a-r;
5 identified one fingerprint of his within the confines of the
6 scene.

7 Q Anyone else from that list of names that you
8 gave us whose fingerprints were found within the Apartment
9 317 of the Katie Arms Apartments?

10 A None of the other persons that I listed were
11 identified from any of the latent prints recovered from that
12 scene.

13 Q You indicated that there were fingerprints
14 given to you from a Ford Pinto.

15 Were there any makes on any of
16 those fingerprints?

17 A No.

18 Q And were there any makes on any of those --
19 of any of the other fingerprints that were submitted to you
20 as latent fingerprints?

21 A None.

22 Q So the only makes you made were 33 to Lauri
23 Jacobson -- did you say eight, I believe, to Officer
24 Flenner --

002222

9

1 MR. WOLFSON: Eleven.

2 MR. SEATON: Eleven, okay, whatever the
3 number was.

4 BY MR. SEATON:

5 Q -- and one to Goslar, Officer Goslar, and
6 one to Detective Steve Scholl?

7 A Yes.

8 Q And that is the extent of any positive
9 findings that you were able to do in your testing?

10 A Yes.

11 Q How unusual is it for you to find the
12 fingerprints of police officers at scenes?

13 A It's infrequent.

14 Q But it does happen?

15 A It does happen.

16 Q This is not the only case?

17 A No, it's not the only one.

18 Q Are you aware of a memo sent to Captain
19 Connett by crime scene analyst Cabrales?

20 A Yes.

21 Q And have you read that memo?

22 A Yes.

23 Q Do you -- let me show you the memo and
24 the --

002223

9

1 MR. WOLFSON: Excuse me, Judge. I would
2 like it marked. I believe if the witness is going to
3 testify to or about a document, it should be marked.

4 MR. SEATON: I'll be happy to mark it, but I
5 don't intend to offer it. It's not that relevant. But I do
6 want him to testify --

7 MR. WOLFSON: Relevancy is determined by the
8 Court.

9 MR. SEATON: I didn't mean to interrupt you,
10 Mr. Wolfson.

11 THE COURT: Have it marked.

12 MR. SEATON: Thank you.

13 (Whereupon, as requested by
14 counsel, State's Exhibit
15 108 was marked for
identification.)

16 BY MR. SEATON:

17 Q I have marked the last paragraph and would
18 you read that for us? I'd like to get your comments on
19 that, please.

20 MR. WOLFSON: To himself or into the record?

21 THE COURT: Is that 10 --

22 MR. SEATON: It is Exhibit 108. I'd like
23 him to read it aloud.

24 MR. WOLFSON: If he's reading it aloud, then

. 002224

9 1 it should be marked and admitted, which I have no objection
2 to. It's not in evidence and he's not supposed to read it
3 out loud unless it's in evidence.

4 If you want it in evidence,
5 I'll agree to let it in.

6 MR. SEATON: Well, that's awful --

7 MR. WOLFSON: It's awful --

8 MR. SEATON: Judge, there is a rule that Mr.
9 Wolfson is not following, that counsel does not offer to
10 stipulate to things in front of a jury, and he has violated
11 that, and I'd ask him to stop.

12 He has an objection. If it's
13 sustained, then I'll abide by it.

14 MR. WOLFSON: My objection is the document
15 is not in evidence; so, therefore, things should not be read
16 from it.

17 THE COURT: Sustained.

18 MR. SEATON: Thank you.

19 BY MR. SEATON:

20 Q When you read that particular memo from Mr.
21 Cabrales to Barbara Connett, did you understand that there
22 was a concern that there may be extra footwear impressions,
23 fingerprints, which were found, and hair samples that may
24 have been left, and that was your concern --

002225

MR. WOLFSON: Objection; relevance.

This is a fingerprint examiner, and whether he had a concern regarding hair samples and footwear comparisons, and whether he had a concern at all is not relevant.

MR. SEATON: Well, Judge I think I can show the relevance. They are the ones who brought up this memo, through Mr. Cabrales. They tried to make a point about it.

We have a man who is senior to Mr. Cabrales, in terms of his doing examinations. He has opinions about this same area and he should be allowed to state them.

MR. DUNLEAVY: Well, I don't think there is anything showing he's senior, Your Honor. He worked in a different area. All he does is compare fingerprints.

There is a world of difference between that and someone who goes out in the field and collects a wide variety of evidence. It's not a matter of somebody being senior to the other. They work in different fields.

MR. WOLFSON: And he's being asked to give his opinion regarding some things that he doesn't even have an expertise in, hair and fiber analysis. We don't know anything about footwear impressions. And that memo talks

002226

10

1 about other things of physical evidence. This man, with all
2 due respect, has got 36 years or 37 in fingerprints.

3 THE COURT: I have to sustain the objection.

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

6
7 MR. SEATON: Court's indulgence.

8 THE COURT: Okay.

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

11
12 BY MR. SEATON:

13 Q You are -- you have some familiarity with
14 crime scenes.

15 A I do.

16 Q When -- what kind of people go to crime
17 scenes?

18 A The --

19 MR. DUNLEAVY: I'm going to object, Your
20 Honor; that's vague and ambiguous.

21 MR. SEATON: I don't mind his objection --

22 MR. HARMON: I don't mind, but I do mind his
23 laughter.

24 THE COURT: Overruled. Go ahead.

002227

10

1 BY MR. SEATON:

2 Q You may answer the question.

3 A The usual method is for some police officer,
4 after a scene is discovered --

5 Q Now who discovers the scene?

6 A Oftentimes, a private citizen will, and
7 they'll phone the police department; and, in turn, usually a
8 patrol car gets dispatched; and it is usually, to the best
9 of my knowledge, their duty -- having been an officer in the
10 past -- it's their duty to determine various things about
11 that scene: What type of crime; is there injury or other
12 things.

13 And they're to enter that scene
14 and find out what has happened, what other services will be
15 required, and to secure the scene for any -- if lab is
16 needed and request these other persons or services.

17 Q And might there be more than one police
18 officer who does that?

19 A Oftentimes, there is at least two, and
20 possibly a detective or two.

21 Q And do paramedics go to these kinds of
22 scenes?

23 MR. WOLFSON: Judge, I'm going to object.
24 It's beyond this witness' field of expertise.

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1 MR. SEATON: He just said that he was a
2 police officer once before. He's been at scenes and he has
3 a lot of knowledge about them.

4 THE COURT: Objection overruled.

5 BY MR. SEATON:

6 Q Do paramedics oftentimes go to these scenes?

7 A In cases where there is injury, they are
8 oftentimes called.

9 Q Those people that you have just mentioned,
10 are they capable of leaving fingerprints?

11 A It has occurred; however, that's an
12 infrequent occurrence also.

13 Q They're trained not to do that, if at all
14 possible?

15 A Nowadays they mostly wear latex gloves when
16 they have to handle things.

17 Q And might they have hair that may shed on a
18 particular scene, if they go to that scene?

19 A That's possible.

20 Q With all of that in mind, could most scenes
21 have the potential of being somehow contaminated?

22 MR. WOLFSON: Objection. This witness is
23 not qualified. It's beyond his expertise. He's been
24 qualified as a fingerprint expert. I don't have to go over

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1 it. He was a police officer, when, for how long, how long
2 ago? He's not qualified to talk about this.

3 THE COURT: Sustained.

4 BY MR. SEATON:

5 Q In your mind, does the fact that three
6 police officers left their fingerprints in various parts of
7 that apartment contaminate the scene to the extent that it
8 is -- that the evidence gathered there is worthless?

9 MR. WOLFSON: Objection. He's not qualified
10 to give that opinion.

11 MR. SEATON: Judge, he is a person who
12 examines this evidence. It is his job to look at
13 fingerprints. He knows crime scenes. He has been a police
14 officer.

15 THE COURT: Was your question limited to the
16 fingerprint evidence or as to all the evidence?

17 MR. SEATON: Well, I -- I was asking him all
18 of the evidence because I think he is that familiar with
19 crime scenes.

20 MR. WOLFSON: You know, in the O.J. Simpson
21 case --

22 MR. SEATON: Judge, I object to this.

23 MR. WOLFSON: I've giving an example.

24 MR. SEATON: Well, do it outside the

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1 presence of the Jury.

2 THE COURT: I don't want to get into the --

3 MR. WOLFSON: Okay. In another case they
4 brought in somebody.

5 MR. SEATON: Judge, he is doing what I just
6 asked him not to do.

7 You know, this isn't the O.J.
8 case. I don't care what he wants to try to impress the Jury
9 with, this is this case.

10 MR. WOLFSON: Now who is giving a speech?

11 MR. SEATON: That's all it is.

12 MR. WOLFSON: My objection is --

13 MR. SEATON: Let him just say what his
14 objection is.

15 MR. DUNLEAVY: Your Honor, the defense has a
16 right to enter a speaking objection.

17 THE COURT: All right. Sit down.

18 State your objection.

19 MR. WOLFSON: My objection is it's obvious
20 this man's focus of expertise. I've known Munson for years
21 and I respect his expertise.

22 MR. SEATON: Is he testifying or giving us
23 an objection?

24 THE COURT: What's your objection?

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1 MR. WOLFSON: My -- my objection is that his
2 opinion should only be on fingerprint evidence.

3 He has not shown any expertise
4 in anything else. Because he was a police officer once, way
5 back when, I don't think that gives him the qualifications
6 to give an overall opinion about crime scene contamination.

7 THE COURT: Response to the objection,
8 Mr. Seaton?

9 MR. SEATON: Judge, this gentleman has 37
10 years experience. He was a police officer.

11 I haven't asked him --

12 THE COURT: How long was he a police
13 officer?

14 BY MR. SEATON:

15 Q How long were you a police officer?

16 A Twenty five years, Your Honor.

17 Q How many crime scenes have you been to?

18 A I processed in Los Angeles a number that I
19 had a figure for of 10,000.

20 MR. SEATON: I rest my case.

21 THE COURT: The objection is overruled. You
22 may ask the question.

23 MR. SEATON: Thank you.

24 THE COURT: Now you forget it or what?

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1 MR. SEATON: I'm getting old, Judge. I
2 forget easily these days.

3 BY MR. SEATON:

4 Q We've gone over a number of individuals who
5 could potentially go into a crime scene and deposit
6 fingerprints, footprints and hair and anything else that
7 might happen when people enter into a scene.

8 Do you have an opinion as to
9 whether or not most crime scenes then have the capacity to
10 be compromised?

11 A Yes, to some extent.

12 Q They could be compromised?

13 A Yes, in -- in -- in ways that you've
14 mentioned.

15 Q All right. As a matter of fact, if we use
16 the word compromised, was this crime scene compromised to
17 the extent that three police officers left their
18 fingerprints in various locations in the apartment, in
19 Apartment 317?

20 MR. WOLFSON: Objection. I don't think he's
21 qualified to give an opinion whether this crime scene was
22 compromised when all he did in this case was examine 78
23 fingerprints. That is the entire theory of this case, and
24 he cannot give an opinion on the entire theory.

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1 MR. SEATON: I don't know about any entire
2 theory, Judge. He has already passed expertise muster on
3 crime scenes.

4 THE COURT: I'll overrule the objection.

5 You may answer.

6 THE WITNESS: Would you please repeat the
7 question?

8 MR. SEATON: I'll try.

9 BY MR. SEATON:

10 Q Was this crime scene contaminated -- if
11 we're going to use that word -- to the extent that three
12 police officers left their fingerprints in various locations
13 of Apartment 317 of the Katie Arms?

14 A To the best of my knowledge, not having been
15 there, I would acknowledge that trace items like you
16 mentioned would have been left or be present there.

17 As to any further disturbance
18 of items of evidence or the crime scene, I would not know.

19 Q So you don't know whether or not they ruined
20 any other evidence, potential evidence, that may have been
21 there?

22 A That's correct.

23 Q If someone had been in that apartment,
24 Apartment 317 of the Katie Arms, they said they were in the

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11 1 apartment, and their fingerprints were not found; is that
2 possible?

3 A Yes.

4 Q Tell us how.

5 A Well, the most obvious way would be if a
6 person wore gloves. That would preclude leaving a
7 fingerprint.

8 Secondly, if a person was very
9 careful and thoroughly wiped everything that was touched,
10 that should preclude the finding of an identifiable
11 fingerprint.

12 And, lastly, it is possible,
13 from my experience, that persons could have occupied a
14 specific area and touched various items, but through
15 smearing or smudging did not leave an identifiable print.

16 Q You had the fingerprints of Denise Lizzi
17 before you, did you not?

18 A I did.

19 Q The known fingerprints?

20 A Yes.

21 Q You compared them to all of the latent
22 fingerprints that were found in Apartment 317 of the Katie
23 Arms?

24 A Yes.

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1 Q Did you find her fingerprints at all?

2 A No.

3 Q You had the known latent prints of Diana
4 Hunt?

5 A Yes.

6 Q And did you compare all of those
7 fingerprints to all of the latents?

8 A Yes.

9 Q And did you find her prints located any
10 place?

11 A No.

12 Q And the same questions of the defendant,
13 Michael Rippo: Did you find his fingerprints in that scene?

14 A None of them were made by Michael Rippo.

15 Q Or Diana Hunt or Denise Lizzi?

16 A That's correct.

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

19 MR. SEATON: No further questions.

20 THE COURT: Cross-examination.

21 MR. WOLFSON: Thank you.

22

23 CROSS-EXAMINATION

24 BY MR. WOLFSON:

Q You were never inside this apartment that is

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11 1 the subject of this crime scene investigation, were you?

2 A No.

3 Q You never responded to that apartment, did

4 you?

5 A No.

6 Q Did you read any of the police reports

7 involved in this case?

8 A No.

9 Q Did you read any of the transcripts from

10 prior hearings on this case?

11 A No.

12 Q Are you aware of how long Diana Hunt said

13 she was in the apartment?

14 A No.

12 15 Q Are you aware of how long Diana Hunt said

16 Michael Ripppo was in the apartment?

17 A No.

18 Q Are you aware of where Diana Hunt said she

19 went inside the apartment?

20 A No.

21 Q And are you aware of where Diana Hunt said

22 Michael Ripppo went inside the apartment?

23 A No.

24 Q Were you there when the police officers

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1 entered the apartment?

2 A No.

3 Q The paramedics?

4 A No.

5 Q The security guard or the maintenance man?

6 A No.

7 Q But you're still giving an opinion, whether
8 this crime scene was contaminated.

9 A The --

10 MR. SEATON: Judge, that is an unfair
11 question.

12 My question to him was that was
13 it contaminated to the extent that there were fingerprints
14 of officers found there? He said yes, it was.

15 And he didn't know about
16 anything else, so he is not giving an opinion about lack of
17 contamination in that regard.

18 THE COURT: Objection sustained.

19 BY MR. WOLFSON:

20 Q Did you say, in response to a question by
21 Mr. Seaton, that you were a superior officer to Mr. Cabrales
22 back in 1992?

23 A Only as to length of -- I would say as to
24 length of time on the job, and experience, length of

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1 experience.

2 Q Have you ever known, in your years as
3 working as a fingerprint examiner, whether a crime scene
4 analyst would note, in his report, whether he had an opinion
5 that a crime scene had been wiped down?

6 A I have in the past -- it's rare, but I have
7 in the past, when I could determine from the developed
8 images in the processing. Occasionally, it is possible to
9 clearly see wipe marks indicating that some form of material
10 was wiped or brushed over a certain surface.

11 Q Do you have any indication, from your
12 knowledge of this case and your examination of the latents
13 in this case, that there was any wiping down of this crime
14 scene?

15 A I do not recall noting that specifically.

16 Q I believe you said that as part of a latent
17 print examiner's job that sometimes a computer is used; is
18 that right?

19 A Yes.

20 Q Tell us about that.

21 A If -- if the fingerprint -- now, the
22 computer will only work with fingerprints, not palm prints.
23 If you have enough of a pattern, enough of the ridge detail
24 clear, that can be seen clearly, especially with specific

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1 locations, like the core, and a delta area, where the ridges
2 form a delta shape, and sufficient characteristics within
3 that portion of the pattern, it may be entered into the
4 computer and searched mechanically that way.

5 And in the case of a computer
6 in existence that we had here, it would compare the
7 submitted or entered print and give back ten possibles. It
8 doesn't actually tell you it's a positive match.

9 That portion has to be done --
10 preliminarily, it can be done by looking at the screen,
11 because the test print and the file print will come up when
12 you get your response.

13 But if -- if it looks like a --
14 a matching print, then the examiner has to obtain the
15 original inked print and physically compare it to be sure
16 that there is no error there.

17 Q Does that computer availability or computer
18 science have a name to it?

19 A Just AFIS, an acronym for Automated
20 Fingerprint Identification System.

21 Q AFIS, A-F-I --

22 A AFIS, yes.

23 Q And was AFIS available back in February of
24 1992 to the Las Vegas Metropolitan Police Department?

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1 A Yes.

2 Q Was it used in this case?

3 A I'm sorry?

4 Q Was it used in this case?

5 A Yes.

6 Q How many total latent prints did you have
7 for your investigation?

8 A Well, the total I counted -- I simply
9 counted -- when I went back to make my notes, I counted the
10 total number of photographs and latent print lifts -- some
11 of the photographs were duplicates -- but of that total, I
12 counted 78.

13 Q Seventy-eight separate images of what I will
14 call finger impressions, finger or palm impressions?

15 A Yes.

16 Q And of those 78, you are saying that some of
17 them were a photograph of the actual tape lift of the
18 impression?

19 A They don't always photo them after they're
20 taped. Usually the photograph is made prior, when the print
21 is developed sufficiently to photograph.

22 The practice is usually to
23 photograph it first; then tape it and lift it.

24 Q What I'm trying to determine, Mr. Moser, is:

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1 How many separate finger or palm impressions did you use in
2 your examination?

3 A I don't know because these lifts often do
4 contain several partial fingerprints on one lift, or it may
5 contain two or three partial palm prints on one lift.

6 Q So when we talk about 78, in practice, we're
7 talking about even more prints because, a latent may have
8 more than one finger on it?

13

9 A There -- there is often more than one print
10 on a latent print lift card that's submitted.

11 Q Did you keep track of how many latent print
12 cards had impressions of how many fingers?

13 A No, it was never my practice to enumerate
14 each and every one primarily because so many times they are
15 only fragments of prints and can't be really counted as an
16 individual single print. They may even be superimposed on
17 one another.

18 Q Isn't there a word for a latent print
19 examiner -- for a print that is usable in a comparison?

20 A Just an identifiable print.

21 Q Okay. I had in mind meaning it's of
22 sufficient quality under a particular system where you feel
23 comfortable in making a comparison?

24 A Yes.

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1 Q And that's called a point system, is it not?

2 A Well, these individual ridge characteristics
3 are often referred to as points.

4 Q So is it safe to assume, in this case, we
5 had a minimum of 78 finger or palm impressions, each having
6 a sufficient number of points to utilize in a comparison?

7 A They're not always -- each one of these
8 prints may not have been identifiable.

9 Many times some are submitted
10 where portions of a print are too smudged or incomplete to
11 make a positive identification. So any number of these
12 individual prints may not be identifiable.

13 Q Of the comparison work you did, you were
14 able to conclude that there were 33 matches; is that right?

15 A On one person, yes.

16 Q I'm sorry. On one person?

17 A Yes.

18 Q Meaning Lauri Jacobson?

19 A Yes.

20 Q And you were able to make eleven matches
21 from Officer Darrell Flenner?

22 A Yes.

23 Q Eight fingers, three palms?

24 A Yes.

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1 Q One from Detective Scholl; is that right?

2 A Yes.

3 Q And one from Officer Goslar; is that right?

4 A Yes.

5 Q So you made 46 matches in this case; is that
6 right?

7 A Yes.

8 Q Does that mean that there are at least 30 or
9 40 other latent prints that you were unable to match?

10 A That would be correct.

11 Q Okay. Now, you used those other 30 or 40 --
12 and that's my number. I'm using the difference between the
13 ones you were able to match and the ones you weren't able to
14 match --

15 MR. HARMON: That's 32.

16 MR. WOLFSON: Well, we're talking about 32
17 if the number is just 78.

18 I think that --

19 MR. HARMON: That was his number, wasn't it?

20 MR. WOLFSON: I think that the witness
21 said -- I think the witness acknowledged that 78 could even
22 be more identifiable prints.

23 BY MR. WOLFSON:

24 Q But my question is: You had 30 or 40

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1 non-identifiable prints; isn't that right?

2 A Prints that were either not identifiable or
3 were identifiable, but not identified.

4 Q Well, how many were identifiable, meaning
5 sufficient quality to use in a comparison, that weren't
6 identified?

7 A I don't have that number.

8 Q Why not?

9 My client is on trial for
10 murder and you don't have that number?

11 MR. SEATON: Judge, we don't need his
12 commentary. He can just ask questions.

13 MR. DUNLEAVY: It was a question.

14 THE COURT: It will be stricken. The Jury
15 will be admonished to disregard that statement.

16 BY MR. WOLFSON:

17 Q Mr. Moser, did you prepare a report
18 regarding how many?

19 A It's never been the practice in the office
20 of enumerating each fragmentary print or each -- each
21 partial print that was not identifiable.

22 The practice has been to submit
23 the amount of latent print lifts submitted and the persons
24 compared with them, but we've never had a practice --

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1 primarily, it would be -- become so lengthy and time
2 consuming to list each and every scrap that we look at and
3 would not have any particular value.

4 Q In your opinion?

5 A Yes, sir.

6 Q How many possible suspects did you have in
7 this case?

8 A I'll have to count.

9 Q You have a list from your notes, do you not?

10 A The best I have here would be 12 possible
11 suspects.

12 Q And you were able to eliminate three other
13 persons, were you not?

14 A Yes.

15 Q And that is under --

16 A No, I'm sorry, Yes, that's true.

17 Q That's under your persons eliminated
18 category?

19 A Yes.

20 Q You have a witness -- or you have a person
21 by the name of Jerry Carr; is that right?

22 A Yes.

23 Q And then you have a person by the name of
24 David Ose, O-s-e, Junior; is that right?

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1 A Yes.

2 Q And then you have a person Tony R.; is that
3 right?

4 A Yes.

5 Q Does that mean that somehow a -- or an
6 exemplar was given to you, a known print, an identifiable
7 print, which we call an exemplar, was given to you for the
8 purposes of comparison and it only had Tony R. on it?

9 A Yes. That is what I wrote down. I have
10 the -- my habit is to copy off of an exemplar, or --
11 sometimes they're not on official cards, but whatever I
12 receive, that was what was on it.

14

13 Q Do you know if any latent prints were
14 recovered off a hair dryer or iron, two pieces of physical
15 evidence, at the crime scene?

16 A Specifically, no, I don't. I'm not aware of
17 that.

18 MR. WOLFSON: Court's indulgence.

19 THE COURT: Okay.

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

22 BY MR. WOLFSON:

23 Q Of these 78 plus prints that you had for the
24 purposes of identification, none of them matched Michael
Rippo; isn't that right?

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1 A That's correct.

2 MR. WOLFSON: That concludes my examination.

3 THE COURT: Redirect.

4
5 REDIRECT EXAMINATION

6 BY MR. SEATON:

7 Q And none of them matched Denise Lizzi; is
8 that correct?

9 A I'm sorry. Who?

10 Q None of them matched Denise Lizzi?

11 A That's correct.

12 Q Can you gauge the age of latent
13 fingerprints?

14 A No.

15 Q You find a latent at a scene and you have no
16 idea how long it's been there?

17 A It's scientifically impossible to determine
18 the exact date that a print was placed on an object.

19 Q There were 32 or more unidentified latent
20 fingerprints left after your examinations; is that correct?

21 A Yes.

22 Q They were either unidentifiable, that is,
23 they weren't of such a quality that would allow you to
24 identify them, or you just didn't make a match to any of the

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1 people you checked on?

2 A Every -- everything that was comparable was
3 compared, and the persons not identified, those prints that
4 were identifiable were not made by them.

5 Q And are you able to tell us with any degree
6 of certainty, regarding the 32 or more unidentified prints,
7 how long they had been in that apartment?

8 A No.

9 Q How long can prints last?

10 A It varies widely.

11 A print, under the right
12 conditions, may last only seconds to minutes; but on
13 something such as paper a print could last years, ten years,
14 and still be developed; so there is no way to really place a
15 time frame accurately.

16 Q In the typical sense, fingerprints are being
17 left on these tables, for example, as we work here.

18 Can they last for any length of
19 time?

20 A Well, ordinarily, they would last until the
21 moisture transferred by the hand would either evaporate or
22 be cleaned off by a cleaning person, doing the normal
23 cleaning work.

24 Q So if you were to come back tomorrow and

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1 examine the table, might you find Mr. Harmon's and my
2 fingerprints on it, if the table was left undisturbed?

3 A It may be possible.

4 Q You mentioned the computer AFIS, the
5 acronym.

6 What goes into AFIS? What are
7 the fingerprints that you have on record to compare latents
8 against?

9 A In this state they're prints from people
10 that have submitted fingerprints on work applications,
11 people from -- that have entered a detention center, their
12 prints will go into it.

13 Q Criminals?

14 A Yes. And anyone who lawfully submits a set
15 of ten fingerprints to the fingerprint bureau, they are
16 entered and put in the file capacity of that computer.

17 Q And when AFIS then goes about doing its
18 work, it checks all of those criminals and civil people in
19 the computer against the particular latent that you are
20 looking at?

21 A Yes. It -- it compares them against all
22 that are submitted to be compared; that is, the operator
23 entering the print can specify the pattern types and such so
24 as to eliminate prints that wouldn't be of any value and

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1 comparison.

2 Q As to the wiping of surfaces, let's use the
3 table. If I were to use a cloth or something to wipe this
4 table down, you indicated before that it would probably
5 obscure or eliminate any fingerprints that might be on it;
6 is that true?

7 A On a hard, non-porous surface it would be
8 easier to remove a print by wiping than one that is more
9 porous.

10 Q When I wiped that surface down, will I leave
11 wipe marks in all -- in all occasions?

12 A Sometimes, depending on the type of material
13 used to do the wiping, such as a coarse cloth or something
14 of that sort. Those tend to leave marks more than a very
15 fine weave soft clot.

16 Q Can surfaces be wiped down then and no marks
17 of that wiping remain so that you could tell whether or not
18 something had been wiped down?

19 A Again, that would depend mostly on the type
20 of surface.

21 Things like small objects would
22 be more likely to be able to be clean without as much chance
23 of leaving the markings behind.

24 Q But that does happen on occasions?

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1 A It does.

2 MR. SEATON: All right. That concludes
3 redirect.4 MR. WOLFSON: Just a couple questions,
5 Judge.

6 THE COURT: Recross.

7

8 RECROSS-EXAMINATION

9 BY MR. WOLFSON:

15

10 Q Are you aware, Mr. Moser, of how many
11 separate locations from inside the apartment latent
12 fingerprints were recovered?

13 A No, I'm not.

14 Q Would it be fair to say if a person wiped
15 down a table with a cloth or a rag in a manner, such as what
16 I'm demonstrating, a brushing manner, (indicating), would it
17 be fair to say that this person, if he or she left their own
18 prints, they would be able to wipe off their prints as well
19 as any other prints that may have been on the same area
20 where they were wiping down?

21 A Yes.

22

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

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1 BY MR. WOLFSON:

2 Q Now you weren't at this crime scene, Mr.
3 Moser. We've already established that.

4 Would it be fair to say that
5 the crime scene analyst who spent eight hours at the crime
6 scene would be in the best position possible to determine
7 whether there was any wiping down at that crime scene?

8 A I would say so, yes.

9 MR. WOLFSON: No further questions.

10

11 FURTHER REDIRECT EXAMINATION

12 BY MR. SEATON:

13 Q And that crime scene analyst may come to a
14 situation where evidence of wiping is nonexistent, even
15 though -- even though wiping occurred; is that correct?

16 A Yes, it would be possible.

17 MR. SEATON: Thank you. Nothing further.

18 THE COURT: Thank you, Mr. Moser.

19 THE WITNESS: Thank you, Your Honor.

20 THE COURT: Enjoy your retirement.

21 (Whereupon, the witness
22 was excused.)

23 THE COURT: All right. We'll take our lunch
24 recess. We'll begin again at 1:45.

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1

Remember: Do not converse

2

among yourselves or with anyone else on any subject

3

connected with this trial;

4

Read, watch, listen to any

5

report or commentary on the trial by any medium of

6

information, including, without limitation, newspaper,

7

television and radio; or

8

Form or express any opinion on

9

the trial until the matter is finally submitted to you.

10

Have a good lunch.

11

12

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14

(Whereupon, a recess was had in the proceedings, at the conclusion of which the following was had:)

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002254.

1 Las Vegas, Nevada, Wednesday, February 28, 1996, 1:50 p.m.

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3 * * * * *

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5 THE COURT: Counsel stipulate to the
6 presence of the Jury?

7 MR. SEATON: Yes.

8 MR. WOLFSON: Yes, Judge.

9 THE COURT: The State may call its next
10 witness.

11 MR. HARMON: Jeff Welte.

12 THE CLERK: Remaining standing, please, and
13 raise your right hand.

14
15 Whereupon,

16 JEFFREY WELTE

17 having been called as a witness by the Plaintiff and
18 having been first duly sworn to tell the truth, the
19 whole truth and nothing but the truth, was examined
20 and testified as follows:

21 THE CLERK: Thank you.

22 Please be seated.

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

002255

1 THE WITNESS: Jeffrey Welte; last name
2 W-e-l-t-e; J-e-f-f-r-e-y.
3

4 DIRECT EXAMINATION

5 BY MR. HARMON:

6 Q Is it Officer Jeffrey Welte?

7 A Yes, it is.

8 Q Officer Welte, where are you employed?

9 A For the Las Vegas Metropolitan Police
10 Department.

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

13 A A little over five years.

14 Q I want to direct your attention to February
15 the 22nd, 1992.

16 On that date, did you have
17 occasion to respond to a shopping center in the 100 block of
18 South Rainbow Boulevard?

19 A Yes, I did.

20 Q Is that in Las Vegas, Nevada?

21 A Yes, it is.

22 Q What caused you to be sent, on February the
23 22nd, 1992, to the area of 100 South Rainbow?

24 A It was a radio dispatch call.

002256

1 1 Q Did you go there looking for a particular
2 car?
3 A Yes, I was.
4 Q Did you locate the car?
5 A Yes, I did.
6 Q What car did you discover?
7 A I believe it was a '92 Nissan 300ZX. It was
8 sort of a reddish maroon in color.
9 Q You've indicated that you believe it was a
10 '92 red Nissan.
11 Did you prepare an officer's
12 report in connection with the sighting of the vehicle on
13 that date?
14 A No, I did not. I only completed a vehicle
15 impound sheet.
16 Q Will reference to your vehicle impound sheet
17 assist you in refreshing your memory regarding the exact
18 description of the vehicle?
19 A Yes, it would.
20 MR. SEATON: May he refer to his report,
21 Your Honor?
22 THE COURT: He may.
23 BY MR. HARMON:
24 Q Officer Welte, I'm showing you what is

002257

1 identified as a Las Vegas Metropolitan Police Department
2 impound record.

3 Is it your report, sir?

4 A Yes, it is.

5 Q By referring to the report, can you refresh
6 your memory regarding the exact description of the motor
7 vehicle in question?

8 A Yes. It was an '88 Nissan 300ZX.

9 Q Did it have a license plate?

10 A Yes. It bore Nevada license plate 139 CUS.

11 Q About what time was it that you were
12 dispatched to the 100 South Rainbow address?

13 A Approximately 2200 hours, which is ten
14 o'clock, if you have to use military time.

15 THE COURT: Ten p.m.?

16 THE WITNESS: Exactly.

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

19 THE COURT: You may.

20 BY MR. HARMON:

21 Q Officer Welte, I'm showing you two
22 photographs that have been marked as Exhibits 64 and 65.

23 Are you able to recognize the
24 automobile shown in the pictures?

002258

1

1 A Yes.

2 Q What car is it?

3 A It's the same vehicle that I impounded, the
4 1988 300ZX.

5 Q The same vehicle you sighted in the 100
6 block of South Rainbow Boulevard on February 22nd, 1992?

7 A Yes.

8 Q Where exactly was the car, which is shown in
9 Exhibits 64 and 65, when you saw it?

10 A Exactly where these photographs were taken,
11 it was approximately 30 yards west of a Carl's Junior, right
12 between an Albertson's grocery store and the Carl's Junior.

13 Q This was in the parking lot of the shopping
14 center in that area?

15 A Yes, it was.

16 Q Was the vehicle occupied when you saw it?

17 A No, it was not.

18 Q You mentioned that you were involved in
19 impounding the car.

20 What does that mean?

21 A What I do is when I recover a vehicle, I
22 fill out a vehicle recovery sheet; and in this case, to seal
23 something for latents, I would take a department
24 standardized sticker and initial it with my name and badge

002259

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1

1 number and the event number, and I would seal the vehicle
2 doors and whatever could be opened.

3 Q Do you recall if you touched the vehicle
4 shown in Exhibits 64 and 65 that night?

5 A No, I did not.

6 Q And were you sensitive to the need to
7 preserve the condition of the vehicle substantially as it
8 was when you found it?

9 A Yes.

10 Q Is this document you referred to, to refresh
11 your memory regarding the vehicle description, the impound
12 report that was prepared by you?

13 A Yes.

14 Q Did a tow truck respond and was the vehicle
15 transported to some other location?

16 A Yes, it was.

17 Q Do you know where it was taken?

18 A To the Metro Police crime lab.

2

19 Q Was that for the purpose of having
20 additional examination conducted upon the car?

21 A Yes, it was.

22 Q Were you involved personally in any
23 photography work or fingerprinting examination or search for
24 evidence inside the vehicle?

002260

2

1 A No, I was not.

2 Q Was your sole task that of being involved in
3 impounding this 1988 red Nissan?

4 A Yes.

5 Q Did you accompany the vehicle from the
6 shopping center to the crime lab garage?

7 A No, I did not.

8 MR. HARMON: Thank you.

9 That concludes direct, Your
10 Honor.

11 THE COURT: Cross-examination.

12 MR. WOLFSON: Thank you, Judge.

13

14 CROSS-EXAMINATION

15 BY MR. WOLFSON:

16 Q Officer Welte, back in February of 1992, how
17 long had you been a police officer with the Las Vegas
18 Metropolitan Police Department?

19 A Approximately one year.

20 Q When did you graduate from the Academy?

21 A June of '91. They consider the hire date
22 from the time you start the Academy.

23 Q Okay. From the time you graduated the
24 Academy and was a working police officer, if I can use that

002261

1 term --

2 A Sure.

3 Q -- you've been so for about eight months; is
4 that right?

5 A That would be approximately three months.

6 Q When did you graduate from the Academy?

7 A I'm sorry. I'm thinking -- I'm thinking out
8 of field training. Yes.

9 Q You graduated in about June of '92, and then
10 you became a police officer; is that right?

11 A Yes.

12 Q And is there a period where you're a field
13 training officer?

14 A Yes.

15 Q And what does that mean?

16 A You are in training for, oh, approximately
17 three to four months; and then you're considered a rookie,
18 by all means, what they call them.

19 Q Okay. And what does an officer go through
20 as a field training officer?

21 A They teach you all the aspects of police
22 work, how to conduct vehicle stops, preliminary
23 investigations, how to handle domestic disputes, things
24 along those lines.

. 002262

2 1 Q Is it true that you ride with another
2 officer normally?

3 A Yes.

4 Q Do you ride with another officer or partner
5 during your entire period of field training?

6 A Until the last phase of it, yes.

7 Q All right. Would it be fair to say that you
8 had some training in the Academy in crime scene
9 preservation?

10 A Yes.

11 Q What is the reason for preserving a crime
12 scene?

13 A Basically it's to keep anyone else from
14 coming in, to preserve evidence to later be processed.

15 Q And did you learn crime scene preservation
16 techniques in the Academy?

17 A Yes.

18 Q And is that something that you practice
19 regularly as a police officer?

20 A Yes, I do.

21 Q And back then, you did as well; is that
22 right?

23 A Yes.

24 Q I mean, you testified that you took certain

. 002263

2

1 steps to preserve this crime scene investigation, meaning
2 the vehicle; is that right?

3 A Yes.

4 Q When you came upon the vehicle, what
5 information concerning this vehicle did you have?

6 A Well, um, I was dispatched by the dispatcher
7 over the radio, which gave the license plate and the nature
8 of the crime that the vehicle was wanted for, which was a
9 felony crime.

10 Q That all the information you had, is that it
11 was a felony crime?

12 A Related -- related to a homicide, I believe.

13 Q Okay. Go ahead. Or that's it?

14 A Basically the information that I received,
15 yes.

16 Q Okay. And you noted on your impound
17 report -- if it is your writing. I'm not sure.

18 I guess my question is: On
19 your report, did you note that it had a hold placed on it
20 for homicide?

21 A That's correct.

22 Q Is that your writing that appears on your
23 impound report?

24 A Yes, sir, it is.

002264

2 1 Q Now, knowing that, when you come to this car
2 what did you do?

3 A Well, I walked up, I looked inside -- the
4 window were very dark and it was dark outside. So with my
5 flashlight, I looked inside the car, without touching the
6 exterior at all, and I could not see the VIN number to
7 confirm the vehicle, but --

8 Q What is a VIN number?

9 A A VIN number is a vehicle identification
10 number, which is 17 numbers and digits long that
11 differentiates cars from each other.

12 Q Okay.

13 A They're very unique.

14 Q And after you look with your flashlight,
15 could you see the VIN number?

16 A No, I could not.

17 Q What did you do next?

18 A Because of the license plate and -- I mean,
19 it was confirmed that the vehicle was outstanding. I then
20 took evidence seals and sealed the outside of the vehicle.

21 Q What type of evidence seal did you use?

22 A I believe that's the standardized Metro
23 Police, and I believe they're orange in color.

24 Q Not yellow tape?

002265

2

1 A I believe they're orange.

2 Q Okay. And did you literally place these
3 seals on the doors of the vehicle?

4 A Yes.

5 Q Is the purpose so that nobody can open the
6 doors and enter unless it's with police authorization and
7 supervision?

8 A Exactly.

9 Q Okay. And then you simply called for a tow
10 truck to come and the vehicle was towed away; is that right?

11 A Yes.

3

12 Q You never touched the vehicle?

13 A No, I did not.

14 Q You never touched the outside or inside of
15 the vehicle; is that yes --

16 A No. No, I did not.

17 Q Okay. And the reason you did these things
18 was to preserve the integrity of this piece of evidence;
19 isn't that right?

20 A Yes. Yes, sir.

21 Q Okay. And you had been a police officer at
22 this time for about eight months?

23 A Yes.

24 MR. WOLFSON: No further questions.

002266

3

1

THE COURT: Redirect?

2

MR. HARMON: No further questions, Your

3

Honor.

4

THE COURT: Thank you, Officer Welte.

5

You are excused.

6

THE WITNESS: Thank you.

7

(Whereupon, the witness
was excused.)

8

9

MR. HARMON: Debra McCracken.

10

THE CLERK: Remain standing, please, and

11

raise your right hand.

12

13

Whereupon,

14

DEBRA MCCRACKEN

15

having been called as a witness by the Plaintiff and

16

having been first duly sworn to tell the truth, the

17

whole truth and nothing but the truth, was examined

18

and testified as follows:

19

THE CLERK: Thank you.

20

Please be seated.

21

Would you state your name and

22

spell it for the record.

23

THE WITNESS: Debra McCracken;

24

M-c-C-r-a-c-k-e-n, D-e-b-r-a.

002267

3

DIRECT EXAMINATION

BY MR. HARMON:

Q Is it Miss or Mrs. McCracken?

A It's Miss.

Q Miss McCracken, what is your business or occupation?

A I'm a criminal scene analyst, supervisor, with the Las Vegas Metropolitan Police Department.

Q How long have you worked with the Las Vegas Metropolitan Police Department?

A Approximately 13 years.

Q How long assigned to the crime lab?

A Approximately 10.

Q Were you employed as a crime scene analyst on March the 1st, 1992?

A Yes, I was.

Q On that day, did you have occasion to respond to the address of 709 Storm Crest Circle in Las Vegas?

A Yes, I did.

Q Do you remember about what time it was?

A It was approximately five a.m.

Q Had you been requested by someone else in the department to respond to that location?

002200

3 1 A Yes, Detective Scholl from homicide.

2 Q Did you locate a particular vehicle in the

3 area of 709 Storm Crest Circle on March the 1st, 1992?

4 A Yes. I was instructed to meet him at that

5 location regarding a vehicle.

6 Q Did Detective Scholl, at the location, point

7 out a particular vehicle?

8 A Yes, he did.

9 Q What is the description of the car?

10 A May I refer to my notes?

11 Q Will that assist you in refreshing your

12 memory?

13 A Yes.

14 MR. HARMON: May she do so, Your Honor?

15 THE COURT: Yes.

16 THE WITNESS: The vehicle at 709 Storm Crest

17 was a '77 Datsun 280Z that had no license plate on it.

18 BY MR. HARMON:

19 Q Where was it located in relation to 709

20 Storm Crest Circle?

21 A It was parked in front of the residence.

22 Q Did you examine this vehicle for evidence

23 that might be pertinent to the case Detective Scholl was

24 investigating?

002263

3

1 A I worked at the direction of Detective
2 Scholl. He had instructed me to photograph it and explained
3 where an item was in that vehicle to me.

4 Q Did you take photographs?

5 A Yes.

6 MR. HARMON: May I approach the witness,
7 Your Honor?

8 THE COURT: Yes.

9 BY MR. HARMON:

10 Q Analyst McCracken, I'm showing you proposed
11 Exhibits 76 and 77.

12 Will you examine the pictures
13 and tell us if you recognize what is shown in them.

14 A Yes. Number 76 of State's proposed exhibit
15 is a photograph of the particular vehicle parked in front of
16 the residence.

17 Q Is that the exact location where you
18 observed the Datsun to be parked that morning, March the
19 1st, 1992?

20 A That's the location it was when I arrived
21 there, yes.

22 Q Is proposed Exhibit 76 a true and accurate
23 representation of the vehicle and its location as of March
24 the 1st, 1992?

002279

3

1 A Yes.

2 Q Now, you've indicated that Detective Scholl
3 directed your attention to a particular item that he wanted
4 you to focus upon.

5 A That's correct.

6 Q Is that area of the vehicle shown in
7 proposed Exhibit 77?

8 A Yes, it is.

9 Q What is shown in proposed 77?

10 A It's the hatchback area of the vehicle, and
11 there is a brown sort of travel bag.

12 Q Is proposed 77 a photograph taken by you at
13 that location on March the 1st, 1992?

14 A Yes, it is.

15 Q Is it a true and accurate representation of
16 the hatchback area and of the brown colored bag, as you
17 observed it that morning, March the 1st, 1992?

18 A The particular photograph, yes; it's after
19 the item has been set up to photograph it closer.

20 Q You're referring, by the item, to the brown
21 bag?

22 A That's correct.

23 Q Where was the brown bag when you originally
24 saw it?

002271

3 1 A It was under the tire cover of the
2 hatchback.

3 Q But inside the Datsun shown in proposed
4 Exhibit 76?

5 A Correct.

6 Q Was the bag open or closed at the time you
7 saw it in its original location?

8 A In its original location, I believe it was
9 lying down flat. I do not recall if it was open or closed.

10 Q In any event, are you telling us that the
11 brown bag had been moved to make it visible at the time the
12 photograph, which is proposed 77, was taken?

13 A That's correct.

14 Q Is 77 accurate in terms of depicting the bag
15 and its location at the time it was moved to where it would
16 become more visible in the picture?

17 A Yes.

18 MR. HARMON: Your Honor, the State offers
19 proposed Exhibits 76 and 77.

20 MR. WOLFSON: No objection.

21 THE COURT: They will be admitted.

22 MR. HARMON: Thank you.

23 (Whereupon, State's Exhibits
24 76 and 77 were admitted into
evidence.)

002272

4

1 BY MR. HARMON:

2 Q Analyst McCracken, did you impound as
3 evidence the brown colored bag?

4 A Yes, I did.

5 MR. HARMON: May I again approach the
6 witness, Your Honor?

7 THE COURT: Yes.

8 BY MR. HARMON:

9 Q I'm showing you a large evidence bag, which
10 has been marked as proposed Exhibit 92.11 Just focusing on the bag for
12 the time being, are you able to identify writing on the bag?

13 A Yes, I am.

14 Q Whose writing is it?

15 A That's my writing.

16 Q Can you tell by looking at the outside of
17 the bag if you have indicated, in your writing, that a
18 particular item was placed inside?

19 A Yes.

20 Q What did you put inside?

21 A A brown shoulder bag containing
22 miscellaneous papers, pictures, address books, toiletries,
23 et cetera.

24 Q Proposed 92 has already been opened; is that

002273

4

1 correct?

2 A Yes.

3 Q Will you remove the contents now from the
4 bag?

5 A (Complies.)

6 Q For the record, have you removed a brown
7 colored bag, which has been marked as proposed 92-A?

8 A Yes.

9 Q Are you able to identify proposed Exhibit
10 92-A?

11 A This appears to be the bag that was in the
12 photograph that I impounded from the vehicle.

13 Q Just in terms of the outside of the bag,
14 does it, except for the court markings, appear to be in
15 substantially the same condition now as it was on the date
16 you impounded it, March the 1st, 1992?

17 A It appears to be.

18 Q And this does appear to be the brown bag
19 that you recovered from inside the gray Datsun depicted in
20 Exhibit 76 and 77, the photographs?

21 A Yes.

22 Q Did you, at any time that morning, or in
23 connection with your impounding procedure, examine the
24 contents of the bag?

. 002274

4 1 A Yes. The bag was opened and -- obviously,
2 to list the items in there, I would have had to have looked
3 inside of the bag.

4 Q Describing them generally, what was inside
5 the bag at the time you impounded it?

6 A May I refer to my notes?

7 Q Will that assist you in being accurate in
8 responding to the question?

9 A Yes.

10 MR. HARMON: May she refer to her notes,
11 Your Honor?

12 THE COURT: She may refer to her notes.

13 THE WITNESS: Just miscellaneous toiletries
14 and personal items, as I have mentioned, the phone books and
15 things that were listed on the bag.

16 BY MR. HARMON:

17 Q Did you identify them item by item?

18 A No, I did not.

19 Q You simply characterized generally what was
20 inside of the bag?

21 A Yes.

22 Q Will you open the bag now, which is marked
23 as proposed Exhibit 92-A.

24 A (Complies.)

002275

4

1 Q Will you remove the contents, please.

2 You will discover that items
3 have been segregated in to two separate bags.

4 For the record, have you
5 removed two separate plastic bags and then three containers
6 outside of the bags, which have been marked as proposed
7 Exhibits 92-A-3, 92-A-10 and 92-A-13?

8 A Yes.

9 Q If you will set the bag down, please.

10 A (Complies.)

11 MR. HARMON: Your Honor, I need the
12 assistance of the clerk with this particular bag. It's been
13 some time since we referred to these items.

14 Did we mark this bag
15 collectively?

16 THE CLERK: Yes.

17 MR. HARMON: What is that number, please?

18 THE CLERK: That's 92-B.

19 MR. HARMON: Thank you.

20 MR. HARMON: And in the other bag, it was
21 92-A-1 through --

22 THE CLERK: 19.

23 MR. HARMON: 19.

24

002276

4 1 BY MR. HARMON:

2 Q I want you to examine the bag which I have
3 in my hand, which has been marked collectively as proposed
4 Exhibit 92-B, and also generally the contents of the other
5 bag, to include the three items which are outside of the
6 bag, which have been marked respectively 92-A-1 through
7 92-A-19.

8 Will you then tell us if these
9 are consistent with the items contained inside the brown
10 carrying bag, proposed Exhibit 92-A, which you observed on
11 March the 1st, 1992?

12 A (Complies.)

13 The items that I have reviewed
14 appear consistent with the general type of items that I
15 recall being in that bag, and upon reviewing photographs,
16 remember seeing numerous ones. I obviously do not recall
17 each and every item individually, but this appears to be the
18 contents of the bag.

19 Q When you placed the brown carrying bag,
20 which is marked in this courtroom as proposed Exhibit 92-A,
21 into the bag, proposed 92, did you seal the bag?

22 A Yes.

23 Q Did you, prior to placing the bag into --
24 the carrying bag into the paper bag, remove any of the

. 002277

5 1 contents which you had discovered to be inside the carrying
2 bag when it was inside the Datsun?

3 A When it was inside of the Datsun?

4 Q Did you remove any of the items or were they
5 all still in the bag when you placed the carrying bag into
6 the paper bag, proposed 92?

7 A I had removed items from the bag at the
8 crime lab and photographed the contents and replaced them
9 back in the bag prior to actually putting it in the evidence
10 bag and sealing it.

11 Q So may we conclude that after your
12 photography work, when you once placed the carrying bag
13 inside the evidence bag, were all the original contents at
14 that point inside the bag?

15 A Yes.

16 Q Did you change the appearance or condition
17 of any of the items?

18 A No, I did not.

19 Q Did you attempt to process the carrying bag,
20 proposed Exhibit 92-A, for the presence of latent prints?

21 A No, I did not.

22 Q You were not instructed to do that by
23 Detective Scholl?

24 A No.

002278

5 1 Q Did you attempt to process any of the
2 contents of the carrying bag for latent prints?

3 A No, I did not.

4 Q Does it appear, except for the court
5 markings, that all of the items which now make up the
6 contents of proposed 92-A, the carrying bag, and they've
7 been marked 92-A-1 through -19, and 92-B, which would be the
8 bag to your left, do all of those items, except the court
9 markings, appear to be in substantially the same condition
10 as they would have been when you first impounded the bag and
11 were involved in your photography work?

12 A Yes, they do.

13 Q Thank you.

14 May we place the items back
15 inside the bag now, please?

16 A (Complies.)

17 Q Analyst McCracken, were you involved in any
18 type of subsequent examination of the contents of the brown
19 carrying bag, proposed Exhibit 92-A, after March the 1st,
20 1992 in connection with recovery and impounding of the bag?

21 A No, I had no further involvement with it.

22 Q Did you, however, on that same date, March
23 the 1st, 1992, have occasion, at the Metropolitan Police
24 Department crime lab garage, to examine and photograph a

002273

1 1986 Isuzu pickup truck?

2 A Yes, I did.

3 Q Do you recall what time it was approximately
4 that you examined that vehicle?

5 A I believe that was approximately seven a.m.

6 Q Did you take photographs of the vehicle?

7 A Yes.

8 Q What was your reason for photographing and
9 examining the truck?

10 A That, again, was at the direction of
11 Detective Scholl. He came to the criminalistics bureau and
12 instructed me to photograph the particular truck.

13 Q Did you know at that time what the relevance
14 might be of this particular vehicle?

15 A No, I did not.

16 Q You simply followed the lead of the homicide
17 detective?

18 A That's correct.

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

21 THE COURT: You may.

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

002289

5 1 BY MR. HARMON:

2 Q I'm showing you proposed Exhibits 68, 69 and
3 70.

4 Are you able to identify those
5 photographs?

6 A Yes. 68 is a photograph of the '86 Isuzu
7 truck as it appeared in the garage that morning.

8 Proposed Exhibit 69 is a
9 general photograph of the front seat of the vehicle, showing
10 numerous items.

11 Proposed Exhibit 70 is a
12 photograph, again, of the front seat, after some of the
13 items that were piled in there had been moved.

14 Q Do each of these photographs truly and
15 accurately show both contents of the 1986 Isuzu pickup truck
16 and the exterior of that vehicle?

17 A Yes, they do.

18 Q As the items appeared on March the 1st,
19 1992?

20 A Correct.

21 MR. HARMON: Your Honor, the State offers
22 proposed Exhibits 68 through 70.

23 MR. DUNLEAVY: No objection, Your Honor.

24 THE COURT: They will be admitted.

002281

5

1

MR. HARMON: Thank you.

2

(Whereupon, State's Exhibits
68, 69 and 70 were admitted
into evidence.)

3

4

BY MR. HARMON:

5

Q In addition to the photography work, Analyst

6

McCracken, did you recover certain items which were found

7

inside the Isuzu pickup truck?

8

A Yes, I did.

9

Q Did that include a pair of sunglasses?

10

A Yes.

11

MR. HARMON: May I again approach the

12

witness, Your Honor?

13

THE COURT: You may.

14

BY MR. HARMON:

15

Q I'm showing you an evidence envelope marked

16

as proposed Exhibit 91.

17

Are you able to identify it?

18

A Yes, I am. This is an envelope that I

19

filled out.

20

Q Are you able, by examining the envelope, to

21

tell us whether you placed a particular item inside it?

22

A Yes.

23

Q What did you put inside?

24

A Oakley brand sunglasses with blue, gray and

002282

5 1 white frames.

2 Q The evidence envelope, marked as proposed
3 91, has already been opened; is that correct?

4 A That's correct.

5 Q Will you remove the contents now?

6 A (Complies.)

7 Q Do the contents appear to be a ziploc
8 plastic baggie with a pair of sunglasses inside?

9 A Yes.

10 Q And has this item been marked as proposed
11 Exhibit 91-A?

12 A Yes.

13 Q Are you able to identify the bag and its
14 contents?

15 A Yes, I am.

16 Q What is the basis of your identification?

17 A I have my initials and personnel number on
18 here. I have the date and event number, which would be a
19 report number. And I have a number six for item number six
20 of my total impound.

21 Q Regarding the sunglasses, do they appear to
22 be in substantially the same condition now as they were on
23 the date that you recovered them?

24 A Yes, they do.

002283

6

1 Q Was that date March the 1st, 1992?

2 A Yes.

3 Q Was it at about seven o'clock a.m. at the

4 crime lab garage?

5 A Yes, approximately seven a.m.

6 Q Are you able to tell us where inside the

7 Isuzu pickup truck, which is shown in the photographs 68

8 through 70, it was that you found the Oakley sunglasses?

9 A The passenger's front floor area.

10 MR. HARMON: Thank you.

11 Your Honor, the State offers

12 proposed Exhibits 91 and 91-A.

13 MR. WOLFSON: No objection.

14 THE COURT: They will be admitted.

15 (Whereupon, State's Exhibits

16 91 and 91-A were admitted

17 into evidence.)

18 BY MR. HARMON:

19 Q Did you also find a document inside the

20 Isuzu pickup truck, without describing further or

21 characterizing the document, which bore the name of a

22 particular person?

23 A Yes.

24 Q What was the name?

A Michael -- I believe it's Damon,

002284

6

1 D-a-m-o-n -- Rippo.

2 Q Where was the document which bore the name
3 Michael Damon Rippo?

4 A On the front floor area of the truck.

5 Q In addition to the Oakley sunglasses, did
6 you also recover certain cords that were inside the Isuzu
7 pickup truck?

8 A Yes, I did.

9 Q At whose direction were they recovered?

10 A At Detective Scholl's direction.

11 Q What types of material did you recover?

12 A Um, wire -- like speaker wiring type wire.
13 I'm not an electrician. Copper type wiring that has a
14 plastic cover on it; there were various colors; just long
15 pieces of wire.

16 Q Were these long pieces of cords or wire
17 attached to any particular appliance or were they loose?

18 A One item had a transformer plug with a wire
19 and a socket on it. There was a headset with common wiring
20 with a black Pacific cover.

21 Q Regarding any of the wire you impounded, and
22 also thereof, the Oakley sunglasses, now in evidence as
23 91-A, did you process any of those items for the presence of
24 latent prints?

- 002285

1 A No, I did not.

2 Q Once you impounded the items you have
3 referred to, which you found inside the Isuzu pickup truck,
4 were you involved in the processing of those items
5 subsequently after impoundment?

6 A No.

7 MR. HARMON: Your Honor, that concludes
8 direct.

9 THE COURT: Cross-examination.

10 MR. WOLFSON: Thank you.

11

12 CROSS-EXAMINATION

13 BY MR. WOLFSON:

14 Q Good afternoon.

15 A Hi.

16 Q The 1986 Isuzu vehicle, which the prosecutor
17 had asked you a number of questions about, did you determine
18 who the registered owner of that vehicle was?

19 A No, I did not.

20 Q Referencing the wire that the prosecutor
21 asked you about, isn't it true that you described that wire
22 as copper wire in your evidence impound report?

23 A I be- -- two of them, I believe, or three
24 rather.

002286

6 1 Q There are actually introduced, are there
2 not?

3 A Copper wiring.

4 Q Sorry?

5 A I'm sorry.

6 Q Specifically, package number two, item
7 number two, you call it a copper wire; item four, you
8 described it as a copper wire; and item number five, you
9 describe it as copper, do you not?

10 A Yes.

11 Q And item number, as indicated in your
12 report, that is the electrical transformer plug with wire
13 and socket; is that correct?

14 A Yes.

15 Q Did you bring those with you today?

16 A No, I did not.

17 Q Okay. Did the prosecutor ask you to bring
18 those things up to him?

19 A No.

20 Q I believe you testified that, to your
21 knowledge --

22 MR. WOLFSON: Forgive me for a moment,
23 Judge.

24

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1 BY MR. WOLFSON:

2 Q -- to your knowledge, none of the contents
3 of the brown bag -- and I know that we've got them in
4 separate bags -- but all of the things that have been
5 displayed to you that came from the brown bag that are
6 called contents, none of them were submitted for
7 fingerprints; is that right?

7

8 A I don't believe so.

9 Q And, to your knowledge, none of them were.

10 A To my knowledge, no.

11 Q And the same question for the brown bag: It
12 was not, to your knowledge, submitted for fingerprints, was
13 it?

14 A No.

15 Q When you responded to these locations,
16 first, the location on Storm Crest Circle, and then the
17 location where you recovered the 1986 Isuzu vehicle, did you
18 work under the direction of Detective Scholl?

19 A Yes.

20 Q And what is his first name?

21 A Steve.

22 Q Had you ever worked under Detective Steve
23 Scholl's direction before?

24 A I had worked with him before, yes.

002288

7 1 Q All right. When a crime scene analyst
2 responds to a crime scene, does one only do so at the
3 request of a homicide detective?

4 A Yes.

5 Q And if the homicide detective is at the
6 scene, do you often work at the direction of the homicide
7 detective?

8 A In general, we are there working with the
9 homicide detective; um, yes, we can be directed to do
10 particular things by the homicide detective, correct.

11 I'm not sure I know exactly
12 what you are asking.

13 Q Well, we're going to clarify right now.

14 A Okay.

15 Q Would it be fair to say that you have your
16 own role in a crime scene investigation, as does the
17 homicide investigator, and that sometimes he will instruct
18 you to do things, and other times, you will go about your
19 job independent of what he instructs you to do?

20 A That's correct.

21 Q Okay. In this case, though, you responded
22 where the 1986 Isuzu vehicle was at the direction of
23 Detective Scholl, did you not?

24 A Correct.

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1 Q Are you a police officer?

2 A No.

3 Q But it would be fair to say that a crime
4 scene analyst, who is not a police officer, must have a
5 working relationship with the homicide detective in order to
6 conduct a proper investigation.

7 A Yes.

8 Q Are you saying that Detective Scholl didn't
9 instruct you to process those items, the bag and its
10 contents, for prints or it was your decision on your own not
11 to do so?

12 A No. In this particular case, I had no
13 knowledge basically of the actual crime scene or what may or
14 may not be pertinent.

15 When I'm working a particular
16 scene, I, obviously, as you have said, know what may or may
17 not need to be done on a crime scene and I do work
18 independently quite frequently and make those decisions.

19 In this particular case, I was
20 working at his direction because I did have no real direct
21 knowledge of the actual crime scene and I was not requested
22 to process these for fingerprints.

23 Q So it was Detective Scholl's decision then
24 whether to instruct you or not to process the bag and its

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1 contents for fingerprints?

2 A Yes.

3 Q And he didn't instruct you to do so?

4 A No.

5 Q Do you have previous experience at
6 processing crime scenes and items for latent fingerprints?

7 A Yes.

8 Q Are you a latent fingerprint gatherer?

9 A Yes.

10 Q Do you have experience at processing crime
11 scenes for latent fingerprints?

12 A Yes, I do.

13 Q Would it be fair to say that you have no
14 knowledge whatsoever of who put what in to that brown bag,
15 State's Exhibit 92 -- I believe it's 92-A -- and when they
16 put the contents in it; isn't that right?

17 A Yes, that would be an accurate statement.

18 MR. WOLFSON: Miss Clerk, the recent
19 photographs showing the brown bag in the trunk of the car,
20 please.

21 BY MR. WOLFSON:

22 Q I don't believe Mr. Harmon asked you: Is it
23 Miss or Mrs.?

24 A Actually it's Ms.

002291

7

1 Q Ms. McCracken.

2 A One of those career things.

3 Q Oh, I have a wife with one of those career
4 things. I know what you are talking about.

5 Let me show you State's
6 Exhibits 76 and 77. These are photographs of the vehicle
7 itself, as well as the trunk area where you retrieved the
8 bag from; is that right?

9 A Correct.

10 Q Okay. Now, the picture that shows the
11 vehicle itself shows the trunk to be in a closed position,
12 does it not?

13 A Yes.

14 Q And the other photograph shows the trunk to
15 be in an open position; is that right?

16 A That's correct.

17 Q The brown bag that you have taken a
18 photograph of is depicted in the trunk with the trunk open;
19 is that right?

20 A That's correct.

21 Q Who opened the trunk?

22 A I do not recall specifically who physically
23 opened the trunk.

24 Q Was the trunk open or shut when you came

002292

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1 upon the vehicle?

2 A It was closed when I arrived.

3 Q Would it be fair to say then that either you
4 or Detective Scholl opened the vehicle -- opened the trunk,
5 I mean?

6 A Or it may have been someone at the -- at the
7 residence. I'm not sure at this point.

8 Q Was the owner of the vehicle there?

9 A I do not recall.

10 Q This is four years ago, so --

11 A Yes.

12 Q -- so your memory may not be that good.

8

13 In any event, why did you take
14 photographs?

15 A Why did I take photographs?

16 Q Yes.

17 A It's standard procedure to photograph
18 evidence prior to its recovery.

19 Q Why?

20 A To depict it as you found it, or if you are
21 recovering it or to show close up views; basically so the
22 jury can see basically the condition, when I, for example,
23 arrived or anything that I may do in between to alter or
24 change the condition of something.

002293

1 Q Why is that important?

2 A Why is that important?

3 It's another means of
4 documenting location or scenes. Obviously we can't bring it
5 all back in to court and these people obviously were not
6 there on that day and time, so we have to have some sort of
7 photographic documentation.

8 Q Okay. Would it be fair to say you placed
9 the brown bag and its contents into the evidence envelope
10 after you took the photographs?

11 A Yes.

12 Q Okay. And you placed 92-A and its contents
13 into this brown evidence bag, which is marked State's
14 Exhibit 92, did you not?

15 A Yes.

16 Q Okay. And did you write on that evidence
17 bag?

18 A Yes, I did.

19 Q Is that your writing that appears on the
20 evidence bag?

21 A Yes.

22 Q Where did you get that evidence bag from?

23 A We have them available at the crime lab.

24 Q Okay. Did you pick up the brown bag and its

002294

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1 contents and physically put it in the brown envelope that is
2 marked State's Exhibit 92? Did you handle the items and
3 place them in the brown bag?

4 A Yes.

5 Q After you did that, what did you then do
6 with the brown bag?

7 A It was submitted to the evidence vault.

8 Q Well, didn't you do something right after
9 you placed the items inside?

10 A You mean, seal the bag? Yes.

11 Q Why did you seal it?

12 A To insure that what I place in the bag is
13 not tampered with; therefore, you place seals on it and
14 markings indicating that it has been sealed.

15 Q Why is that important?

16 A It's important to insure the integrity of
17 the evidence, so it's not been tampered with.

18 Q Did you take steps to insure the integrity
19 of those pieces of evidence, referring to the shoulder bag
20 and its contents?

21 A I placed them in the evidence bag and sealed
22 the bag.

23 Q So what would your answer be?

24 A Yes.

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Q To your knowledge, was Detective Scholl the lead homicide detective in this case?

A I have no idea.

MR. WOLFSON: Court's indulgence.

(Whereupon, a sotto voce at this time.)

MR. WOLFSON: That concludes my cross-examination.

Thank you.

THE COURT: Redirect.

MR. HARMON: That concludes the examination, Your Honor.

THE COURT: Thank you, Miss McCracken.

You are excused.

(Whereupon, the witness was excused.)

MR. SEATON: Linda Errichetto.

MR. WOLFSON: Counsel approach the bench?

THE COURT: Yes.

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

THE COURT: All right. We're going to take a short recess.

Remember: Don't converse among

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8 1 yourselves or with anyone else on any subject connected with
2 the trial;

3 Read, watch, listen to any
4 report or commentary on this trial by any medium of
5 information, including, without limitation, television,
6 newspapers or radio; or

7 Form or express any opinion on
8 this case until it is finally submitted to you.

9 THE REPORTER: How long, Judge?

10 THE COURT: Short; 10, 15 minutes.

11
12 (Whereupon, a recess was had in
13 the proceedings, at the
14 conclusion of which the
15 following was had:)

16 THE COURT: Counsel stipulate to the
17 presence of the Jury?

18 MR. SEATON: Yes, Judge.

19 MR. DUNLEAVY: Yes.

20 THE CLERK: Will you stand, please, and
21 raise your right hand.

22
23
24 Whereupon,

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1

LINDA ERRICHETTO

2

having been called as a witness by the Plaintiff and

3

having been first duly sworn to tell the truth, the

4

whole truth and nothing but the truth, was examined

5

and testified as follows:

6

THE CLERK: Thank you.

7

Please be seated.

8

Will you state your name and

9

spell it for the record.

10

THE WITNESS: Certainly. My name is Linda

11

Errichetto; E-r-r-i-c-h-e-t-t-o.

12

THE CLERK: Thank you.

13

14

DIRECT EXAMINATION

15

BY MR. SEATON:

16

Q Miss Errichetto, how are you employed?

17

A Currently, I'm the director of laboratory

18

services for the Las Vegas Metropolitan Police Department

19

forensic laboratory.

20

Q And tell us a little bit about that.

21

What is the forensic

22

laboratory?

23

A The forensic laboratory is a part of the

24

criminalistics bureau of the Las Vegas Metropolitan Police

002293

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1 Department.

2 We're responsible for the
3 analysis of various types of physical evidence that are
4 submitted to the laboratory. We apply science backgrounds
5 in the analysis that we perform and we analyze a variety of
6 substances. This could be things like blood, blood alcohols
7 in D.U.I. cases, controlled substances, for the presence of
8 drugs. We analyze hairs, fibers, soil samples, arson cases,
9 a number of different items that can be considered physical
10 evidence in criminal matters.

11 Q Are crime scene analysts Cabrales and Norman
12 part of that -- and McCracken, are they part of that unit?

13 A They're not part of the forensic laboratory;
14 however, they are part of the criminalistics bureau.

9

15 Q All right. And Dan Connell, where does he
16 fit in to that?

17 A Well, he's retired now and working part
18 time --

19 Q Yes.

20 A -- for the criminalistic bureau, but it was
21 assigned to the criminalistics bureau, as opposed to the
22 forensic lab.

23 And the forensic laboratory is
24 made up of people who have science degrees; you have to have

002299

9 1 a background in science, a science degree, to be a member of
2 2 the laboratory, to be on staff at the lab.

3 Q And is that the lab which has been
4 4 responsible for examining the evidence in this particular
5 5 case?

6 A Yes, various members of the laboratory have
7 7 been.

8 Q And have you been a part of that team?

9 A Yes, sir, I have.

10 Q To what extent? What have you done?

11 A At the time when I analyzed this evidence, I
12 12 was not the director of the laboratory. At the time, I was
13 13 a bench chemist or a criminalist. I was assigned to
14 14 serology.

15 Serology is the analysis and
16 16 identification of biological fluids. This can be things
17 17 like blood -- blood would be the most common -- blood,
18 18 semen, occasionally things like urine, feces, saliva, those
19 19 type of substances.

20 Q Does it also fall under your expertise, the
21 21 hair analysis that you spoke of earlier?

22 A Yes, occasionally, it does.

23 Q What is serologist -- or what is serology?
24 24 Would you tell the jury a little bit about that?

002309

9 1 A Serology is the analysis and the
2 2 identification of biological fluids, those that I just
3 3 mentioned: Blood, saliva, semen, occasionally urine,
4 4 occasionally fecal material.
5 5 Q Are you a serologist?
6 6 A I am a serologist, yes.
7 7 Q All right.
8 8 A I was a serologist. I'm now the lab
9 9 director. I'm not actually doing bench work right now, but
10 10 I did at the time of the analysis that I performed.
11 11 Q Could you tell us how you came about
12 12 obtaining your qualifications to testify as a serologist?
13 13 A I have a Bachelor of Arts degree in
14 14 chemistry from Tyle College in Greenville, Pennsylvania.
15 I have a Master of Science
16 16 degree in forensic chemistry from the University of
17 17 Pittsburgh in Pittsburgh, Pennsylvania.
18 During my stint at the
19 19 University of Pittsburgh, I was involved in some research
20 20 that resulted in a publication in the Journal of Forensic
21 21 Sciences in relation to blood typing, analyzing blood stains
22 22 for the presence of drugs.
23 After I became employed with
24 24 the police department, I received different types of

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9 1 training. I received vocational or on-the-job training, and
2 I've also gone to a number of different schools since I've
3 been employed with the police department.

4 I received probably about 320
5 hours of training in the analysis and identification of
6 biological fluids, and that would be those that I spoke of
7 earlier.

8 I have also attended classes in
9 a technique known as isoelectric focusing, given by
10 Analytical Genetic Testing Services in Denver, Colorado.
11 This also was in regards to the analysis of blood evidence.

12 I have attended a two week
13 semen identification course, given by the Serological
14 Research Institute in Emeryville, California.

15 I have testified in the
16 district courts of Clark County and Nye County. I've
17 testified in the justice courts of Beatty, of Las Vegas
18 Township. I've testified in the municipal courts of
19 Henderson, Boulder City, Las Vegas. I've testified in the
20 United States federal court system and also in the Court of
21 the Adjutant General's Office at Nellis Air Force Base,
22 probably over -- probably about 300 times now in the 13 and
23 a half years that I've been employed by the police
24 department.

002302

9 1 Q And when you have so testified, have you
2 been qualified as an expert in the field of serology?

3 A Yes, sir. I've been qualified as an expert
4 in a variety of fields, so not all 300 times were just in
5 serology.

6 I've done a number of different
7 analyses in the laboratory. I've done blood alcohols,
8 controlled substances, serol- -- serology, trace evidence,
9 like in association with hairs. So I've testified in those
10 300 times a number of times under each one of those
11 different disciplines.

12 Q Within the context of this case, did you
13 receive certain evidence to examine that was presented to
14 you by crime scene analyst Connell that he had retrieved
15 from the autopsies of Denise Lizzi and Lauri Jacobson on
16 February the 20th, 1992?

17 A I received evidence that was --

18 MR. WOLFSON: Excuse me, Judge.

19 I must interpose an objection.
20 I believe the witness is reading from something and I think
21 it should be identified if she's doing so.

22 BY MR. SEATON:

23 Q Are you reading from something?

24 A Yes, sir. I was looking at a formal

002303

10 1 laboratory report of analysis of examination that I would
2 have completed following my analysis of the evidence.

3 Q Do you need to refresh your memory by
4 looking at that particular document?

5 A I not only need to refresh my memory with
6 this document, sir, I need to refresh my memory with the
7 various handwritten notes that I also have in my possession
8 today.

9 MR. SEATON: Judge, when it becomes
10 necessary, may she do that?

11 THE COURT: Yes, she may.

12 BY MR. SEATON:

13 Q Could you tell us if the evidence that you
14 examined was presented to you by Dan Connell from the
15 autopsies conducted on February the 20th -- I'm sorry,
16 February the 21st, 1992, on two female individuals by the
17 name of Denise Lizzi and Lauri Jacobson?

18 A I received two, what I refer to as sexual
19 assault kits, that were collected on 2/21 of '92, both by
20 Connell; one containing samples from Lauri Jacobson, one
21 containing samples from Denise Lizzi.

22 Q All right. And did you also receive
23 fingernail scrapings through Mr. Connell?

24 A I received fingernail scrapings later on,

002304

1 following my analysis of the first two items, which were the
2 two sexual assault kits.

3 Q Let's do the sexual assault kits first.

4 What was your purpose in
5 looking in the sexual assault kits and doing examinations
6 thereupon?

7 A The purpose of looking at a sexual assault
8 kit -- the purpose of a sexual assault kit is to collect
9 evidence that -- in an appropriate fashion to determine if
10 there was any sexual contact or anything that would lead you
11 to believe that there was some sexual contact with the
12 victims. These can be both live victims and also from
13 deceased victims.

14 In this case I was looking
15 through a number of items under each one of the sexual
16 assault kits to identify or note the presence of any seminal
17 material.

18 Q And did you find any seminal material?

19 A No, sir. I looked at a number of items and
20 I identified semen in neither of the items, the sexual
21 assault from Lauri Jacobson, nor the sexual assault kit from
22 Denise Lizzi.

23 Q And so insafar as semen is concerned, there
24 was no evidence of any sexual assault in this particular

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10

1 case on either victim; is that correct?

2 A There was no evidence of sexual activity on
3 either victim.

4 Q All right. Was there anything else within
5 these sexual assault kits to suggest to you any evidence of
6 sexual activity?

7 A There were a number items which I examined,
8 none of which had any semen associated with them.

9 Q So was your ultimate conclusion then that
10 there was no evidence of sexual activity on the part of
11 either Lauri Jacobson or Denise Lizzi?

12 A There was no evidence of seminal fluid of
13 any type.

14 Q The fingernail scrapings that you got at a
15 later time from Dan Connell, did you -- did you have an
16 opportunity -- were there ten each fingernail scrapings?

17 A There were two separate packages, each
18 containing vials, plastic vials; each contained ten separate
19 vials; and I received those from the Las Vegas Metropolitan
20 Police Department evidence vault subsequent to my analysis
21 of the sexual assault kits.

22 Q And then did you analyze those fingernail
23 scrapings and sticks?

24 A Yes, sir, I did.

002306