

WASHINGTON - DIRECT

1 (Plaintiff's Exhibit Nos. 155 and 155A admitted)

2 BY MR. DASKAS:

3 Q There's been testimony that you also -- that you
4 also searched the backyard of the Everman home. Is that
5 correct?

6 A That's correct.

7 Q And that you impounded certain items of evidence
8 from the backyard?

9 A That's correct.

10 Q Describe how it was you located the items of
11 evidence from the backyard?

12 A After I had done some work in the house, there was
13 some -- after corroborating some information with a detective
14 on the scene, he said that there may have been some evidence
15 in the backyard. At that time I went out to the backyard and
16 I walked around looking for any type of unusual disturbances,
17 and I noticed a spot, kind of on the north side -- definitely
18 on the north side of the property, along a fence line, where
19 there was some smooth dirt and then some stones where there
20 was normally smooth stuff -- smoothed dirt, excuse me. And
21 that reminded me of an area that had been recently dug up. So
22 at that point I started searching in that area, digging up the
23 dirt, and that's when I found those items.

24 Q Let me hand you what's been marked as State's
25 Proposed Exhibit 154 and its contents. And I'll ask you if

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1 you recognize 154?

2 A Yes, I do.

3 Q What is that?

4 A That's the evidence bag and an evidence label
5 describing three items, a hotel room key labeled 6829, another
6 hotel room key labeled 6704, and a Motorola flex beeper, blue
7 in color, and the serial number X -- excuse me, AXAAA 0717595.

8 Q If you removed the contents of 154, would you expect
9 to find the items you just mentioned?

10 A Yes, I would.

11 Q Would you please remove the contents of 154 and
12 describe what it is you've removed?

13 A This is the case of the pager.

14 Q Is that marked 154A?

15 A That's correct. And this item marked 154B is the
16 pager itself. This item marked 154D is one of the hotel room
17 keys. And this item, marked 154C, is another hotel room key.

18 Q Now Analyst Washington, are State's Proposed
19 Exhibits 154 and 154A through D inclusive in the same, or
20 substantially the same conditions as when you impounded them
21 on August 18th, 1998?

22 A That's correct.

23 MR. DASKAS: Judge, I move for the admission of 154
24 and its contents, 154A through D inclusive.

25 MR. FIGLER: Submit it.

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1 THE COURT: Received.

2 (Plaintiff's Exhibit Nos. 154 & 154A thru 154D admitted)

3 MR. DASKAS: Thank you, Judge.

4 BY MR. DASKAS:

5 Q You also searched, along with Sergeant Hefner, the
6 master bedroom of the Everman home?

7 A That's correct.

8 Q You impounded certain items from the master bedroom?

9 A That's correct.

10 Q Let me hand you what's been marked as State's
11 Proposed Exhibit 191, and I'll ask you if you recognize 191?

12 A This is an evidence bag and an evidence label in
13 which I impounded one pair of black Calvin Klein jeans, with
14 the size -- waist being 34, length being 30, with areas of
15 blood-like substance on 'em.

16 Q There is a biohazard sticker on 191, is that
17 correct?

18 A That's correct.

19 Q And why is that biohazard sticker on 191?

20 A Anytime biohazardous materials such as human fluids
21 or blood or semen or anything like that, it is impounded, we
22 put that sticker on it to basically warn the people that
23 handle these bags of possible problems that can result of
24 handling evidence like that. Thank you.

25 Q When you noticed the jeans, the Calvin Klein jeans

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1 in the master bedroom of the Everman home, did it appear to
2 you that they had blood on 'em?

3 A That's correct. We examined the jeans, we observed
4 a reddish-brown stain. I had a presumptive test for blood
5 called phenolphthalein, I tested that stain and it came back
6 positive.

7 Q That presumptive test was done there at the scene?

8 A That's correct.

9 Q I won't ask you to remove the contents since it's a
10 biohazard, but if you were to remove the contents, what would
11 you expect to find inside of 191?

12 A One pair of black Calvin Klein jeans.

13 Q Is 191 in the same condition as when you impounded
14 the contents of 191 on August 18th, 1998?

15 A Yes, it is.

16 MR. DASKAS: I'd move for the admission of 191,
17 Judge.

18 MR. FIGLER: Submit.

19 THE COURT: Received.

20 (Plaintiff's Exhibit No. 191 admitted)

21 MR. DASKAS: Thank you, Judge.

22 BY MR. DASKAS:

23 Q Now Analyst Washington, is it possible that the
24 presumptive test you would've done on the blood stain on the
25 jeans could've contaminated the blood and interfered with

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1 possible DNA testing down the road?

2 A There's no way of that possible that I'm aware of,
3 because we take a sterile swab, we rub it in the stain, and
4 then we go away from the object itself and then place the
5 chemical on the swab.

6 Q All right. Also in the master bedroom of the
7 Everman home either you or Sergeant Hefner located a Ruger .22
8 rifle, is that correct?

9 A That's correct.

10 Q Did you impound that item?

11 A Yes, I did.

12 MR. DASKAS: Judge, with the Court's permission I'm
13 gonna ask the bailiff to clear the weapon that's been marked
14 as State's Proposed Exhibit 168C.

15 (Pause in the proceeding, bailiff clearing weapon)

16 BY MR. DASKAS:

17 Q Now, Analyst Washington, you've been handed what's
18 been labeled as State's Proposed Exhibit 168C, is that
19 correct?

20 A That's correct.

21 Q Do you recognize that particular piece of evidence?

22 A Yes, I do. It's --

23 Q What is it?

24 A It's a semiautomatic rifle, .22 caliber, with --
25 let's see --

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1 Q Now for the record, you are comparing your impound
2 report with the actual gun to ensure that's the same gun you
3 impounded on August 18th, 1998, from the Everman home?

4 A That's correct, and they are the same.

5 Q Is 168C in the same condition as it was when you
6 impounded it from the master bedroom of the Everman home on
7 August 18th, 1998?

8 A Yes, other than the process that was conducted on
9 it, fingerprint processing.

10 MR. DASKAS: Judge, with the Court's permission, can
11 I display this in front of the members of the jury?

12 MR. FIGLER: I think the jury can see it, Judge,
13 from where he's at.

14 MR. DASKAS: Can I --

15 THE COURT: Yeah.

16 MR. DASKAS: -- walk it by the bench, Judge?

17 THE COURT: Yes.

18 MR. DASKAS: Thank you.

19 THE COURT: Did you offer it?

20 MR. DASKAS: Judge, if I haven't, I would offer -- I
21 move to admit 168C.

22 THE COURT: Submit it?

23 MR. FIGLER: Submit.

24 MR. DASKAS: Thank you, Judge.

25 THE COURT: Admitted.

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(Plaintiff's Exhibit No. 168C admitted)

BY MR. DASKAS:

Q Now let me ask you one other question about this gun. It appears that there is an extra portion of the gun near the handle. Can you describe what that is?

A This section here?

Q Yes.

A That would be a collapsible stock.

Q All right. Does that collapsible stock actually fold in and out of the gun?

A That's correct, it folds from the gun to an extended position like that.

Q It would make the gun longer, in other words?

A That's correct.

Q Thank you. Analyst Washington, can you tell me, if you know, whether 168C, that gun, was loaded when it was impounded on August 18th, 1998?

A Yes. It had an ammunition magazine containing cartridges.

Q You say an ammunition magazine?

A That's correct.

Q Is that sometimes called a clip?

A Yes, it can be referred to as a clip.

Q And was the clip in the gun, in 168C when it was impounded?

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1 A That's -- not when it was impounded, but when I
2 recovered it, yes, it was in.

3 Q And were there bullets in the clip at the time you
4 found 168C?

5 A Yes, there were.

6 Q Do you recall what that clip looked like, the shape
7 of the clip?

8 A I believe it was the -- like a banana clip, curved.

9 MR. DASKAS: I'll pass the witness, Judge.

10 THE COURT: Any cross of this witness?

11 MR. FIGLER: Thanks, Judge.

12 CROSS-EXAMINATION

13 BY MR. FIGLER:

14 Q Mr. Washington, good afternoon.

15 A Good afternoon.

16 Q Let's talk about this 168C, this rifle that you
17 impounded. That's a .22 caliber weapon?

18 A That's correct.

19 Q So that uses .22 caliber ammunition?

20 A That's correct.

21 Q Now I want to ask you about the VCR. Do you know if
22 a print was taken off of that VCR?

23 A I believe there was, yes.

24 Q Okay. Now, you also impounded the item. Is it
25 common for you to impound items if you've already taken prints

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1 off of 'em?

2 A No, I impounded the item first, and it was processed
3 at a later date.

4 Q So you had certain information as to what items may
5 possibly be of some evidentiary value when you went into that
6 Everman residence, correct?

7 A That's correct.

8 Q Okay. Now, did you have information at that time
9 that John White or Donte Johnson had purchased that VCR for
10 twenty dollars (\$20) from another individual named Sikia
11 Smith?

12 A I had no information of that nature.

13 Q Now, did you know that Ace Hart and Bryan Johnson
14 lived in that residence at some point?

15 A I did not. I was not aware of anything like that.

16 Q Okay. Let's talk about that VCR for a second. What
17 -- when you looked to make sure, to verify that that was the
18 same one that you impounded, what was the reference number
19 that you utilized in your report, what item was it of impound?

20 A According to my report, it's package 12, item number
21 13.

22 Q Okay. What is "EG" in your terminology?

23 A "EG"?

24 Q Yes.

25 A Could you explain more of the question? I don't

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1 understand, I apologize.

2 Q Well ---

3 (Off-record colloquy)

4 BY MR. FIGLER:

5 Q Okay. When you take your items that are impounded,
6 they move on to other individuals, is that correct?

7 A That's correct.

8 Q So you don't do the actual testing, someone else
9 does the testing?

10 A That's correct.

11 Q So if Ed Guenther did a testing, he might label
12 things with his initials "EG," is that correct?

13 A That's correct.

14 Q Okay. But again, you're referring to item number
15 13, the VCR?

16 A Yes.

17 Q Okay. Now you're operating under the direction of
18 Sergeant Hefner?

19 A That's correct.

20 Q Sergeant Hefner's sort of the boss in these type of
21 situations?

22 A On search teams, that's correct.

23 MR. FIGLER: Pass the witness, Your Honor.

24 THE COURT: Anything further?

25 MR. DASKAS: No, Judge.

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1 THE COURT: Thank you, you're excused, sir.
2 Would you approach the bench, please.

3 (Off-record bench conference)

4 MR. GUYMON: Call the next one, Judge?

5 THE COURT: Yes.

6 MR. GUYMON: All right. Tommy Thowsen.

7 THE COURT: I can see some of you, by the way, are
8 getting tired. Just so you know, we're going to have one,
9 possibly two short witnesses, and then we'll be breaking for
10 the day.

11 (Off-record colloquy)

12 THOMAS THOWSEN, PLAINTIFF'S WITNESS, IS SWORN

13 THE CLERK: Please state your full name and spell
14 your last name for the record.

15 THE WITNESS: Thomas D. Thowsen, T-H-O-W-S-E-N.

16 DIRECT EXAMINATION

17 BY MR. GUYMON:

18 Q And are you a detective with the Las Vegas
19 Metropolitan Police Department?

20 A Yes, I am.

21 Q And are you in the homicide detail?

22 A Yes, for the last eight years.

23 Q You've been in homicide for eight years?

24 A Yes, sir.

25 Q And how long have you been involved in law

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1 enforcement?

2 A I've been with Metro police for twenty-three years
3 at the end of this month.

4 Q And were you one of the detectives assigned to the
5 homicide investigation -- or the homicide that occurred at
6 Terra Linda on August 13th and into the morning hours of the
7 14th?

8 A In 1998.

9 Q 1998.

10 A Yes.

11 Q Okay. There was four decedents in that case, is
12 that correct?

13 A That is correct.

14 Q Jeff Biddle, Tracey Gorringer, Matt Mowen, and Peter
15 Talamantez?

16 A That is correct.

17 Q Tell me this, what was your primary responsibility
18 in this investigation?

19 A I was responsible for the crime scene, working with
20 the crime scene analysts to make sure that the crime scene was
21 processed, and to determine what evidence in the case there
22 was available at the crime scene.

23 Q Did you have a partner?

24 A Yes, I did.

25 Q And did -- who was your partner?

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- 1 A Detective James Buczek.
- 2 Q Okay. Now you obviously had the crime scene and
3 working with crime scene analysts, in the totality of this
4 investigation, have you been in charge of the collection of
5 evidence?
- 6 A Yes.
- 7 Q And what has Jim Buczek's responsibilities been?
- 8 A To interview witnesses and suspects in the case.
- 9 Q Okay. And tell me, how long have you been partners
10 with Jim Buczek?
- 11 A For three years.
- 12 Q And how long, if you know, has Jim Buczek been
13 associated with law enforcement?
- 14 A I believe it's approximately ten years.
- 15 Q I want to limit my questioning of you today to the
16 collection of a piece of evidence in this case. Okay? I want
17 to show you what's been marked as State's Proposed Exhibit
18 194, and ask you if you recognize it?
- 19 A Yes, I do.
- 20 Q And how is it that you recognize 194?
- 21 A It has my signature on it right here, and the event
22 number that I placed on it at the date and time that I made
23 the impound.
- 24 Q Is the event number an event number that is
25 associated with this case and this case only?

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1 A Yes, it is.

2 Q That is, the quadruple homicide at Terra Linda in
3 August 1998?

4 A That is correct.

5 Q The event number bearing a day associated with this
6 case, 98/08/14 -- that being August 14th -- and 1600?

7 A That's correct.

8 Q 1600 would be the sixteenth hundredth call that
9 Metro got that day?

10 A Yes.

11 Q The next call would've been 1601?

12 A That's correct.

13 Q All right. And does this investigation only have
14 one event number associated with it?

15 A This one had only one, yes.

16 Q Okay. And is any other event that Metro's responded
17 to associated with that event number, or does that get a
18 different event number?

19 A That would get a different event number.

20 Q Now tell me, this is dated August 18th, 1998?

21 A Yes, it is.

22 Q All right. When did you first see this particular
23 exhibit, on that very day?

24 A On that very day.

25 Q And where were you at on August 18th, 1998, when you

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1 came in contact with that particular exhibit?

2 A At the Clark County Detention Center, which is a few
3 blocks over.

4 Q And what was the purpose of your being there?

5 A I was with Detective Buczek, and arresting a suspect
6 and charging that individual with murder.

7 Q And who was the person that was arrested and charged
8 with murder?

9 A Donte Johnson, also known as Deco, also known as
10 John White.

11 Q And is Donte Johnson here in court today?

12 A Excuse me. Yes, he is.

13 Q Will you point to him and describe an article of
14 clothing that he's wearing in court today?

15 A He's the gentleman wearing the tan-colored long-
16 sleeve shirt.

17 MR. GUYMON: Record reflect the identification of
18 the defendant, Your Honor?

19 THE COURT: It will.

20 BY MR. GUYMON:

21 Q And is Donte Johnson's appearance any different
22 today than it was on August 18th, 1998?

23 MR. SCISCENTO: Your Honor, I'm gonna object. May
24 we approach real quick?

25 (Off-record bench conference)

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THOWSEN - DIRECT

1 BY MR. GUYMON:

2 Q Now then, at the Detention Center, did you collect
3 some evidence from Donte Johnson?

4 A Yes, I did.

5 Q And when you did that, who was present?

6 A Myself and Donte Johnson.

7 Q And what evidence were you collecting at that time?

8 A It's called a buccal swab, which is a -- it's like a
9 small toothbrush made out of like a cardboard material.

10 Q And where do you get that small toothbrush made out
11 of cardboard material, to use your expression?

12 A It's located, already in a package like this, in the
13 nurse's station at the jail.

14 Q Okay. Now, is the package that you receive from the
15 nurse's station, is it sealed up?

16 A The package that you get before you seal is not
17 sealed up.

18 Q Okay. Is it sterile, to your knowledge?

19 A Yes, it is.

20 Q And how is it that you know that, or why do you say
21 that?

22 A The outer package like this is opened up by just
23 unwinding it and opening it up. Inside the portion that you
24 actually do the test with, is in a sterile sealed plastic
25 container, and there's instructions that tell you step by step

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1 how to do it, which include installing rubber gloves, removing
2 the testing material from the hermetically sealed package, and
3 having the individual that's going to give the sample take it
4 and rub it inside their cheek several times. Then they place
5 it inside a small cardboard box that's provided, and it's
6 allowed to air dry for I believe fifteen minutes. They do
7 another one on the other side, that's placed in there, and
8 after it has had time to dry the whole thing is sealed up,
9 placed in this bag here, and then evidence seal is placed on
10 it so that you know it is secure. It's then placed in the
11 refrigerator there at the jail.

12 Q All right. Now, is that the procedure you followed
13 in collecting the swab, two swabs from Donte Johnson that very
14 day of August 18th, 1998?

15 A Yes, it is.

16 Q Did the kit you actually received from the nurse's
17 station, did it -- was it sealed?

18 A Yes, it was.

19 Q Did you wear the gloves?

20 A Yes, I did.

21 Q Did you follow the procedure step by step as
22 outlined?

23 A Yes, I did.

24 Q Is that a procedure you're familiar with?

25 A I've done it many times.

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THOWSEN - DIRECT

1 Q Approximately how many times?

2 A I would guess more than fifty.

3 Q Now did you actually watch Donte Johnson take the
4 first "toothbrush," if you will, and rub the side -- the
5 inside of his mouth with the toothbrush?

6 A Yes.

7 Q Did you give him direction as to how to do that and
8 what he was to do?

9 A Yes, I did.

10 Q Did he follow those directions?

11 A Yes, he did.

12 Q Did you take that toothbrush and place it there for
13 it to dry, as you indicated to the jury?

14 A Yes. What I actually do is, once I put the rubber
15 gloves on, the latex gloves on, remove it, hand it to them,
16 have them rub it in their cheek, I have them insert it into
17 the box; so I don't even touch it again after they've taken
18 the sample.

19 Q All right. So once Donte Johnson received the
20 toothbrush, did you touch the sample again at all?

21 A No.

22 Q All right. Did Donte Johnson then do it a second
23 time as requested by yourself?

24 A Yes.

25 Q And I guess that's consistent with the procedure?

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THOWSEN - DIRECT

- 1 A Yes, it is.
- 2 Q Now, once Donte Johnson rubbed his, I guess the
3 inside of his cheek, the other side --
- 4 A That's correct.
- 5 Q -- with the toothbrush, the second toothbrush, what
6 did Donte Johnson do with that toothbrush?
- 7 A He placed it inside the cardboard container that I
8 was holding for him to insert it into.
- 9 Q And then what do you do with now both of these
10 containers that have the toothbrushes in them?
- 11 A It's actually one container with two toothbrushes,
12 and you just allow it to dry for fifteen minutes. Once it's
13 dried, you seal the entire package up in here.
- 14 Q All right. For those fifteen minutes that it was
15 drying, did you keep those toothbrushes in your sole care and
16 custody?
- 17 A Yes, I did.
- 18 Q Once they had dried and the fifteen minutes had
19 expired, what did you then do with that particular exhibit?
- 20 A I placed an evidence seal on the -- on the flap,
21 which is designed to rip if someone were to reopen the flap,
22 and then I put my initials and personnel number, as well as
23 the date.
- 24 Q And is your evidence seal still intact?
- 25 A Yes, it is.

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THOWSEN - DIRECT

1 Q All right. Has this piece of evidence changed at
2 all since the last time you saw it, that is to say, since you
3 sealed it up, put it in the refrigerator, has it changed at
4 all?

5 A Yes, it has.

6 Q And how has it changed?

7 A It has an additional seal placed on the bottom,
8 indicating that it has been opened and examined. And there's
9 a place on the bottom of the form itself here, for the chain
10 of custody, and that's signed by Thomas Wahl on 9/4 of '98.

11 Q And is Thomas Wahl someone you know and are familiar
12 with?

13 A Yes.

14 Q Who is Thomas Wahl?

15 A Thomas Wahl is a criminalist that works for the Las
16 Vegas Metropolitan Police Department assigned to the DNA
17 laboratory.

18 Q Is it common, using standard operating police
19 procedures, if another person opens that particular piece of
20 evidence that they do not disturb your seal, but rather open
21 it somewhere else and put their own seal on it?

22 A That is correct.

23 Q And why is that?

24 A So that you can keep track of exactly how many times
25 the package has been opened, and by whom.

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THOWSEN - DIRECT

1 Q Now once it's sealed up by yourself, you've
2 collected the evidence, dried it, sealed it, what do you do
3 with it?

4 A I retrieve a key for the refrigerator, the evidence
5 refrigerator in the nurse's station at the jail, I remove a
6 lock from that refrigerator allowing me to have access to the
7 inside, and I place the evidence inside, relock it, and return
8 the key to the desk at the nurse's station.

9 Q After locking that refrigerator and returning the
10 key, do you have any contact whatsoever with that particular
11 exhibit, in other words, those two toothbrushes and that
12 envelope?

13 A No.

14 Q All right. And what is the -- I guess the last time
15 you would've seen that -- those toothbrushes and envelope
16 would have been on August 18th then?

17 A That's correct?

18 A 1998?

19 A That is correct.

20 Q And when is the next time that you saw that
21 particular evidence envelope?

22 A When I picked it up at approximately 3:55 this
23 afternoon at the evidence vault.

24 Q And the evidence vault, I take it, is maintained by
25 the Las Vegas Metropolitan Police Department?

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1 A Yes, it is.

2 Q Is it a secure facility, the evidence vault?

3 A Yes, it is.

4 MR. GUYMON: I'd move for the admission of State's
5 Proposed Exhibit --

6 MR. FIGLER: No objection, Your Honor.

7 THE COURT: Received.

8 MR. GUYMON: -- 194.

9 (Plaintiff's Exhibit No. 194 admitted)

10 MR. GUYMON: No other questions of this witness,
11 pass the witness.

12 MR. FIGLER: Briefly.

13 THE COURT: Any cross of this witness?

14 MR. FIGLER: Thank you, Judge.

15 CROSS-EXAMINATION

16 BY MR. FIGLER:

17 Q Good afternoon. Just a couple real quick questions.
18 The name of your partner on this particular case was?

19 A Detective James Buczek, B-U-C-Z-E-K.

20 Q Okay. And your supervisor in this case was?

21 A Sergeant Ken Hefner.

22 Q Okay. Now, Detective, during the course of your
23 investigation I think that you indicated that you share
24 information always between the three of you with regard to
25 proceeding with your investigation?

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THOWSEN - CROSS

1 A We certainly make an attempt to share information,
2 yes.

3 Q And oftentimes rely on each other's information, is
4 that correct?

5 A That would be correct.

6 Q Okay. Now I notice you have two very large
7 notebooks with you. Is that related to this case?

8 A Yes. That is the case file for this particular
9 case.

10 Q And it's important for you to bring these case files
11 to court with you in case there's any questions, correct?

12 A Yes.

13 Q Gives you a frame of reference, something to look
14 at?

15 A Yes, it does.

16 Q Okay. Finally, when you went to do the swabbing, or
17 request the swabbing of this gentleman, you identified
18 yourself as a police officer, correct?

19 A Yes, that is correct.

20 Q Okay. And you described his conduct as cooperative,
21 he was cooperative and did what you told him to do?

22 A Yes, he did what I asked.

23 Q In other words, he respected your authority?

24 A In completing this test, he did.

25 Q Okay. He didn't give you any hassle, just did what

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THOWSEN - CROSS

1 he was supposed to do, correct?

2 A Yes, he did.

3 Q Okay, thank you.

4 MR. FIGLER: No further questions.

5 THE COURT: Anything further?

6 MR. GUYMON: Nothing else, Your Honor.

7 THE COURT: Thank you, you're excused, Detective.

8 THE WITNESS: Thanks, Your Honor.

9 THE COURT: All right, folks, we're gonna take our
10 evening recess now. During this recess you're admonished not
11 to talk or converse among yourselves or with anyone else on
12 any subject connected with this trial; read, watch or listen
13 to any report of or commentary on the trial, or any person
14 connected with it by any medium of information, including,
15 without limitation, newspaper, television and radio; or form
16 or express any opinion on any subject connected with the trial
17 until it's finally submitted to you.

18 Tomorrow morning is one of the mornings where I have
19 a calendar of arraignments and sentencings and things like
20 that before we get to the trial, so we're going to go back to
21 the Tuesday schedule, which means if you report to Stony by no
22 later than 9:20, unless something unforeseen happens we will
23 start this trial at exactly 9:30.

24 If you're the sort of folks who likes to know what's
25 going on and what the future will bring, I expect that we will

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1 have all the witnesses done at some point tomorrow morning.
2 And really the only thing that's sort of up in the air is
3 whether you're going to go and have brunch around 11:00 or
4 you're gonna go and have lunch around 12:00. And after one of
5 those two events there's going to be the instructions of the
6 Court and argument sometime around mid-day tomorrow. So
7 that's where we're at, and we'll see you tomorrow morning.

8 We're in recess. We'll make the record on that one
9 issue tomorrow.

10 MR. FIGLER: Thanks, Judge.

11 (Court recessed at 5:25 p.m. until the following day,
12 Thursday, June 8, 2000 at 9:30 a.m.)

13 * * * * *

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Robert Honea	316	326	328	--	
Ken Hefner	329	353	358/360	359	
Marc Washington	363	376	--	--	
Thomas Thowsen	379	390	--	--	

DEFENDANT'S WITNESSES

None

EXHIBITS

DESCRIPTION	ADMITTED
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PLAINTIFF'S EXHIBITS

20	Crime Scene Photograph	189
74-76	Crime Scene Photograph	209
79-82	Crime Scene Photograph	211
86	Crime Scene Photograph	211
89-95	Crime Scene Photograph	211
96-97	Cigar Box Photograph	208
105	Photograph of Everman home	342
106	Photograph of Everman home	342
113	Autopsy photos of Talamantez	287
114	Autopsy photos of Talamantez	287
116	Autopsy photos of Talamantez	287
120	Autopsy photos of Talamantez	287
125	Autopsy photos of Talamantez	287
127	Autopsy photos of Mowen	280
130	Autopsy photos of Mowen	280
134	Autopsy photos of Mowen	280
135-137	Autopsy photos of Biddle	265
145-146	Autopsy photos of Biddle	265

(Continued)

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EXHIBITS

DESCRIPTION

ADMITTED

PLAINTIFF'S EXHIBITS

147-148	Autopsy photos of Gorringe	274
151	Autopsy photos of Gorringe	274
153-153A	VCR taken from crime scene	366
154-154A-D	Hotel keys and pager	371
155-155A	Duct tape	369
156	Cartridge cases, fragments	224
157-157A	Duffel bag	367
162	Crime Scene Diagram	219
168C	.22 Rifle	375
180	Photograph	10
182	Photographs of cigarette butts	196
183	Cigarette Butts	200
185	Letter from Charla Severs to District Attorney's Office	80
186	Letter from Charla Severs to Channel 8 News	84
187	Beaudette's stipulation	237
188	Latent fingerprint card	250
189	Sawed off rifle	325
190	Consent to search card signed by Tod Armstrong	338
191	Black Calvin Klein jeans	372
194	Toothbrush swab of Donte Johnson's	390

DEFENDANT'S EXHIBITS

None

III-395

CERTIFICATION

I (WE) CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM
THE ELECTRONIC SOUND RECORDING OF THE PROCEEDINGS IN THE
ABOVE-ENTITLED MATTER.

NORTHWEST TRANSCRIPTS, INC.
LAS VEGAS DIVISION
P.O. BOX 35257
LAS VEGAS, NEVADA 89133-5257
(702) 658-9626

GAYLE MARTIN-LUTZ
FEDERALLY CERTIFIED OWNER

Beverly Siguenik
MANAGER

Beverly Siguenik
SIGNATURE OF TRANSCRIBER

6/8/00
DATE

ORIGINAL

1 INST

FILED IN OPEN COURT
 JUN 09 2000 4:10 PM
 SHIRLEY B. PARRAGUIRRE, CLERK
 BY Carole D'Alaia
 CAROLE D'ALOIA DEPUTY

DISTRICT COURT
 CLARK COUNTY, NEVADA

8 THE STATE OF NEVADA,
 9 Plaintiff,

10 -vs-

11 DONTE JOHNSON,

12
 13 Defendant.

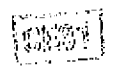
Case No. C153154
 Dept. No. V
 Docket H

15 INSTRUCTIONS TO THE JURY (INSTRUCTION NO. 1)
 16 MEMBERS OF THE JURY:

17 It is now my duty as judge to instruct you in the law that applies to this case. It is your
 18 duty as jurors to follow these instructions and to apply the rules of law to the facts as you find
 19 them from the evidence.

20 You must not be concerned with the wisdom of any rule of law stated in these
 21 instructions. Regardless of any opinion you may have as to what the law ought to be, it would
 22 be a violation of your oath to base a verdict upon any other view of the law than that given in
 23 the instructions of the Court.

24
 25
 26
 27
 28



If, in these instructions, any rule, direction or idea is repeated or stated in different ways, no emphasis thereon is intended by me and none may be inferred by you. For that reason, you are not to single out any certain sentence or any individual point or instruction and ignore the others, but you are to consider all the instructions as a whole and regard each in the light of all the others.

The order in which the instructions are given has no significance as to their relative importance.

1
2 An Indictment is but a formal method of accusing a person of a crime and is not of itself
3 any evidence of his guilt.

4 In this case, it is charged in an Indictment that on or about the 14th day of August, 1998,
5 the Defendant committed the offenses as follows:

6 COUNT I -BURGLARY WHILE IN POSSESSION OF A FIREARM

7 did, together with TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH,
8 then and there wilfully, unlawfully, and feloniously enter, while in possession of a firearm, with
9 intent to commit larceny and/or robbery and/or murder, that certain building occupied by
10 MATHEW MOWEN and TRACEY GORRINGE and JEFFREY BIDDLE, located at 4825
11 Terra Linda Avenue, Las Vegas, Clark County, Nevada; the Defendant aiding or abetting
12 TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH by counsel and
13 encouragement and by entering into a course of conduct whereby the said Defendant arrived at
14 4825 Terra Linda Avenue with TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE
15 SMITH; the said Defendant entering the residence with TERRELL COCHISE YOUNG and/or
16 SIKIA LAFAYETTE SMITH while Defendant and/or TERRELL COCHISE YOUNG and/or
17 SIKIA LAFAYETTE SMITH were in possession of a firearm or firearms; Defendant and/or
18 TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH binding MATHEW
19 MOWEN and TRACEY GORRINGE and JEFFREY BIDDLE and PETER TALAMENTEZ and
20 placing them on the floor of the residence; then Defendant and/or TERRELL COCHISE
21 YOUNG and/or SIKIA LAFAYETTE SMITH shooting at and into the body of the said
22 MATHEW MOWEN and TRACEY GORRINGE and JEFFREY BIDDLE and PETER
23 TALAMENTEZ with a firearm.

24 COUNT II - CONSPIRACY TO COMMIT ROBBERY AND/OR KIDNAPPING AND/OR
25 MURDER

26 did then and there meet with TERRELL COCHISE YOUNG, SIKIA LAFAYETTE
27 SMITH and/or another unknown individual, and between themselves, and each of them with
28 the other, wilfully, unlawfully, and feloniously conspire to commit a crime, to wit: robbery

1 and/or kidnaping and/or murder, and in furtherance of said conspiracy, Defendant did commit
2 the acts as alleged in Counts III thru XIV of this indictment, together with TERRELL COCHISE
3 YOUNG and/or SIKIA LAFAYETTE SMITH, which acts are incorporated herein by this
4 reference as though fully set forth.

5 COUNT III - ROBBERY WITH USE OF A DEADLY WEAPON

6 did, together with TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH,
7 then and there wilfully, unlawfully, and feloniously, take personal property, to wit: lawful money
8 of the United States, from the person of JEFFREY BIDDLE, or in his presence or company, by
9 means of force or violence, or fear of injury to, and without the consent and against the will of
10 the said JEFFREY BIDDLE, said Defendant using a deadly weapon, to wit: a firearm, during
11 the commission of said crime; the Defendant aiding or abetting TERRELL COCHISE YOUNG
12 and/or SIKIA LAFAYETTE SMITH by counsel and encouragement and by entering into a
13 course of conduct whereby the said Defendant arrived at 4825 Terra Linda Avenue with
14 TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH; the said Defendant
15 entering the residence with TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE
16 SMITH while Defendant and/or TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE
17 SMITH were in possession of a firearm or firearms; Defendant and/or TERRELL COCHISE
18 YOUNG and/or SIKIA LAFAYETTE SMITH binding the said JEFFREY BIDDLE and placing
19 him on the floor of the residence; then Defendant and/or TERRELL COCHISE YOUNG and/or
20 SIKIA LAFAYETTE SMITH taking lawful money of the United States from the person of
21 JEFFREY BIDDLE and/or other persons in his presence or company; then Defendant and/or
22 TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH shooting at and into the
23 body of the said JEFFREY BIDDLE with a firearm.

24 COUNT IV - ROBBERY WITH USE OF A DEADLY WEAPON

25 did, together with TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH,
26 then and there wilfully, unlawfully, and feloniously, take personal property, to wit: lawful money
27 of the United States, from the person of TRACEY GORRINGE, or in his presence or company,
28 by means of force or violence, or fear of injury to, and without the consent and against the will

1 of the said TRACEY GORRINGE, said Defendant using a deadly weapon, to wit: a firearm,
2 during the commission of said crime; the Defendant aiding or abetting TERRELL COCHISE
3 YOUNG and/or SIKIA LAFAYETTE SMITH by counsel and encouragement and by entering
4 into a course of conduct whereby the said Defendant arrived at 4825 Terra Linda Avenue with
5 TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH; the said Defendant
6 entering the residence with TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE
7 SMITH while Defendant and/or TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE
8 SMITH were in possession of a firearm or firearms; Defendant and/or TERRELL COCHISE
9 YOUNG and/or SIKIA LAFAYETTE SMITH binding the said TRACEY GORRINGE and
10 placing him on the floor of the residence; then Defendant and/or TERRELL COCHISE YOUNG
11 and/or SIKIA LAFAYETTE SMITH taking lawful money of the United States from the person
12 of TRACEY GORRINGE and/or other persons in his presence or company; then Defendant
13 and/or TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH shooting at and into
14 the body of the said TRACEY GORRINGE with a firearm.

15 COUNT V - ROBBERY WITH USE OF A DEADLY WEAPON

16 did, together with TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH
17 then and there wilfully, unlawfully, and feloniously, take personal property, to wit: lawful money
18 of the United States, from the person of MATHEW MOWEN, or in his presence or company,
19 by means of force or violence, or fear of injury to, and without the consent and against the will
20 of the said MATHEW MOWEN, said Defendant using a deadly weapon, to wit: a firearm,
21 during the commission of said crime; the Defendant aiding or abetting TERRELL COCHISE
22 YOUNG and/or SIKIA LAFAYETTE SMITH by counsel and encouragement and by entering
23 into a course of conduct whereby the said Defendant arrived at 4825 Terra Linda Avenue with
24 TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH; the said Defendant
25 entering the residence with TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE
26 SMITH while Defendant and/or TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE
27 SMITH were in possession of a firearm or firearms; Defendant and/or TERRELL COCHISE
28 YOUNG and/or SIKIA LAFAYETTE SMITH binding the said MATHEW MOWEN and

1 placing him on the floor of the residence; then Defendant and/or TERRELL COCHISE YOUNG
2 and/or SIKIA LAFAYETTE SMITH taking lawful money of the United States from the person
3 of MATHEW MOWEN and/or other persons in his presence or company; then Defendant and/or
4 TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH shooting at and into the
5 body of the said MATHEW MOWEN with a firearm.

6 COUNT VI - ROBBERY WITH USE OF A DEADLY WEAPON

7 did, together with TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH
8 then and there wilfully, unlawfully, and feloniously, take personal property, to wit: lawful money
9 of the United States, from the person of PETER TALAMENTEZ, or in his presence or company,
10 by means of force or violence, or fear of injury to, and without the consent and against the will
11 of the said PETER TALAMENTEZ, said Defendant using a deadly weapon, to wit: a firearm,
12 during the commission of said crime; the Defendant aiding or abetting TERRELL COCHISE
13 YOUNG and/or SIKIA LAFAYETTE SMITH by counsel and encouragement and by entering
14 into a course of conduct whereby the said Defendant arrived at 4825 Terra Linda Avenue with
15 TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH; the said Defendant
16 entering the residence with TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE
17 SMITH while Defendant and/or TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE
18 SMITH were in possession of a firearm or firearms; Defendant and/or TERRELL COCHISE
19 YOUNG and/or SIKIA LAFAYETTE SMITH binding the said PETER TALAMENTEZ and
20 placing him on the floor of the residence; then Defendant and/or TERRELL COCHISE YOUNG
21 and/or SIKIA LAFAYETTE SMITH taking lawful money of the United States from the person
22 of PETER TALAMENTEZ and/or other persons in his presence or company; then Defendant
23 and/or TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH shooting at and into
24 the body of the said PETER TALAMENTEZ with a firearm.

25 COUNT VII - FIRST DEGREE KIDNAPPING WITH USE OF A DEADLY WEAPON

26 did, together with TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH
27 wilfully, unlawfully, feloniously, and without authority of law, seize, confine, inveigle, entice,
28 decoy, abduct, conceal, kidnap, or carry away JEFFREY BIDDLE, a human being, with the

1 intent to hold or detain the said JEFFREY BIDDLE, against his will, and without his consent,
2 for the purpose of committing robbery and/or murder, said Defendant and/or TERRELL
3 COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH using a deadly weapon, to wit: a
4 firearm during the commission of said crime; the Defendant aiding or abetting TERRELL
5 COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH by counsel and encouragement and
6 by entering into a course of conduct whereby the said Defendant arrived at 4825 Terra Linda
7 Avenue with TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH; the said
8 Defendant entering the residence with TERRELL COCHISE YOUNG and/or SIKIA
9 LAFAYETTE SMITH while Defendant and/or TERRELL COCHISE YOUNG and/or SIKIA
10 LAFAYETTE SMITH were in possession of a firearm or firearms; Defendant and/or TERRELL
11 COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH binding the said JEFFREY BIDDLE
12 and placing him on the floor of the residence for the purpose of committing robbery and/or
13 murder; then Defendant and/or TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE
14 SMITH shooting at and into the body of the said JEFFREY BIDDLE with a firearm.

15 COUNT VIII - FIRST DEGREE KIDNAPPING WITH USE OF A DEADLY WEAPON

16 did, together with TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH,
17 wilfully, unlawfully, feloniously, and without authority of law, seize, confine, inveigle, entice,
18 decoy, abduct, conceal, kidnap, or carry away MATHEW MOWEN, a human being, with the
19 intent to hold or detain the said MATHEW MOWEN, against his will, and without his consent,
20 for the purpose of committing robbery and/or murder, said Defendant and/or TERRELL
21 COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH using a deadly weapon, to wit: a
22 firearm during the commission of said crime; the Defendant aiding or abetting TERRELL
23 COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH by counsel and encouragement and
24 by entering into a course of conduct whereby the said Defendant arrived at 4825 Terra Linda
25 Avenue with TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH; the said
26 Defendant entering the residence with TERRELL COCHISE YOUNG and/or SIKIA
27 LAFAYETTE SMITH while Defendant and/or TERRELL COCHISE YOUNG and/or SIKIA
28 LAFAYETTE SMITH were in possession of a firearm or firearms; Defendant and/or TERRELL

1 COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH binding the said MATHEW MOWEN
2 and placing him on the floor of the residence for the purpose of committing robbery and/or
3 murder; then Defendant and/or TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE
4 SMITH shooting at and into the body of the said MATHEW MOWEN with a firearm.

5 COUNT IX - FIRST DEGREE KIDNAPPING WITH USE OF A DEADLY WEAPON

6 did, together with TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH,
7 wilfully, unlawfully, feloniously, and without authority of law, seize, confine, inveigle, entice,
8 decoy, abduct, conceal, kidnap, or carry away TRACEY GORRINGE, a human being, with the
9 intent to hold or detain the said TRACEY GORRINGE, against his will, and without his consent,
10 for the purpose of committing robbery and/or murder, said Defendant and/or TERRELL
11 COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH using a deadly weapon, to wit: a
12 firearm during the commission of said crime; the Defendant aiding or abetting TERRELL
13 COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH by counsel and encouragement and
14 by entering into a course of conduct whereby the said Defendant arrived at 4825 Terra Linda
15 Avenue with TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH; the said
16 Defendant entering the residence with TERRELL COCHISE YOUNG and/or SIKIA
17 LAFAYETTE SMITH while Defendant and/or TERRELL COCHISE YOUNG and/or SIKIA
18 LAFAYETTE SMITH were in possession of a firearm or firearms; Defendant and/or TERRELL
19 COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH binding the said TRACEY
20 GORRINGE and placing him on the floor of the residence for the purpose of committing
21 robbery and/or murder; then Defendant and/or TERRELL COCHISE YOUNG and/or SIKIA
22 LAFAYETTE SMITH shooting at and into the body of the said TRACEY GORRINGE with a
23 firearm.

24 COUNT X - FIRST DEGREE KIDNAPPING WITH USE OF A DEADLY WEAPON

25 did, together with TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH,
26 wilfully, unlawfully, feloniously, and without authority of law, seize, confine, inveigle, entice,
27 decoy, abduct, conceal, kidnap, or carry away PETER TALAMENTEZ, a human being, with the
28 intent to hold or detain the said PETER TALAMENTEZ, against his will, and without his

1 consent, for the purpose of committing robbery and/or murder, said Defendant and/or TERRELL
2 COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH using a deadly weapon, to wit: a
3 firearm during the commission of said crime; the Defendant aiding or abetting TERRELL
4 COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH by counsel and encouragement and
5 by entering into a course of conduct whereby the said Defendant arrived at 4825 Terra Linda
6 Avenue with TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH; the said
7 Defendant entering the residence with TERRELL COCHISE YOUNG and/or SIKIA
8 LAFAYETTE SMITH while Defendant and/or TERRELL COCHISE YOUNG and/or SIKIA
9 LAFAYETTE SMITH were in possession of a firearm or firearms; Defendant and/or TERRELL
10 COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH binding the said PETER
11 TALAMENTEZ and placing him on the floor of the residence for the purpose of committing
12 robbery and/or murder; then Defendant and/or TERRELL COCHISE YOUNG and/or SIKIA
13 LAFAYETTE SMITH shooting at and into the body of the said PETER TALAMENTEZ with
14 a firearm.

15 COUNT XI - MURDER WITH USE OF A DEADLY WEAPON (OPEN MURDER)

16 did, together with TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH,
17 then and there wilfully, feloniously, without authority of law, and with premeditation and
18 deliberation, and with malice aforethought, kill JEFFREY BIDDLE, a human being, by shooting
19 at and into the body of said JEFFREY BIDDLE, with a deadly weapon, to wit: a firearm, the said
20 Defendants being responsible under the following theories of criminal liability, to wit: 1)
21 Premeditation and Deliberation; 2) Felony Murder, Defendant and/or TERRELL COCHISE
22 YOUNG and/or SIKIA LAFAYETTE SMITH committing the murder in the perpetration or
23 attempted perpetration of kidnaping and/or robbery; 3) Aiding or Abetting, the Defendant aiding
24 or abetting TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH by counsel and
25 encouragement and by entering into a course of conduct whereby the said Defendant arrived at
26 4825 Terra Linda Avenue with TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE
27 SMITH; the said Defendant entering the residence with TERRELL COCHISE YOUNG and/or
28 SIKIA LAFAYETTE SMITH while Defendant and/or TERRELL COCHISE YOUNG and/or

1 SIKIA LAFAYETTE SMITH were in possession of a firearm; Defendant and/or TERRELL
2 COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH binding the victim and placing him
3 on the floor of the residence; Defendant and/or TERRELL COCHISE YOUNG and/or SIKIA
4 LAFAYETTE SMITH shooting at and into the body of the said JEFFREY BIDDLE with a
5 firearm; 4) Conspiracy, by the said Defendant acting pursuant to a conspiracy to commit robbery
6 and/or kidnaping and/or murder with TERRELL COCHISE YOUNG and/or SIKIA
7 LAFAYETTE SMITH, whereby the said Defendant entered the residence with TERRELL
8 COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH while Defendant and/or TERRELL
9 COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH were in possession of a firearm or
10 firearms; Defendant and/or TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE
11 SMITH binding the said JEFFREY BIDDLE and placing him on the floor of the residence; then
12 Defendant and/or TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH shooting
13 at and into the body of the said JEFFREY BIDDLE with the firearm or firearms.

14 COUNT XII - MURDER WITH USE OF A DEADLY WEAPON (OPEN MURDER)

15 did, together with TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH,
16 then and there wilfully, feloniously, without authority of law, and with premeditation and
17 deliberation, and with malice aforethought, kill TRACEY GORRINGE, a human being, by
18 shooting at and into the body of said TRACEY GORRINGE, with a deadly weapon, to wit: a
19 firearm, the said Defendant being responsible under the following theories of criminal liability,
20 to wit: 1) Premeditation and Deliberation; 2) Felony Murder, Defendant and/or TERRELL
21 COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH committing the murder in the
22 perpetration or attempted perpetration of robbery and/or kidnaping; 3) Aiding or Abetting, the
23 Defendant aiding or abetting TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE
24 SMITH by counsel and encouragement and by entering into a course of conduct whereby the
25 said Defendant arrived at 4825 Terra Linda Avenue with TERRELL COCHISE YOUNG and/or
26 SIKIA LAFAYETTE SMITH; the said Defendant entering the residence with TERRELL
27 COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH while Defendant and/or TERRELL
28 COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH were in possession of a firearm;

1 Defendant and/or TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH binding
2 the victim and placing him on the floor of the residence; Defendant and/or TERRELL COCHISE
3 YOUNG and/or SIKIA LAFAYETTE SMITH shooting at and into the body of the said
4 TRACEY GORRINGE with a firearm; 4) Conspiracy, by the said Defendant acting pursuant to
5 a conspiracy to commit robbery and/or kidnaping and/or murder with TERRELL COCHISE
6 YOUNG and/or SIKIA LAFAYETTE SMITH, whereby the said Defendant entered the
7 residence with TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH while
8 Defendant and/or TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH were
9 in possession of a firearm or firearms; Defendant and/or TERRELL COCHISE YOUNG and/or
10 SIKIA LAFAYETTE SMITH binding the said TRACEY GORRINGE and placing him on the
11 floor of the residence; then Defendant and/or TERRELL COCHISE YOUNG and/or SIKIA
12 LAFAYETTE SMITH shooting at and into the body of the said TRACEY GORRINGE with the
13 firearm or firearms.

14 COUNT XIII - MURDER WITH USE OF A DEADLY WEAPON (OPEN MURDER)

15 did, together with TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH,
16 then and there wilfully, feloniously, without authority of law, and with premeditation and
17 deliberation, and with malice aforethought, kill MATHEW MOWEN, a human being, by
18 shooting at and into the body of said MATHEW MOWEN, with a deadly weapon, to wit: a
19 firearm, the said Defendant being responsible under the following theories of criminal liability,
20 to wit: 1) Premeditation and Deliberation; 2) Felony Murder, Defendant and/or TERRELL
21 COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH committing the murder in the
22 perpetration or attempted perpetration of kidnaping and/or robbery; 3) Aiding or Abetting, the
23 Defendant aiding or abetting TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE
24 SMITH by counsel and encouragement and by entering into a course of conduct whereby the
25 said Defendant arrived at 4825 Terra Linda Avenue with TERRELL COCHISE YOUNG and/or
26 SIKIA LAFAYETTE SMITH; the said Defendant entering the residence with TERRELL
27 COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH while Defendant and/or TERRELL
28 COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH were in possession of a firearm;

1 Defendant and/or TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH binding
2 the victim and placing him on the floor of the residence; Defendant and/or TERRELL COCHISE
3 YOUNG and/or SIKIA LAFAYETTE SMITH shooting at and into the body of the said
4 MATHEW MOWEN with a firearm; 4) Conspiracy, by the said Defendant acting pursuant to
5 a conspiracy to commit robbery and/or kidnaping and/or murder with TERRELL COCHISE
6 YOUNG and/or SIKIA LAFAYETTE SMITH, whereby the said Defendant entered the
7 residence with TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH while
8 Defendant and/or TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH were
9 in possession of a firearm or firearms; Defendant and/or TERRELL COCHISE YOUNG and/or
10 SIKIA LAFAYETTE SMITH binding the said MATHEW MOWEN and placing him on the
11 floor of the residence; then Defendant and/or TERRELL COCHISE YOUNG and/or SIKIA
12 LAFAYETTE SMITH shooting at and into the body of the said MATHEW MOWEN with the
13 firearm or firearms.

14 COUNT XIV - MURDER WITH USE OF A DEADLY WEAPON (OPEN MURDER)

15 did, together with TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH,
16 then and there wilfully, feloniously, without authority of law, and with premeditation and
17 deliberation, and with malice aforethought, kill PETER TALAMENTEZ, a human being, by
18 shooting at and into the body of said PETER TALAMENTEZ, with a deadly weapon, to wit: a
19 firearm, the said Defendant being responsible under the following theories of criminal liability,
20 to wit: 1) Premeditation and Deliberation; 2) Felony Murder, Defendant and/or TERRELL
21 COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH committing the murder in the
22 perpetration or attempted perpetration of robbery and/or kidnaping; 3) Aiding or Abetting, the
23 Defendant aiding or abetting TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE
24 SMITH by counsel and encouragement and by entering into a course of conduct whereby the
25 said Defendant arrived at 4825 Terra Linda Avenue with TERRELL COCHISE YOUNG and/or
26 SIKIA LAFAYETTE SMITH; the said Defendant entering the residence with TERRELL
27 COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH while Defendant and/or TERRELL
28 COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH were in possession of a firearm;

1 Defendant and/or TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH binding
2 the victim and placing him on the floor of the residence; Defendant and/or TERRELL COCHISE
3 YOUNG and/or SIKIA LAFAYETTE SMITH shooting at and into the body of the said PETER
4 TALAMENTEZ with a firearm; 4) Conspiracy, by the said Defendant acting pursuant to a
5 conspiracy to commit robbery and/or kidnaping and/or murder with TERRELL COCHISE
6 YOUNG and/or SIKIA LAFAYETTE SMITH, whereby the said Defendant entered the
7 residence with TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH while
8 Defendant and/or TERRELL COCHISE YOUNG and/or SIKIA LAFAYETTE SMITH were
9 in possession of a firearm or firearms; Defendant and/or TERRELL COCHISE YOUNG and/or
10 SIKIA LAFAYETTE SMITH binding the said PETER TALAMENTEZ and placing him on the
11 floor of the residence; then Defendant and/or TERRELL COCHISE YOUNG and/or SIKIA
12 LAFAYETTE SMITH shooting at and into the body of the said PETER TALAMENTEZ with
13 the firearm or firearms.

14 It is the duty of the jury to apply the rules of law contained in these instructions to the
15 facts of the case and determine whether or not the Defendant is guilty of one or more of the
16 offenses charged.

17 Each charge and the evidence pertaining to it should be considered separately. The fact
18 that you may find the defendant guilty or not guilty as to one of the offenses charged should not
19 control your verdict as to any other offense charged.

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2 To constitute the crime charged, there must exist a union or joint operation of an act
3 forbidden by law and an intent to do the act.

4 The intent with which an act is done is shown by the facts and circumstances surrounding
5 the case.

6 Do not confuse intent with motive. Motive is what prompts a person to act. Intent refers
7 only to the state of mind with which the act is done.

8 Motive is not an element of the crime charged and the State is not required to prove a
9 motive on the part of the Defendant in order to convict. However, you may consider evidence
10 of motive or lack of motive as a circumstance in the case.

The Defendant is presumed innocent unless the contrary is proved. This presumption places upon the State the burden of proving beyond a reasonable doubt every material element of the crime charged and that the Defendant is the person who committed the offense.

A reasonable doubt is one based on reason. It is not mere possible doubt but is such a doubt as would govern or control a person in the more weighty affairs of life. If the minds of the jurors, after the entire comparison and consideration of all the evidence, are in such a condition that they can say they feel an abiding conviction of the truth of the charge, there is not a reasonable doubt. Doubt to be reasonable must be actual, not mere possibility or speculation.

If you have a reasonable doubt as to the guilt of the Defendant, he is entitled to a verdict of not guilty.

INSTRUCTION NO. 5A

It is a constitutional right of a defendant in a criminal trial that he may not be compelled to testify. Thus the decision as to whether he should testify is left to the defendant on the advice and counsel of his attorney. You must not draw any inference of guilt from the fact that he does not testify, nor should this fact be discussed by you or enter into your deliberations in any way.

INSTRUCTION NO. 56

If the evidence in this case is subject to two constructions of interpretation, each of which appears to you to be reasonable, and one of which points to the guilt of the defendant, and the other to innocence, it is your duty, to adopt the interpretation which will admit of the defendant's innocence, and reject that which points to guilt.

You will notice the rule applies only when both of the two possible opposing conclusions appear to you to be reasonable. If, on the other hand, one of the possible conclusions should appear to you to be reasonable and the other to be unreasonable, it would be your duty to adhere to the reasonable deduction and to reject the unreasonable, bearing in mind, however, even if the reasonable deduction points to defendant's guilt, the entire proof must be beyond a reasonable doubt to support a verdict of guilty.

INSTRUCTION NO. 6

You are here to determine the guilt or innocence of the Defendant from the evidence in the case. You are not called upon to return a verdict as to the guilt or innocence of any other person. So, if the evidence in the case convinces you beyond a reasonable doubt of the guilt of the Defendant, you should so find, even though you may believe one or more persons are also guilty.

The evidence which you are to consider in this case consists of the testimony of the witnesses, the exhibits, and any facts admitted or agreed to by counsel.

There are two types of evidence; direct and circumstantial. Direct evidence is the testimony of a person who claims to have personal knowledge of the commission of the crime which has been charged, such as an eyewitness. Circumstantial evidence is the proof of a chain of facts and circumstances which tend to show whether the Defendant is guilty or not guilty. The law makes no distinction between the weight to be given either direct or circumstantial evidence. Therefore, all of the evidence in the case, including the circumstantial evidence, should be considered by you in arriving at your verdict.

Statements, arguments and opinions of counsel are not evidence in the case. However, if the attorneys stipulate to the existence of a fact, you must accept the stipulation as evidence and regard that fact as proved.

You must not speculate to be true any insinuations suggested by a question asked a witness. A question is not evidence and may be considered only as it supplies meaning to the answer.

You must disregard any evidence to which an objection was sustained by the court and any evidence ordered stricken by the court.

Anything you may have seen or heard outside the courtroom is not evidence and must also be disregarded.

Every person who, either by day or by night, enters any house, apartment or other building with the intent to commit larceny, assault or battery, or any felony, therein is guilty of "Burglary."

Larceny is defined as the stealing, taking and carrying away of personal goods or property of another with specific intent to permanently deprive the owner thereof.

Assault is defined as an unlawful attempt, coupled with a present ability to commit a violent injury on a person.

Battery is any willful and unlawful use of force or violence upon a person.

The person who unlawfully enters into the aforementioned may reasonably be inferred to have entered with the intent to commit larceny, assault or battery, or any felony, unless the unlawful entry is explained by evidence satisfactory to the jury to have been made without criminal intent.

INSTRUCTION NO. 9

Every person who, in the commission of a burglary, commits any other crime, may be prosecuted for each crime separately.

To prove an entry in establishing the crime of Burglary, the prosecution need only show an entry without the consent of the possessor of the house, room or apartment. Force or a "breaking", as such, is not a necessary element of the crime.

INSTRUCTION NO. //

A conspiracy is an agreement or mutual understanding between two or more persons to commit a crime. To be guilty of conspiracy, a defendant must intend to commit, or to aid in the commission of, the specific crime agreed to. The crime is the agreement to do something unlawful; it does not matter whether it was successful or not.

Where two or more individuals join together in a common design to commit any unlawful act, each is criminally responsible for the acts of his confederates committed in furtherance of the common design. In contemplation of law, the act of one is the act of all. Every conspirator is legally responsible for an act of a co-conspirator that follows as one of the probable and natural consequences of the object of the conspiracy even if it was not intended as part of the original plan and even if he was not present at the time of the commission of such act.

Where the purpose of the conspiracy is to commit a dangerous felony, each member runs the risk of having the venture end in homicide, even if he has forbidden the others to make use of deadly force. Hence, each is guilty of murder if one of them commits homicide in the perpetration of an agreed-upon robbery or attempted perpetration of said offense.

It is not necessary in proving a conspiracy to show a meeting of the alleged conspirators or the making of an express or formal agreement. The formation and existence of a conspiracy may be inferred from all circumstances tending to show the common intent and may be proved in the same way as any other fact may be proved, either by direct testimony of the fact or by circumstantial evidence, or by both direct and circumstantial evidence.

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2 Whenever there is slight evidence that a conspiracy existed, and that the defendant was
3 one of the members of the conspiracy, then the statements and the acts by any member of the
4 conspiracy may be considered by the jury as evidence in the case as to the defendant. This is
5 true even though the statements and acts may have occurred in the absence and without the
6 knowledge of the defendant, provided such statements and acts were knowingly made and done
7 during the continuance of such conspiracy, and in furtherance of some object or purpose of the
8 conspiracy.

INSTRUCTION NO. 16

Once a person joins a conspiracy, that person remains a member until he withdraws from it. A person can withdraw from a conspiracy by taking some positive action which disavowed or defeated the purpose of the conspiracy. It is not enough if the evidence shows that the defendant merely ceased his own activities in furtherance of the conspiracy.

Where two or more persons are accused of committing a crime together, their guilt may be established without proof that each personally did every act constituting the offense charged.

All persons concerned in the commission of a crime who either directly or actively commit the act constituting the offense or who knowingly and with criminal intent aid and abet in its commission or, whether present or not, who advise and encourage its commission, are regarded by the law as principals in the crime thus committed and are equally guilty thereof.

To aid and abet is to assist or support the efforts of another in the commission of a crime.

A person aids and abets the commission of a crime if he knowingly and with criminal intent aids, promotes, encourages or instigates by act or advice, or by act and advice, the commission of such crime.

The state is not required to prove precisely which defendant actually committed the crime and which defendant aided and abetted.

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2 The presence of one at the commission of a crime of another is evidence which can be
3 considered in determining whether or not he is guilty of aiding or abetting, as well as the
4 defendant's presence, companionship, and conduct before, during and after the participation in
5 the criminal act.
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INSTRUCTION NO. 19

Mere presence at the scene of the crime and knowledge that a crime is being committed are not sufficient to establish that the defendant aided and abetted the crime, unless you find beyond a reasonable doubt that the defendant is a participant and not merely a knowing spectator.

Evidence that a person was in the company or associated with one or more other persons alleged or proven to have been members of a conspiracy is not, in itself, sufficient to prove that such person was a member of the alleged conspiracy.

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2 Robbery is the unlawful taking of personal property from the person of another, or in his
3 presence, against his will, by means of force or violence or fear of injury, immediate or future,
4 to his person or property. Such force or fear must be used to obtain or retain possession of the
5 property, or to prevent or overcome resistance to the taking, in either of which cases the degree
6 of force is immaterial.

7 The value of property or money taken is not an element of the crime of Robbery, and it
8 is only necessary that the State prove the taking of some property or money.
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INSTRUCTION NO. 22

If you find the defendant guilty of robbery, you must also determine whether or not a deadly weapon was used in the commission of this crime.

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A deadly weapon is any instrument which, if used in the ordinary manner contemplated by its design and construction, will or is likely to cause substantial bodily harm or death; or any weapon or device, instrument, material or substance which, under the circumstances in which it is used, attempted to be used or threatened to be used, is readily capable of causing substantial bodily harm or death.

You are instructed that a firearm is a deadly weapon.

INSTRUCTION NO. 24

If more than one person commits a robbery, and one of them uses a deadly weapon in the commission of that robbery, each may be convicted of Robbery With Use of a Deadly Weapon, even though he did not personally himself use the weapon.

If you find beyond a reasonable doubt that the defendant committed Robbery With the Use of a Deadly Weapon, then you are instructed that the verdict of Robbery With the Use of a Deadly Weapon is the appropriate verdict.

If, however, you find that a deadly weapon was not used in the commission of the Robbery, but you do find that a Robbery was committed, then you are instructed that the verdict of Robbery Without the Use of a Deadly Weapon is the appropriate verdict.

You are instructed that you cannot return a verdict of both Robbery With the Use of a Deadly Weapon and Robbery Without the Use of a Deadly Weapon.

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Kidnapping is of two degrees-First Degree Kidnapping and Second Degree Kidnapping.

Second Degree Kidnapping is a lesser included offense of First Degree Kidnapping.

Every person who willfully seizes, confines, inveigles, entices, decoys, abducts, conceals, kidnaps or carries away any person by any means whatsoever with the intent to hold or detain, or who holds or detains, the person for:

1) ransom, or reward; or

2) the purpose of committing sexual assault, extortion or robbery upon or from the person; or

3) the purpose of killing the person or inflicting substantial bodily harm upon him; or

4) to exact from relatives, friends, or any other person any money or valuable thing for the return or disposition of the kidnaped person is guilty of Kidnapping in the First Degree.

Every person who wilfully and without authority of law seizes, inveigles, takes, carries away or kidnaps another person with the intent to keep the person secretly imprisoned within the state, or for the purpose of conveying the person out of the state without authority of law, or in any manner held to service or detained against his will, is guilty of kidnapping in the second degree.

It is the fact, not the distance of forcible movement of the victim that constitutes kidnapping. However, a charge of kidnapping and an associated offense will lie only where movement of the victim is over and above that required to complete the associated crime charged.

When associated with a charge of robbery, kidnapping does not occur if the movement is incidental to the robbery and does not increase the risk of harm over and above that necessarily present in the commission of such offense.

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2 The crime of Kidnapping in the First Degree, as charged in this case, is a specific intent
3 crime. A specific intent, as the term implies, means more than the general intent to commit the
4 act. To establish specific intent the state must prove that the defendant knowingly did the act
5 which the law forbids, purposely intending to violate that law.

6 An act is "knowingly" done if done voluntarily and intentionally, and not because of
7 mistake or accident or other innocent reason.

8 The intention or purpose for which the victim was held against his will is a question of
9 fact to be determined by your consideration of the evidence. The intention may be inferred from
10 the defendant's conduct or the conduct of the defendant's co-conspirators and all other
11 circumstances.

INSTRUCTION NO. 28

In order to find the defendant guilty of Kidnaping, the evidence of kidnaping must include either:

- (1) an element of movement; or
- (2) physical restraint; or
- (3) restraint which increases the risk of harm to the victim or has an independent purpose and significance.

INSTRUCTION NO. 296

If the movement of the victim appears to have been incidental to the robbery and without an increase in danger to them; if their detention was only for the short period of time necessary to consummate the robbery, no kidnaping will have occurred.

If you find the defendant guilty of Kidnapping, you must also determine whether he is guilty of First or Second Degree and whether or not a deadly weapon was used in the commission of this crime.

INSTRUCTION NO. 30

You are instructed that you cannot return a verdict of both First Degree Kidnapping with the use of a Deadly Weapon and First Degree Kidnapping without the use of a Deadly Weapon.

The same instruction applies to Second Degree Kidnapping.

In this case the defendant is accused in an Indictment alleging an open charge of murder. This charge includes and encompasses murder of the first degree, murder of the second degree, and voluntary manslaughter.

The jury must decide if the defendant is guilty of any offense and, if so, of which offense.

Murder of the first degree is murder which is perpetrated by means of any kind of willful, deliberate, and premeditated killing. All three elements--willfulness, deliberation, and premeditation--must be proven beyond a reasonable doubt before an accused can be convicted of first-degree murder.

INSTRUCTION NO. 32

Willfulness is the intent to kill. There need be no appreciable space of time between formation of the intent to kill and the act of killing.

Deliberation is the process of determining upon a course of action to kill as a result of thought, including weighing the reasons for and against the action and considering the consequences of the action.

A deliberate determination may be arrived at in a short period of time. But in all cases the determination must not be formed in passion, or if formed in passion, it must be carried out after there has been time for the passion to subside and deliberation to occur. A mere unconsidered and rash impulse is not deliberate, even though it includes the intent to kill.

Premeditation is a design, a determination to kill, distinctly formed in the mind by the time of the killing.

Premeditation need not be for a day, an hour, or even a minute. It may be as instantaneous as successive thoughts of the mind. For if the jury believes from the evidence that the act constituting the killing has been preceded by and has been the result of premeditation, no matter how rapidly the act follows the premeditation, it is premeditated.

The law does not undertake to measure in units of time the length of the period during which the thought must be pondered before it can ripen into an intent to kill which is truly deliberate and premeditated. The time will vary with different individuals and under varying circumstances.

INSTRUCTION NO. 39

The true test is not the duration of time, but rather the extent of the reflection. A cold, calculated judgment and decision may be arrived at in a short period of time, but a mere unconsidered and rash impulse, even though it includes an intent to kill, is not deliberation and premeditation as will fix an unlawful killing as murder of the first degree.

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2 There is a kind of murder which carries with it conclusive evidence of premeditation and
3 malice aforethought. This class of murder is murder committed in the perpetration, or attempted
4 perpetration, of robbery and/or kidnapping. Therefore, a killing which is committed in the
5 perpetration, or attempted perpetration, of robbery and/or kidnapping is deemed to be murder
6 of the first degree, whether the killing was intentional or unintentional or accidental. This is
7 called the Felony-Murder rule.
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Under the Felony Murder rule, in determining whether the killing was committed during the perpetration or attempted perpetration of a robbery and/or kidnapping a test of causation is applied.

Such causation requires that the killing be linked to or part of the series of incidents so as to be one continuous transaction.

The robbery begins the moment the defendant(s) by force or violence or fear of injury places the victim(s) under his fearful domination in an effort to obtain money or property of the victim(s). The robbery continues so long as the victim(s) is subjected to the force or violence or fear of injury originally applied.

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2 All verdicts returned in this case must be unanimous. In considering the offense of
3 Murder of the First Degree, however, you need not be unanimous in finding that the murder was
4 premeditated and deliberate, or that it was perpetrated in the course and furtherance of the
5 perpetration of or attempted perpetration of robbery and/or kidnapping with or without a deadly
6 weapon. It is sufficient that each of you finds, beyond a reasonable doubt, that the murder, under
7 either theory, was murder of the first degree.
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A Murder which is not Murder in the First Degree is Murder of the Second Degree.

The distinguishing feature between first and second degree murder is the presence or absence of premeditation and deliberation. If the unlawful killing is done with malice, but without deliberation and premeditation, that is, without the wilful, deliberate and premeditated intent to take life which is an essential element of First Degree Murder, then the offense is Murder of the Second Degree.

In practical application this means that the unlawful killing of a human being with malice aforethought, but without a deliberately formed and premeditated intent to kill, is Murder of the Second Degree.

If you believe from the evidence beyond a reasonable doubt that the defendant is guilty of Murder, and there is in your minds a reasonable doubt as to which of the two degrees he is guilty, he must be convicted of the lesser offense which is Murder of the Second Degree.

Should you find that the defendant did not commit Murder of either the First or Second degree but believe beyond a reasonable doubt that he is responsible for the homicide, you must determine if that killing was manslaughter.

Voluntary Manslaughter is the unlawful killing of a human being, without malice aforethought and without deliberation or premeditation. It is a killing upon a sudden quarrel or heat of passion, caused by a provocation sufficient to make the passion irresistible.

The provocation required for Voluntary Manslaughter must either consist of a serious and highly provoking injury inflicted upon the person killing, sufficient to excite an irresistible passion in a reasonable person, or an attempt by the person killed to commit a serious personal injury on the person killing.

For the sudden, violent impulse of passion to be irresistible resulting in a killing, which is Voluntary Manslaughter, there must not have been an interval between the assault or provocation and the killing sufficient for the voice of reason and humanity to be heard; for, if there should appear to have been sufficient time for a cool head to prevail and the voice of reason to be heard, the killing shall be attributed to deliberate revenge and determined by you to be murder. The law assigns no fixed period of time for such an interval but leaves its determination to the jury under the facts and circumstances of the case.

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2 The heat of passion which will reduce a homicide to Voluntary Manslaughter must be
3 such an irresistible passion as naturally would be aroused in the mind of an ordinarily reasonable
4 person in the same circumstances. A defendant is not permitted to set up his own standard of
5 conduct and to justify or excuse himself because his passions were aroused unless the
6 circumstances in which he was placed and the facts that confronted him were such as also would
7 have aroused the irresistible passion of the ordinarily reasonable man if likewise situated. The
8 basic inquiry is whether or not, at the time of the killing, the reason of the accused was obscured
9 or disturbed by passion to such an extent as would cause the ordinarily reasonable person of
10 average disposition to act rashly and without deliberation and reflection and from such passion
11 rather than from judgment.
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INSTRUCTION NO. 46

If you find the defendant guilty of Murder or Manslaughter you must also determine whether or not a deadly weapon was used in the commission of that crime.

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If you find beyond a reasonable doubt that a defendant committed Murder of the First Degree with the Use of a Deadly Weapon, then you are instructed that the verdict of Murder of the First Degree with the Use of a Deadly Weapon is the appropriate verdict.

If, however, you find that a deadly weapon was not used in the commission of the Murder, but you do find that a murder was committed, then you are instructed that the verdict of Murder of the First Degree without the Use of a Deadly Weapon is the appropriate verdict.

You are instructed that you cannot return a verdict of both Murder of the First Degree with the Use of a Deadly Weapon and Murder of the First Degree without the Use of a Deadly Weapon.

The same instruction applies to Murder of the Second Degree and Manslaughter.

The credibility or believability of a witness should be determined by his manner upon the stand, his relationship to the parties, his fears, motives, interests or feelings, his opportunity to have observed the matter to which he testified, the reasonableness of his statements and the strength or weakness of his recollections.

If you believe that a witness has lied about any material fact in the case, you may disregard the entire testimony of that witness or any portion of his testimony which is not proved by other evidence.

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A witness who has special knowledge, skill, experience, training or education in a particular science, profession or occupation is an expert witness. An expert witness may give his opinion as to any matter in which he is skilled.

You should consider such expert opinion and weigh the reasons, if any, given for it. You are not bound, however, by such an opinion. Give it the weight to which you deem it entitled, whether that be great or slight, and you may reject it, if, in your judgment, the reasons given for it are unsound.

Although you are to consider only the evidence in the case in reaching a verdict, you must bring to the consideration of the evidence your everyday common sense and judgment as reasonable men and women. Thus, you are not limited solely to what you see and hear as the witnesses testify. You may draw reasonable inferences from the evidence which you feel are justified in the light of common experience, keeping in mind that such inferences should not be based on speculation or guess.

A verdict may never be influenced by sympathy, prejudice or public opinion. Your decision should be the product of sincere judgment and sound discretion in accordance with these rules of law.

INSTRUCTION NO. 51

In your deliberation you may not discuss or consider the subject of punishment. Your duty now is confined to the determination of whether the Defendant is guilty or not guilty.

When you retire to consider your verdict, you must select one of your number to act as foreperson who will preside over your deliberation and will be your spokesperson here in court.

During your deliberation, you will have all the exhibits which were admitted into evidence, these written instructions and forms of verdict which have been prepared for your convenience.

Your verdict must be unanimous. As soon as you have agreed upon a verdict, have it signed and dated by your foreperson and then return with it to this room.

If, during your deliberation, you should desire to be further informed on any point of law or hear again portions of the testimony, you must reduce your request to writing signed by the foreperson. The officer will then return you to court where the information sought will be given you in the presence of, and after notice to, the district attorney and the Defendant and his/her counsel.

Playbacks of testimony are time-consuming and are not encouraged unless you deem it a necessity. Should you require a playback, you must carefully describe the testimony to be played back so that the court recorder can arrange her notes. Remember, the court is not at liberty to supplement the evidence.

Given this ^{8th} day of June, 2010,
Judge Jeffrey M. Brown

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1 VER

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3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

FILED IN OPEN COURT

JUN 09 2000 @ 4:10 PM

5 THE STATE OF NEVADA,

6 Plaintiff,

7 -vs-

8 DONTÉ JOHNSON,

9
10 Defendant.
11

SHIRLEY B. PARRAGUIRRE, CLERK

BY Carole D'Aloia
CAROLE D'ALOIA DEPUTY

Case No. C153154
Dept. No. V
Docket H

12
13 VERDICT

14 We, the jury in the above entitled case, find the defendant DONTÉ JOHNSON, as
15 follows:

16 COUNT I - Burglary While in Possession of a Firearm

17 *(please check the appropriate box, select only one)*

18 ☒ Guilty of Burglary While in Possession of a Firearm

19 ☐ Guilty of Burglary

20 ☐ Not Guilty
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22 We, the jury in the above entitled case, find the defendant DONTÉ JOHNSON, as
23 follows:

24 COUNT II - Conspiracy to Commit Robbery and/or Kidnapping and/or Murder

25 *(please check the appropriate box, select only one)*

26 ☒ Guilty of Conspiracy to Commit Robbery and/or Kidnapping and/or Murder

27 ☐ Not Guilty
28

1 We, the jury in the above entitled case, find the defendant DONTE JOHNSON, as
2 follows:

3 **COUNT III** - Robbery With Use of a Deadly Weapon

4 *(please check the appropriate box, select only one)*

- 5 ☒ Guilty of Robbery With Use of a Deadly Weapon
6 ☐ Guilty of Robbery
7 ☐ Not Guilty
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9 We, the jury in the above entitled case, find the defendant DONTE JOHNSON, as
10 follows:

11 **COUNT IV** - Robbery With Use of a Deadly Weapon

12 *(please check the appropriate box, select only one)*

- 13 ☒ Guilty of Robbery With Use of a Deadly Weapon
14 ☐ Guilty of Robbery
15 ☐ Not Guilty
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17 We, the jury in the above entitled case, find the defendant DONTE JOHNSON, as
18 follows:

19 **COUNT V** - Robbery With Use of a Deadly Weapon

20 *(please check the appropriate box, select only one)*

- 21 ☒ Guilty of Robbery With Use of a Deadly Weapon
22 ☐ Guilty of Robbery
23 ☐ Not Guilty
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1 We, the jury in the above entitled case, find the defendant DONTE JOHNSON, as
2 follows:

3 **COUNT VI** - Robbery With Use of a Deadly Weapon

4 *(please check the appropriate box, select only one)*

- 5 ☒ Guilty of Robbery With Use of a Deadly Weapon
6 ☐ Guilty of Robbery
7 ☐ Not Guilty
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9 We, the jury in the above entitled case, find the defendant DONTE JOHNSON, as
10 follows:

11 **COUNT VII** - First Degree Kidnapping With Use of a Deadly Weapon (Jeffrey Biddle)

12 *(please check the appropriate box, select only one)*

- 13 ☒ Guilty of First Degree Kidnapping with Use of a Deadly Weapon
14 ☐ Guilty of First Degree Kidnapping
15 ☐ Guilty of Second Degree Kidnapping with Use of a Deadly Weapon
16 ☐ Guilty of Second Degree Kidnapping
17 ☐ Not Guilty
18

19 We, the jury in the above entitled case, find the defendant DONTE JOHNSON, as
20 follows:

21 **COUNT VIII** - First Degree Kidnapping With Use of a Deadly Weapon (Mathew Mowen)

22 *(please check the appropriate box, select only one)*

- 23 ☒ Guilty of First Degree Kidnapping with Use of a Deadly Weapon
24 ☐ Guilty of First Degree Kidnapping
25 ☐ Guilty of Second Degree Kidnapping with Use of a Deadly Weapon
26 ☐ Guilty of Second Degree Kidnapping
27 ☐ Not Guilty
28

1 We, the jury in the above entitled case, find the defendant DONTE JOHNSON, as
2 follows:

3 **COUNT IX** - First Degree Kidnapping With Use of a Deadly Weapon (Tracey Gorringer)

4 *(please check the appropriate box, select only one)*

- 5 ☒ Guilty of First Degree Kidnapping with Use of a Deadly Weapon
6 ☐ Guilty of First Degree Kidnapping
7 ☐ Guilty of Second Degree Kidnapping with Use of a Deadly Weapon
8 ☐ Guilty of Second Degree Kidnapping
9 ☐ Not Guilty

10
11 We, the jury in the above entitled case, find the defendant DONTE JOHNSON, as
12 follows:

13 **COUNT X** - First Degree Kidnapping With Use of a Deadly Weapon (Peter Talamentez)

14 *(please check the appropriate box, select only one)*

- 15 ☒ Guilty of First Degree Kidnapping with Use of a Deadly Weapon
16 ☐ Guilty of First Degree Kidnapping
17 ☐ Guilty of Second Degree Kidnapping with Use of a Deadly Weapon
18 ☐ Guilty of Second Degree Kidnapping
19 ☐ Not Guilty

20
21 We, the jury in the above entitled case, find the defendant DONTE JOHNSON, as
22 follows:

23 **COUNT XI** - Murder With Use of a Deadly Weapon (Jeffrey Biddle)

24 *(please check the appropriate box, select only one)*

- 25 ☒ Guilty of Murder of the First Degree with Use of a Deadly Weapon
26 ☐ Guilty of Murder of the First Degree
27 ☐ Guilty of Murder of the Second Degree with Use of a Deadly Weapon
28 ☐ Guilty of Murder of the Second Degree

- 1 ☐ Guilty of Voluntary Manslaughter With Use of a Deadly Weapon
2 ☐ Guilty of Voluntary Manslaughter
3 ☐ Not Guilty
4

5 We, the jury in the above entitled case, find the defendant DONTE JOHNSON, as
6 follows:

7 **COUNT XII** - Murder With Use of a Deadly Weapon (Tracey Gorringer)

8 *(please check the appropriate box, select only one)*

- 9 ☒ Guilty of Murder of the First Degree with Use of a Deadly Weapon
10 ☐ Guilty of Murder of the First Degree
11 ☐ Guilty of Murder of the Second Degree with Use of a Deadly Weapon
12 ☐ Guilty of Murder of the Second Degree
13 ☐ Guilty of Voluntary Manslaughter With Use of a Deadly Weapon
14 ☐ Guilty of Voluntary Manslaughter
15 ☐ Not Guilty
16

17 We, the jury in the above entitled case, find the defendant DONTE JOHNSON, as
18 follows:

19 **COUNT XIII** - Murder With Use of a Deadly Weapon (Mathew Mowen)

20 *(please check the appropriate box, select only one)*

- 21 ☒ Guilty of Murder of the First Degree with Use of a Deadly Weapon
22 ☐ Guilty of Murder of the First Degree
23 ☐ Guilty of Murder of the Second Degree with Use of a Deadly Weapon
24 ☐ Guilty of Murder of the Second Degree
25 ☐ Guilty of Voluntary Manslaughter With Use of a Deadly Weapon
26 ☐ Guilty of Voluntary Manslaughter
27 ☐ Not Guilty
28

1 We, the jury in the above entitled case, find the defendant DONTE JOHNSON, as
2 follows:

3 **COUNT XIV** - Murder With Use of a Deadly Weapon (Poter Talamentez)

4 *(please check the appropriate box, select only one)*

- 5 ☒ Guilty of Murder of the First Degree with Use of a Deadly Weapon
6 ☐ Guilty of Murder of the First Degree
7 ☐ Guilty of Murder of the Second Degree with Use of a Deadly Weapon
8 ☐ Guilty of Murder of the Second Degree
9 ☐ Guilty of Voluntary Manslaughter With Use of a Deadly Weapon
10 ☐ Guilty of Voluntary Manslaughter
11 ☐ Not Guilty

12
13 DATED this 9 day of JUNE, 2000.

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Shirley S. Riggins
CLERK

1 **ORDR**
2 PHILIP J. KOHN
3 CLARK COUNTY SPECIAL PUBLIC DEFENDER
4 Nevada Bar #0556
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DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,
Plaintiff,

vs.

DONTE JOHNSON,
ID# 1586283

Defendant.

CASE NO. C153154

DEPT. NO. V

ORDER FOR CONTACT VISIT

This matter having come before the Court upon Defendant's Ex Parte
Application, and good cause appearing therefor,

IT IS HEREBY ORDERED that Defendant, DONTE JOHNSON, be allowed
a contact visit with Johnnisha White (sister), SS#572-55-8065, DOB 4/12/79 and

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COUNTY CLERK

JUN 12 2000

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GROVER - CROSS

1 MR. DASKAS: I'll pass the witness, Judge.

2 CROSS-EXAMINATION

3 BY MR. FIGLER:

4 Q Mr. Grover, you indicated that you retrieved
5 numerous latents -- latent prints in this case?

6 A Yes, I did.

7 Q I think you said hundreds?

8 A Not me personally but --

9 Q You and your team --

10 A That we'd -- okay. I didn't say that I recovered
11 hundreds but we processed hundreds of items --

12 Q Okay.

13 A -- is what I said.

14 Q Do you know how many were retrieved -- how latent
15 prints were retrieved?

16 A Ballpark?

17 Q Sure.

18 A Maybe around a hundred.

19 Q About a hundred?

20 A I personally lifted about -- I could tell you
21 exactly how many I lifted if that would help?

22 Q And how many people were lifting?

23 A Probably at least four or five.

24 Q Okay. How many did you do?

25 A I recovered five latents there.

III-252

GROVER - CROSS

1 Q Okay. But your understanding, from your presence
2 at this investigation, that about a hundred would be an
3 accurate --

4 A It's -- I don't know how accurate that is, but there
5 was a lot.

6 Q Now, you would agree that latent prints could still
7 exist in that house that you and your colleagues didn't find,
8 isn't that correct?

9 A Is that possible?

10 Q Yes.

11 A Yes, that's possible.

12 Q Okay. Even items that you looked at you may not
13 have gotten every print off those, isn't that correct?

14 A That's possible.

15 Q Now, what's a palm print?

16 A Basically the same thing as a fingerprint only on
17 your palm. Fingerprint is the friction skin on the tips of
18 your finger. You also have friction skin on the palms of your
19 hands and on the soles of your feet and toes also. A palm
20 print is the friction skin on your palm.

21 Q Okay. Are you instructed to try to maintain or find
22 palm prints as well?

23 A Yes, any type of friction print.

24 Q Okay. Because that may turn out to have some sort
25 of value for evidence or something like that?

III-253

GROVER - CROSS

1 A Yes, it could.

2 Q Now, we use that word evidence a lot. When we say
3 that word evidence, there's no magic meaning to it, it just
4 means items found, isn't that correct?

5 A Generally.

6 Q And they may and may not turn out to have anything
7 to do with a particular case, correct?

8 A That's true.

9 Q Okay. Now, you say that you don't typically
10 preserve items that you take fingerprints off of, correct?

11 A Not always.

12 Q Okay. Sometimes you do that?

13 A Sometimes we do.

14 Q And as the prosecutor, Mr. Daskas, said, if you know
15 that they have evidentiary value possibly, you're definitely
16 going to keep those things, correct?

17 A Right.

18 Q Okay. So, if later information comes to light that
19 a particular piece of evidence is valuable and you didn't
20 preserve it, that's kind of an "opps," right?

21 A Well, that's one of the reasons why we photograph
22 the item so we, in a way, we have preserved it on film.

23 Q But you know, you can't process a photograph to see
24 if what's depicted inside may have had any trace drugs in it,
25 isn't that true?

III-254

GROVER - CROSS

1 A That'd be true.

2 Q Okay. Now, an item such as -- well, let's use the
3 example, a cigar box. That's a transitory item isn't it?

4 A Meaning?

5 Q It could easily be transported from one location to
6 another?

7 A Oh, certainly.

8 Q Okay. Like a styrofoam cup is a transfer item,
9 correct?

10 A Sure.

11 Q Now, there is a possibility that my fingerprints
12 will show up on this item now that I'm holding it in my hand,
13 correct?

14 A Yes, there is.

15 Q Okay. Now, Mr. Sciscento here could pick up that
16 item and there's a possibility his fingerprints won't show up
17 on that, isn't that correct?

18 A That's correct also.

19 Q Okay. And like I said, transfer, he could then take
20 that and go, God knows where with it, isn't that correct?

21 A That's correct, he could.

22 MR. FIGLER: No further questions, Judge.

23 THE COURT: Anything further?

24 MR. DASKAS: One question.

25 //

III-255

GROVER - REDIRECT / BUCKLIN - DIRECT

REDIRECT EXAMINATION

1
2 BY MR. DASKAS:

3 Q Mr. Grover, can you tell me, if you know, how many
4 man hours in total were spent at this crime scene by crime
5 scene analysts with Metro?

6 A I think it was in the vicinity of a hundred hours.

7 MR. DASKAS: Nothing else, Judge.

8 MR. FIGLER: Nothing further.

9 THE COURT: Thank you, sir. You're excused.
10 Call your next witness, please.

11 MR. GUYMON: Bob Bucklin.

12 THE COURT: Would you approach the bench while Dr.
13 Bucklin's coming in? Where's Stony?

14 (Off-record bench conference)

15 ROBERT BUCKLIN, M.D., PLAINTIFF'S WITNESS, IS SWORN

16 THE CLERK: Please be seated and state your full
17 name and spell your last name for the record.

18 THE WITNESS: I'm Dr. Robert Bucklin, B-U-C-K-L-I-N.

19 DIRECT EXAMINATION

20 BY MR. GUYMON:

21 Q Dr. Bucklin, tell me something, are you retired now?

22 A I'm retired officially but I haven't slipped into it
23 very smoothly yet.

24 Q All right. Let me ask you, what -- before you
25 retired, if in fact that's what we may refer to you as, what

III-256

1 was your profession?

2 A I was a forensic pathologist, a doctor/lawyer for
3 sixty years. Retired last December.

4 Q What is a forensic pathologist?

5 A Well, first of all a pathologist is a physician who
6 is interested in making a diagnosis of diseased conditions by
7 examining the body or the body organs of a person or the
8 secretions of that person. Most pathologists work in
9 laboratories or hospitals. Forensic pathology is a specialty
10 where we're concerned with the determination of death in
11 persons who come under the coroner or medical examiner's
12 jurisdiction. Bodies found, bodies shot, bodies stabbed,
13 natural deaths, unsuspected. Forensic pathology requires that
14 those cases be examined and a determination be made not only
15 of the cause of death but also the manner of death.

16 Q And just what do you mean by the cause of the death
17 versus the manner of death?

18 A A cause of death is a physical reason why the person
19 died, a gunshot wound to the head. The manner of death is
20 accident, suicide, homicide; obviously, not natural.

21 Q And tell me this, I take it you have some special
22 training in order to be a forensic pathologist?

23 A Yes.

24 Q Yes or no?

25 A Yes.

BUCKLIN - DIRECT

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2 A I was a forensic pathologist, a doctor/lawyer for
3 sixty years. Retired last December.

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11 persons who come under the coroner or medical examiner's
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18 A A cause of death is a physical reason why the person
19 died, a gunshot wound to the head. The manner of death is
20 accident, suicide, homicide; obviously, not natural.

21 Q And tell me this, I take it you have some special
22 training in order to be a forensic pathologist?

23 A Yes.

24 Q Yes or no?

25 A Yes.

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BUCKLIN - DIRECT

1 Q Okay. And have you ever qualified as an expert in
2 the field of forensic pathology?

3 A Yes, sir.

4 Q About how many times have you qualified as an expert
5 in forensic pathology?

6 A For a period of over sixty years I've been
7 qualified. The number of times I wouldn't begin to count.

8 Q Okay.

9 MR. GUYMON: And at this point in time we've offer
10 him as an expert in the field of forensic pathology without
11 going through his education, formal training if that's all
12 right?

13 THE COURT: Stipulated, Mr. Sciscento?

14 MR. SCISCENTO: Yes, Your Honor.

15 THE COURT: Okay. That just means that rather than
16 sit here and listen to the years of training that he's had,
17 both parties admit to submit him to you as an expert. All
18 that means is, unlike most witnesses, he can give his answers
19 in the form of opinions and what weight you give those
20 opinions, as you'll hear in one of the jury instructions,
21 hopefully tomorrow, is up to you.

22 Go ahead, Mr. Guymon.

23 BY MR. GUYMON:

24 Q Doctor, tell me this, as an expert for sixty years
25 in the field of forensic pathology, how many autopsies have

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BUCKLIN - DIRECT

1 you done?

2 A In excess of twenty-five thousand.

3 Q And tell me briefly, before -- you used to work at
4 the Clark County Medical Examiner's office, is that correct?

5 A For three years, between '95 and '98.

6 Q Taking you back, just very briefly, the other
7 offices you worked for?

8 A L.A. County Coroner in Los Angeles, the Saginaw
9 County Medical Examiner. I was chief medical examiner in
10 Galveston, Texas and I was chief medical examiner in Austin,
11 Texas. I worked for ten years as the deputy medical examiner
12 in Harris County, Houston and I started off at twenty some
13 years in Michigan as their hospital pathologist and worked
14 with the coroner up there.

15 Q I take it by the numerous jobs you've had in the
16 field you've also testified in other states as an expert, the
17 state of California, Michigan, Texas, and the likes?

18 A That's correct.

19 Q And how many states in total do you think you've
20 testified in, Doctor?

21 A Fifteen or twenty, at least.

22 Q All right. Tell me what the purpose of an autopsy
23 is?

24 A An autopsy is done to determine why a person died
25 and under medical, legal circumstances such as these cases,

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BUCKLIN - DIRECT

1 the manner of death, whether someone else did it or whether he
2 did it himself.

3 Q While employed at the Clark County Medical
4 Examiner's Office, did you have a particular procedure that
5 you followed when you performed an autopsy?

6 A Yes, it was routinized procedure which we followed
7 in every case. Consisted first of reviewing the report
8 prepared by the coroner's investigator which outlined the
9 circumstances of death. This person had actually gone to the
10 scene and determined the information related to the death of
11 the individual and typed it up into a formal report. That was
12 available to us before we started the examination. The
13 autopsy itself starts off with a physical examination of the
14 body, simple things as the height, the sex, the skin color,
15 and the weight and so on are all recorded. And then the
16 body's examined from head to toe, front to back to see if
17 there's anything abnormal about the skin surfaces. If there
18 are any injuries they're recorded and photographed, there's
19 any kind of a disease condition of the skin this is described
20 and noted. Any old scars are remarked upon and measured.

21 Then the examination continues to the internal
22 portion. The internal examination requires that you make
23 incisions into the body cavities. There's one incision which
24 is made into the chest and continues down into the abdomen and
25 by reflecting the skin and the rib cage we can see the content

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BUCKLIN - DIRECT

1 of the chest cavity, the heart and the lungs. And the same
2 incision allows us to see the content of the abdomen. And
3 each of the organs is identified as it lies in the body. Any
4 excess fluids are recorded. Samples are taken of blood and
5 urine at that time with a large syringe in the heart and the
6 bladder. And each organ is taken out, removed anatomically,
7 dissected, and described into a dictating machine. Simple
8 things like weight and size and structures present are
9 recorded.

10 The same thing is done in the neck. The neck organs
11 are opened by moving -- removing the skin upward toward the
12 chin and taking out the neck organs, the tongue and the larynx
13 and the tracheae and the vocal cords. And then the last
14 incision is over the top of the head to remove the brain.

15 All these organs, as I say, are described in detail,
16 photographs are taken if necessary and diagrams are made in
17 most instances. When that's all done, my routine is to
18 establish an anatomic diagnosis to list the condition which I
19 found, I found this and this and this and this, and then to
20 express an opinion into the dictating machine as to the cause
21 of death and the manner of death. Whether or not this was
22 self-inflicted, whether this was a homicide, whether it was a
23 suicide or whatever.

24 Q And, Doctor, in this particular case did you, in
25 fact, perform an autopsy on August 15th, 1998 on an individual

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BUCKLIN - DIRECT

1 that to learned to be Jeffrey Charles Biddle?

2 A Yes, I did.

3 Q Tell me, when you performed that autopsy, was it at
4 the Clark County Medical Examiner's Office?

5 A Yes, sir.

6 Q Was Jeffrey Biddle the first of the four boys that
7 you did an autopsy on that day?

8 A I believe so, yes, sir.

9 Q Who attended that autopsy, Doctor?

10 A Detectives Hefner, Thowsen, and Buczek from Metro;
11 Crime Scene Analyst Morton, and Sheree Norman from the Metro
12 Police Department.

13 Q And is it common, Doctor, for the detectives to
14 attend the autopsy?

15 A Yes.

16 Q And --

17 MR. FIGLER: Your Honor, I'm sorry, maybe we -- Your
18 Honor, perhaps we can move the microphone a little closer,
19 about there.

20 MR. GUYMON: Is that better?

21 BY MR. GUYMON:

22 Q Doctor, you indicated that it's common for the
23 detectives to attend an autopsy?

24 A Yes, they're required to by their department.

25 Q All right. Is it also common for crime scene

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BUCKLIN - DIRECT

1 analyst to attend?

2 A Yes.

3 Q And why have a crime scene analyst there?

4 A The crime scene analyst takes care of any of the
5 samples that -- which you might have; any bullets you might --
6 which we might find; any hair samples or blood samples are
7 taken by that person.

8 Q Okay. Any items of evidence that you find during
9 the autopsy, who takes them?

10 A I hand them directly to the crime scene analyst who
11 records them and takes them with him or her.

12 Q And in this case did you, in fact, hand items of
13 evidence to Sheree Norman during the autopsies --

14 A Yes, sir.

15 Q -- of these four boys?

16 A I did, yes.

17 Q Tell me this, Doctor, did you attempt on all four of
18 the boys to obtain a blood sample for DNA testing
19 subsequently?

20 A Blood was taken, I don't -- I think it may be still
21 be available for DNA.

22 Q Okay.

23 A It wasn't ordered at the time of the autopsies.

24 Q But the blood that was taken, you would have given
25 to Sheree Norman who would impound it then?

III-263

BUCKLIN - DIRECT

1 A Yes, either --

2 Q With any --

3 A -- Sheree Norman or the Associated Pathology
4 Laboratories. One of those two would have 'em.

5 Q Okay. And was blood taken for each one of the four
6 decedents in this case?

7 A Yes.

8 Q All right. And you indicated that Sheree Norman
9 took some photographs?

10 A Yes, she did.

11 Q All right. Will photographs assist you in
12 describing your findings in this case?

13 A Yes.

14 MR. FIGLER: Could we approach, Your Honor?

15 THE COURT: Sure.

16 (Off-record bench conference)

17 THE COURT: Go ahead.

18 BY MR. GUYMON:

19 Q Doctor, showing you what has been marked as State's
20 Proposed Exhibit 135, 136, 137, 145, and 146. Do those
21 photographs fairly and accurately depict Jeffrey Biddle in the
22 condition you found him in on August 15th, 1998, prior to
23 conducting the autopsy?

24 A Yes.

25 MR. GUYMON: I'd move for the admission of those

III-264

BUCKLIN - DIRECT

1 particular photographs, Your Honor.

2 MR. SCISCENTO: What was the number, Your Honor?

3 I'm sorry.

4 THE CLERK: 135, 136, 137, 145, and 146.

5 MR. SCISCENTO: No objection. Other than the
6 objections which --

7 THE COURT: Yeah, the -- they're all received.

8 (Plaintiff's Exhibit Nos. 135, 136, 137, 145, 146 admitted)

9 BY MR. GUYMON:

10 Q Now then, Doctor, can you tell me first of all did
11 you do an external examination of Jeffrey Biddle?

12 A I did.

13 Q Can you tell me his height, size, and weight?

14 A Mr. Biddle was a Caucasian male, hundred and
15 seventy-three pounds, twenty years of age, sixteen inches from
16 crown to heel, five foot eight.

17 Q And when the body came to you I note that there's a
18 photograph there -- seconds -- there's a wallet associated
19 with Jeffrey Biddle?

20 A Yes.

21 Q They're attached to his clothes, is that correct?

22 A The wallet's apparently lying on the clothing.

23 Q Okay. And what would have been done with the
24 wallet, Doctor?

25 A That would have been given to Sheree Norman as well.

III-265

BUCKLIN - DIRECT

1 Q Okay. And --

2 A I didn't handle that physically myself.

3 Q And, Doctor, if I could reach across you and ask you
4 in State's Exhibits --

5 A Mm-hmm.

6 Q -- 136, is that, in fact, the clothing items that
7 were removed from the body of Jeffrey Biddle?

8 A Yes.

9 Q The wallet included, I take it?

10 A Yes.

11 Q All right. Now then, Doctor, in doing your external
12 examination can you tell us what your significant findings
13 were?

14 A The significant finding was the fact that the body
15 had been restrained by duct tape, which is around the
16 clothing, around the ankles, and around the wrists. The body
17 itself had an entrance gunshot wound in the right side of the
18 back of the scalp. It was two inches to the right of the
19 midline and the plane five inches below the top of the head.
20 The wound --

21 Q Doctor, is there a photograph that's there that
22 actually depicts the gunshot wound?

23 A Yes, sir.

24 Q Tell me was -- in that particular photograph,
25 there's some hair that's been taken off the head, is that

III-266

BUCKLIN - DIRECT

1 correct?

2 A Correct.

3 Q Who shaved the head of Jeffrey Biddle in that area?

4 A The autopsy technician.

5 Q Okay. With the exception of the autopsy technician
6 shaving that area, is that as Jeffrey Biddle appeared?

7 A Yes.

8 Q And what exhibit number is that one?

9 A 146.

10 Q Okay. And 146 then, would fairly and accurately
11 depict that gunshot wound?

12 A It does.

13 Q Okay. Now, Doctor, can, with the Court's
14 permission, can you come forward down in front of the jury and
15 show them what you're referring to when you say a gunshot
16 wound to the head?

17 MR. SCISCENTO: Your Honor, we object to the
18 location of the evidence based on the discussion we had at the
19 bench.

20 THE COURT: Come on, go ahead.

21 MR. SCISCENTO: We will renew at the time of --

22 THE WITNESS: This is the gunshot wound to the head,
23 very clearly seen here from --

24 COURT RECORDER: Doctor, could you keep your voice
25 up, please?

III-267

BUCKLIN - DIRECT

1 BY MR. GUYMON:

2 Q I need you to speak real, real loudly, Doctor.

3 MR. SCISCENTO: Your Honor, I don't know if there's
4 been a question presented -- the evidence and Dr. Bucklin's
5 speaking to the jury. Is he in response to a question?

6 THE COURT: I think he said to -- yes.

7 THE WITNESS: This is a gunshot wound of entrance
8 which is very clearly shown on the right side of the back of
9 the head. This wound's a half an inch by five eighth's in
10 diameter. It shows some charring of its borders but there's
11 very little evidence of sooting in the tissues around it.

12 BY MR. GUYMON:

13 Q When you say charring of the borders, what are you
14 referring to, Doctor?

15 A I'm referring to the brownish/black discoloration
16 around the borders of the wound. That happens when the bullet
17 enters the skin. The bullet leaving the gun is hot as it
18 passes through the gun barrel and it chars the skin and the
19 underlying tissue for a short distance. The extent of this
20 will depend upon how close the gun was to the skin. The
21 closer it -- the gun is, the more charring might be noted.

22 Q And, Doctor, approximately how many times have you
23 seen gunshot wounds to the head in your career of sixty years?

24 A Several thousand.

25 Q And based on the examination that you did of Jeffrey

III-268

BUCKLIN - DIRECT

1 Biddle's head, can you tell us how far or near the gun would
2 have been when he received this particular wound?

3 MR. SCISCENTO: Your Honor, I object. I don't think
4 that this -- the Doctor's an expert as for distance of the
5 gun, the firing.

6 THE COURT: It's typical for a forensic pathologist.
7 Overruled.

8 THE WITNESS: This is a fairly close gunshot wound.
9 It's not a touching wound because if it were there would be
10 some splitting of the skin. The gases from the gun would
11 expand the skin. It's a close wound, a near contact wound and
12 I would put it in the matter of an inch or so, the gun being
13 about an inch or so from the skin surface.

14 BY MR. GUYMON:

15 Q Okay. Doctor, if you want to be seated again, if
16 it's easier now.

17 MR. FIGLER: Let the record reflect that the
18 photograph was shown the jury and held up solid for two
19 minutes, please?

20 THE COURT: I don't know if it was two minutes. It
21 was shown for the jury.

22 BY MR. GUYMON:

23 Q Doctor, tell me other than the gunshot wound to the
24 head and the physical restraints, were there other -- any
25 other significant external findings on Jeffrey Biddle?

III-269

BUCKLIN - DIRECT

1 A No.

2 Q Did you do an internal examination of Jeffrey .
3 Biddle?

4 A Yes.

5 Q Just tell me, Doctor, what your significant findings
6 were of your internal examination?

7 A There was nothing significance found in the chest or
8 in the abdomen or in the front part of the neck. Those organs
9 were all essentially normal. The significant changes were
10 related to the gunshot wound which we've just seen in a
11 picture. This bullet entered the head, going in a back to
12 front direction. The bullet fragmented, it broke up as it
13 entered the skull. One of the metal fragments went upward
14 into the right lobe of the cerebellum and then into the left
15 cortex of the brain. I recovered that fragment. The major
16 portion of the bullet went downward through the skull base and
17 the bullet pieces were found in the upper part of the next
18 below the skull base.

19 Q You say the bullet traveled front to back in what
20 direction beyond front to back?

21 A From -- well, went -- it went slightly toward to the
22 right. From left toward right.

23 Q Okay. And you indicated there were some bullet
24 fragments that you removed from the brain?

25 A Yes, from the brain and more from the neck.

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1 Q Is there a photograph there of the bullet fragments
2 that you actually removed? Can you refer to the number and
3 show the jury where it is you are referring -- you're stating
4 as bullet fragments?

5 A This is Exhibit 135 and it shows three bullet
6 fragments here which were recovered from the head and one
7 which I recovered from the back of the neck.

8 Q All right. And, Doctor, in your experience over
9 sixty years doing autopsies, is it common for a bullet to
10 fragment where it enters into the head?

11 A Yes, it is. It depends upon the ammunition very
12 much but it's not uncommon.

13 Q Can you tell me anything about this ammunition based
14 on your examination and your retrieving of it?

15 A I'm not sure, quite, what you want me to --

16 Q Okay. Let me ask you this, were you able to tell
17 from the size of the wound from the back of the head, whether
18 this was a small or large caliber handgun?

19 MR. SCISCENTO: Your Honor, I'm going to object.

20 BY MR. GUYMON:

21 Q Or weapon at all?

22 MR. SCISCENTO: I don't think the Doctor's an expert
23 in gun -- determining the caliber of a gun or the entrance --
24 he can tell you the diameter of it, I understand that.

25 THE COURT: Overruled.

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BUCKLIN - DIRECT

1 MR. GUYMON: Judge, I thought in the interest of
2 time we had a stipulation to his qualifications. I'm happy to
3 go through the qualifications.

4 MR. SCISCENTO: I'll withdraw that, Your Honor.
5 BY MR. GUYMON:

6 Q Doctor, are you able to tell us anything about the
7 actual size of that hole in Jeffrey Biddle, are you able to
8 tell us anything about the size or caliber of the weapon?

9 A There are some things that you can and some things
10 which you cannot. You can tell a very tiny bullet hole from a
11 .22 pretty clearly from a large hole made by a .45. In
12 between it's not always so easy. It's very difficult to
13 distinguish say a .32 from a .38 or a .38 from a 9 millimeter.
14 But this bullet is in the large range which would -- I would
15 be thinking in terms of .38 caliber or 9 millimeter, in that
16 range -- that size.

17 Q Doctor, can you tell how much blood loss Jeffrey
18 Biddle would have had from a wound such as this to the head?

19 A He may not have had a lot of blood loss externally.
20 The bleeding would come from the scalp and from the veins
21 underneath the scalp and there should be a dripping of blood
22 down. I couldn't -- wouldn't try and estimate to you how much
23 might have come from those. His position was head down at the
24 time he came to the coroner's office and I believe that was
25 the position he was in when he was shot. So the head -- the

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1 blood, if there wasn't a lot at the scene, could well -- very
2 well have accumulated in the body.

3 Q Doctor, based on your expertise and the years of
4 experience, can you tell me how long Jeffrey Biddle would have
5 been able to live after sustaining such an injury?

6 A I think he would have died very quickly, in a matter
7 of minutes, one minute. Something in that range. I don't
8 think he would have lived any longer. He would have been
9 unconscious immediately, as soon as the bullet struck the
10 brain and his death would have happened quite quickly.

11 Q And, Doctor, were you -- based on your external and
12 internal examination, were you able to establish a manner of
13 death?

14 A The manner was homicide based on the circumstances
15 of the wrapping of the body and the circumstance of the death.

16 Q And the cause of Jeffrey Biddle's death?

17 A The cause was gunshot wound to the head.

18 Q Let me go now to Tracey Gorringer. Did you also
19 conduct an autopsy of Tracey Gorringer or Gorringer?

20 A Yes, I did.

21 Q And tell me, Doctor, what was the size of Tracey
22 Gorringer?

23 A Tracey was a Caucasian male, he measured 68 inches
24 in height, 158 pounds, and was a --

25 Q Can you --

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1 A -- a normal male.

2 Q Can you approximate Tracey's age?

3 A I didn't in the autopsy.

4 Q I'm giving you photographs -- I'm sorry --
5 photographs 147, 148, and 151. Do you recognize those
6 particular photographs?

7 A Yes, I do.

8 Q Do they fairly and accurately depict Tracey Gorringer
9 as you saw him on August 15th, 1998?

10 A Yes, they do.

11 MR. GUYMON: I would move for the admission of 147,
12 148, and 151.

13 MR. SCISCENTO: Your Honor, we have a continuing
14 objection as to --

15 THE COURT: Yeah, sure. They'll be admitted.

16 (Plaintiff's Exhibit Nos. 147, 148 and 151 admitted)

17 BY MR. GUYMON:

18 Q Now, then, Doctor, did you do an external
19 examination of Tracey Gorringer?

20 A Yes, I did.

21 Q And tell me what your significant findings were as
22 it relates to Tracey Gorringer.

23 A The most significant finding was a gunshot wound of
24 entrance, which was located in the occipital portion, the back
25 portion of the skull, at a point 2 1/2 inches from the plane

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1 of the crown and right in the midline.

2 Other significant findings were the presence of a
3 marked hemorrhage into the upper lid of the right eye, a
4 lesser degree of hemorrhage in the left eye. There was blood
5 in the nostrils, which indicates the track of the bullet.

6 Q And, Doctor, is there an actual photograph that
7 shows the location of that particular entry wound?

8 A Okay. Yes, this is Exhibit 151.

9 Q From where you're seated, can you hold that up and
10 show the jury just where that entry wound was?

11 A This was located in the back of the head, in the
12 occipital portion of the head, right in the midline. It's a
13 round wound, and just a single entrance wound.

14 Q Can you tell me, Doctor, in relationship to the
15 entry wound on Jeffrey Biddle, how did this wound appear in
16 relationship to size?

17 A The size of this one was 3/8 of an inch in diameter,
18 which is essentially the same as Jeff Biddle's, it was a half
19 an inch and that's very close.

20 Q Were there any charrings --

21 A This shows --

22 Q -- at the margin here?

23 A This shows charring of the -- of the borders of the
24 wound.

25 Q And --

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1 A I didn't find any soot or powder or stippling on
2 this one. The charring is primarily on the lower border of
3 the wound here.

4 Q Not finding any soot or powder, is that significant
5 to you?

6 A Yes.

7 Q And why?

8 A The soot and powder are discharged from the gun
9 based on the kind of gun it is, and they travel a certain
10 distance after they go out the barrel; they don't go as far as
11 the bullet, but they do go a few inches. And by test firing
12 the gun you can determine exactly how far the stippling
13 material goes, and that's useful in determining the distance
14 between the gun and the skin. If you know how far a
15 particular gun will transport the soot and powder via target
16 practice, then you can apply that to the skin. I don't see
17 any here, so that takes it away from being a contact wound.

18 It's a little bit smaller in some aspects than the
19 one in the first case, Biddle. I think this gun was probably
20 just a little bit farther away from the skin, but it was still
21 a near contact, close gunshot wound of entrance, not touching.

22 Q Not touching. When you say "near" or "close," can
23 you give me a -- say an amount of inches when you refer to
24 "near" or "close"?

25 A A very low number of inches, one or two, in that --

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1 in that range. That's about the best you can do.

2 Q Okay. And, Doctor, in this particular case did you
3 do an external -- well, before we get there, you mentioned
4 about the hemorrhaging in the eyelids, you indicated that was
5 significant. Why?

6 A Hemorrhage in the eyes comes from injury to the
7 facial bones, the bones of the face, particularly the ones
8 that surround the eye. When a person is shot in the -- in the
9 head and lives a while, and if there's enough impact from the
10 bullet into the bones of the skull, there'll be slight
11 breakage of some of those bones, and blood will seep outside
12 the skull cavity and into the subcutaneous tissues of the
13 face. It usually takes about ten minutes for that to happen,
14 which means that the person is alive for a period up to of
15 about that long; it's not that precise, but it's reasonable in
16 range.

17 Q In this case then, I take it what you're saying is,
18 Tracey Gorringer could have lived up to ten minutes?

19 A That would be the maximum, yes.

20 Q Did you do an internal examination?

21 A Yes. The internal exam didn't provide any useful
22 information, except as far as the bullet was concerned. The
23 bullet left this round hole 3/8 inch in diameter, went from
24 back to front in a horizontal plane. The bullet went through
25 the skull with a bevel on the inside, which again helps in the

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1 direction. It went through the dura, which is a heavy
2 membranous covering of the brain. It entered the brain below
3 the cerebella hemispheres, went through the right cerebella
4 hemisphere in a back-to-front direction. And I recovered
5 three bullet fragments from that portion of the -- of the
6 brain.

7 Q And, Doctor, is there a photograph that shows the
8 three bullet fragments that you removed?

9 A Yes. This shows one very fine sliver, and one which
10 has an indentation at the base of the bullet, and another one
11 which is a part of the remainder of the bullet.

12 Q Doctor, based on your internal and external
13 examination, are you able to tell this jury the size or
14 caliber of weapon that would be capable of causing such an
15 injury to Tracey Gorringer?

16 A This is a large caliber bullet, again in the range
17 of 9 millimeters, .38 caliber, in that -- in that general
18 range.

19 Q And, Doctor, were you able to form an opinion as to
20 the cause of death?

21 A Cause of death was a gunshot wound to the head.

22 Q And the manner of death?

23 A Manner, homicide.

24 Q Let me go next to Matthew David Mowen. Did you
25 perform an autopsy on August 15th, 1998 of David Mowen?

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1 A Yes, I did.
2 Q I'm sorry --
3 A Yes --
4 Q -- Matt Mowen, my mistake.
5 A I did, yes.
6 Q And were the same persons present, that being the
7 detectives and also Sheree Norman?
8 A Yes, sir.
9 Q Did you give items of evidence to Sheree Norman
10 associated with Matthew Mowen's autopsy?
11 A I did.
12 Q And was that autopsy photographed?
13 A Was it photographed?
14 Q Yes.
15 A Yes.
16 Q Showing you what has been marked as State's Proposed
17 Exhibit 127, 130, and 134, do those photographs fairly and
18 accurately depict items of evidence and the wounds on Matt
19 Mowen?
20 A Yes.
21 MR. GUYMON: I'd move for their admission, Your
22 Honor.
23 THE COURT: Subject to the same objection -- let me
24 see them, please.
25 They will be admitted.

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1 (Plaintiff's Exhibit Nos. 127, 130, and 134 admitted)

2 BY MR. GUYMON:

3 Q Doctor, can you tell me what your -- first of all,
4 the size and height of Matt?

5 A Matt was about twenty years of age, sixty-nine
6 inches tall, one eighty-nine pounds.

7 Q Doctor, did you do an external examination?

8 A I did.

9 Q And what were your significant findings?

10 A The only significant finding here, with the
11 exception of the tying of the wrists by the duct tape, and the
12 ankles, was a gunshot wound of entrance, which was located at
13 the base of the hair on the back of the scalp, seven inches
14 below the top of the head and in the midline.

15 Q Doctor, is there a corresponding photograph that
16 depicts the very location of the wound you're describing?

17 A Yes.

18 Q And what number is it, Doctor?

19 A 134.

20 Q And can you show the jury exactly the location of
21 that wound?

22 A This bullet is in the midline, lower part of the
23 skull, in the back.

24 Q And, Doctor, tell me, similar to the other two, is
25 this an entry wound?

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1 A This is an entry wound, yes.

2 Q Is it a bullet wound?

3 A A bullet wound, yes.

4 Q And can you tell me, is it similar in size to the
5 first two, that being Jeffrey Biddle and Tracey Gorringer's
6 wounds?

7 A Yes, it is. This wound was -- was 3/8 of an inch in
8 diameter, the same as Mr. Gorringer.

9 Q Okay. And, Doctor, did you perform -- or actually
10 do a dictated autopsy report in these particular cases?

11 A I did.

12 Q All right. And does the autopsy report bear the
13 findings that you're telling us about?

14 A Yes, sir.

15 Q Okay. Now, then, any other significant external
16 findings?

17 A No.

18 Q Did you -- well, can you describe if there was any
19 charring or soot or powder associated with this wound?

20 A Distinct black charring at the borders, with some
21 discoloration of the surrounding skin.

22 Q Okay. And when you use the term, Doctor, "distinct
23 black charring at borders," what is that referring to and what
24 does it mean to you?

25 A Refers to this blackening which you see on the.

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1 needle side of the wound, right here where my finger is. It's
2 a little more pronounced than we saw in some of the other
3 photos of the other people.

4 Q Doctor, are you able to give an opinion as to how
5 far or near the weapon would have been from Matthew Mowen in
6 order to have what you refer to as "distinct black charring at
7 the borders"?

8 A A very close wound, not touching, within an inch or
9 so of the body.

10 Q Did you in fact do an internal examination of
11 Matthew Mowen?

12 A Internal with exception of the head was not
13 remarkable. The head examination showed that the bullet had
14 passed from back toward front through the cervical spine into
15 the spinal canal, and I recovered two bullet fragments from
16 the cervical spinal canal area. These are the two which
17 are --

18 Q Just show us and state the number.

19 A Shown in Exhibit Number 127, large irregular
20 fragments of a bullet.

21 Q Did you do an internal examination?

22 A This -- yeah, this is part of the internal
23 examination.

24 Q And can you track the bullet on this particular
25 injury?

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1 A I tracked it through the cervical spine, which it
2 divided at the upper level, there was only mild hemorrhage
3 into the tissues around the brain in this -- in this case.
4 But the spinal cord was completely penetrated.

5 Q And when one's spinal cord is completely penetrated
6 what does that cause an individual?

7 A Well, first thing it's instant paralysis, and in
8 this case since it's so high up probably instant death, within
9 a matter of seconds I think he would have died.

10 Q Would there be any reaction that a individual such
11 as Matthew Mowen would have when the bullet sheers his spine?

12 A Probably not.

13 Q Okay. And I might have asked, too, on the other two
14 would there have been any reaction, bodily reaction that, say,
15 Jeffrey Biddle would have endured as a result of his injury?

16 A Neither one of them could have had any movement of
17 the hands or legs 'cause they were tied, facial movement is a
18 possibility but not likely because they would have been
19 unconscious the moment the brain was involved by the -- by the
20 trauma. If anything were to move it would be due to reflex
21 and not by a voluntary movement on the part of the person.

22 Q Okay. Doctor, did you form an opinion as to the
23 cause of death of Matt Mowen?

24 A The cause of death was a gunshot wound to the neck,
25 the manner was homicide.

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1 Q And, Doctor, can you tell me how long, what time
2 frame Matthew Mowen could have lived after sustaining this
3 injury?

4 A I think he probably died as quick as any of the
5 four, because of the severe damage to the spinal cord. And of
6 course he would have been unconscious from that point on, too.

7 Q Let me go now to Peter Talamantez.

8 THE COURT: And before you do we're going to take
9 the first of what will turn out to be two afternoon recesses.

10 During this recess you're admonished not to talk or
11 converse among yourselves or anyone else on any subject
12 connected with this trial, read, watch or listen to any report
13 of or commentary on the trial, or any person connected with
14 it, by any medium of information, including, without
15 limitation, newspaper, television or radio, or to form or
16 express any opinion on any subject connected with this matter
17 until it's finally submitted to you.

18 We'll be in recess 'til 3:00 o'clock.

19 (Court recessed at 2:50 p.m. until 3:00 p.m.)

20 (Jury is present)

21 DIRECT EXAMINATION (Continued)

22 BY MR. GUYMON:

23 Q Doctor, we left off on the fourth autopsy, the
24 autopsy of Peter Talamantez, did you conduct that autopsy in
25 the same place, that is the Clark County Coroner's office, or

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1 Medical Examiner's office on August 15th, 1998?

2 A Yes, I did.

3 Q And were the same people present?

4 A Yes.

5 Q Detective Buczek, Hefner, Sergeant -- excuse me,
6 Detective Buczek, Thowsen, Sergeant Hefner and the crime scene
7 analyst Sheree Norman?

8 A Yes.

9 Q Okay. And, Doctor, can you tell me the height and
10 weight of Peter Talamantez?

11 A Peter was sixty-nine inches tall, weighed a hundred
12 and five pounds, and appeared to be the stated age of
13 seventeen.

14 Q Did you conduct an external examination of Peter
15 Talamantez?

16 A Yes, I did.

17 Q And did you have any significant findings as it
18 related to Peter Talamantez and his injuries?

19 A The occipital -- the important findings were in the
20 head, he had a gunshot wound of entrance in the back of the
21 head, and near this a laceration of the scalp, those are the
22 two significant injuries.

23 Q Let me talk about the laceration of the scalp first.
24 Just where was the laceration on the scalp?

25 A The laceration was in the posterior portion of the

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1 scalp slightly to the left of the midline at the plane of the
2 ear, right about this level here.

3 MR. GUYMON: Okay. The record reflect that the
4 Doctor is pointing to the back of his own head.

5 THE WITNESS: Yes.

6 THE COURT: It will.

7 BY MR. GUYMON:

8 Q And is there a photograph that I gave you that,
9 without showing it first, that depicts that particular injury?

10 A Oh, there it is, yeah. All right.

11 Q Let me have you look at all the photographs first
12 and ask you if --

13 A Okay.

14 Q -- those photographs fairly and accurately depict
15 Peter Talamantez and his injuries that you noted?

16 A Yes, they do.

17 Q Okay. And the exhibit numbers, just so we have
18 them, if I could, Doctor, are Exhibit Number --

19 MR. GUYMON: This will be out of order, Judge, 125,
20 120, 116, 114, 113.

21 BY MR. GUYMON:

22 Q You say they fairly and accurately depict the
23 injuries?

24 A Yes, they do.

25 MR. GUYMON: I'd move for the admission, Your Honor.

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(Pause in the proceedings)

THE COURT: Same objection to some of these?

MR. SCISCENTO: Same objection, Your Honor, to these.

THE COURT: All will be received.

(Plaintiff's Exhibit Nos. 113, 114, 116, 120 and 125 admitted)

BY MR. GUYMON:

Q And, Doctor, Number 125, does it actually depict the laceration injury?

A Yes, it does.

Q Will you show the jury just where that laceration injury is in the picture?

A It's close to the top of the head that I indicated with my finger, it's right here. It's a blunt laceration about a half an inch in diameter due to application of some kind of force to the skin. It's either --

MR. GUYMON: And, Judge, so the jury can see it can I walk it down the banister briefly?

BY MR. GUYMON:

Q Doctor, are you able to -- were you able to tell how recent or fresh that laceration injury was?

A It's quite fresh.

Q And what is the basis of that finding, Doctor?

A The bleeding from it, the edges -- the aversion of the edges all look as if there's no attempted healing process.

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1 Q Can you tell me, Doctor, what would cause a
2 laceration such as this to the back of Peter Talamantez's
3 head?

4 A It's caused by blunt force trauma, some object
5 struck his head, or his head struck some object.

6 Q How much force would have to be used in order to
7 cause an injury such as that?

8 A This is fairly shallow, it went through the skin
9 layers but no deeper than that, so it would not take a lot of
10 force to do this.

11 Q What -- when we talk about force and being struck,
12 would that -- is that injury consistent with being struck with
13 a hand?

14 A No, it would have to be something which had a harder
15 consistency than a hand.

16 Q Can you give us an example of something with a
17 harder --

18 MR. SCISCENTO: Your Honor, I want to object to
19 this, if you say it's a blunt object I don't think we need an
20 example, it's going to call for speculation as to what was
21 used.

22 THE COURT: Overruled.

23 THE WITNESS: There are many objects, the first
24 thing comes to mind is a gun because there's a gunshot wound
25 as well, and I think it might be consistent with a gun -- side

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1 of a gun striking the head.

2 BY MR. GUYMON:

3 Q And, Doctor, did you note any other injuries, other
4 than the laceration, on Peter Talamantez that were significant
5 to you?

6 A There's a gunshot wound of entrance located in the
7 left side of the scalp, back of the left ear.

8 Q And is the gunshot wound actually depicted in 125 as
9 well?

10 A It's partly covered by hair, but it is seen.

11 MR. GUYMON: And can I walk that down the banister
12 pointing to the same area he has.

13 BY MR. GUYMON:

14 Q You said the wound is kind of covered by hair
15 though, is that right? I'm on it there, Doctor?

16 A Yes, that's right.

17 Q Doctor, can you describe that particular wound, is
18 it an entry wound?

19 A This is an entry wound.

20 Q And what size, Doctor?

21 A Large size, large caliber projectile.

22 Q When you say large size, can you give us a range in
23 the caliber?

24 A The same range as the ones we've been talking about
25 in the other -- the other bodies, .38, 9 millimeter, in that

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1 range.

2 Q Okay. Doctor, was there any charring or any
3 gunpowder tattooing, soot or blackened margins? And I might
4 ask, are you reviewing your autopsy --

5 A I'm looking at the autopsy, yes, I described it
6 under a different place than I did usually. This was located
7 on the left side of the occipital scalp, five inches below the
8 top of the head, two inches left of the entry midline. It was
9 ovoid, 5/8 by 3/8 of an inch, there was charring at the
10 borders, but no soot powder stippling was noted on the skin.

11 Q And, Doctor, based on your findings are you able to
12 make a determination how far the gun would have been from
13 Peter Talamantez's head?

14 A It's a close injury, a matter of an inch or two from
15 gun to skin.

16 Q I'll ask again, is this a contact wound?

17 A No.

18 Q All right. Did you do an internal examination of
19 Peter Talamantez?

20 A Yes. The internal examination, with the exception
21 of the head, was not remarkable. The bullet direction was
22 from left toward right and upward. The bullet went through
23 the left middle fascia, that's adjacent to the -- to the
24 brain, the left lobe of the cerebellum, and the right lobe of
25 the cerebrum. And I got bullet fragments close to the skull

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1 at the entrance point, another one from the top part of the --
2 of the head. There were three bullet fragments recovered
3 totally; they're shown in Exhibit 113.

4 Q And, Doctor, were these bullet fragments, as well as
5 the blood of Peter Talamantez preserved and given to Sheree
6 Norman?

7 A Yes.

8 Q All right. Doctor, did you note any other, say any
9 defensive wounds on Peter Talamantez?

10 A No.

11 Q Okay. Did -- were you able to form a cause of death
12 for Peter Talamantez?

13 A The cause of death was the gunshot wound to the
14 head.

15 Q And the manner of death?

16 A Homicide.

17 Q And, Doctor, can you tell me with any degree of
18 medical certainty how long Peter Talamantez would have
19 survived from an injury such as this that you found?

20 A A very short time period, because this bullet went
21 right through the cerebellum and part of the brain stem, so he
22 didn't live more than minutes.

23 Q Would the body have any reaction to receiving an
24 injury such as this?

25 A He would be unconscious immediately, would not have

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1 any pain or suffering, but would have died quickly.

2 Q Doctor, let me ask, are you familiar with toxicology
3 reports?

4 A Yes.

5 Q In this particular case was toxicology work done for
6 each of the four boys?

7 A It was.

8 Q And just what is toxicology, Doctor?

9 A Toxicology is the chemical testing of the blood for
10 substance called drugs. In the case of the coroner's office
11 they test for alcohol and for quite a number of other drugs,
12 street drugs, opiates and substances of that sort.

13 Q Were there controlled substances in the blood or
14 urine of these four boys, Doctor?

15 A Yes.

16 Q Let me start with, well, Tracey -- let's start with
17 Tracey Gorringer. Well, actually let's go with Jeffrey Biddle,
18 the order of the autopsies. All right?

19 A All right. Okay.

20 Q Jeffrey Biddle, did he have controlled substances in
21 his blood or urine?

22 A Yes, he did.

23 Q And just what controlled substance did he have in
24 his blood or urine?

25 A Jeffrey had no alcohol. He had methamphetamine,

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1 which is known as speed, 1,069 nanograms per ml. of blood. He
2 had amphetamine, which is a breakdown product of
3 methamphetamine, 163 nanograms per ml. And he had a cocaine
4 metabolite. Cocaine breaks down quickly in the body to a
5 metabolite called benzylocognine or be. The be. level was 92
6 nanograms per ml. No cocaine was found as such.

7 Q Doctor, can you tell this jury then how long ago or
8 how recent Jeffrey Biddle would have used the cocaine?

9 A It would be a matter of hours, he had it in his
10 urine as well as in his blood, but the cocaine itself was
11 gone, so depending upon how much was taken, it had metabolized
12 down to the benzylocognine product. It was hours, several
13 hours perhaps when he had taken it.

14 Q Were the levels of controlled substance in Jeffrey
15 Biddle's body lethal levels, Doctor?

16 A The methamphetamine is a lethal level, but obviously
17 not the cause of death, because cause of death was the gunshot
18 which overweighs this. It was a very high level.

19 Q Let me ask you then, based on what you just said,
20 with or without the methamphetamine Jeffrey Biddle would not
21 have survived, is that true?

22 A That's correct, yeah.

23 Q Would have died from the gunshot wound?

24 A He would die from the gunshot wound, that's right.

25 Q Let's go to Tracey Gorringer. Did he have any

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1 controlled substances in his body?

2 A Tracey Gorringer had no alcohol. He had 878
3 nanograms of methamphetamine, 142 nanograms of amphetamine,
4 and 176 nanograms of the cocaine metabolite. He also had
5 these same substances in his urine.

6 Q Doctor, I might ask, were -- was the methamphetamine
7 in Tracey Gorringer's body the cause of his death?

8 A No.

9 Q Okay. Could he have survived the gunshot wound with
10 or without the methamphetamine?

11 A He couldn't have survived the gunshot wound, no.

12 Q No matter what?

13 A That's right.

14 Q How about Matthew Mowen?

15 A Matthew Mowen had 0.03 grams of alcohol, which is a
16 quite a small amount, but it's there. He had cocaine
17 metabolite, 1415 nanograms. He had methamphetamine, 1050
18 nanograms per ml.; amphetamine, 163 nanograms per ml., and
19 nordiazepam, which is a tranquilizer, 123 nanograms. And the
20 same substances were found in the urine.

21 Q Did the controlled substances in Matthew Mowen,
22 mixed with the alcohol, cause his death, Doctor?

23 A No, sir. No.

24 Q And, lastly, Peter Talamantez, did he have
25 controlled substances in his body at the time of his death?

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BUCKLIN - CROSS

1 A Peter had no alcohol. He had a large amount of
2 methamphetamine, 3,169 nanograms per ml., 324 nanograms of
3 amphetamine, and the same found in the urine.

4 Q Doctor, did the methamphetamine kill Peter
5 Talamantez?

6 A No, the gunshot wound killed Peter.

7 MR. GUYMON: I have no other questions.

8 THE COURT: Any cross for this witness?

9 MR. SCISCENTO: Yes, Your Honor.

10 Do you have the -- do you have the exhibits, Doctor,
11 the photographs?

12 THE COURT: He has three out of four.

13 CROSS-EXAMINATION

14 BY MR. SCISCENTO:

15 Q Dr. Bucklin?

16 A Yes, sir.

17 Q Let's talk a little about the closeness of the
18 gunshots. There's a thing called stippling, correct?

19 A Yes.

20 Q Stippling is an indication of the closeness or how
21 far away the gunshot is, am I right?

22 A Yes.

23 Q You did not detect any stippling?

24 A That's correct.

25 Q Wouldn't that tell you that the gunshots were

BUCKLIN - CROSS

1 further away than what you've just testified to?

2 A No. If they were farther away, say five, six inches
3 there might have been. It depends upon the gun. I would feel
4 that this is a fairly clean gun, because there was a minimum
5 -- we didn't find soot, powder or stippling in any of these
6 cases, we found the charring from the -- from the heat, but
7 there was no stippling.

8 Q Again, isn't stippling, though, an indication of the
9 closeness of a gunshot?

10 A The stippling, yes. You have to test fire the gun
11 to get the full information that you need on that.

12 Q And without the information of the gun, the length
13 of the barrel or the caliber of the gun, you really can't say
14 for certain the distance of the shot?

15 A I would need to have the gun test fired, the other
16 things wouldn't be important.

17 Q You testified that you believe that this was close
18 range?

19 A They were all close range, but not touching.

20 Q Okay. When you say close range, what do you
21 determine is close range?

22 A I'm talking like near contact or short distance.
23 There's no way for me tell you how many millimeters the gun
24 was from the skin of these gentlemen, but it's a short
25 distance measured in inches at the most.

III-296

BUCKLIN - CROSS

1 Q So you can give me inches?
2 A Yes.
3 Q Two, three, five?
4 A No, under that, I think, like I mentioned to Mr.
5 Guymon, were one or two inches.
6 Q Even without the presence of the stippling?
7 A Yes.
8 Q And you're sure about that?
9 A Yes.
10 Q And this happened on all four of these victims?
11 A Yes.
12 Q You say it was close range?
13 A Yes.
14 Q So a person who is firing the gun you say had to be
15 maybe two inches away, the barrel of the gun?
16 A Yes.
17 Q Was the person -- were these victims on the ground
18 when the gun -- when they were fired into?
19 A I have no way of knowing that.
20 Q There's no indication to you --
21 A No.
22 Q -- on the external view of the bodies?
23 A No.
24 Q From what the information you've learned, being that
25 the victims were tied up and all, do you have any theory on

III-297

BUCKLIN - CROSS

1 whether or not they were on the ground at the time of the
2 shooting?

3 A Nothing I could prove, other than speculating.

4 Q Okay. But we're sure, though, that the gunshot had
5 to be rather close?

6 A Yes, sir.

7 Q And if they were on the ground the person that shot
8 'em would probably have to bend down and get close to them,
9 right?

10 A If that's the case, yes.

11 Q Okay. So we're certain, then, it was a closeness of
12 shot?

13 A Yes.

14 Q No doubt?

15 A No doubt.

16 Q And to get that close we have to bend down and get
17 close to 'em, right?

18 A Unless he was higher up and not on the ground.

19 Q Okay. So a person -- I want to -- I want to make
20 sure I understand this, your last comment makes me a little
21 nervous. The person who did this has to be close up, maybe
22 bending down.

23 A If the victim was on the ground, yes.

24 Q Okay.

25 A If the victim were sitting or standing then that

III-298

BUCKLIN - CROSS

1 wouldn't be necessary.

2 Q There was a person named Gorringe --

3 MR. SCISCENTO: Court's indulgence for a moment,
4 please.

5 BY MR. SCISCENTO:

6 Q Tracey Gorringe. You indicated no soot -- or soot
7 or powder around the entrance wound, am I correct?

8 A That's right.

9 Q But you still say it was a low number of inches
10 away, close range?

11 A Yes, from the appearance of the wound.

12 Q How many inches you think it was?

13 A One, two inches, as I've told Mr. Guymon, that's
14 about as close as I would try and get.

15 Q So a person has got to be close to shoot him,
16 wherever, in the back of the head, they've got to be close
17 within two inches, or the barrel has got to be within two
18 inches --

19 A Yes.

20 Q Okay. You said that there may or may not be -- was
21 there a lot of blood loss from Tracey Gorringe?

22 A I have no way of knowing how much blood was lost,
23 that would depend upon what the scene showed. I would assume
24 that there would be pooling of blood as it came out from the
25 injury to the veins and the small arteries under the scalp and

III-299

BUCKLIN - CROSS

1 under the skull, but I don't know how much was lost. I wasn't
2 impressed with there being anemia of the body from a massive
3 blood loss, but I couldn't tell you how much might have been
4 lost from those wounds.

5 Q There wasn't a significant amount left in the body?

6 A No, I didn't say that at all. I don't know what
7 significance is, I don't know how much there was there, I
8 didn't see it.

9 Q A person who's hemorrhaging shows that there's still
10 body functions going on, correct? Instant death you would not
11 show the hemorrhaging?

12 A Well, now you're talking about the heart can stop
13 and blood can still come out from a wound which was made when
14 the heart was beating. It doesn't require the heart -- the
15 blood doesn't stop coming out of the body just because the
16 heart stops. Blood will --

17 Q So, there's no hemorrhaging --

18 A -- continue to come out. We see blood come out of
19 wounds at the autopsy table.

20 Q Well, I understand that, but I'm talking about
21 internal hemorrhaging, will that happen?

22 A The same thing, depends upon the size of the vessel.
23 If a vessel is very large and it's transacted, then it's going
24 to bleed until the vessel empties, living or dead.

25 Q On Tracey Gorringer you stated that you believe he

III-300

BUCKLIN - CROSS

1 was probably conscious for maybe -- or, I'm sorry, was still
2 alive for ten minutes?

3 A Because of the hemorrhage above the eyes -- below
4 the eyes.

5 Q So there was a hemorrhaging above the eyes that
6 indicates to you that he's possibly still -- was still alive?

7 A It's bleeding into the subcutaneous tissues, and
8 that is a vital reaction, that happens only during life.

9 Q All right. So he was most likely unconscious,
10 though, at the time, due to the wound?

11 A Not necessarily, no.

12 Q Well, you stated on the other three that you thought
13 he was unconscious?

14 A Because the bullets -- the bullets in all these
15 people were in such a position that I feel they were all
16 unconscious. But Mr. Gorringer, with the hemorrhage related to
17 his eyes, showed signs of his heart beating for a longer time.

18 Q In the shot for Tracey Gorringer, the caliber that
19 you said was either 9 millimeter or a .38, around that
20 caliber?

21 A I said it's a large caliber in that range.

22 Q Close range, large caliber, a lot of impact, would
23 you agree with that?

24 A Well, I didn't say a lot of impact, because I don't
25 know what the gun was, what the --

III-301

BUCKLIN - CROSS

1 Q It's got more impact than a .22?
2 A It's what?
3 Q It's got more impact than a .22, would you agree?
4 A Yes.
5 Q Okay.
6 A Yes, because the bullet is different.
7 Q You testified earlier, you told Mr. Guymon that you
8 believe that in the autopsies that you've seen and that you're
9 an expert, all the research that you've done and all the
10 autopsies you've done, you can tell the caliber of a bullet to
11 a degree?
12 A To a degree from the size of the hole, yes. Big or
13 little.
14 Q And you determined it's a .38 or a 9 millimeter?
15 A I wouldn't try and separate those by the wound
16 itself.
17 Q But I'm saying --
18 A A 9 millimeter is almost exactly a .38 caliber, it's
19 the same amount, same size.
20 Q I'm not trying to lock you into the caliber, Doctor,
21 what I'm trying to lock you into is the force of the bullet.
22 Would you agree that a 9 millimeter bullet has more force from
23 the barrel of the gun than a .22?
24 A In general, yes, I would.
25 Q The impact would cause greater destruction from a

III-302

BUCKLIN - CROSS

1 .38 or a 9 millimeter than a .22?

2 A Correct, because the bullet itself is many times
3 larger.

4 Q It's larger, traveling probably faster?

5 A Exactly.

6 Q Okay. It's impact will cause a greater destruction?

7 A Yes.

8 Q The impact would also cause greater force coming
9 back, am I right?

10 A Force on what?

11 Q Well, if you fire into something, as I understand
12 the laws of gravity, if you hit something, an equal and
13 opposite reaction is going to happen, am I right? You fire
14 into something, something is going to come back, too?

15 A Well, it depends on what the object is, clearly.

16 Q Well, if you're firing into a --

17 A Fire into a log it's not going to jump back at you.
18 You fire into a hundred and eighty pound person the body is
19 not going to move.

20 Q Tissue is going to come back?

21 A I doubt if there'd be any visible reaction of the
22 body to that injury. It wouldn't be measurable if it were.

23 Q What about blood, would that come back?

24 A Depends entirely upon what vessels might have been
25 involved.

III-303

BUCKLIN - CROSS

1 Q If you shoot into a body and hit a vessel, an artery
2 or a vein, you're most likely going to get squirts coming back
3 with blood?

4 A If you hit a pumping artery close to the skin, then
5 you would expect perhaps to find some spurting, but if you hit
6 an artery which is, say, under the bone, as the case here,
7 then you wouldn't expect that the spurting would happen
8 because of the thickness of the skull.

9 Q There are numerous arteries and veins running -
10 traversing the neck, am I correct?

11 A Yes.

12 Q On both front and the back, am I correct?

13 A Yes.

14 Q What are the arteries, let's start with the
15 arteries, in the back of the neck?

16 A What are they?

17 Q Yes.

18 A There are two vertebral arteries, the carotid
19 arteries are on the side. There are many smaller branches of
20 the -- of the arteries which have individual names and go to
21 different parts of the skin and the scalp.

22 Q Okay. And how many are in the back? You said two
23 majors.

24 A The two majors are the vertebrals, which are along
25 the spine, and the carotid arteries are along the side of the

III-304

BUCKLIN - CROSS

1 neck. These are the two main supplies of blood to the head.

2 Q What are the -- now we're talking about arteries,
3 we're talking veins now, what veins are traversing the back of
4 the neck?

5 A Each artery has a vein which is consistent --

6 Q So there's two equal --

7 A -- they're part of the same system.

8 Q Okay. Would you consider those -- the medical
9 profession consider those major arteries?

10 A The ones I mentioned are major arteries, yes.

11 Q Yes. Which are thick flowing, heavy flow of blood?

12 A Yes.

13 Q And those are located in the back?

14 A The ones I mentioned, the four, the carotids are on
15 the side, the vertebrals are on the back right along the spine
16 and not in the trajectory of any of these bullets.

17 Q You mentioned on the autopsy that the track passed
18 through the right cerebella hemisphere in the back to the
19 front direction, am I right?

20 A This is Gorringer?

21 Q This is Tracey Gorringer.

22 A Yes.

23 Q That the bullets fragmented?

24 A Yes.

25 Q The bullet fragmented --

III-305

BUCKLIN - CROSS

1 A Right.

2 Q -- into three separate fragments?

3 A Right.

4 Q Through that track, the cerebellar hemisphere, the

5 carotid arteries are there, am I correct?

6 A No.

7 Q They're not there?

8 A No.

9 Q Where are they located?

10 A The carotid arteries are not located -- they're

11 located at the base of the skull. They divide to make the --

12 to supply the blood to the internal portion of the head, but

13 they're not -- the carotid arteries are not in the cerebellum.

14 Q What do you consider the occipital portion of the

15 skull? Occipital.

16 A Occipital, the back.

17 Q The back. Where's the plane of the crown?

18 A The plane is the top of the head.

19 Q So where did the bullet for Tracey Gorringer travel?

20 A It entered the head at a point two and a half inches

21 below the top of the head in the occipital portion of the

22 skull, and the picture shows it's close to the midline. The

23 bullet went from back toward front in a horizontal plane,

24 penetrated the skull, leaving a bevel on the internal aspect,

25 which tells us the direction. It went through the dura and

III-306

BUCKLIN - CROSS

1 perforated the brain inferior to the cerebella hemisphere.
2 And the track went through the cerebellar hemisphere from
3 front to back -- back to front, I mean, back to front. And
4 that's where I found the fragments.

5 Q Let me stop you there. On Matt Mowen the travel of
6 the bullet is where?

7 A Matt Mowen's gunshot entrance was in the midline of
8 the upper portion of the neck. Seven inches below the plane
9 of the crown.

10 Q Okay. Which then puts it closer to the neck?

11 A Close to the neck, yeah.

12 Q Closer to the carotid arteries that we're talking
13 about?

14 A No, no. The carotid arteries are on the side of the
15 neck, they're three or four inches away from that.

16 Q Still -- now, Doctor, we have a skull that goes from
17 here, the base?

18 A Yes.

19 Q To the crown?

20 A Right.

21 Q Which is, in this case, how many inches?

22 A From the bullet --

23 Q From Matt Mowen's?

24 A From the bullet to the --

25 Q No, no, no, no. From Matt Mowen's, from the crown

III-307

BUCKLIN - CROSS

1 to the base is how many inches?

2 A Probably nine.

3 Q And so where it's seven inches --

4 A It was seven inches below the top of his head, which
5 put it right at the top of the neck.

6 Q You say there is only a mild hemorrhage into the --
7 help me out with that.

8 A Subarachnoid.

9 Q -- tissue of the brain?

10 A Yes.

11 Q A small graded area is present on the right lobe of
12 the cerebellum?

13 A Yes.

14 Q Have you done any research or any studies on the
15 impact of firing a bullet into a head?

16 A Not myself, no.

17 Q Have you read any studies?

18 A I've read much literature on gunshot wounds. It's a
19 great concern to any forensic pathologist.

20 Q And that -- what studies have you read?

21 A I couldn't begin to tell you.

22 Q What recent --

23 A I've been going to seminars for many, many years,
24 I've taken part in giving seminars in subjects like this,

25 Q Have you talked about blood spatter?

III-308

BUCKLIN - CROSS

1 A I am familiar with blood spatter. I don't consider
2 myself an expert in blood spatter pattern interpretation.

3 Q You've testified in other cases, though, when you're
4 on the stand you've mentioned about blood spatter, am I right?

5 A I've mentioned blood spatter, but I've never called
6 myself an expert. There are people that do that for a living.

7 Q You're saying then that there wouldn't be any blood
8 spatter on a -- on this case at a low -- or in close range,
9 one to two inches away from the base of the skull, or the
10 skull itself, on a .38 to a 9 millimeter caliber bullet, and
11 you're saying there's no spatter at all?

12 A No, sir, I didn't say that at all. No one asked me
13 that.

14 Q Well, let me ask you, would there be spatter on that
15 close range with that caliber, would there be spatter?

16 A It would depend entirely on what the bullet struck.
17 Logic would have it that there would be some blood coming out
18 of that hole. Now, if it came out from a vein having been
19 perforated, it's under very low pressure so you wouldn't
20 expect to see a distance traveled by it.

21 Q So you would agree --

22 A An artery is different.

23 Q Okay. So, Doctor, then we can agree that there may
24 or may -- there may be spatter?

25 A If there had been spatter it would have been seen on

III-309

BUCKLIN - CROSS

1 the skin, which it was not, or it would have been seen on some
2 of the photographs which were taken at the scene of the death.

3 Q But there was drainage later which would have --
4 could have diminished the spatters, there was other -- am I
5 right?

6 A I don't know what you mean by diminished --

7 Q Well, there was other factors involved that could
8 have moved the blood around --

9 MR. GUYMON: Judge, I'm going to --

10 BY MR. SCISCENTO:

11 Q -- you're aware of that?

12 A I don't know what they were.

13 MR. GUYMON: -- object. It calls for speculation at
14 this point on behalf of the Doctor.

15 THE COURT: Overruled.

16 BY MR. SCISCENTO:

17 Q Doctor, you're aware that there were animals that
18 may have moved some blood around?

19 A No.

20 Q Okay. If you were aware that there were blood that
21 was moved around from a different source, I'm talking about
22 animals moving the blood around, covering up different
23 portions of it, you wouldn't have been able to detect that
24 spatter, am I correct?

25 A I think that's a very impossible question to answer,

III-310

BUCKLIN - CROSS

1 it's totally full of speculations, and I don't know what the
2 animals -- how the animals moved the blood.

3 MR. GUYMON: Well, Your Honor --

4 BY MR. SCISCENTO:

5 Q Doctor, let me ask you this, there's paw prints on
6 the back?

7 A Yeah.

8 Q That would ruin any evidentiary value of the
9 spatter, am I right?

10 A I don't know that.

11 MR. GUYMON: Judge, I'm going to object, it calls
12 for speculation at this point.

13 THE COURT: Well, he's an expert and he's going to
14 give his answer if he can, and if not he's going to tell us he
15 can't.

16 THE WITNESS: I couldn't answer that without wildly
17 guessing what might have happened, I will not do that.

18 MR. SCISCENTO: If I may approach?

19 BY MR. SCISCENTO:

20 Q Doctor, do you recognize State's Exhibit 114?

21 A I don't recall which body this is.

22 Q Okay. But you recognize that that's one of the
23 bodies?

24 A Yes.

25 Q That had -- that is clothing from one of the bodies?

III-311

BUCKLIN - REDIRECT

1 A Correct, yes.

2 Q And this is a shirt?

3 A Yes.

4 Q And there's a significant, would you agree with me,
5 amount of blood on there?

6 A Yes.

7 Q Which looks that it was either poured on, run off of
8 some sort, correct?

9 A Yeah. It looks to be at the top end of the -- of
10 the shirt, and obviously it's run from the wound onto the --
11 onto the clothing.

12 Q Okay. Doctor, let me ask you, with that amount of
13 blood washing down the shirt, that might destroy any evidence
14 of spatter, am I right? It wouldn't leave the spatters that
15 you normally see in crime scenes, am I right?

16 A I -- that's absolute pure speculation on my part. I
17 don't know what that might cover, if anything.

18 MR. SCISCENTO: No further questions, Your Honor.

19 THE COURT: Anything on redirect?

20 MR. GUYMON: Yes, very briefly.

21 REDIRECT EXAMINATION

22 BY MR. GUYMON:

23 Q Doctor, using your expertise in the field of the
24 human body, you indicated that no major arteries were struck
25 on Tracey Gorringer, is that correct?

III-312

BUCKLIN - REDIRECT

1 A Yes.

2 Q Had the bullet travelled through a major artery,
3 would you expect more blood to come out of the entry wound?

4 A Yes.

5 Q On the tissue of Tracey Gorringer at the point of
6 entry, is the tissue inverted inwards or is it outward?

7 A The bullet pushes it in.

8 Q And as the bullet pushed in through Tracey Gorringer
9 and into his body, did it hit a major artery?

10 A No.

11 Q Did any of the boys' wounds travel through a major
12 artery, a blood artery, a pumping artery?

13 A No.

14 Q Now, then, applying blood spatter in the -- your
15 expertise in the medical field, would you expect a great deal
16 of blood spatter if the bullet doesn't go through a major
17 artery?

18 A No, I would not. I would expect that gravity would
19 take over immediately and that the blood would follow the laws
20 of gravity and come out of the body. And depending on the
21 position of the body it would go to wherever gravity would
22 take it. That would account for the blood on the back of the
23 shirt, or any pools of blood which may have been at the scene.
24 But I wouldn't anticipate spatter from these kind of injuries.

25 Q And why?

III-313

BUCKLIN - RECROSS

1 A Well, they're very large injuries, for one thing,
2 and they didn't, by my own examination, strike an arterial
3 blood vessel which was close to their -- to their trajectory.
4 If they had, conceivably there might have been some blood
5 issuing out under pressure. But I believe the blood which was
6 lost, that which appears on the shirt and what was at the
7 scene, which I didn't see, was simply a result of blood
8 pouring out of the body from gravity, nothing stopped it, it
9 just poured out because it was in the body and it came out
10 when they died.

11 Q If there is pooling next to each of the body is that
12 the gravity effect that you are speaking about?

13 A Yes, sir.

14 MR. GUYMON: No other questions, Your Honor.

15 THE COURT: Any recross?

16 RECROSS EXAMINATION

17 BY MR. SCISCENTO:

18 Q How long would it take, Doctor, for the blood to
19 pool out, as you say?

20 A Depends upon the size of the injury and the type of
21 wound. I wouldn't expect to find a lot of blood from these
22 injuries because they died fairly quickly and that would take
23 away any kind of momentum from the heart. I wouldn't be
24 surprised if there were not a pint or two of blood, maybe more
25 at the scene from these. But again this is speculative.

III-314

BUCKLIN - RECROSS

1 Q And this is a pint or two of blood?

2 A Yeah, I used a term which is a small amount, but you
3 can spread a pint of blood over a pretty big area if you tried
4 to.

5 Q So a pint -- you suspect after looking at this that
6 a pint or two of blood would come out?

7 A I'm sorry?

8 Q Looking at this you thought maybe a pint or two?

9 A You're misinterpreting my words, I don't know how
10 much came out, I didn't see it, had I seen it I could have
11 told you perhaps how much it was or measured it.

12 MR. SCISCENTO: No further questions, Your Honor.

13 MR. GUYMON: Nothing else, Your Honor.

14 THE COURT: Thank you, sir, you're excused.

15 THE WITNESS: Thank you.

16 THE COURT: Call your next witness please.

17 MR. GUYMON: Sergeant Honea.

18 ROBERT HONEA, PLAINTIFF'S WITNESS, IS SWORN

19 THE CLERK: Please state your full name and spell
20 your last name for the record.

21 THE WITNESS: My name is Robert Honea, H-O-N-E-A.

22 MR. SCISCENTO: Your Honor, can we approach for a
23 moment?

24 (Off-record bench conference)

25 MR. DASKAS: Judge, may I proceed?

III-315

HONEA - DIRECT

1 THE COURT: Sure.

2 DIRECT EXAMINATION

3 BY MR. DASKAS:

4 Q Mr. Honea, I assume by the uniform you work for the
5 Nevada Highway Patrol?

6 A Yes, sir.

7 Q What's your job title?

8 A I'm a sergeant with Nevada Highway Patrol.

9 Q And how long have you been a sergeant with NHP?

10 A I've been a sergeant since December 1997.

11 Q In total how long have you been employed with NHP?

12 A A little over ten years.

13 Q All right. Tell me briefly some of your duties and
14 responsibilities as a sergeant with NHP?

15 A My duties, I patrol the road and enforce traffic
16 laws. I also supervise seven troopers, investigate accidents
17 and basically do their paperwork, or check their paperwork and
18 forward it through.

19 Q Let me direct your attention to the 17th day -- or
20 17th night I guess of August, 1998, sometime around 10:30 or
21 10:40 p.m., were you working on that particular night?

22 A Yes, sir, I was.

23 Q And can you tell me around that time what area of
24 town you were patrolling?

25 A That was at the end of my shift, I worked swing

III-316

HONEA - DIRECT

1 shift at the time and I was driving from our office to my
2 residence.

3 Q And where exactly would you have been driving?

4 A I was driving 95 northbound from Boulder Highway,
5 from our office on East Sahara to 95 northbound there at
6 Boulder Highway, and going to continue all the way up 95
7 North.

8 Q All right. So you're actually on U.S. 95 at that
9 time?

10 A Yes.

11 Q Do you work alone or with a partner?

12 A Alone.

13 Q And you were alone on that night I take it?

14 A Yes, sir.

15 Q Were you in your marked patrol car?

16 A Yes, sir.

17 Q Wearing a uniform?

18 A Yes, sir.

19 Q Let me ask you now, specifically, did you stop or
20 attempt to stop a 1994 white Ford four-door automobile?

21 A Yes, sir, I did.

22 Q What drew your attention to that car?

23 A As I got onto U.S. 95 northbound from Boulder
24 Highway the white Ford four-door passed me on my left-hand
25 side at a high rate of speed.

III-317

HONEA - DIRECT

1 Q What's the posted speed limit in that area?

2 A Sixty-five miles per hour.

3 Q Did you pace that vehicle?

4 A Yes, I accelerated up to the point where my vehicle
5 was traveling at the same speed as the Ford four-door was. I
6 paced the vehicle at a little over eighty-five miles per hour.

7 Q Based on the fact that this car was speeding did you
8 attempt to stop the car?

9 A Yes, sir.

10 Q You activated your overhead lights?

11 A Yes.

12 Q Did the Ford four-door eventually pull to the side
13 of the highway there, or freeway and stop?

14 A Yes, sir.

15 Q Did you exit your car and approach the vehicle?

16 A Yes, I did.

17 Q And can you tell me how many occupants were inside
18 that Ford four-door?

19 A There were two.

20 Q Obviously one in the driver's seat. Where was the
21 other person located?

22 A In the right front passenger seat.

23 Q Describe first of all the passenger in that car?

24 A The passenger in the car -- as I was walking up I
25 could see both occupants, I had my spotlights on, lit up the

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HONEA - DIRECT

1 interior of the car, the passenger of the car had -- it was a
2 black male adult, had his hair done in rows, braided in rows
3 straight back.

4 Q And what about the driver, when you initially
5 approached the car can you tell me what the driver looked
6 like?

7 A The driver was also a black male adult, his hair was
8 braided but it was done in a cross pattern, it was braided not
9 only back, but sideways making little squares.

10 Q As you approached the driver's side of the car, if
11 you did, and I assume you did?

12 A Yes, I did.

13 Q Did you speak to the driver?

14 A Yes, I did.

15 Q Did you ask the typical questions, driver's license,
16 registration and insurance?

17 A Yes, sir.

18 Q How closely did you get to the driver of that car?

19 A I was speaking right through the -- through the
20 driver's window, I was standing at the -- at the B-post of the
21 car, which is about where the back of the seat is, and leaning
22 forward and speaking to him.

23 Q Was anything obstructing your vision of the driver?

24 A No.

25 Q Do you see that person in court today?

III-319

HONEA - DIRECT

1 A The hair is quite a bit different, but the gentleman
2 sitting in the middle of this table with the glasses on and
3 the tan- colored shirt.

4 MR. DASKAS: Judge, would the record reflect the
5 witness has identified the defendant.

6 THE COURT: It will.

7 MR. DASKAS: Thank you.

8 BY MR. DASKAS:

9 Q Now, did you ask the defendant for some
10 identification?

11 A Yes, I did.

12 Q Did he produce any?

13 A No, he did not.

14 Q Did you ask him his name?

15 A Yes, I did.

16 Q And how did he respond to you?

17 A He told me his name was Donte Fletch.

18 Q You say Donte Fletch?

19 A Fletch.

20 Q All right. Did you ask the defendant his date of
21 birth?

22 A Yes, I did.

23 Q Do you recall what he told you?

24 A Off the top of my head I believe 5/27 of '78.

25 Q Did you attempt to ascertain whether that was a true

III-320

HONEA - DIRECT

1 identity?

2 A I attempted to run that information through our
3 computer system.

4 Q And what did you learn?

5 A There was no matching record.

6 Q That caused you some concern?

7 A Yes, sir.

8 Q Did you continue to have a conversation with the
9 defendant?

10 A I asked the driver of the vehicle to step back out
11 of the vehicle to my patrol vehicle.

12 Q Now, before you did that, did you ever attempt to
13 ascertain the identity of the passenger?

14 A Not at that point.

15 Q Okay. At any point?

16 A Yes.

17 Q What information did you learn about the passenger's
18 identity?

19 A Once I got the driver back to my vehicle, again
20 asked him his information, and got the same Donte Fletch. I
21 asked what the passenger's name was, he told me his name was
22 Red.

23 Q You say the defendant told you the passenger's name
24 was Red?

25 A That's correct.

III-321

HONEA - DIRECT

1 Q All right. Did he identify the passenger in any
2 other fashion?

3 A I asked if he knew a first or a last name, he said I
4 only know him as Red.

5 Q What happened next?

6 A As I was speaking with the driver I noticed the
7 passenger door of the vehicle open up maybe two or three
8 inches.

9 Q That cause you some concern?

10 A Yes, it did.

11 Q What'd you do?

12 A I stepped back behind the open door of my patrol
13 vehicle, as the door came open further the passenger stepped
14 out of the car and looked back in my direction and had a small
15 handgun in his hand. At that point I drew my weapon, both the
16 driver and the passenger turned their backs to me and ran off,
17 jumped over the concrete wall next to the freeway and ran down
18 the Charleston off ramp.

19 Q Did you see what the passenger -- what Red did with
20 the handgun that he had at his side?

21 A I did not.

22 Q Did you capture either the passenger or the
23 defendant the night of August 17th?

24 A No, sir.

25 Q Obviously the car remained there at the side of the

III-322

HONEA - DIRECT

1 road that the defendant was driving?

2 A Yes, sir.

3 Q Did you search the car?

4 A Yes, we did.

5 Q You say "we" did, who else searched the car?

6 A Trooper Rodriguez showed up at the scene, because I
7 had called for backup and he had showed up sometime later.

8 Q What, if anything, did you find inside that Ford
9 automobile on August 17?

10 A I found right underneath the passenger seat and in
11 the back a short sawed-off rifle, .30 carbine rifle.

12 Q You say it was a short sawed-off rifle?

13 A Yeah, the stock -- the wood stock area had been cut
14 off or removed from the -- from the rifle, so it was only
15 about sixteen or eighteen inches long, and just a straight
16 rifle with a -- with a magazine stuffed in it.

17 Q And you mentioned that part of the rifle was wood,
18 is that correct?

19 A That's correct.

20 Q All right. What did you do after you had located
21 that gun, did you impound it?

22 A Yes, I did.

23 Q All right. And some point prior today did you bring
24 it back here to the court and lodge it with the court?

25 A Yes, sir, I did.

III-323

HONEA - DIRECT

1 MR. DASKAS: Judge, for the record I'm going to have
2 the bailiff clear the gun, and it has been marked previously
3 as State's Proposed Exhibit 196.

4 (Pause in the proceedings)

5 MR. DASKAS: And for the record, Judge, the bailiff
6 has indicated that he has cleared the gun.

7 BY MR. DASKAS:

8 Q Trooper Honea, let me hand you what's been marked as
9 State's -- actually I'm going to hold you if you don't mind,
10 show you what's been marked as State's Proposed Exhibit 196,
11 and let me ask you, do you recognize these gun?

12 A Yes, sir.

13 Q And how do you recognize the gun?

14 A That appears to be the gun that I found in that Ford
15 four-door on the night of question.

16 Q Now, there's a red evidence tag that's attached to
17 the trigger portion of the gun, let me ask you do you
18 recognize your signature on that tag?

19 A Yes, sir, on the top line is my signature.

20 Q And is there a date on there as well?

21 A 8/18 of '98.

22 Q All right. Is this in fact the same gun you
23 impounded from the car stopped on August 17th when the
24 defendant was driving the car?

25 A Yes, sir.

III-324

HONEA - DIRECT

1 Q And is it in the same condition as when you
2 impounded it on August 17th, 1998?

3 A It appears to be.

4 MR. DASKAS: Judge, I'd move for the admission of
5 State's Proposed Exhibit 196.

6 THE CLERK: I believe that's wrong.

7 MR. DASKAS: I apologize.

8 THE COURT: Subject to the earlier objection it'll
9 be admitted.

10 (Plaintiff's Exhibit No. 189 admitted)

11 MR. DASKAS: And for the record, Judge, the clerk
12 has corrected me, it's State's Exhibit 189.

13 THE COURT: Thank you.

14 MR. DASKAS: I apologize.

15 BY MR. DASKAS:

16 Q Other than the weapon that was found inside the car,
17 was any ammunition found?

18 A Yes.

19 Q And describe the ammunition that was found.

20 A Well, the weapon itself had a magazine, a straight
21 metal tube coming out the bottom of it that I believe held
22 about twenty rounds of ammunition. In addition to that there
23 was another magazine, a thirty-round magazine in the -- in the
24 vehicle as well.

25 Q Were those items also impounded?

III-325

HONEA - CROSS

1 A Yes, sir.

2 Q In fact you previously brought those items to court?

3 A Yes, sir.

4 MR. DASKAS: And for the record I will not mark
5 those, Judge, for obvious reasons. I'll pass the witness,
6 Judge.

7 THE COURT: Any cross of this witness?

8 CROSS-EXAMINATION

9 BY MR. SCISCENTO:

10 Q Officer, or Trooper?

11 A Trooper is fine.

12 Q Honea?

13 A Honea.

14 Q You pulled over the person you identified as Donte
15 Fletch. You said the passenger subsequently got out of the
16 car?

17 A That's correct.

18 Q And the passenger had a handgun?

19 A That is correct.

20 Q And the passenger was a guy you identified as Red?

21 A That was the name given to me by the driver.

22 Q Later did you find out that Red is in fact a Terrell
23 Young?

24 A Yes, sir, I did.

25 Q You found this gun located in the passenger seat in

III-326

HONEA - CROSS

1 the back?

2 A It was partially under the passenger's seat from the
3 -- from the back side. I found it from the back seat, but it
4 was on the back floor board partially under the passenger's
5 seat.

6 Q As if somebody had stuck it back there?

7 A Correct.

8 Q Did you see Red make any movements towards maybe
9 sticking the gun back there?

10 A No, I did not.

11 Q You saw Red throw down the gun --

12 A I did not --

13 Q -- and then run off?

14 A I did not see him throw down the gun, he carried it
15 with him when he ran off.

16 Q Oh, he carried -- Red carried the gun when he ran
17 off?

18 A The handgun, yes.

19 Q Okay. And kept it with him?

20 A Yes.

21 Q When you first stopped the person you call Donte
22 Fletch, you ran back it didn't -- the names didn't match --
23 the names didn't match, you then asked Donte Fletch to come
24 back to the car with you, to your car?

25 A Yes, I had him stand at the right front of my car.

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HONEA - REDIRECT

1 Q Did he put up any resistance to do that?

2 A No, he did not.

3 Q And it was only until the fact when Red came out and
4 showed a gun, you displayed yours, that they both ran off?

5 A That's correct.

6 MR. SCISCENTO: No further questions, Your Honor.

7 THE COURT: Anything further?

8 REDIRECT EXAMINATION

9 BY MR. DASKAS:

10 Q How did you ultimately ascertain the defendant's
11 true identity?

12 A Approximately two days after this incident --

13 MR. SCISCENTO: Your Honor, I object, I think this
14 probably exceeds the scope.

15 THE COURT: Would you approach the bench.

16 (Off-record bench conference)

17 THE COURT: Okay. Overruled.

18 BY MR. DASKAS:

19 Q I'm sorry, Trooper, you can answer the question.

20 A Approximately two days -- two days after the traffic
21 stop where the subjects had fled from me, I was reading the
22 Las Vegas Sun newspaper in the evening and turned to a page
23 and saw a picture of the driver, who identified himself as
24 Donte Fletch to me. The picture of him identified him as
25 Donte Johnson.

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HEFNER - DIRECT

1 Q With that information did you eventually contact
2 homicide?

3 A Yes, I called them the next morning.

4 MR. DASKAS: Nothing else, Judge.

5 THE COURT: Anything further, Joe?

6 MR. SCISCENTO: Nothing, Your Honor.

7 THE COURT: Thank you, sir, you're excused.

8 Call your next witness please.

9 MR. DASKAS: Sergeant Hefner.

10 KEN HEFNER, PLAINTIFF'S WITNESS, IS SWORN

11 THE CLERK: Please be seated and state your full
12 name and spell your last name for the record.

13 THE WITNESS: Ken Hefner, H-E-F-N-E-R.

14 DIRECT EXAMINATION

15 BY MR. DASKAS:

16 Q Mr. Hefner, you're employed by the Las Vegas
17 Metropolitan Police Department?

18 A Yes.

19 Q And what's your job title?

20 A I'm a sergeant in the homicide section.

21 Q How long have you been a sergeant in -- at the
22 homicide section of Metro?

23 A I've been in homicide for six years.

24 Q Prior to becoming a sergeant what were your duties
25 with Metro?

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HEFNER - DIRECT

1 A Prior to being a sergeant I was a detective in the
2 burglary detail. I was a sergeant in the robbery section.
3 I've worked patrol, traffic. I've got slightly over twenty
4 years on the department.

5 Q And tell me briefly your duties and responsibilities
6 as a sergeant in the homicide division of Metro?

7 A I supervise a squad of six detectives, I respond on
8 calls with them, assist in their investigations, monitor the
9 investigations, and oversee their work on a day-to-day basis.

10 Q You've received special training, I take it, in the
11 area of homicide investigation?

12 A Yes.

13 Q Tell me a little bit about that training.

14 A I've been to countless courses over the years. Last
15 year I went to the New Jersey State Police Homicide School for
16 a week. I have attended the Practical Homicide Investigation
17 seminars, both the three- and the five-day course, which is
18 generally considered the premier homicide investigator's
19 training courses. I've been to several FBI academy classes,
20 several in-house departmental training programs. Over the
21 years it's just -- it's too numerous to remember and mention.

22 Q Back in August of 1998 who were the homicide
23 detectives that you supervised?

24 A Detective Jim Buczek, Detective Tom Thowsen,
25 Detective Dwayne Morgan and Detective Tom Marin.

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HEFNER - DIRECT

1 Q Let me direct your attention to the 14th day of
2 August 1998, was a quadruple homicide case assigned to you as
3 a sergeant and then to some of your detectives?

4 A Yes.

5 Q And to whom -- which detectives was the quadruple
6 homicide case assigned?

7 A Thowsen and Marin.

8 Q Thowsen and Marin?

9 A I'm sorry, Thowsen and Buczek.

10 Q All right. Detectives Thowsen and Buczek. This was
11 a homicide that occurred at 4825 Terra Linda here in Las
12 Vegas, Clark County, Nevada?

13 A Correct.

14 Q Tell me, did you personally respond to that homicide
15 scene?

16 A Yes.

17 Q When you arrived was it obvious to you that other
18 police personnel had already been to the scene?

19 A Yes.

20 Q In fact, were other law enforcement personnel
21 actually there by the time you arrived?

22 A Yes, I was notified by the general assignment
23 detective supervisor. When we arrived, he and several general
24 assignment detectives were still there at the scene
25 maintaining it for us, there were patrol officers and patrol

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HEFNER - DIRECT

1 supervisors there maintaining the perimeter and the security
2 of the scene.

3 Q Tell me generally what you observed when you showed
4 up to the scene of the quadruple murder?

5 A The scene was secured by the officers, as I've
6 mentioned, with crime scene tape, and access to the street,
7 and the area in front and near the house was restricted to
8 police personnel. Upon entering the front door of the
9 residence I could see one body and the part of another. Once
10 I entered into the living room of the residence there were
11 four homicide victims lying face down in the living room
12 floor. Their feet were bound with duct tape, their hands were
13 bound behind their back with duct tape. They had all been,
14 based on what I could see in my experience, shot and were
15 obviously dead. There was indications that the house had been
16 ransacked, drawers overturned, cushions, bedding knocked about
17 on the floor. The house was really quite in a state of
18 disarray. The victims' wallets were on the floor in close
19 proximity to where the victims' bodies were. The wallets had
20 been gone through.

21 MR. SCISCENTO: Your Honor, I object to this, this
22 is starting to seem cumulative. We've heard this report
23 through numerous witnesses, including --

24 THE COURT: Assume this is introductory, we're going
25 to get to something new a second, overruled.

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HEFNER - DIRECT

1 MR. DASKAS: We will, Judge, thank you.

2 BY MR. DASKAS:

3 Q Let me just ask you this, based on your training and
4 experience and your observations at the crime scene, did this
5 appear to you to be a robbery or a burglary scene?

6 A Yes.

7 Q And you say that because the rooms, I take, were
8 ransacked and turned upside down?

9 A Yes, as well as some of the victims' personal
10 property, that being their wallets and whatnot.

11 Q Detectives Thowsen and Buczek, I assumed, were given
12 their duties and responsibilities at that point?

13 A Yes.

14 Q Were crime scene analysts called out to the scene?

15 A Yes.

16 Q And were you present when that occurred and when
17 they began to perform their work at the crime scene?

18 A Yes.

19 Q Can you estimate for me how long you personally were
20 at that Terra Linda household on August 14th?

21 A I'm going to guess five to six hours minimum, maybe
22 even longer.

23 Q Let me now jump ahead to August 18th, 1998 at around
24 3:00 in the morning. Did you respond to a residence at 4815
25 Everman here in Las Vegas, Nevada?

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HEFNER - DIRECT

1 A Yes.

2 Q And before you responded to that location had you
3 received information that was pertinent to the quadruple
4 murder case at Terra Linda?

5 A Yes.

6 Q Describe the residence that's located at 4815
7 Everman?

8 A It's a single family house. The -- when we
9 responded to the area we were requested to assist some SWAT
10 and patrol officers. They had gotten the people that were in
11 the house outside. After that, myself and some crime scene
12 analyst then began to conduct a search of that house. It had
13 been entered by the SWAT officers and cleared and secured.

14 Q Let me ask you, prior to traveling to the Everman
15 home, but after responding to the Terra Linda home, had you
16 interviewed witnesses who might have pertinent information
17 about the quadruple homicide?

18 A My detectives did, yes.

19 Q All right. And I take it that your detectives
20 convey information to you that they learn, and you convey
21 information to your detectives that you learn about any
22 particular investigation?

23 A Correct.

24 Q As a result of the interviews you and your
25 detectives conducted, what did you hope or who did you hope to

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HEFNER - DIRECT

1 locate at the Everman home now on August 18th?

2 A We hoped to locate Donte Johnson and Red, also I
3 believe his name is Terrell Young.

4 Q Prior to responding to the Everman home did you
5 learn who actually owned the home?

6 A Yes.

7 Q Who owned that home?

8 A Tod Armstrong's mother owned the home, she lived out
9 of state. Tod Armstrong was residing in the home and had care
10 and control over the home.

11 Q Did you personally meet, or your detectives
12 personally meet with Tod Armstrong?

13 A Well, they met and interviewed him and then I talked
14 to him and got a key from him.

15 Q Did you learn how many keys there were to that
16 Everman residence?

17 A When he gave me the key he told me that that was the
18 only key in existence for that house.

19 Q And were you satisfied after speaking with Tod
20 Armstrong that he was the person responsible for the home and
21 who had the authority to give you permission to search that
22 home?

23 A Yes.

24 Q Did he in fact give you permission to search the
25 home?

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HEFNER - DIRECT

1 A Yes, he did.

2 Q All right. Did he give that permission to you in
3 writing?

4 A Yes.

5 Q Do you have with you in court today a copy of the
6 form that he signed that authorized you to search the home?

7 A Yes, I have a copy of the consent to search card
8 that he signed with Detective Thowsen.

9 Q Is that your only copy here in court today?

10 A You're certainly welcome to have it if you like it.

11 Q Let's do that if we could.

12 MR. FIGLER: Can we approach, Your Honor?

13 THE COURT: Sure.

14 (Off-record bench conference)

15 BY MR. DASKAS:

16 Q Now, Detective, for the record you've handed me --
17 I'm sorry, Sergeant, you've handed me a Las Vegas Metropolitan
18 Police Department consent to search card, is that correct?

19 A Yes.

20 MR. DASKAS: And for the record I'm having that
21 marked as State's Proposed Exhibit 190. I'm showing to
22 defense counsel what's been marked as State's Proposed Exhibit
23 190.

24 BY MR. DASKAS:

25 Q Sergeant, let me now hand back to you State's

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HEFNER - DIRECT

1 Proposed Exhibit 190, and ask you if you recognize this
2 document?

3 A Yes, I do.

4 Q What is that?

5 A It is the consent to search card that Tod Armstrong
6 signed. He -- this card was obtained from Tod Armstrong by
7 Detective Thowsen.

8 Q And does the date appear on that card?

9 A Yes.

10 Q What date?

11 A 8/17 of '98.

12 Q Was that the date that you -- or your detectives met
13 with Tod and received consent to search?

14 A Yes.

15 Q And does Tod's signature appear on that card?

16 A Yes, it does.

17 Q Is that in the same -- or is it a true and correct
18 copy of the consent to search card that Tod Armstrong signed?

19 A Yes, it's a copy I made myself from the original in
20 our case file.

21 MR. DASKAS: I'd move for the admission of 190,
22 Judge.

23 MR. SCISCENTO: Submit it, Your Honor, obviously
24 with the objection that we had before.

25 THE COURT: Right. Subject to, and not really

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HEFNER - DIRECT

1 related to the earlier objection, it'll be admitted.

2 (Plaintiff's Exhibit 190 admitted)

3 MR. DASKAS: And may I publish that, Judge?

4 THE COURT: Sure.

5 MR. DASKAS: Thank you.

6 BY MR. DASKAS:

7 Q Who actually responded in terms of law enforcement
8 personnel to the Everman home?

9 A Was myself and Detectives Buczek and Thowsen, there
10 were some patrol officers there, and there were several SWAT
11 officers there.

12 Q Were the occupants of Everman asked to exit the
13 home?

14 A Yes.

15 Q And tell me, if you know, who exited the Everman
16 home?

17 A When we responded to the close-in area, when SWAT
18 had secured the area and asked for our assistance, I made
19 contact -- or we, my detectives and I, made contact with Donte
20 Johnson, Charla Severs and Dewayne Anderson there sitting on a
21 curb in close proximity to the house.

22 Q You mentioned three names, including Donte Johnson.
23 Do you see Donte Johnson in court today?

24 A Yes, I do.

25 Q Would you please point to him and describe something

III-338

HEFNER - DIRECT

1 he's wearing as he sits in court today?

2 A He's sitting to my right. He's wearing a khaki
3 colored long sleeve shirt with an open collar, has black
4 glasses on.

5 MR. DASKAS: Judge, would the record reflect the
6 witness has identified the defendant?

7 THE COURT: It will.

8 MR. DASKAS: Thank you, Judge.

9 BY MR. DASKAS:

10 Q Did you have any personal contact with Donte Johnson
11 on August 18th at around 3:00 a.m.?

12 A Yes.

13 Q And tell me about that.

14 A When the SWAT officers were finishing their
15 procedures, they were making announcements over the
16 loudspeaker asking for anybody to come out. The three people
17 I just mentioned kind of chuckled amongst themselves about
18 that. I then had an opportunity, I spoke to all three of
19 them, including Mr. Johnson, and asked each of them
20 individually if they lived in the house. And Mr. Johnson, as
21 well as the others, individually, told me that, no, they did
22 not live in the house.

23 Q You say all three, including the defendant,
24 mentioned that they did not live in the Everman home?

25 A Correct.

III-339

HEFNER - DIRECT

1 Q Now, based on the fact that you had received consent
2 to search and that you were told the three occupants did not
3 live in the home, did you eventually enter the home?

4 A Yes.

5 Q Was that for the purpose of searching the home for
6 evidence?

7 A Yes.

8 Q Were any crime scene analysts present when you
9 searched the home?

10 A Yes.

11 Q Do you recall the name of the analysts?

12 A The primary analyst doing the actual work was CSA
13 Marc Washington.

14 Q What were his responsibilities at the home?

15 A They provide the technical support for us, he takes
16 the photographs, he would document the location and recovery
17 of evidence. He would do the impounding of evidence. They
18 also assist in the searching of the crime scene and help out
19 whoever they can. They maintain the equipment and the
20 expertise to do the technical or the analytical part of the
21 police work that was done there.

22 Q You did not personally impound any evidence at the
23 Everman home?

24 A No.

25 Q Marc Washington would have done that?

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HEFNER - DIRECT

1 A Yes.

2 Q Would you, however, have searched the home and
3 pointed out items of evidence to Marc Washington?

4 A Correct.

5 Q In fact was that done in this case?

6 A Yes.

7 Q Is that common police procedure with Metro?

8 A Yes.

9 Q Let me show you a series of photographs. And,
10 Sergeant, for the record, these are marked State's Proposed
11 Exhibits -- actually maybe State's Exhibits already admitted,
12 98 through 112. Let me have you thumb through those quickly
13 and ask you if you recognize what's depicted in those photos?

14 A Yes, these are photographs taken at the Everman
15 house, both inside and in the back yard area.

16 Q Actually, Sergeant, I'm going to remove 100, so with
17 the exception of 100, 98 through 112, excluding 100, you say
18 they -- do they fairly and accurately depict the Everman home
19 including the exterior and interior?

20 A Yes, they do.

21 MR. DASKAS: And I'd move for the admission of 98
22 through 112, excluding 100, unless they've already been
23 admitted.

24 THE COURT: Have they been? Well, in any event --

25 THE CLERK: 105 and 106 haven't been admitted yet.

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HEFNER - DIRECT

1 THE COURT: Any objection to 105 and 106?

2 MR. SCISCENTO: I'll submit it, Your Honor.

3 THE COURT: Received.

4 (Plaintiff's Exhibits No. 105 and 106 admitted)

5 MR. DASKAS: Thank you, Judge.

6 BY MR. DASKAS:

7 Q Now, tell me, before we show these photos to the
8 jury, generally when you entered the home what were your
9 duties and what were Marc Washington's duties?

10 A We conducted a cursory search of the house to see if
11 we could locate any items of evidentiary value. Once those
12 things were located, then CSA Washington would set about
13 conducting his photography, diagraming, reference notes and
14 impounding procedures.

15 Q Let me start with the living room of the Everman
16 home, did you enter and search the living room of the Everman
17 home?

18 A Yes.

19 Q What, if anything, did you find of significance in
20 the living room?

21 A In the living room I found a teal colored gym bag,
22 tote bag, it had a partially used roll of gray duct tape
23 inside the bag. Also in the living room I found a black pair
24 of jeans that were draped over the couch. There was also a
25 VCR that was sitting on the ground in kind of a haphazard

III-342

HEFNER - DIRECT

1 arrangement, it was stacked on some phone books on the floor
2 in front of the television. And to the right of the TV up on
3 a stand was a --

4 Q Let me -- let me --let me stop you there, okay?

5 A Okay.

6 Q Let me just ask you specifically about the duffel
7 bag, is there a photograph there that depicts the duffel bag
8 that you saw inside the living room?

9 A Yes.

10 Q And what number is that?

11 A It's State's Exhibit 104.

12 Q Does that also depict a roll of duct tape that you
13 mentioned a few moments ago?

14 A Yes, that's correct.

15 Q Now, did Crime Scene Analyst Washington actually
16 impound both the duffel bag and the duct tape?

17 A Yes, he did.

18 MR. DASKAS: May I publish 104, Judge?

19 THE COURT: Sure.

20 BY MR. DASKAS:

21 Q You mentioned a VCR in the living room of the
22 Everman home. Is that depicted in one of the photographs?

23 A Yes, it's depicted in several. State's Exhibit 99,
24 101, and then there's a more distant view in 102.

25 Q Right, but you say at least -- is it 98 and 99?

III-343

HEFNER - DIRECT

1 A They have much closer, head-on, straight-on shots of
2 the VCR.

3 Q Okay. And did Crime Scene Analyst Washington
4 actually impound the VCR that's depicted in 99 and 101, the
5 exhibits?

6 A Yes, he did.

7 MR. DASKAS: May I publish those, Judge?

8 BY MR. DASKAS:

9 Q You mentioned a pair of jeans that were in the
10 living room, is that correct?

11 A Yes.

12 Q Were those jeans impounded?

13 A Yes, they were.

14 Q And is there a photograph that depicts the jeans in
15 the living room of the Everman home?

16 A I believe there is, but it's probably in one of the
17 photos that's in the jury's hands.

18 Q Now, sometime earlier back on the 14th day of August
19 1998, you had visited the crime scene at the Terra Linda, is
20 that true?

21 A Yes.

22 Q When you were in the living room of the Terra Linda
23 home did you notice an entertainment center?

24 A Yes, I did.

25 Q And did it appear to be disrupted in some manner?

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HEFNER - DIRECT

1 A Yes.

2 Q Describe that.

3 A There were spaces -- empty spaces in the
4 entertainment unit where one might expect to find components.
5 And in particular there was a space that had a coaxial or
6 cable TV cable that had been pulled to the front and was left
7 hanging there. That suggested to me that there had been a VCR
8 there and it was now gone.

9 Q Back to the Everman home, did you find anything else
10 of significance in the living room area that pertained or
11 related to the crime scene at Terra Linda?

12 A Yes.

13 Q What else did you find?

14 A There was a box that contained some miscellaneous
15 wrappers and boxes, and in particular there was a empty cigar
16 box for a Black and Mild brand of cigar.

17 Q Now, is there a photograph that you have there in
18 your possession that depicts the shoe box that contained the
19 Black and Mild boxes at the Everman home when you searched it
20 on August 18th?

21 A Yes, it's State's Exhibit 103.

22 MR. DASKAS: And that's been admitted. May I
23 publish that, Judge?

24 THE COURT: Sure.

25 MR. DASKAS: Thank you.

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HEFNER - DIRECT

1 BY MR. DASKAS:

2 Q All right. Did that conclude then your search in
3 the living room of the Everman home?

4 A Yes.

5 Q Let me lead you now to the master bedroom of the
6 Everman home. Did you and Analyst Washington search that and
7 impound evidence?

8 A Yes.

9 Q What, if anything, of significance did you find in
10 the master bedroom of the Everman home?

11 A I found a pair of black jeans that had what appeared
12 to be blood spatter on the bottom area of the -- one of the
13 legs. Crime Scene Analyst Washington conducted a presumptive
14 test on that and it did come back as being blood.

15 Q You say -- I apologize for interrupting you, you say
16 Crime Scene Analyst Washington conducted a presumptive test?

17 A Yes.

18 Q Describe what that is?

19 A He takes a sterile Q-tip and puts some -- I believe
20 he puts some water on it, then gets -- with that wet Q-tip
21 will dab the sample, and then he tests it with a chemical, I
22 believe it's phenolphthalein and it will register as being
23 blood or not.

24 Q In any event it's your testimony that you were
25 present when Analyst Washington conducted a presumptive test

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HEFNER - DIRECT

1 on the jeans?

2 A Yes.

3 Q Is there a photograph that depicts those jeans,
4 including what appear to be the bloodstain?

5 A Yes, there's a --

6 Q And let me do this, if I could, with the Court's
7 permission, can I have you step down, Sergeant Hefner, and
8 display for the members of the jury the photograph, including
9 the number you're referring to, and describe what it is on the
10 jeans that was significant to you?

11 A State's Exhibit 105 is a closeup area photograph of
12 the pant leg in particular that I was talking about. Near the
13 bottom you can see several lighter areas that appear to be a
14 reddish or rust-colored blood droplets. And that's what I
15 initially saw and believed to be blood, and it was tested and
16 confirmed by CSA Washington.

17 Q As a result of that, were those jeans actually
18 impounded by Analyst Washington?

19 A Yes, they were.

20 Q All right. Anything else in the master bedroom that
21 was of significance?

22 A There was some other pants impounded, some shoes.
23 There was a Ruger .22 long rifle with an ammunition clip that
24 was also impounded.

25 Q When you say "ammunition clip," is that also

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HEFNER - DIRECT

1 referred to as a "banana clip"?

2 A It's often referred to that way, yes.

3 Q Is there a photograph there that depicts that Ruger
4 .22 rifle?

5 A State's --

6 Q I apologize.

7 MR. DASKAS: With the Court's permission, can I have
8 him display that to the jury, Judge?

9 THE WITNESS: State's Exhibit 107 depicts the items
10 that I mentioned, the pair of pants that was shown in detail
11 in the previous photographs, some other black pants, several
12 pair of shoes, and the Ruger .22 long rifle with a folding
13 stock, which is -- which you can see right here.

14 BY MR. DASKAS:

15 Q Did Analyst Washington also impound that Ruger
16 rifle?

17 A Yes, he did.

18 MR. DASKAS: Okay. Now let me -- let me have 107
19 and 105 and 106, that is the photos of the jeans.

20 With the Court's permission, may I publish 105, 106,
21 and 107, Judge?

22 THE COURT: Yep.

23 MR. DASKAS: Thank you, Judge.

24 BY MR. DASKAS:

25 Q Did you and Analyst Washington eventually search the

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HEFNER - DIRECT

1 backyard of the Everman home?

2 A Yes.

3 Q Had you received information --

4 THE COURT: Robert, --

5 MR. DASKAS: Yes.

6 THE COURT: -- let me take the second of our
7 recesses now.

8 During this recess you're admonished not to talk or
9 converse among yourselves or with anyone else on any subject
10 connected with this trial; read, watch or listen to any report
11 of or commentary on the trial, or any person connected with it
12 by any means of information, including not -- including, but
13 not limited to newspaper, television and radio; or to form or
14 express any opinion on any subject connected with this matter
15 until it's finally submitted to you.

16 We'll be in recess 'til 4:30.

17 Could I see counsel briefly in chambers please.

18 (Court recessed at 4:20 p.m.)

19 (Jury is present)

20 THE COURT: Go ahead, Mr. Daskas.

21 MR. DASKAS: May I, Judge?

22 THE COURT: Go ahead. Yes.

23 BY MR. DASKAS:

24 Q Sergeant Hefner, I believe we left off with your
25 search of the backyard of the Everman home. Is that your

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HEFNER - DIRECT

1 understanding?

2 A Yes.

3 Q Now, had you received information that led you to
4 believe that you might find something in the backyard of the
5 Everman home?

6 A Yes.

7 Q What information had you received?

8 A We received information from several witnesses that
9 there may be a pager buried in the backyard.

10 Q As a result of that information, did you and Analyst
11 Washington go to the backyard of the Everman home?

12 A Yes.

13 Q And after a cursory examination of the backyard, did
14 you find a location of where it appeared that something had
15 been buried?

16 A Yes.

17 Q Describe what you saw.

18 A CSA Washington was the one who -- whose interest was
19 drawn to this area. He hailed me from a different part of the
20 yard; when he started checking further he came across a blue
21 Motorola pager that was buried several inches in the ground,
22 and along with the pager in the same hole was -- were two
23 brass metal keys to a hotel/motel.

24 Q The keys, did you have any information prior to
25 searching the home at Everman on August 18th, that led you to

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HEFNER - DIRECT

1 believe the keys were related somehow to the Terra Linda home?

2 A No information that they were related to that scene,
3 that vicinity.

4 Q Any information that they were related to somebody
5 who lived at the Everman home?

6 A Yes. We had information that they might have been
7 connected to one of the occupants of the home.

8 Q All right. Do you -- did you make a determination
9 at any point regarding what hotel room those keys were
10 associated with?

11 A Yes, it was --

12 Q What -- go ahead, I'm sorry.

13 A It was the Thunderbird.

14 Q All right. Do you have a photograph that depicts
15 the backyard of the Everman home as well as the pager and the
16 keys that were buried but eventually unearthed?

17 A Yes. There are several photographs, State's Exhibit
18 108 through 112, that show the vicinity -- or the area that
19 drew CSA Washington's interest, where you can see the keys,
20 and then he's also taken -- there's a slight picture of the
21 pager just barely unearthed. And then he took progressive
22 pictures showing the stages of unearthing the pager and the
23 keys, and some closeups of the pager and the keys once they
24 were unearthed.

25 Q Okay. And do 108 through 112 portray I guess the

III-351

HEFNER - DIRECT

1 progressive unearthing of those items?

2 A Yes, they do.

3 MR. DASKAS: May I publish those, Judge?

4 THE COURT: Sure.

5 MR. DASKAS: They've been admitted. Thank you.

6 BY MR. DASKAS:

7 Q Did that then conclude the significant items of
8 value that you found at the Everman home?

9 A Yes.

10 Q And as you mentioned, Analyst Washington actually
11 impounded all of those items?

12 A Yes.

13 Q You've mentioned that you've been a sergeant with
14 homicide for how many years?

15 A Six.

16 Q Can you estimate for me how many homicide
17 investigations you've been involved in?

18 A It's getting close to two hundred.

19 Q In your experience, with homicide cases in
20 particular and other cases in general, is it common, or is it
21 unusual to provide witnesses leniency or consideration for
22 showing up in court?

23 A It's not unusual.

24 Q Tell me a little bit about that, about the
25 consideration that's given for witnesses in general.

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HEFNER - CROSS

1 MR. SCISCENTO: Your Honor, I'm gonna object to
2 this, I don't see the relevancy.

3 THE COURT: Sustained.

4 BY MR. DASKAS:

5 Q Is it common in your experience that witnesses are
6 sometimes reluctant to come forward?

7 A Yes.

8 MR. SCISCENTO: Again, Your Honor, I'm gonna object
9 to that.

10 THE COURT: We already have the answer in. Go on to
11 your next question.

12 MR. DASKAS: I'll pass the witness, Judge.

13 THE COURT: Go ahead.

14 CROSS-EXAMINATION

15 BY MR. SCISCENTO:

16 Q Sergeant Hefner, you mentioned that you went to the
17 Everman house that Tod controlled; correct?

18 A That Tod controlled?

19 Q Yeah.

20 A Yes, sir.

21 Q Tod was the owner of that?

22 A The house is actually owned by his mother, who lived
23 out of state, and he was left in care and control of the
24 house.

25 Q When you -- you were there during the search of the

III-353

HEFNER - CROSS

1 Everman home?

2 A Yes.

3 Q And during the search of the Everman home you found
4 some black pants in a back bedroom?

5 A Yes.

6 Q And you indicated earlier that you believed, when
7 you saw the black pants, you saw what you thought was blood
8 splatter on those pants?

9 A Yes.

10 Q You wrote a report in this case, right?

11 A Yes.

12 Q In that report you indicated:

13 "As a result of the interviews with Tod Armstrong,
14 Bryan Johnson, and Ace Hart, we learned that Johnson
15 had buried a pager believed to belong to Matthew
16 Mowen, one of the victims, and possibly other
17 evidence in the backyard of the residence."

18 A Correct.

19 Q Is that correct?

20 A Yes, correct.

21 Q Okay. So through the results of interviews with the
22 three of 'em, Armstrong, Johnson, and Ace Hart, you learned
23 that there was possibly some evidence buried in the backyard?

24 A Correct.

25 Q And when you went to the spot that you determined

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HEFNER - CROSS

1 was where this stuff was buried, you unearthed it, and you
2 found a pager?

3 A Correct.

4 Q You asked Tod Armstrong to describe the pager to
5 you?

6 A Yeah. You're -- you're referring to a situation
7 when we were still at the Everman house and Tod Armstrong
8 arrived. And we had, at that point, had the pager in our
9 possession, and I asked him to describe it.

10 Q You asked Tod Armstrong to describe the pager to
11 you?

12 A Yes.

13 Q And he told that it was blue and sat sideways in the
14 holder?

15 A Right.

16 Q You showed it to him, the pager to Tod Armstrong,
17 and he recognized it as Matt Mowen's?

18 A That's correct.

19 Q And this was Tod Armstrong who gave you that -- this
20 information?

21 A He was the one that I showed the pager to. The
22 information came from a culmination of the three witnesses.

23 Q Is Tod Armstrong a suspect in this case?

24 A Yes.

25 Q Have you done any further investigation of Mr.

III-355

1 Armstrong?

2 A Yes.

3 Q You found also in that hole, in the evidence that
4 was buried, two keys to the Thunderbird Motel?

5 A Yes.

6 Q Subsequently to finding that, did you follow up any
7 information about those keys?

8 A Yes. They were actually related to another
9 detective's situation, and I informed him of that.

10 Q So they did lead up to the -- those -- that key was
11 to the Thunderbird Hotel, to a room. Did you find out it was
12 rented by Ace Hart?

13 A I believe that to be correct, I don't know that for
14 sure.

15 MR. SCISCENTO: Court's indulgence, Your Honor.

16 BY MR. SCISCENTO:

17 Q In your report you also indicate that Ace Hart told
18 you that he believed the black jeans found in the living room
19 belonged to Red.

20 A I'm sorry?

21 Q In your report you indicate that "Hart told me that
22 he believed the jeans found in the living room belonged to
23 Red"?

24 A Yes.

25 Q Okay. So it was Ace Hart who also gave you that

1 information?

2 A Yes.

3 Q These three guys, Bryan Johnson, Ace Hart, Tod
4 Armstrong, they had a lot of information for you?

5 A Yes, they did.

6 Q That's information you relied upon?

7 A Yes.

8 Q Information that was specific enough as to where all
9 the stuff was buried that these people may have some
10 information, that it may come from people who were involved in
11 the crime?

12 A They did not have specifics. It was, they believed
13 the pager may have been buried in the backyard; they didn't
14 have any proximate location or anything like that. This was
15 just information that they were relaying. I don't think they
16 knew exactly where it was, or if it actually was in the
17 backyard or not.

18 Q But based on their -- the information from them, it
19 turned out to be correct?

20 A Yes.

21 Q And it also turned out to be correct that the pager
22 that Tod Armstrong indicated was, in fact, Matthew Mowen?

23 A Eventually, we determined that it belonged to one of
24 the other victims, it was not Matt Mowen's.

25 Q So the information that Tod gave you though led to

HEFNER - REDIRECT

1 one of the victims -- showed that the pager was in fact
2 another one of -- was one of the victims'?

3 A One of the victims', correct.

4 MR. SCISCENTO: No further questions.

5 THE COURT: Anything further?

6 REDIRECT EXAMINATION

7 BY MR. DASKAS:

8 Q You mentioned on cross-examination that Tod
9 Armstrong was a suspect in this case, is that true?

10 A Yes.

11 Q Have you ever received enough evidence or
12 information to actually arrest Tod Armstrong?

13 A No.

14 Q Have you ever received any evidence to suggest that
15 Tod Armstrong was at the scene of the murder?

16 A No.

17 Q If you receive admissible evidence that suggests
18 that he is in fact involved, more involved than anybody
19 believes he is, what will you do?

20 A We will charge him.

21 MR. DASKAS: Nothing else, Judge.

22 THE COURT: Anything further, Joe?

23 MR. SCISCENTO: Court's indulgence.

24 //

25 //

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HEFNER - RECROSS

RECROSS EXAMINATION

1
2 BY MR. SCISCENTO:

3 Q The three people you relied upon, Tod Armstrong,
4 Bryan Johnson, Ace Hart, if they gave conflicting information,
5 would that be important to you?

6 MR. DASKAS: Judge, this is beyond the scope of
7 redirect.

8 THE COURT: It is.

9 MR. SCISCENTO: Your Honor, we're --

10 MR. DASKAS: I'll object.

11 THE COURT: Where's it gonna go though if I let you
12 reopen it, to something you think is important?

13 MR. SCISCENTO: Yes.

14 THE COURT: Okay, go ahead.

15 THE WITNESS: Mr. Sciscento, I'm not quite sure, I
16 don't understand your question.

17 BY MR. SCISCENTO:

18 Q The three people you relied upon, Tod Armstrong,
19 Bryan Johnson, and Ace Hart, if they gave you conflicting
20 information -- if they give conflicting information, would
21 that be important to your -- to your investigation, to
22 determine whether they lied or not?

23 A I still am not quite sure what you're inquiring.
24 When you get information from three different people it's very
25 rarely the same; people have their own take, or they may have

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HEFNER - FURTHER REDIRECT

1 100 percent of the story where the next guy may have 80
2 percent of the story. I'm not aware of anything substantial
3 amongst the three -- information provided by the three that
4 would suggest that one was lying and one wasn't.

5 Q If subsequently you found out that one of the three
6 boys was withholding information and lied about any
7 information, would that further the investigation to charge
8 'em with crimes?

9 A Oh, yes.

10 MR. SCISCENTO: Okay. No further questions.

11 THE COURT: Anything further?

12 FURTHER REDIRECT EXAMINATION

13 BY MR. DASKAS:

14 Q In addition to the statements from those three
15 witnesses, you had physical evidence, didn't you?

16 A Yes.

17 Q You had statements from witnesses other than Bryan,
18 Tod, and Ace, didn't you?

19 A Yes.

20 MR. DASKAS: Nothing else, Judge.

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

22 Call your next witness, please.

23 MR. DASKAS: Mark Washington.

24 MR. GUYMON: Judge, as we do that, can we enter in a
25 couple of stipulations that we had marked --

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1 THE COURT: Sure.

2 MR. GUYMON: -- and counsel has. Two of them are

3 the next in order, Judge, I've given 'em to the clerk, going

4 to move for their admission, is Exhibits Number 195 and 196.

5 They're associated with the autopsy and the pager, Your Honor.

6 THE COURT: Would you swear the witness in, please.

7 MARC WASHINGTON, PLAINTIFF'S WITNESS, IS SWORN

8 THE CLERK: Please state your full name and spell

9 your last name for the record.

10 THE WITNESS: My name is Marc Washington, that's

11 W-A-S-H-I-N-G-T-O-N.

12 THE COURT: Okay, before you start with this witness

13 do you want the substance of these, which are going to be in

14 evidence, told to the jury now?

15 MR. GUYMON: At some point in time it'd be nice to

16 have 'em read to the jury, Judge. Whatever -- whatever your

17 pleasure.

18 MR. SCISCENTO: I'd prefer it now, Your Honor.

19 THE COURT: And you want 'em read in their entirety?

20 MR. GUYMON: Please, Your Honor.

21 THE COURT: Okay. 195, the stipulation is, folks,

22 that both the State and the defense stipulate or agree that:

23 "On July 24th, 1998, Ace Hart rented Room 6829 at

24 the Thunderbird Hotel at 1213 South Las Vegas

25 Boulevard, Las Vegas, Clark County, Nevada. Room

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1 6829 remained rented in the name of Ace Hart
2 continuously from July 24th through August 3rd,
3 1998. On August the 4th, 1998 that room which was
4 previously rented under the name of Ace Hart was
5 vacated.
6 "On August 4th, 1998 Room Number 6704 of the
7 Thunderbird Hotel was under -- rented under the name
8 of Ace Hart. Room Number 6704 remained rented
9 continuously from August the 4th, 1998 through
10 August the 17th, 1998."
11 And the stipulation, which I've already explained to
12 you the meaning of, in Exhibit Number 196, which you'll also
13 have back in the jury room tomorrow:
14 "Both the State and the defense stipulate or agree
15 that on August the 18th, 1998, Las Vegas
16 Metropolitan Police Department Crime Scene Analyst
17 Marc Washington" -- is he familiar to you? --
18 "impounded a blue Motorola pager bearing serial
19 number AXAAA 0717595 from the backyard of 4815
20 Everman, Las Vegas, Nevada.
21 "That pursuant to police and procedures -- policies
22 and procedures of the Las Vegas Metropolitan Police
23 Department, CSA Marc Washington placed the Motorola
24 pager in the Las Vegas Metropolitan Police
25 Department evidence vault.

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WASHINGTON - DIRECT

1 "That Sergeant Ken Hefner removed the pager from the
2 evidence vault, sent the pager to a Motorola
3 facility in Florida that's responsible for
4 manufacturing, research, and development of Motorola
5 pagers.

6 "That a representative from Motorola determined that
7 the telephone number assigned to the pager bore
8 serial number AXAAA 071795 [sic] was 675-0883.

9 "That Peter Talamantez carried and used the Motorola
10 pager bearing serial number AXAAA 0717595 which was
11 assigned telephone number 675-0883, and which was
12 found buried in the backyard of 4815 Everman, Las
13 Vegas, Nevada."

14 Go ahead.

15 MR. GUYMON: Thank you, Judge.

16 DIRECT EXAMINATION

17 BY MR. DASKAS:

18 Q Mr. Washington, you're a crime scene analyst with
19 Metro, is that correct?

20 A That's correct.

21 Q On August 18th, 1998, you responded to 4815 Everman
22 with Sergeant Ken Hefner, is that correct?

23 A That's correct.

24 Q And were your duties and responsibilities to search
25 the residence and impound certain items of evidence that

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WASHINGTON - DIRECT

1 either you or Sergeant Hefner located?

2 A That's correct.

3 Q All right, let me get you right to this. Let's
4 start with the living room area. There's been testimony by
5 Sergeant Hefner that a VCR was located and impounded by you.
6 Is that accurate?

7 A That's correct.

8 Q Let me show you what's been marked as State's
9 Exhibit 153 and its contents, and ask you if you recognize
10 this exhibit?

11 A Yes, I do.

12 Q What is 153?

13 A This is a bag I used to impound the VCR, and this
14 would be the label that I placed on there.

15 Q Is 153 in the same, or substantially the same
16 condition as when you impounded it?

17 A That I --

18 Q That of the bag itself?

19 A Oh. Yes.

20 Q Other than the fact that it's been opened.

21 A That's correct.

22 Q All right. Your name and the event number
23 associated with this particular case is located on 153?

24 A That's correct.

25 Q If you were to open 153, what would you expect to

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WASHINGTON - DIRECT

1 153A, Judge.

2 MR. FIGLER: Submit, Your Honor.

3 THE COURT: Be admitted.

4 (Plaintiff's Exhibit Nos. 153 and 153A admitted)

5 BY MR. DASKAS:

6 Q Now is there some indication to you that the VCR has
7 been processed?

8 A Yes, there is.

9 Q And what indication is there that it's been
10 processed?

11 A There's a film over the surface of the VCR, it's a
12 white film which is familiar to me of super glue fuming. And
13 also, I recognize these -- this P number on here, which is
14 latent fingerprint examiner, and he also processes evidence.

15 Q Let me take back 153A from you, and ask you --
16 excuse me -- you also impounded a tote bag, or a duffel bag
17 from the living room of the Everman home?

18 A That's correct.

19 Q Let me hand you what's been previously marked as
20 State's Proposed Exhibit 157 and ask you if you recognize 157?

21 A Yes, I do.

22 Q What is that?

23 A This is the evidence bag and label that I used to
24 impound one tan, black and green duffel bag labeled Olivett
25 Sport.

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WASHINGTON - DIRECT

1 Q And if you removed the contents of 157, what would
2 you expect to find?

3 A That tan and black bag.

4 Q Would you please remove the contents and describe
5 what it is you remove.

6 A This is the bag that I impounded that day.

7 Q On August 18th, 1998?

8 A That's correct.

9 Q Is it in the same or substantially the same
10 condition as when you impounded it on August 18th, 1998?

11 A With the exception of this tag, that's correct.

12 MR. DASKAS: Judge, I move for the admission of 157
13 and 157A.

14 THE COURT: Submit it?

15 MR. FIGLER: Submit it.

16 THE COURT: Admitted.

17 (Plaintiff's Exhibit Nos. 157 and 157A admitted)

18 BY MR. DASKAS:

19 Q Now there's been testimony by Sergeant Hefner that a
20 roll of duct tape was found and impounded from the living room
21 as well. Was that correct?

22 A That's correct.

23 Q Are you the one who impounded that duct tape?

24 A Yes, I am.

25 Q Let me hand you what's been marked as State's

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WASHINGTON - DIRECT

1 Proposed Exhibit 155 and ask you if you recognize this?

2 Do you recognize that?

3 A Yes, I do.

4 Q What is 155?

5 A It is an evidence bag with a label that I filled out
6 identifying one partially-used roll of duct tape.

7 Q And if you removed the contents, what would you
8 expect to find?

9 A One partially-used roll of duct tape.

10 Q Would you please remove it and describe what you've
11 removed?

12 A This is a plastic bag that I placed the duct tape
13 in, those are my initials and the event number and what item
14 it is according to my report. And inside that, labeled 155A
15 is a roll of duct tape --

16 Q Is --

17 A -- partially used.

18 Q Is the contents of 155A, that is the roll of duct
19 tape, in the same condition as when you impounded it on August
20 18th, 1998?

21 A Other than the processing conducted on it, yes.

22 MR. DASKAS: I move for the admission of 155 and
23 155A, Judge.

24 MR. FIGLER: Submit.

25 THE COURT: Received.

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IN THE SUPREME COURT OF NEVADA

DONTE JOHNSON,

CASE NO. 65168

Appellant,

vs.

THE STATE OF NEVADA

Respondent.

OPENING BRIEF APPENDIX

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7	ADDENDUM TO NOTICE OF EVIDENCE IN SUPPORT OF AGGRAVATING CIRCUMSTANCES (FILED 04/26/2000)	1733-1734
6	AFFIDAVIT OF JOSEPH S. SCISCENTO IN SUPPORT OF THE MOTION TO CONTINUE (FILED 12/14/1999)	1428-1433
19	AMENDED EX PARTE ORDER ALLOWING WITHDRAWAL OF ATTORNEY OF RECORD FOR MATERIAL WITNESS CHARLA SEVERS (FILED 08/24/2000)	4585
7	AMENDED JURY LIST (FILED 06/06/2000)	1823
8	AMENDED JURY LIST (FILED 06/08/2000)	2131
3	AMENDED NOTICE OF MOTION AND MOTION TO VIDEOTAPE THE DEPOSITION OF CHARLA SEVERS (FILED 10/08/1999)	659-681
31	APPELLANT'S OPENING BRIEF (FILED 02/03/2006)	7174-7225
19	CASE APPEAL STATEMENT (FILED 11/08/2000)	4651-4653
42	CASE APPEAL STATEMENT (FILED 03/06/2014)	8200-8202
31	APPELLANT'S REPLY BRIEF (FILED 05/25/2006)	7254-7283

1	3	CERTIFICATE FOR ATTENDANCE OF OUT OF STATE WITNESS CHARLA CHENIQUA SEVERS AKA KASHAWN HIVES (FILED 09/21/1999)	585-606
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3	7	CERTIFICATE OF MAILING OF EXHIBITS (FILED 04/17/2000)	1722
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10	5	DEFENDANT'S MOTION FOR CHANGE OF VENUE (FILED 11-29-1999)	1186-1310
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17	5	DEFENDANT'S MOTION FOR DISQUALIFICATION FROM THE JURY VENUE OF ALL POTENTIAL JURORS WHO WOULD AUTOMATICALLY VOTE FOR THE DEATH PENALTY IF THEY FOUND MR. JOHNSON GUILTY OF CAPITAL MURDER (FILED 11/29/1999)	1073-1076
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7	5	DEFENDANT'S MOTION TO ALLOW THE DEFENSE TO ARGUE LAST AT THE PENALTY PHASE (FILED 11/29/1999)	1058-1062
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12	5	DEFENDANT'S MOTION TO BIFURCATE PENALTY PHASE (FILED 11/29/1999)	1142-1145
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17	5	DEFENDANT'S MOTION TO EXCLUDE AUTOPSY PHOTOGRAPHS (FILED 11/29/1999)	1098-1101
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21	5	DEFENDANT'S MOTION TO PROHIBIT THE USE OF PEREMPTORY CHALLENGES TO EXCLUDE JURORS WHO EXPRESS CONCERNS ABOUT CAPITAL PUNISHMENT (FILED 11/29/1999)	1084-1090
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24	5	DEFENDANT'S MOTION TO REQUIRE PROSECUTOR TO STATE REASONS FOR EXERCISING PEREMPTORY CHALLENGES (FILED 11/29/1999)	1137-1141
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1	3	DEFENDANT'S OPPOSITION TO STATE'S MOTION TO VIDEOTAPE THE DEPOSITION OF CHARLA SEVERS (FILED 10/06/1999)	650-658
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28	3	MOTION AND NOTICE OF MOTION IN LIMINE TO PRECLUDE EVIDENCE OF OTHER CRIMES OR BAD ACTS (FILED 10/18/1999)	699-704

1	3	MOTION AND NOTICE OF MOTION IN LIMINE TO PRECLUDE EVIDENCE OF OTHER GUNS WEAPONS AND AMMUNITION NOT USED IN THE CRIME (FILED 10/19/1999)	743-756
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3	2	MOTION FOR DISCOVERY (FILED 05/13/1999)	440-443
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12	6	MOTION FOR OWN RECOGNIZANCE RELEASE OF MATERIAL WITNESS CHARLA SEVERS (FILED 01/11/2000)	1496-1500
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18	2	MOTION TO COMPEL DISCLOSURE OF EXISTENCE AND SUBSTANCE OF EXPECTATIONS, OR ACTUAL RECEIPT OF BENEFITS OR PREFERENTIAL TREATMENT FOR COOPERATION WITH PROSECUTION (FILED 06/29/1999)	511-515
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21	3	MOTION TO COMPEL DISCLOSURE OF EXISTENCE AND SUBSTANCE OF EXPECTATIONS, OR ACTUAL RECEIPT OF BENEFITS OR PREFERENTIAL TREATMENT FOR COOPERATION WITH PROSECUTION (10/19/1999)	738-742
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24	2	MOTION TO COMPEL THE PRODUCTION OF ANY AND ALL STATEMENTS OF THE DEFENDANT (FILED 06/29/1999)	516-520
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26	3	MOTION TO COMPEL THE PRODUCTION OF ANY AND ALL STATEMENTS OF THE DEFENDANT (FILED 10/19/1999)	727-731
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28	2	MOTION TO CONTINUE TRIAL (FILED 06/16/1999)	481-484

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9	19	MOTION TO SET ASIDE DEATH SENTENCE OR IN THE ALTERNATIVE MOTION TO SETTLE RECORD (FILED 09/05/2000)	4593-4599
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15	42	NOTICE OF APPEAL (FILED 03/06/2014)	8203-8204
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1	3	NOTICE OF MOTION AND MOTION TO VIDEOTAPE THE DEPOSITION OF CHARLA SEVERS (FILED 09/29/1999)	622-644
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24	6	OPPOSITION TO DEFENDANT'S MOTION FOR DISQUALIFICATION FROM THE JURY VENIRE OF ALL POTENTIAL JURORS WHO WOULD AUTOMATICALLY VOTE FOR THE DEATH PENALTY IF THEY FOUND MR. JOHNSON GUILTY OF CAPITAL MURDER (FILED 12/06/1999)	1380-1382
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28	6	OPPOSITION TO DEFENDANT'S MOTION FOR INSPECTION OF POLICE OFFICERS' PERSONNEL FILES (FILED 12/06/1999)	1362-1365

1	6	OPPOSITION TO DEFENDANT’S MOTION FOR PERMISSION TO FILE OTHER MOTIONS (FILED 12/06/1999)	1356-1358
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16	6	OPPOSITION TO DEFENDANT’S MOTION TO AUTHENTICATE AND FEDERALIZE ALL MOTIONS OBJECTIONS REQUESTS AND OTHER APPLICATIONS AND ISSUES RAISED IN THE PROCEEDINGS IN THE ABOVE ENTITLED CASE (FILED 12/06/1999)	1394-1396
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19	6	OPPOSITION TO DEFENDANT’S MOTION TO BIFURCATE PENALTY PHASE (FILED 12/06/1999)	1359-1361
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1	6	OPPOSITION TO DEFENDANT’S MOTION TO PROHIBIT THE USE OF PEREMPTORY CHALLENGES TO EXCLUDE JURORS WHO EXPRESS CONCERNS ABOUT CAPITAL PUNISHMENT (FILED 12/06/1999)	1389-1391
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4	6	OPPOSITION TO DEFENDANT’S MOTION TO REQUIRE PROSECUTOR TO STATE REASONS FOR EXERCISING PEREMPTORY CHALLENGES (FILED 12/06/1999)	1415-1417
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6	3	OPPOSITION TO MOTION IN LIMINE TO PERMIT THE STATE TO PRESENT “THE COMPLETE STORY OF THE CRIME” (FILED 07/02/1999)	524-528
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9	4	OPPOSITION TO MOTION INN LIMINE TO PRECLUDE EVIDENCE OF OTHER GUNS, WEAPONS AND AMMUNITION NOT USED IN THE CRIME (FILED 11/04/1999)	791-800
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11	6	OPPOSITION TO MOTION TO CONTINUE TRIAL (FILED 12/16/1999)	1434-14440
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9	4	REPLY TO OPPOSITION TO MOTION IN LIMINE TO PRECLUDE EVIDENCE OF OTHER GUNS, WEAPONS AND AMMUNITION NOT USED IN THE CRIME (FILED 11/15/1999)	950-955
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12	17	REPLY TO RESPONSE TO MOTION FOR NEW TRIAL (FILED 07/10/2000)	4096-4100
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14	36	REPLY TO THE STATE'S RESPONSE TO DEFENDANT'S PETITION FOR WRIT OF HABEAS CORPUS POST-CONVICTION, DEFENDANT'S SUPPLEMENTAL BRIEF, AND SECOND SUPPLEMENTAL BRIEF IN SUPPORT OF DEFENDANT'S WRIT OF HABEAS CORPUS POST CONVICTION (FILED 06/01/2011)	7672-7706
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19	21	REPORTER'S TRANSCRIPT OF APRIL 20, 2005 TRIAL BY JURY- VOLUME II- P.M. (FILED 04/21/2005)	4864-4943
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1	35	TRANSCRIPT OF PROCEEDINGS DEFENDANT'S MOTION	
2		TO PLACE ON CALENDAR TO EXTEND THE TIME TO FILE	
3		REPLY BRIEF IN SUPPORT OF DEFENDANT'S WRIT OF	
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8		MOTION TO PLACE ON CALENDAR TO EXTEND THE TIME	
9		TO FILE A REPLY BRIEF IN SUPPORT OF DEFENDANT'S	
10		WRIT OF HABEAS CORPUS	
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22	19	WARRANT OF EXECUTION	
23		(FILED 10/03/2000)	4624
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CERTIFICATE OF SERVICE

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on the 9th day of January, 2015. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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