

293

ORIGINAL

FILED IN OPEN COURT
JUN 12 2000 20

DISTRICT COURT
CLARK COUNTY, NEVADA

SHIRLEY B. PARRAGUIRRE, CLERK

BY

CAROLE D'ALOIA

DEPUTY

STATE OF NEVADA

Plaintiff

vs.

DONTE JOHNSON,
aka John Lee White

Defendant

CASE NO. C153154

DEPT. V
DOCKET "H"

Transcript of
Proceedings

BEFORE THE HONORABLE JEFFREY D. SOBEL, DISTRICT COURT JUDGE

JURY TRIAL - DAY 4
THURSDAY, JUNE 8, 2000
VOLUME IV

APPEARANCES:

FOR THE PLAINTIFF:

GARY L. GUYMON
Chief Deputy District Attorney
ROBERT J. DASKAS
Deputy District Attorney

FOR THE DEFENDANT:

DAYVID J. FIGLER
Deputy Special Public Defender
JOSEPH S. SCISCENTO

COURT REPORTER:

SHIRLEE PRAWALSKY
District Court

TRANSCRIPTION BY:

NORTHWEST TRANSCRIPTS, INC.
Las Vegas Division
P.O. Box 35257
Las Vegas, Nevada 89133-5257
(702) 658-9626

Proceedings recorded by electronic sound recording, transcript
produced by transcription service.

CE

EX-45

1 LAS VEGAS, NEVADA, THURSDAY, JUNE 10, 2000, 8:40 A.M.

2 (Jury is present)

3 THE COURT: All right, call your first witness,
4 Robert.

5 MR. DASKAS: Ed Guenther.

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

8 EDWARD GUENTHER, PLAINTIFF'S WITNESS, IS SWORN

9 THE CLERK: Please state your full name and spell
10 your last name for the record.

11 THE WITNESS: My name is Edward Guenther. It's
12 spelled G-U-E-N-T-H-E-R.

13 DIRECT EXAMINATION

14 BY MR. DASKAS:

15 Q Mr. Guenther, can you tell me where it is that
16 you're employed?

17 A Yes, I'm employed with the Las Vegas Metropolitan
18 Police Department. I'm assigned to the Crime Laboratory and I
19 work in the Latent Print Detail.

20 Q What's your actual job title?

21 A I'm a latent print examiner.

22 Q Okay. And how long have you been a latent print
23 examiner with Metro?

24 A With Metro I have been a latent print examiner for a
25 little over two years now.

IV-2

GUENTHER - DIRECT

1 Q Prior to your employment with Metro, did you also
2 work in the field of latent fingerprint examination?

3 A Yes, I did.

4 Q For whom and for how long?

5 A Well, my training in fingerprinting began back in
6 1975. I was employed by the Federal Bureau of Investigation
7 in Washington, D.C. That is where I underwent my basic
8 training in classifying, searching and identifying of
9 fingerprints.

10 In 1977 I entered into a training program with the
11 State of Ohio for a latent fingerprint examiner. I completed
12 that training program and I did case work in Ohio for three
13 years and then, in 1980, took a job with the Florida
14 Department of Law Enforcement in Tampa, Florida and I worked
15 there for the next 18 years on the bench as a latent
16 fingerprint analyst until taking my job with Metro in 1998.

17 Q In total, then, how long have you been employed in
18 the area of fingerprint examination?

19 A 25 years in fingerprint examination, 23 as a latent
20 fingerprint examiner.

21 Q What exactly are your duties and responsibilities
22 now with Metro as a latent print examiner?

23 A My duties are to process evidence that comes into
24 the laboratory for the presence of latent fingerprints and
25 also to make examinations of latent lift cards that are

GUENTHER - DIRECT

1 submitted to our laboratory through our Crime Scene Detail and
2 to make comparisons with those items with the known finger,
3 palm and sole prints of individuals that are submitted into
4 the laboratory for the purposes of comparison and trying to
5 make identifications.

6 Q Can you tell me just a little bit about your
7 training that qualifies you to perform the work that you do
8 with Metro as a fingerprint examiner?

9 A Well, what I reviewed there is the -- Well, mostly
10 my experience, my 23 years of experience, and I periodically
11 keep up with going to classes. I'm a member of the
12 International Association for Identification. I'm a certified
13 latent fingerprint examiner through that organization.

14 And so those are some of the other qualifications I
15 have, plus I've probably examined hundreds of thousands of
16 fingerprints over the last 23 years in the latent fingerprint
17 area.

18 Q You mentioned that prior to your employment with
19 Metro you actually worked for the FBI at some point?

20 A Yes, I did.

21 Q Have you previously testified as an expert in courts
22 of law regarding fingerprint comparison and examination?

23 A Yes, I have.

24 Q How many times?

25 A Well over a hundred times.

IV-4

GUENTHER - DIRECT

1 Q Have you ever qualified as an expert in the Eighth
2 Judicial District Court here in Las Vegas, Nevada?

3 A Yes, I have.

4 Q As a fingerprint expert?

5 A Yes, I have.

6 MR. DASKAS: Judge, I would proffer Mr. Guenther's
7 testimony as an expert in the area of fingerprint examination.

8 THE COURT: Any --

9 MR. FIGLER: Submitted, Your Honor.

10 THE COURT: He'll be found to be an expert.

11 As I indicated with reference to Dr. Bucklin, all
12 that means is that he can give his testimony, as most lay
13 witnesses cannot, in the form of opinions. And as you'll be
14 instructed later on today, what weight you give his opinion is
15 up to you.

16 Go ahead, Mr. Daskas.

17 MR. DASKAS: Thank you, Judge.

18 BY MR. DASKAS:

19 Q Mr. Guenther, let me have you define some terms and
20 explain the processes that you employ in your examinations.
21 First of all, what is a fingerprint?

22 A Well, in a fingerprint -- Well, we have two types
23 of, when we talk about fingerprints, we have what we call an
24 inked fingerprint and we have a latent fingerprint. An inked
25 fingerprint is the standard that is taken from an individual.

GUENTHER - DIRECT

1 And I guess the easiest way to explain it is that the finger -
2 - the skin on your hands and your feet is obviously different
3 than any other skin on your body. It's not smooth. It's
4 raised into rows, which we call ridges, and when a thin film
5 of ink is applied over those ridges and they are rolled onto a
6 receiving medium, which is normally a fingerprint card, an
7 exact replica of those -- of that detail is left upon that
8 card. This is what we call an inked fingerprint.

9 Q Is that, and I apologize for interrupting, is that
10 also known sometimes as an exemplar?

11 A Yes, sir.

12 Q All right.

13 A Yes, it is.

14 A latent fingerprint -- The ridges I just described
15 to you are at the tips of -- or at the tops of every ridge are
16 pores and, obviously, we all know that our body is constantly
17 excreting perspiration and other chemicals and, when the hand
18 or foot comes into contact with a surface, a deposit of that
19 material is going to be left on the surface and then it's our
20 job, as either crime scene analysts or fingerprint examiners,
21 to employ various methods and techniques to try to develop and
22 enhance those latent fingerprints so that we can use them to
23 make comparisons with those exemplars that come into the
24 laboratory setting.

25 Q What factors or variables would determine whether

GUENTHER - DIRECT

1 somebody actually leaves a print on any particular object?

2 A Well, there are numerous factors that have -- play
3 into whether a fingerprint will actually be left on a surface.
4 The primary one, in my opinion, is pressure. If there's too
5 much pressure put down on a surface, instead of getting nice
6 ridge detail what you end up with is a big blob, a smear.

7 The other would be environmental factors, whether --
8 how long a latent print, once it's placed down, is exposed to
9 wind, moisture, rain, you know, rain or any kind of
10 environmental factor that you can think of.

11 The substrate that's touched, generally speaking,
12 the smoother a surface is the better it is for leaving a
13 latent print behind that can be identified.

14 The skin condition of the individual who's touching
15 it, some people just simply perspire more than others or they
16 have skin conditions that maybe they don't -- do or don't
17 leave latents behind.

18 And time is also a factor. From the moment a latent
19 is put down on a surface, eventually it will reach the point
20 where it's not able to be developed and utilized for
21 comparison purposes.

22 Q Do any two individuals have the same fingerprints?

23 A No.

24 Q What about identical twins?

25 A No.

IV-7

GUENTHER - DIRECT

1 Q Can you explain how is it that you actually compare
2 fingerprints and then make identifications?

3 A Yes. Well, the first process of making a comparison
4 is the analytical portion where a latent -- we have a lift or
5 we have a photograph, whatever means we have that that latent
6 was recorded, and the analyst has to first make a
7 determination of whether that latent is actually of what we
8 call comparison value. That means does it have enough of what
9 we call characteristics to make it unique and to individualize
10 it to a particular individual.

11 And not all latent prints make the cut. A lot of
12 times latent lifts are made at crime scenes and the ridge
13 detail that's left is of insufficient quality or quantity to
14 make a comparison with any individual.

15 So once we've gone through that process and
16 determined that particular latent lifts do, in fact, have
17 value for comparison, we then introduce the exemplar into the
18 -- or the standard into the process and from there we look for
19 a grouping of these individual characteristics on the latent
20 fingerprint and try to locate the same grouping of individual
21 characteristics on the inked fingerprint.

22 And this is the process that we go through. And
23 when, in the examiner's mind, they have found a sufficient
24 number of corresponding points between this latent fingerprint
25 and the inked fingerprint, they're able to make an

IV-8

GUENTHER - DIRECT

1 identification and make a positive statement about that latent
2 print as it relates to that particular standard.

3 Q What value then would a fingerprint comparison or
4 identification have in a criminal case?

5 A Well, it will establish, if you are able to make an
6 identification, it will establish a positive identity, that a
7 particular latent print was left at a crime scene or on a
8 particular item, whatever the situation surrounding that
9 particular latent print may be.

10 Q With what percent of accuracy does a fingerprint
11 ascertain somebody's identification?

12 A 100 percent.

13 Q All right. You were called upon in this particular
14 case to make some comparisons, is that correct?

15 A Yes, sir.

16 Q All right. And do you know who in this
17 investigation called upon you to begin your work in the area
18 of fingerprint examination?

19 A Detective Jim Buczek was the detective in charge of
20 this case. He made a submittal into the laboratory for we in
21 the Latent Print Detail to make a processing of exhibits that
22 were collected at the crime scene and also to make a
23 comparison of latent lifts that were made by the crime scene
24 analysts at the crime scene.

25 Q Detective Buczek is a homicide detective, is that

GUENTHER - DIRECT

1 true?

2 A Yes, sir.

3 Q All right. And is that standard protocol, for the
4 detective assigned to the case to request fingerprint
5 examiners to perform comparisons?

6 A Yes, it is.

7 Q Once you receive a request to perform a comparison,
8 what steps do you take?

9 A Well, once we receive a request, by this time
10 normally we have gathered up the latent lifts from the Crime
11 Scene Detail and have them secured and stored in the Latent
12 Print Detail. The next step then is to contact our evidence
13 vault and to have the evidence brought up into the laboratory
14 from the vault.

15 From there an inventorying of all of the evidence is
16 done so that we correspond, that we do exactly have what the
17 detective has asked us to look at, and from there we enter
18 into the examination process of actually processing the
19 evidence or, as I explained earlier, evaluating the latent
20 lifts.

21 Q Once you received a request from Detective Buczek in
22 this case, did you also then subsequently receive latent
23 fingerprint cards?

24 A Latent fingerprint cards?

25 Q Yes.

IV-10

GUENTHER - DIRECT

1 A Yes. Those were the -- Those would have been
2 gathered together in the latent -- in the Crime Scene Detail
3 and then we have a policy and procedure in place where we, as
4 the latent print examiners, go over to their area and remove
5 them from a locked box and bring them over to our area in the
6 Latent Print Detail.

7 Q There's been some testimony thus far from crime
8 scene analysts who testified that they lifted prints from
9 items and placed those prints onto latent fingerprint cards.
10 Is that what you retrieved from the evidence vault in this
11 case?

12 A Yes.

13 Q I don't think we've defined the term latent print.
14 Can you define the term latent print?

15 A Yes. I explained that it's a deposit left on a
16 surface.

17 Q You mentioned the term exemplars or standards of
18 individuals. Did you receive exemplars or known fingerprints
19 of individuals in this investigation?

20 A Yes, I did.

21 Q Can you tell me the names of the individuals you
22 received known prints from?

23 A Yes, I can. In this case I was asked to examine the
24 latent prints from the case with these following individuals;
25 John L. White, also known as Donte Johnson, Terrell Young,

GUENTHER - DIRECT

1 Sikia Smith, Jeffrey Biddle, Tracey Gorringer, Matthew Mowen,
2 Peter Talamantez, Nicholas Gorringer, Joseph Haphes [phonetic]
3 and Tod Alan Armstrong.

4 Q All right. Now those individuals you just
5 mentioned, you received their known fingerprints, is that
6 true?

7 A Yes, finger and palm -- and in some instances their
8 known palm prints also.

9 Q So, for example, these individuals may have applied
10 for a work card at some point and rolled their prints onto a
11 card, much like, I'm sure, many of us have done?

12 A Yes.

13 Q All right, let me show you, -- and I've shown
14 defense counsel, Judge, what's been marked as State's Proposed
15 Exhibits 197 and 198 and I'll ask you if you recognize those
16 two documents.

17 A Yes, I do. It has my identifying initials and our
18 laboratory number at the bottom and I recognize them as
19 certified copies of fingerprint standards that I made in our
20 laboratory from the original cards.

21 Q Is there a name associated with those known
22 fingerprints and palm prints?

23 A Yes.

24 Q What name is associated with those known
25 fingerprints and palm prints?

IV-12

GUENTHER - DIRECT

1 A The name on the top of each card, 197 and 198, says
2 John L. White or John Lee White.

3 Q You mentioned those are certified copies?

4 A Yes.

5 Q All right, does that mean that these are true and
6 correct copies of the actual fingerprints that were rolled
7 onto those forms?

8 A Yes.

9 Q Are those in the same condition as when you
10 retrieved them -- On what did you retrieve those?

11 A Well, I made the actual certified copy back in 1998,
12 September 11th, and from that time they have been in my case
13 file, which is secured in the laboratory setting.

14 MR. DASKAS: I'd move for the admission of 197 and
15 198, Judge.

16 MR. FIGLER: Submitted, Your Honor.

17 THE COURT: Admitted.

18 (Plaintiff's Exhibit Nos. 197, 198 admitted)

19 MR. DASKAS: Thank you, Judge.

20 BY MR. DASKAS:

21 Q Now did you also receive the known fingerprints and
22 palm prints of somebody named Sikia Smith?

23 A Yes, I did.

24 Q Let me hand you, and I've shown defense counsel,
25 what's been marked as State's Proposed Exhibit 172 and I'll

GUENTHER - DIRECT

1 ask if you recognize that.

2 A Yes, I do recognize State's Exhibit 172. Once
3 again, my initials and our laboratory case number is located
4 in the corner of the exhibit.

5 Q Is that also a certified copy and was that in your
6 sole care, custody and control from the time you retrieved it
7 until today?

8 A Yes, it would have been handled exactly the same as
9 State's Exhibits 197 and 198 would have been.

10 MR. DASKAS: Judge, I'd move for the admission of
11 172.

12 MR. FIGLER: Submitted.

13 THE COURT: Admitted.

14 (Plaintiff's Exhibit No. 172 admitted)

15 BY MR. DASKAS:

16 Q Now are you also familiar with the process of
17 lifting or developing latent prints?

18 A Yes, sir.

19 Q All right. In addition to your training to compare
20 fingerprints, have you received training to lift or develop
21 fingerprints?

22 A Yes. Training in the processing of evidence is
23 standard training for all latent fingerprint -- well, I
24 shouldn't -- almost all latent fingerprint examiners, is to
25 learn the techniques and the processes to develop latent

IV-14

GUENTHER - DIRECT

1 fingerprints within the laboratory setting, much the same as
2 what happened at a crime scene. We employ the same techniques
3 in the laboratory and sometimes we employ some additional
4 techniques that are better utilized in a laboratory setting
5 than they are in a field situation.

6 Q In this particular case did you also develop or
7 recover some latent prints?

8 A Yes, I did.

9 Q And can you describe the item from which you
10 developed those prints?

11 A Yes. One of the items that I was asked to examine
12 was a VCR, an RCA VCR cassette deck, and I did, in fact, call
13 that particular item up from the vault, as I described
14 earlier, and I did process that item in the laboratory and I
15 did develop a particular latent palm print on that -- on that
16 VCR.

17 Q You mentioned that you developed a palm print from
18 the VCR?

19 A Yes.

20 Q And do any two individuals have the same palm
21 prints?

22 A No. All of the ridge detail on your hands and feet
23 is unique to you and you alone, so it's not just your
24 fingerprints. It's your palms, the joint areas of your
25 fingers and the ridge detail on your feet.

GUENTHER - DIRECT

1 Q Mr. Guenther, let me hand you what's previously been
2 admitted as State's Exhibit 153A and I will ask if you
3 recognize that particular item.

4 A Yes, I do. I recognize it as the VCR that I did, in
5 fact, process back in 1998. It has my initials and our
6 laboratory case number on the front.

7 Q In fact, is there something on that VCR that is
8 State's 153A that indicates to you you did develop --

9 A Oh.

10 Q -- latents from that item?

11 A Yes. On the back underneath side of the VCR there's
12 an area that has a piece of tape over it and this indicates
13 the area where I actually processed -- where I processed and
14 then did notice a latent palm print. And so my normal
15 procedure is once I recognize that area I make a lift of it, I
16 place a piece of tape over that area to cover it so that I
17 can, well, show later on where, in fact, I did make a
18 particular latent lift from.

19 Q Now if you can hold up for the jury --

20 A Yes, sir.

21 Q -- the bottom of the VCR, I see what appears to be a
22 piece of tape with the numbers or letters E5891G, is that
23 correct?

24 A Yes.

25 Q And there's a date of August 22nd, 1998?

GUENTHER - DIRECT

1 A Yes.

2 Q Does that suggest to you that's the date you lifted
3 the print from this VCR?

4 A Yes.

5 Q The E and the G, does that stand for Ed Guenther?

6 A Yes.

7 Q All right. And perhaps you mentioned it, but can
8 you tell me briefly how it was -- the process you used to
9 actually develop that print?

10 A Okay. Well, in this particular instance, as in all
11 instances, we first do what we call a visual examination,
12 'cause sometimes you can actually see a latent fingerprint on
13 an item just with a visual, with a strong light passing across
14 it. In this particular instance I was not able to do that
15 with a visual exam, so I introduced what we call the super
16 glue technique to this surface. And what happens in that
17 technique is the item is actually placed into a sealed chamber
18 and --

19 THE COURT: Sir, we heard that from another witness.
20 Will you move on to a new area?

21 MR. DASKAS: Yes, Judge. I apologize.

22 THE WITNESS: Yes, sir.

23 BY MR. DASKAS:

24 Q After applying the super glue and developing the
25 print through that process, did you then memorialize the print

GUENTHER - DIRECT

1 that you lifted in some particular fashion?

2 A Yes, I powdered -- I then powdered the area once I
3 noticed -- saw the ridge detail and then I made a lift of that
4 area to preserve the image that was on the VCR.

5 Q Was the lift then placed onto a fingerprint card?

6 A Yes.

7 Q And let me hand you what's been marked and shown to
8 defense counsel as State's Proposed Exhibit 171 and ask you if
9 you recognize 171.

10 A Yes, I recognize State's Exhibit 171. Once again I
11 have -- my initials are on this particular lift, the date I
12 made the lift and our laboratory event number.

13 Q Now is 171 the actual palm print that you lifted
14 from the VCR, 153A, and then placed onto the fingerprint card?

15 A Yes, onto the latent print -- onto the latent lift
16 card, yes, it is.

17 Q And is it in the same condition today as when you
18 lifted it and placed the print onto the card?

19 A Yes.

20 MR. DASKAS: I'd move for the admission of 171,
21 Judge.

22 MR. FIGLER: Submitted.

23 THE COURT: Admitted.

24 (Plaintiff's Exhibit No. 171 admitted)

25 (Pause in the proceedings)

IV-18

GUENTHER - DIRECT

1 BY MR. DASKAS:

2 Q Now, Mr. Guenther, did you then take the print that
3 you lifted from the VCR and compare that print to the known
4 prints of a particular individual?

5 A Yes, I did.

6 Q And to whom did you compare the print from the VCR?

7 A Well, I began comparing it with all of the
8 individuals, but when I reached one particular individual I
9 stopped, because at that point I made an identification with
10 this individual.

11 Q And who is the individual that you identified as
12 having left the palm print on the VCR?

13 A I identified the palm print from the VCR as the
14 right palm print of Sikia Smith.

15 Q And with what percent of accuracy did you identify
16 Sikia Smith as having left the palm print on the VCR?

17 A 100 percent.

18 Q Can you just briefly or quickly hold the VCR in the
19 fashion that Sikia would have held the VCR to leave the palm
20 print that he left, so the jury can understand it.

21 A Well, on the card I normally -- When you receive the
22 card you'll see that there's a line on the bottom of it and I
23 mark on the bottom of it what I think is the direction of the
24 print on a particular item and that helps me in orienting the
25 latent print when I make a comparison.

IV-19

GUENTHER - DIRECT

1 And also, when you get this, you'll see that there's
2 a large circle right here in the latent lift card and you'll
3 be able to locate and place that on the actual bottom of the
4 VCR, which will show that the palm print would have been in
5 this fashion, like this, on the back side of the VCR.

6 Q So it's possible that Sikia Smith would have held
7 that VCR upright with his right hand on the bottom of the VCR?

8 A Yes, or in any number of other combinations.

9 Q All right.

10 A But this would certainly be one possibility.

11 Q After you identified Sikia Smith as having made that
12 palm print, did somebody else in the Metro Crime Lab confirm
13 or verify your results?

14 A Yes.

15 Q And is it common practice, in the Crime Lab at
16 Metro, to have somebody else confirm or verify another
17 fingerprint examiner's results?

18 A Yes.

19 Q And who --

20 A All --

21 Q I apologize.

22 A Yeah, all identifications in our laboratory system
23 are verified by a second person.

24 Q And who in this case, that is involving Sikia
25 Smith's palm print, verified your results?

IV-20

GUENTHER - DIRECT

1 A They were verified by Joe Geller.

2 Q And Joe Geller, I assume, is also a fingerprint
3 examiner with Metro?

4 A Yes.

5 Q Do you know how many years of experience Joe Geller
6 has?

7 A Over 20.

8 Q All right, combined some 45 years of experience
9 between you and Mr. Geller?

10 A Yes.

11 Q And did he reach the same results as you?

12 A Yes.

13 Q You made other comparisons in this case, is that
14 correct?

15 A Yes, I did.

16 Q All right. Now in this particular print involving
17 Sikia Smith, you developed the latent print yourself?

18 A Yes, I did.

19 Q Did you ever also make comparisons with latent
20 prints that other crime scene analysts developed?

21 A Yes, I did.

22 Q All right, let me hand you what's been marked as
23 State's -- marked and admitted as State's Exhibit 188 and its
24 content and ask you if you recognize this item.

25 A Yes, I do. I recognize it as a latent -- one of the

GUENTHER - DIRECT

1 latent lift cards that came into the Latent Print Detail's
2 possession. My initials and the latent lift number are on the
3 card, as is our Metro event number.

4 Q All right. Can you tell me who it was that lifted
5 or developed that print?

6 A Yes. It would have been lifted by CSA Grover.

7 Q All right. And that's associated with this
8 quadruple homicide case, correct?

9 A Yes.

10 Q Let me also hand you what's been marked and admitted
11 as State's Exhibit 96 and 97 and ask you if you recognize
12 these photographs.

13 A Well, not directly, sir. No, I do not, because I
14 never actually saw the cigar pack in the laboratory setting.

15 Q Right, but, at the very least, do you recognize that
16 there's something in the photos to indicate to you that a
17 latent print was lifted from that cigar box?

18 A Oh, yes, sir. There is a piece of tape, which
19 appears to me to be fingerprint tape, that is placed on this
20 Middleton cigar box.

21 Q In fact, is there also something on the latent print
22 card itself to suggest that that print was developed from a
23 Black and Mild Middleton cigar box?

24 A Well, I'm just assuming that the individual who took
25 the photograph or who placed the tape on there is the same and

IV-22

GUENTHER - DIRECT

1 then lifted the latent from this cigar box and placed it onto
2 the latent lift card.

3 Q Is there anything unusual about a fingerprint
4 examiner, such as yourself, comparing latent prints developed
5 by some other person?

6 A No. That's probably the norm more than the
7 exception.

8 Q Okay. Now did you compare the latent fingerprint
9 card lifted from the Black and Mild cigar box with a known
10 individual's prints?

11 A Yes, I did.

12 Q And who did you compare those prints with?

13 A Once again, I compared the latent from the cigar box
14 with the individuals that were submitted to me and I stopped
15 once again at a particular individual because I had made an
16 identification with that particular individual.

17 Q What's the name of the individual that you
18 identified as having left the fingerprint on the Black and
19 Mild Middleton cigar box?

20 A I identified the latent from the Black and Mild
21 cigar box as the right thumb of Donte Johnson.

22 Q And is Donte Johnson also known as John Lee White?

23 A Yes.

24 Q In fact, on the exemplars or known prints of John
25 Lee White that you have up at the witness stand, does a

GUENTHER - DIRECT

1 signature appear on there and specifically the signature of
2 John White?

3 A Yes, sir, on both cards -- or on both certified
4 copies, 197 and 198, they both have the signature of John
5 White or John Lee White.

6 Q With what percent of accuracy can you tell us that
7 John Lee White, also known as Donte Johnson, left a
8 fingerprint on that Black and Mild cigar box?

9 A 100 percent.

10 Q What instrumentality did you use to make the visual
11 comparison in this case involving the latent print card from
12 the Black and Mild cigar box?

13 A Well, normally we just utilize a simple magnifying
14 glass and it's just a simple five-power magnification
15 apparatus that we place over -- Usually we employ two, one
16 that we place over the latent fingerprint and one that we use
17 and place over the inked fingerprint or the known standard.

18 Q Is that common practice in your profession among
19 your peers?

20 A Yes.

21 Q Now you mentioned previously that you had somebody
22 verify or confirm your results involving Sikia Smith. Did you
23 do that involving the cigar box as well?

24 A Yes, I did.

25 Q And who confirmed or verified your results?

GUENTHER - DIRECT

1 A Once again Mr. Joe Geller.

2 Q So again, between the two of you, some 45 years of
3 experience?

4 A Yes.

5 Q And you both identified John Lee White as having
6 left the print on the cigar box?

7 A Yes, we did.

8 Q If you could, if it would assist the jury, can you
9 take the photograph of the cigar box, along with the latent
10 print that was lifted from it, and describe to the jury how
11 that print could have been placed on the cigar box, if you
12 can.

13 A Well, once again, as I did on the palm print, I
14 always orient my latent prints and in this case, with a
15 fingerprint, I make this little half circle over the top of
16 the latent print to once again orient me to -- for the
17 positioning and in this instance the print would be in this
18 fashion, oriented as the right thumb. And judging by the
19 photographs that are in my possession here, the thumb would
20 either have to have been placed --

21 MR. DASKAS: And with the Court's permission, could
22 he --

23 THE WITNESS: May I step down, Your Honor?

24 It would either have to have been placed in this
25 fashion on the cigar box or, of course, the other possibility

GUENTHER - CROSS

1 is that the hand came across the cigar box in the other
2 direction and then the thumb would be across the box in this
3 direction.

4 MR. DASKAS: Okay. Judge, may I publish?

5 THE COURT: Yes.

6 MR. DASKAS: Thank you.

7 BY MR. DASKAS:

8 Q Mr. Guenther, is there any way for an expert such as
9 yourself to determine when a particular print was left on an
10 object?

11 A No.

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

13 THE COURT: Thank you.

14 MR. FIGLER: The Court's indulgence.

15 (Pause in the proceedings)

16 MR. FIGLER: Your Honor, actually, I think I need
17 the photographs that are being published to the jury, so would
18 you like me to gather those now or wait until this jury has
19 had a chance to see all of them?

20 THE COURT: I'd wait a minute or two.

21 MR. FIGLER: That's fine.

22 (Pause in the proceedings)

23 CROSS-EXAMINATION

24 BY MR. FIGLER:

25 Q Good morning, Mr. Guenther.

1 A Good morning.

2 Q Now I want to ask you some general questions first
3 and then will specifically ask about this case.

4 The process in fingerprint analysis is to, well,
5 essentially gather as many latent prints as possible for later
6 comparison, is that correct?

7 A Yes.

8 Q And when we use that expression, "latent prints,"
9 that can cover -- that covers all three things that you talked
10 about. The fingerprint, right?

11 A Well, it --

12 Q Well, a fingerprint is a latent print or can be a
13 latent print?

14 A Well, in the jargon of the -- A latent print is not
15 an inked -- There's a distinction between an inked fingerprint
16 and a latent fingerprint.

17 Q Okay.

18 A A latent fingerprint coming from something from a
19 crime scene and an inked fingerprint being the exemplar.

20 Q Okay, let's just use the expression then, just to
21 clear it up, and I'm glad I'm doing this, latent print. If a
22 latent print has been recovered, that could be a fingerprint,
23 correct?

24 A Yes.

25 Q And that could be a palm print?

GUENTHER - CROSS

1 A Yes.

2 Q And it could even be a sole print from the bottom of
3 someone's foot, correct?

4 A Yes.

5 Q Okay, so all those are captured when you're talking
6 about -- or those type of things are captured when you're
7 talking about latent prints, correct?

8 A Yes.

9 Q Okay. And you additionally stated, and I think the
10 prosecutor asked you, that there's no way to tell the length
11 of time that a print existed, correct?

12 A No, there's not.

13 Q Now there's also a distinction between permanent
14 structured prints and transitory item prints, isn't that
15 correct?

16 A I'm not familiar with that term. Maybe I understand
17 it as a --

18 Q Well, maybe if I give you an example.

19 A Yes, sir.

20 Q If I walk up to the bench here by the Judge and I
21 put my hands on this item, --

22 A Yes.

23 Q -- there is a possibility that my fingerprints may
24 be left, correct?

25 A Yes, sir.

IV-28

GUENTHER - CROSS

1 Q Okay. No, if you were to recover those fingerprints
2 off the Judge's bench, there's a pretty good inference there
3 that I was actually the one standing at this bench putting my
4 prints on it, correct?

5 A Yes.

6 Q Okay. Now I used an example before with someone
7 else about a cup. If I put my hand on a cup, it may or may
8 not leave prints on the cup, correct?

9 A Correct.

10 Q And then if somebody were to then take that cup and
11 go into any number of places, then that doesn't necessarily
12 mean that I'm where the cup was found, correct?

13 A No.

14 Q Okay. Now do you still have the VCR up there with
15 you?

16 A Yes, sir, I do.

17 Q Now the VCR had a print on it, right, that you
18 found, a palm print?

19 A Yes, sir.

20 Q Okay. Now it doesn't surprise you that there was
21 testimony that that VCR was in three or four different
22 locations, isn't that correct? It doesn't surprise you, that
23 type of testimony?

24 A Well, I'm not -- I don't know.

25 Q It's possible?

GUENTHER - CROSS

1 A It certainly is, sir.

2 Q It's possible that that was in a hundred different
3 places, correct?

4 A It may well have been, sir.

5 Q Changed hands, that sort of thing?

6 A It certainly could have.

7 Q Now let me ask you about this particular case. When
8 you received information to test, you received about a hundred
9 latent lifts?

10 A Yes, I did.

11 Q And those came from a number of different examiners,
12 correct?

13 A Yes, they came from numerous crime scene analysts.

14 Q Grover, Horn, Fletcher, O'Donnell, Perkins, does
15 that seem right to you?

16 A Yes. Just let me check my report here just to make
17 sure.

18 Q Sure.

19 A Yes, those are some of the names that I have listed
20 on my report.

21 Q And, in fact, you then also received items that were
22 recovered from different locations and you did your own
23 fingerprint analysis on those things, correct?

24 A Yes.

25 Q And retrieved and recovered latent prints off of

1 those items as well?

2 A Yes, on this VCR, yes.

3 Q Okay, now you also received exemplars. Is that the
4 word that we used?

5 A Yes.

6 Q So those are the known finger or palm prints of
7 individuals, correct?

8 A Yes.

9 Q And you went down the list, and I won't make you do
10 it again, of all the people that you received known
11 fingerprints to compare, correct?

12 A Yes.

13 Q Now is the list that you told us when the prosecutor
14 asked you, is that the complete list? In other words, was
15 there anyone else that you received besides the people who you
16 just listed?

17 A I do not think -- No.

18 Q Okay. So you never received the fingerprint of an
19 individual named Ace Hart to compare?

20 A No.

21 Q And you never received the fingerprint of an
22 individual named Bryan Johnson to compare?

23 A No.

24 Q And you never received the fingerprints of an
25 individual named Charla Severs to compare?

GUENTHER - CROSS

1 A No.

2 Q And out of those hundred or so prints that were
3 presented to you, you were only able to -- well, there were
4 some that -- or, in fact, there were numerous that you weren't
5 able to match up, isn't that correct?

6 A Yes.

7 Q And these were from items taken from the Terra Linda
8 residence?

9 A Yes, sir.

10 Q Now there was a time when you actually did this
11 examination?

12 A Yes.

13 Q And that date was?

14 A Well, it would have been approximately between
15 August 15th and the 22nd. I'd have to see the card again to
16 see the exact date that I made the identification.

17 Q This card here?

18 A Yes, 'cause it will have the date that the
19 identification was actually made on it.

20 August 22nd, 1998.

21 Q Okay. And you have prepared a report in this
22 particular case, is that correct, sir?

23 A Yes.

24 Q And do you remember the date of your report?

25 A Yes. It says October 15th, 1998.

1 Q October 15th, 1998?

2 A Yes, sir.

3 Q Now at the time that you had prepared that report on
4 October 15th, 1998, certain individuals were identified to you
5 as suspects, is that correct?

6 A Yes.

7 Q And you even notated that on your -- on your report,
8 isn't that correct?

9 A Yes. We often place either S or V next to the
10 individual or an E just to indicate who in the detective's
11 point of view or their submission, based on their submission,
12 who a suspect, victims or prints submitted for elimination
13 purposes could have originated from.

14 Q So E stands for elimination?

15 A Yes.

16 Q So an S, if someone has an S by their name, they're
17 considered a suspect?

18 A Yes.

19 Q And an E, someone's trying to eliminate that person,
20 correct?

21 A Yes. There could be a person who had legitimate
22 access to the scene and what we try to do is -- we always try
23 to eliminate all of the latent prints that we can. Oftentimes
24 we ask for victim prints from crime scenes so that we can
25 compare the latents from the crime scene, obviously, with the

GUENTHER - CROSS

1 victims, or people who have had legitimate access to a scene,
2 to -- well, to eliminate those so we don't have to keep
3 comparing them and comparing them and comparing them with
4 suspects in the case.

5 Q Okay. Now in your investigation you were given the
6 name John White, correct?

7 A Yes.

8 Q And you had a card that said John White on it,
9 right?

10 A Yes.

11 Q And you were informed that John White was a suspect,
12 correct?

13 A Yes.

14 Q And so you put an S next to his name on your report,
15 correct?

16 A Yes.

17 Q Now you were also given the name Tod Armstrong,
18 isn't that correct?

19 A Yes.

20 Q And you put an S next to his name as well?

21 A No.

22 Q So you were not presented that Tod Armstrong may be
23 a possible suspect in this case?

24 A No. His name was introduced to me as a -- for
25 elimination purposes.

IV-34

GUENTHER - CROSS

1 Q In fact, you were given other information about --
2 or direction about Tod Armstrong? Yes or no?

3 A Yes, I believe I was.

4 Q And that came directly from Detective Buczek, isn't
5 that correct?

6 A Yes.

7 Q And what did Detective Buczek tell you with regard
8 to comparing the fingerprints of Tod Armstrong in this
9 particular case?

10 A Well, at the -- at this particular time in the
11 investigation I was asked only to compare Tod Armstrong's
12 prints with latent prints that would have been developed on
13 Item 13, which would be an ATM card, I believe.

14 Yes, I'm sorry, EG6. Excuse me.

15 Q Right.

16 Q Which would have been, excuse me, EG6, Item 13,
17 which would have been the RCA VCR tape player here that we've
18 been talking about this morning.

19 Q So pursuant to a directive from Detective Buczek,
20 even though you had all of these other fingerprints to
21 compare, as late as October 15th, 1998 Detective Buczek said
22 only check Tod Armstrong with regard to that VCR that you
23 have, correct?

24 A At that date, yes.

25 Q He didn't tell you to -- He said don't check 'em

GUENTHER - CROSS

1 with anyone else, just that VCR?

2 A Correct.

3 Q Don't compare Tod Armstrong with any of the other
4 prints that were found at Terra Linda, correct?

5 A Yes.

6 Q Now, Mr. Guenther, I want to talk to you about this
7 photograph, the Black and Mild photograph.

8 A Yes, sir. Excuse me.

9 Q You don't have that box with you, do you, the actual
10 box? You haven't actually seen that box?

11 A No, I have not.

12 Q So really all that remains of the box is the
13 photograph that you have in your hand, is that correct?

14 A Yes, sir, that's what I'm assuming.

15 Q Okay. And that's Exhibit 96 and 97?

16 A Yes.

17 Q Okay, you can't tell me, from looking at those
18 pictures, whether or not there might have been a smeared print
19 on there, can you?

20 A No, not really.

21 Q And you can't tell me what was on the underside of
22 that Black and Mild box, can you?

23 A No.

24 Q And typically, as an expert, someone who lifts
25 latents, you're not gonna lift a smeared print because there's

IV-36

GUENTHER - REDIRECT

1 no reason for that, isn't that correct?

2 A Yes. You usually would do a -- Once powder is
3 applied to a surface, the person, either the crime scene
4 person or a latent print person, is going to make an
5 evaluation of that area to determine if there is, in fact,
6 some ridge detail to in fact actually be lifted.

7 Q So if there's something of no value, in other words,
8 if someone put too much pressure or if it got smeared or
9 something like that, no one's gonna bring that back to you to
10 look at 'cause that's a waste of time, right?

11 A Yes, sir.

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

13 THE COURT: Redirect.

14 MR. DASKAS: Thank you, Judge.

15 REDIRECT EXAMINATION

16 BY MR. DASKAS:

17 Q Mr. Guenther, you were asked if you had received the
18 known prints, that is the exemplars, of either Ace Hart, Bryan
19 Johnson or Charla Severs and I believe your answer was no.

20 A Yes, sir, it was.

21 Q All right. You were also asked whether Detective
22 Buczek asked you to only compare Tod Armstrong's known prints
23 with one particular object and the answer was yes.

24 A Yes, sir, at that -- at that date, yes.

25 Q And as of what date was that?

GUENTHER - REDIRECT

1 A That would have -- Well, I'll have to just double
2 check, but it would have been some time between the issuance
3 of the report and the date that the investigation was started.
4 I can tell you the exact date here.

5 On the 2nd of September of '98.

6 Q Some time subsequent to September 2nd, 1998, did you
7 receive another request to compare Tod Armstrong's known
8 prints to every single latent print lifted from the Terra
9 Linda home?

10 A Yes, I did.

11 Q And did you make those comparisons?

12 A Yes, I did.

13 Q In other words, you took Tod Armstrong's known.
14 fingerprints and compared those to every latent print
15 developed at Terra Linda?

16 A Yes, I did.

17 Q And what were the results?

18 A I was not able to make any identifications between
19 the inked fingerprints of Tod Armstrong with any of the lifts
20 from the Terra Linda address.

21 Q Of the some 100 prints developed from the Terra
22 Linda home, none of those were Tod Armstrong's?

23 A No, sir.

24 Q All right. You were asked some questions about
25 either an E next to a person's name for elimination or an S

GUENTHER - REDIRECT

1 for suspect. When you received the second request to make the
2 comparison with Tod Armstrong, was there a letter next to
3 Tod's name?

4 A Yes.

5 Q What letter?

6 A It had an S next to it at that time.

7 Q And what did that suggest to you?

8 A It suggested at that point Detective Buczek had
9 wanted the comparison with Mr. Armstrong as a -- he was asking
10 it as a suspect in his mind.

11 Q You identified the defendant's fingerprints on a
12 cigar box at the crime scene, but Tod Armstrong's prints were
13 nowhere?

14 A Correct.

15 Q You were shown the photograph of the cigar box and
16 you were asked whether a smeared print either was found
17 anywhere on the box or whether you received a smeared print,
18 is that correct?

19 A Yes.

20 Q And the answer was no?

21 A Correct.

22 Q Would the existence of a smeared print on the cigar
23 box affect your identification of Donte Johnson as having left
24 a print on that box?

25 A No.

GUENTHER - RECROSS

1 Q All right, you were asked about the underside of the
2 cigar box. Do you recall that question?

3 A Yes, sir.

4 Q Would the existence of anything on the underside of
5 the cigar box affect your identification of Donte Johnson as
6 having left the print on the Black and Mild cigar box?

7 A No.

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

9 THE COURT: Any recross?

10 RECROSS EXAMINATION

11 BY MR. FIGLER:

12 Q However, Mr. Guenther, had there been evidence that
13 some smeared -- or prints of no value were on the underside,
14 it might suggest that someone else could have handled that
15 Black and Mild box and you just don't know?

16 A I'm not able to make a determination to that, sir.

17 Q It might show activity, but, again, because it would
18 be of no value, all it would show is perhaps activity, but not
19 identity, correct?

20 A Correct.

21 Q Now the prosecutor just asked you about some
22 supplemental request that was made of you, correct?

23 A Yes, sir.

24 Q And you talked about your first investigation being
25 done in September of -- I'm sorry, August, September, October,

IV-40

GUENTHER - RECROSS

1 1998, correct?

2 A Yes.

3 Q Now this supplemental request was made in December
4 of 1999, isn't that correct?

5 A Yes, that's when the report was issued, December
6 1st, 1999.

7 Q Okay. And Tod Armstrong was then compared, correct?

8 A Yes.

9 Q Okay. Now if Tod Armstrong had been wearing gloves,
10 per se, at the Terra Linda residence, that would diminish the
11 ability for his fingerprints to actually show up on surfaces,
12 isn't that correct?

13 A Yes.

14 Q Okay. Now you were given Tod Armstrong's name, but
15 you still weren't given Ace Hart's, right?

16 A No.

17 Q And you still weren't given Bryan Johnson's, right?

18 A No.

19 Q And you still weren't given Charla Severs, correct?

20 A No.

21 Q Now there was something else about Tod Armstrong's
22 prints that you lacked to do a complete investigation, isn't
23 that correct?

24 A Yes.

25 Q Okay. In fact, that's how you phrased it, you

GUENTHER - FURTHER REDIRECT

1 needed something necessary for a complete examination that you
2 didn't have, correct?

3 A Yes, sir.

4 Q Okay. And what was that, sir?

5 A Well, there were -- no palm prints were on file for
6 Tod Armstrong, so the only exemplars that I had to make a
7 comparison were with his fingerprints.

8 Q So you didn't even have the palm prints of Tod
9 Armstrong, did you?

10 A No, I did not.

11 Q Now how hard is it, if I'm here present and you want
12 to compare my palm print, how hard is it for me to give you my
13 palm print?

14 A Oh, it would take about ten minutes.

15 Q About ten minutes.

16 (Pause in the proceedings)

17 MR. FIGLER: Nothing further, Your Honor.

18 MR. DASKAS: Two questions, Judge.

19 FURTHER REDIRECT EXAMINATION

20 BY MR. DASKAS:

21 Q Mr. Guenther, from the time you made your initial
22 comparisons in this case until you received a second request
23 in December of 1999, when you compared Tod's prints to the
24 latents, --

25 A Yes, sir.

IV-42

GUENTHER - FURTHER REDIRECT

1 Q -- did the latents change in any fashion?

2 A No.

3 Q They're preserved for all time?

4 A Yes, sir.

5 Q And from the time you received your initial request
6 to make the comparisons until the subsequent request in
7 December of '99 to compare Tod Armstrong, did the known prints
8 of Tod Armstrong change in any fashion?

9 A No, they did not.

10 MR. DASKAS: I have nothing else, Judge.

11 MR. FIGLER: Nothing, Judge.

12 THE COURT: Thank you. You're excused, sir.

13 Call your next witness, please.

14 THE WITNESS: Thank you, Your Honor.

15 MR. DASKAS: Richard Good.

16 (Pause in the proceedings)

17 THE COURT: While Richard's coming in, would you
18 guys approach the bench, please?

19 (Off-record bench conference)

20 THE COURT: You gonna to be good today?

21 THE WITNESS: Yes, sir, I will.

22 THE COURT: Okay.

23 RICHARD GOOD, PLAINTIFF'S WITNESS, IS SWORN

24 THE CLERK: Please state your full name and spell
25 your last name for the record.

IV-43

GOOD - DIRECT

1 THE WITNESS: Richard George Good, Sr., G-O-O-D.

2 DIRECT EXAMINATION

3 BY MR. DASKAS:

4 Q Mr. Good, by whom are you employed?

5 A By the Las Vegas Metropolitan Police Department.

6 Q Okay. And how long have you been employed with
7 Metro?

8 A Just about 28 years.

9 Q And what's your job title?

10 A I'm a lab manager in the forensic laboratory of the
11 Criminalistics Bureau.

12 Q Do your duties and responsibilities include work in
13 the area of firearms examination?

14 A Yes, they do.

15 Q And tell us a little bit about what's encompassed or
16 involved in the area of firearms and ballistics examination
17 and comparison.

18 A Well, the discipline of firearms examination or
19 firearms identification is one that entails the examination of
20 firearms that have been submitted to the laboratory and have
21 been suspected of being involved in criminal matters. The
22 examination itself of a standard firearm is fairly
23 straightforward. The examiner examines the firearm to
24 determine the make, the model, serial number and location,
25 caliber, finish, barrel length, trigger pull and the type of

IV-44

GOOD - DIRECT

1 function that firearm has.

2 He then would test fire the firearm to see if it's
3 functional and would compare the test fires of that firearm
4 with other ammunition components, that is to say fire bullets
5 or fire cartridge cases from minor crime scenes or from
6 autopsies.

7 THE COURT: Excuse me, Mr. Daskas, I understand
8 that's what Mr. Good usually does, but in this case he did
9 something else, right?

10 MR. DASKAS: Right.

11 BY MR. DASKAS:

12 Q Tell me specifically what your involvement was with
13 respect to this quadruple homicide investigation. What
14 comparisons were you asked to make in this case?

15 A I was asked to examine and compare fire cartridge
16 cases and bullet fragments involving this event.

17 Q Now you've previously qualified and testified as an
18 expert in courts here -- in the Eighth Judicial District Court
19 of Las Vegas, Nevada in that area, is that true?

20 A Yes, sir, that is true.

21 MR. DASKAS: Judge, I believe there would be a
22 stipulation of his qualifications as an expert in that area.

23 THE COURT: Is that stipulated?

24 MR. FIGLER: That's correct, Your Honor.

25 THE COURT: All right, thank you

IV-45

GOOD - DIRECT

1 Again, this just means that rather than go through
2 all of Mr. Good's various qualifications and then find he's an
3 expert, he's been around for years and the defense does not
4 contest that he is a qualified expert, which, as I've told you
5 twice before, just means he can state his testimony in the
6 form of opinions and what weight you give the opinions are up
7 to you.

8 Go ahead, Mr. Daskas.

9 MR. DASKAS: Thank you, Judge.

10 BY MR. DASKAS:

11 Q Mr. Good, if it would assist the jury, what I'd like
12 you to do is step down from the stand and, with the assistance
13 of a diagram, explain the terms to the jury that you utilize
14 in your area of expertise and how it is that you go about
15 making such a determination or comparison of cartridge cases.

16 And let me show you, first of all, what purports to
17 be a diagram of a semi-automatic handgun and then the interior
18 portion of the barrel of the gun. And just explain,
19 generally, the functions of the gun and how the mechanism and
20 function of the gun would assist in the determination you made
21 in this case.

22 A Well, this depiction is of the old standard Colt
23 Model 1911-A-1 service pistol, which is a single-action, semi-
24 automatic, .45 caliber pistol. More importantly, in respect
25 to the case, a portion of that firearm is depicted here, which

IV-46

GOOD - DIRECT

1 would be the barrel of the firearm. The barrel is that
2 portion of the firearm in which the bullet travels and what
3 you see here is a cartridge and the cartridge is seated in a
4 chamber of that barrel.

5 When the firearm is discharged, variously a firing
6 pin or a striker or a hammer nose would strike the primer,
7 which is an area right back here, the base of the cartridge,
8 which would cause a flash, burning the powder inside the
9 cartridge case, and causing the bullet to travel down the
10 barrel of the firearm.

11 What is marked here as "rifling" refers to these
12 helical grooves that are cut inside the barrel of the gun, the
13 purpose of which is to impart a rotational spin to the bullet
14 as it exits through -- or exits the muzzle of the pistol.

15 Q And what's depicted at the top of the diagram is a
16 semi-automatic handgun, is that correct?

17 A Yes, sir, that is correct.

18 Q And what's the difference between a semi-automatic
19 handgun or an automatic versus a revolver?

20 A A semi-automatic handgun and an automatic handgun,
21 which is very rare, is the fact that in a semi-automatic
22 firearm a single pull of the trigger is needed to discharge
23 each shot. In a fully automatic firearm, the shooter would
24 simply need to pull the trigger one time and not release it
25 and the firearm would discharge until the contents of the

IV-47

GOOD - DIRECT

1 magazine were expended.

2 And I believe your question was a revolver?

3 Q Yes.

4 A Is that correct?

5 A comparison of a pistol with a revolver is such
6 that rather than have a slide mechanism that you see here, a
7 revolver employs a revolving cylinder, which typically would
8 hold between five and nine cartridges which are held
9 separately in holes known as charge holes. The cylinder -- I
10 guess the best depiction I can think of, of a revolver as
11 opposed to a pistol, would be the old-fashion western
12 firearms, western six-guns, this little thing, where in those
13 usually the hammer would be cocked, but, in any event, the
14 cylinder would rotate one-sixth of a turn for the six shots
15 that would be held in the cylinder.

16 Another very important difference, from the
17 standpoint of criminalistics, is that in a firearm of this
18 nature, when the bullet is discharged, another component -- we
19 see the bullet here and the cartridge here, labeled as
20 cartridge, but the remaining component of the cartridge would
21 be the cartridge case and with a pistol that case is ejected
22 from the firearm and very oftentimes is found at the crime
23 scene. That differs from a revolver inasmuch as with a
24 revolver, once fired, that cartridge case remains inside the
25 firearm cylinder and most generally is only ejected at one

IV-48

GOOD - DIRECT

1 time, generally when the shooter is completely out of
2 cartridges. He would then manually open up the cylinder and
3 eject the cartridge cases. And they, of course, are much more
4 rarely found at the scenes of crime.

5 Q Okay, you mentioned some terms, including cartridge
6 and cartridge case. Let me now turn around this diagram and,
7 if it would assist the jury, explain what's depicted on the
8 other side of the diagram and what the various terms mean.

9 A Well, here we have the entire unit of ammunition,
10 which is known as a cartridge. A cartridge consists of a
11 bullet, the holder for the cartridge -- I beg your pardon, the
12 holder for the bullet, the gunpowder, which is the propellant
13 that makes everything happen and this area here at the base of
14 the cartridge is known as the primer. The primer is the
15 initiator and once struck a very intense flame shoots through
16 a hole in the primer, actually in the cartridge case, from
17 there, and ignites the gunpowder. And, once again, as I
18 mentioned earlier, this conversion of gunpowder to a gaseous
19 form is the impetus to propel the bullet down the barrel of
20 the firearm.

21 This would be the base of the cartridge, if this
22 cartridge was turned in this fashion, in other words,
23 sideways, and you would see an unfired primer. If this were
24 fired, there would be some form of a shape, most commonly a
25 circular or semi-circular shape here, to show that it had been

IV-49

GOOD - DIRECT

1 fired.

2 Q And I assume the center-fire cartridge most people,
3 other than experts, such as yourself, might refer to that as a
4 bullet.

5 A Yes, unfortunately, very oftentimes we hear this
6 constantly where someone says, "I need more bullets," or "I'm
7 out of bullets." It's a misnomer. The bullet is only a
8 portion of the cartridge, in the same way a tire is only a
9 portion of a car. The bullet is the portion of the cartridge,
10 once again, that goes down range and hopefully strikes the
11 intended target, but the unit of ammunition is not a bullet.
12 Once again, the bullet is only, basically, one-fourth of the
13 cartridge.

14 Q On the -- well, what I would call the right side of
15 the diagram, as I'm facing it, we have three other depictions,
16 is that correct?

17 A Yes, that's correct.

18 Q Now does that actually depict the various components
19 of a center-fire cartridge after it's fired?

20 A Yes, it does.

21 Q And describe each one of those, if you would,
22 please.

23 A Well, this figure here would represent a fired
24 cartridge case, once again most commonly found at crime scenes
25 in a pistol much more so than in a revolver. This depiction

IV-50

GOOD - DIRECT

1 is that of a fired bullet and although we don't have -- well,
2 we do, we have a bullet here that does not have any of these
3 markings that you see referred to as rifling impressions.
4 That's because this bullet has not been fired, has not been
5 squeezed down the barrel of a firearm and been made to take on
6 these impressions that you see here, known as rifling
7 impressions.

8 Here, in this depiction, this would be
9 representative of the cartridge case, only in this instance
10 it's fired. We see there is a firing pin impression and then
11 various marks are found on the cartridge case. This refers to
12 ejector marks. An ejector is a device inside the firearm that
13 may or may not leave identifiable marks on the softer metal of
14 the cartridge case. Chamber marks very commonly are found on
15 a fired cartridge case.

16 Here we have an ejector. This, as I mentioned
17 earlier, is an extractor mark on this portion of the cartridge
18 case. On the head of the cartridge case, commonly ejector
19 marks are found, which can also, in many instances, be
20 identified to the proper firearm.

21 A firing pin impression, you can see that here, and
22 then breech base marks, which take various physical forms, but
23 which are probably the most pronounced marking that's found on
24 a fired cartridge case and is most commonly used to identify a
25 cartridge case with the responsible firearm.

IV-51

GOOD - DIRECT

1 Q Mr. Good, based on your testimony thus far, I assume
2 that if cartridge cases are found at a particular crime scene
3 we can assume that a revolver was not used?

4 A It would be unusual, not to say it couldn't happen,
5 but it would be unusual. The shooter wouldn't have a need to
6 reload and dump the cartridge cases at that time.

7 Q Now also the diagram depicts what you've described
8 as chamber marks on a cartridge case, is that true?

9 A Yes, sir, that's correct.

10 Q Now is that one of the indications or markings that
11 enables an expert, such as yourself, to compare cartridge
12 cases to determine if they were fired from the same weapon?

13 A It is.

14 Q And do you make that observation or comparison with
15 the naked eye or do you use some instrument to assist you?

16 A No, sir. Some of these marks actually can be seen
17 with the naked eye, depending, of course, on the size of the
18 cartridge case. The larger the case, in the instance of a .45
19 auto, which we saw on the reverse of the diagram, very
20 oftentimes with the naked eye these marks can be seen. The
21 same is true of the ejector mark, but they can only be seen,
22 in other words, just a rough outline of the geometry of the
23 mark can be noted, but the comparisons themselves are
24 conducted microscopically.

25 Q And is that what was done in this case?

IV-52

GOOD - DIRECT

1 A Yes, sir, it was.

2 Q Are chamber marks that are left on a cartridge case
3 unique to individual firearms?

4 A In fact, sir, all of the markings we have here, in
5 respect to the cartridge case, be they chambering marks,
6 extractor marks, ejector marks or breech base marks, are
7 unique to a specific firearm.

8 Q If I might speak in crude terms, would it be similar
9 to say a fingerprint?

10 A Yes, it would be, in terms of identification. The
11 identification of a cartridge case with a firearm is as
12 positive as a fingerprint would be to an individual.

13 Q If I could ask you to please return to your seat.

14 A Sure.

15 Q Now you mentioned that you made a comparison in this
16 case of, I believe, four cartridge cases recovered from the
17 crime scene. Let me hand you what's been marked as State's
18 Proposed Exhibit 156 and ask you if you recognize at least the
19 description that's contained on 156.

20 A Yes, sir, I do.

21 Q And what do you recognize 156 to be, or at least its
22 contents, the description?

23 A The contents should be a sealed evidence envelope
24 containing a bullet fragment and four fired Winchester 380
25 automatic cartridge cases.

IV-53

GOOD - DIRECT

1 Q Okay, I'm assuming, based on your answer, that those
2 cartridge cases, after you performed an examination, were sent
3 somewhere else, is that true?

4 A Yes, sir, that is true.

5 Q All right. If you would remove the contents,
6 though, you would expect to find the cartridge cases that you
7 analyzed and compared in this case?

8 A That's correct.

9 Q Did you go about making your comparison
10 microscopically as we've discussed this morning?

11 A Yes, sir, I did.

12 Q And tell me what conclusions did you reach after
13 examining the four cartridge cases recovered from the Terra
14 Linda crime scene in this case?

15 A I concluded that all four of the cartridge cases
16 were manufactured by the firm of Winchester, all four of them
17 were of caliber 380 automatic and were all fired from a common
18 firearm, a single firearm.

19 Q And you based that conclusion on the microscopic
20 examination you performed in this case?

21 A Yes, sir, that's correct.

22 Q How certain are you that those four cartridge cases
23 were fired from the same weapon?

24 A I'm positive.

25 Q Let me ask you just a little bit about various forms

IV-54

GOOD - DIRECT

1 of ammunition. I assume you're familiar with the various
2 calibers and sizes of ammunition?

3 A Yes, sir.

4 Q What's the difference say between a 9-millimeter and
5 a .38?

6 A In terms of the bullet or the cartridge or both?

7 Q Well, both actually, the size of wound that would be
8 left by such a piece of ammunition and the size of the
9 cartridge or center-fire cartridges themselves.

10 A Well, in terms of the physical characteristics --
11 I'm sorry, it was a 380 and a .38? Is that what you --

12 Q A 9-millimeter versus a .38.

13 A A 9-millimeter and a .38.

14 In general, when we're speaking of a .38, we're
15 speaking of a .38 Smith & Wesson Special. The difference in
16 the bullet are sometimes extremely minimal. The base diameter
17 of a 9-millimeter Luger is most generally about .355 of an
18 inch, whereas with a .38 it's generally .357 of an inch. So
19 in terms of size, at least in terms of diameter, there is
20 very, very little difference whatsoever.

21 Most commonly, --

22 Q Let me, and I apologize, let me stop you. What
23 about the difference in size between a 9-millimeter and a .38
24 versus a 380 cartridge case -- or cartridge rather? And we're
25 talking about the size now of the ammunition.

IV-55

GOOD - DIRECT

1 A Well, the size -- The size of the unit of
2 ammunition?

3 Q Yes.

4 A The overall cartridge in a 380 is the smallest of
5 any. A 9-millimeter, if we were to measure from the base of
6 the cartridge case to the very tip of the bullet nose, you'd
7 find that in sequence of small to large there would be the
8 380, the 9-millimeter Luger and the .38 Special, exclusive of
9 a wad-cutter type, but a standard round-nose would be the
10 largest of the .38 ammunition.

11 Q Now let me see if we've covered this. What about
12 the difference in diameter between a 9-millimeter, a .38.
13 versus 380 ammunition, what the diameters are?

14 A Well, once again, in fact, there almost is none. I
15 mentioned that the 9-millimeter generally mics out at about
16 .355 of an inch and a .38 Special, most generally, is about
17 .357 of an inch. Now in speaking of the .38 -- I beg your
18 pardon, a 380 auto, we're back down to the 9-millimeter. The
19 380 auto is a smaller 9-millimeter in terms of overall length,
20 but not in terms of diameter.

21 The diameter of a 380 auto again, most generally, is
22 about 3 -- I beg your pardon, .355 of an inch, the same as the
23 9-millimeter, but the overall length is quite a bit smaller
24 and, as a result, the bullet weight of the 380 is, most
25 generally, substantially less than that of a 9-millimeter.

IV-56

GOOD - CROSS

1 Q In terms of diameter though there is either little
2 or no difference between, again, the diameter size of a 9-
3 millimeter, .38 and 380 ammunition?

4 A For practical purposes there really isn't.

5 Q All right.

6 MR. DASKAS: Nothing else, Judge. I'll pass the
7 witness.

8 THE COURT: Any cross?

9 MR. FIGLER: Real quick, Judge.

10 CROSS-EXAMINATION

11 BY MR. FIGLER:

12 Q So your conclusion in this particular matter was
13 that the four cartridges that you examined all came from the
14 same unknown firearm, isn't that correct?

15 A The four fired cartridge cases, yes, sir.

16 Q Came from the same unknown firearm, correct?

17 A That is correct.

18 Q Okay. Now in this particular case you were informed
19 that guns were taken into evidence, correct?

20 A I was informed?

21 Q Were you?

22 A No, sir.

23 Q Now there was some guns that were retrieved in this
24 particular case.

25 MR. DASKAS: Judge, I apologize. If I might, in the

IV-57

GOOD - CROSS

1 interest of time, I would certainly stipulate that the
2 cartridge cases he examined were not fired from the guns
3 recovered in this case, if it would save us some time.

4 MR. FIGLER: It sure would. That's fine.

5 So the stipulation is that these guns here had
6 nothing to do with any of those cartridge cases that you did
7 your investigation on.

8 THE COURT: So stipulated?

9 MR. DASKAS: That's the stipulation, Judge.

10 THE COURT: All right.

11 BY MR. FIGLER:

12 Q In fact, you have no information of the
13 investigation that those guns had anything to do with this,
14 isn't that correct, from your investigation and your
15 examination?

16 A I am unaware of any firearms in this case.

17 MR. FIGLER: No further questions, Judge.

18 MR. DASKAS: No redirect, Judge.

19 THE COURT: Thank you, sir. You're excused.

20 Call your next witness, please.

21 MR. DASKAS: Detective James Buczek.

22 THE WITNESS: Good morning, Your Honor.

23 THE CLERK: Please raise your right hand.

24 JAMES BUCZEK, PLAINTIFF'S WITNESS, IS SWORN

25 THE CLERK: Please be seated.

IV-58

BUCZEK - DIRECT

1 State and spell your name for the record, please.

2 THE WITNESS: My name is James Buczek. It's

3 B-U-C-Z-E-K.

4 DIRECT EXAMINATION

5 BY MR. DASKAS:

6 Q Detective Buczek, you are employed by the Las Vegas
7 Metropolitan Police Department as a detective in the Homicide
8 Bureau, is that correct?

9 A Yes, sir.

10 Q For how many years?

11 A I've been with the homicide detail for approximately
12 three and a half years.

13 Q How many years in total have you been employed with
14 law enforcement?

15 A Approximately 18.

16 Q Let me direct your attention specifically to the
17 month of August 1998. Were you working in the Homicide
18 Division at that time?

19 A Yes, I was.

20 Q Did you have a partner?

21 A Yes, I did.

22 Q And who was your partner?

23 A My partner was Detective Tom Thowsen.

24 Q Who was your sergeant back in 1998, August?

25 A My sergeant is Sergeant Ken Hefner.

IV-59

BUCZEK - DIRECT

1 Q And, generally speaking, when you and your partner,
2 Detective Thowsen, are called out to homicide investigations,
3 do you divide the responsibilities of your investigation?

4 A Yes, we do.

5 THE COURT: I think we know that from earlier
6 witnesses. Would you get to the one area that you were gonna
7 pursue with this detective today?

8 MR. DASKAS: Certainly, Judge.

9 BY MR. DASKAS:

10 Q You were assigned to a particular homicide that
11 occurred at 4825 Terra Linda here in Las Vegas?

12 A That's correct.

13 Q And your responsibility included interviewing
14 witnesses?

15 A That's right.

16 Q Do you make an effort, as a homicide detective, once
17 you learn information about a crime, not to release certain
18 information to the media or to the general public?

19 A Yes.

20 Q And what's the reason for that?

21 A Certain information we don't want to go out to the
22 media -- out to the media so it's disbursed to the general
23 public because we want to see if people that we are talking to
24 can corroborate what we saw there.

25 Q And in this case did you make an effort not to

IV-60

BUCZEK - DIRECT

1 release details of the quadruple homicide either to the media
2 or the public in general?

3 A That's correct, yes.

4 Q And were you satisfied that that was done?

5 A Yes.

6 Q You mentioned that one of your responsibilities
7 included interviewing witnesses. When you interview witnesses
8 in any investigation, do you share with them details of a
9 crime scene?

10 A No, I do not.

11 Q Why not?

12 A 'Cause I want to learn what they have to offer me
13 and I don't want to try to put words into their mouth. I need
14 to go in and find out what type of information they have:

15 Q And did you avoid, in this particular investigation,
16 the quadruple homicide, did you avoid sharing details of the
17 crimes with witnesses?

18 A Yes, I did.

19 Q When you interview witnesses do you interview
20 witnesses together or do you separate witnesses?

21 A We separate witnesses and interview them by
22 themselves.

23 Q And what's the reason --

24 A Normally.

25 Q And what's the reason for that?

IV-61

BUCZEK - DIRECT

1 A Because I don't want other people that are sitting
2 there listening to what a witness is saying learn something
3 else and use it in their testimony.

4 Q Did you make an effort in this case to ensure that
5 you didn't influence witness statements by letting them listen
6 to other witnesses?

7 A That's right, I did.

8 Q You received information in this case that a VCR was
9 recovered from a home at an Everman address, is that true?

10 A Yes, that is correct. I believe it was 4815.

11 Q After learning that information, did you attempt to
12 determine who owned that VCR?

13 A Yes, I did.

14 Q And what efforts did you make and what were your
15 findings?

16 A I spoke to Dave Mowen, the father of Matt Mowen, and
17 asked if he had provided his child with the VCR and he -- I
18 described the VCR to him and he said, yes, that he believed
19 that he did give it to his son, Matt. And he then remembered
20 that he had a remote control somewhere in his home that went
21 with the VCR. It was an RCA VCR. Mr. Mowen, I believe it was
22 on October 23rd of 1998, was able to provide me with a remote
23 control and, on a later date, I believe it was April 20th of
24 1999, we took the remote control, went over to the evidence
25 vault, met with the prosecuting attorneys there and we put

IV-62

BUCZEK - DIRECT

1 batteries in the remote control and tried it with the RCA VCR
2 and it actually activated the VCR, so it worked with it.

3 Q In other words, the remote control that David Mowen,
4 the victim's father, provided to you operated the VCR that was
5 recovered from the Everman home where the defendant was
6 arrested?

7 A That's right.

8 Q All right. Let me hand you what's been marked as
9 State's Proposed Exhibit 169 and ask you if you recognize 169
10 and its contents?

11 A Yes. Exhibit 169 is the packaging that I put the
12 remote control in. It has my name and P-number, 3702, on it
13 and it describes an RCA black remote. And inside is the
14 remote that I tested on the RCA VCR and it worked.

15 Q Is the remote itself also labeled with an evidence
16 sticker?

17 A Yes, it is.

18 Q And what number's on there?

19 A It would be 169A.

20 Q Is 169A and 169 in the same or substantially the
21 same condition as when you impounded the remote and placed it
22 in the envelope on the date that you just mentioned?

23 A Other than the court's evidence sticker -- exhibit
24 stickers on there and being opened, yes.

25 MR. DASKAS: Judge, I'd move for the admission of

IV-63

BUCZEK - CROSS

1 169 and 169A.

2 MR. FIGLER: Submitted.

3 THE COURT: Admitted.

4 (Plaintiff's Exhibit Nos. 169, 169A admitted)

5 MR. DASKAS: Thank you, Judge.

6 I'll pass the witness, Judge.

7 THE COURT: Thank you.

8 Cross?

9 MR. FIGLER: Thank you, Judge.

10 CROSS-EXAMINATION

11 BY MR. FIGLER:

12 Q Good morning, detective.

13 A Good morning.

14 Q The prosecutor asked you a question and I just want
15 to do some follow-up on that, okay?

16 A Yes, sir.

17 Q Your primary task in this particular investigation
18 was to interview witnesses, correct?

19 A That is correct.

20 Q And you also indicate that sometimes, when you
21 interview witnesses, you separate them out, correct?

22 A That's correct.

23 Q And one of the reasons for that, I think you just
24 told us, is that you don't want them hearing what each other
25 has to say, correct?

IV-64

BUCZEK - CROSS

1 A That's right.

2 Q That's because, and correct me if I'm wrong, one of
3 them may not know something and they might say something that
4 the other person said? In other words, you might get people
5 giving you information that they don't have personal knowledge
6 of, correct?

7 A That's right.

8 Q And another reason, would you agree, is that if
9 witnesses give you conflicting information that that's
10 somewhat suspicious to you, isn't that correct?

11 A That's correct, yes.

12 Q And that helps you, in your investigation, in
13 figuring out perhaps what happened in a particular case,
14 correct?

15 A Correct.

16 Q Now you also talked on direct about the media, that
17 there's certain information that you don't release to the
18 media, correct?

19 A That's right.

20 Q Although there was a lot of media coverage in this
21 particular case, wasn't there?

22 A Yes, there was.

23 Q More than normal, but still a lot?

24 A Yes.

25 Q Okay. Nonetheless, there were very specific facts

IV-65

BUCZEK - CROSS

1 in this case that you felt you had concealed from the media,
2 right?

3 A That's correct.

4 Q Now if individuals are presented to you and they
5 happen to know those facts that haven't been released to the
6 media, that also might be something suspicious to you, isn't
7 that correct?

8 A Suspicious and also maybe interesting.

9 Q Interesting, something you might want to follow up
10 on, correct?

11 A That's right.

12 Q Now you personally interviewed witnesses in this
13 case, correct?

14 A Yes, I have.

15 Q So you were able to interview an individual named
16 Tod Armstrong, correct?

17 A Yes, I have.

18 Q And an individual named Bryan Johnson?

19 A Yes.

20 Q And an individual named Ace Hart?

21 A That's correct.

22 Q In fact, you did multiple interviews with these
23 boys, correct?

24 A Yes, that's right.

25 Q And pretty much in this case everyone that you were

IV-66

BUCEK - CROSS

1 looking at, the people who were killed, these witnesses I just
2 talked about and people you later developed as suspects,
3 they're all around the same age, isn't that correct?

4 A Yes, they are.

5 Q All in that sort of 17 to 19 range?

6 A I think that's fair to say, yes.

7 Q Young men, one and all?

8 A Yes.

9 Q Now the information that you get from the people
10 that you interview, you state that's important and interesting
11 for your investigation, right?

12 A That's right.

13 Q Okay, now I want to focus on Tod Armstrong for a
14 second. When you were interviewing this gentleman you had
15 learned that Tod Armstrong was in a -- or at least he
16 indicated to you that he was in a vehicle that drove by that
17 Terra Linda residence that we've all been talking about
18 shortly before this killing occurred?

19 MR. DASKAS: Judge, I apologize. My objection is,
20 before we get into any specific statements, it's hearsay and
21 it's not admissible.

22 THE COURT: Overruled.

23 Let's hear an additional question.

24 BY MR. FIGLER:

25 Q Have you learned that from Tod Armstrong?

IV-67

BUCZEK - CROSS

1 A I'm sorry, could you repeat?

2 Q Have you learned from Tod Armstrong that prior to
3 this killing occurring at Terra Linda that he was in a car
4 that drove by the Terra Linda residence?

5 A Yes, that's correct.

6 Q Okay. And you were informed that Ace Hart was the
7 driver of that vehicle, correct?

8 A Incorrect.

9 Q Who was the driver of the vehicle?

10 A I believe the driver of the vehicle was Deco.

11 Q Okay. Do you want to look at Tod Armstrong's -- Did
12 he indicate to you that Ace Hart was in the vehicle?

13 A Yes, he did.

14 Q Oh, okay, maybe that's where I'm mistaken.

15 And that Ace Hart was the one who knew where this
16 location was, correct?

17 A That's right.

18 Q And so Ace Hart was the one who was able to point
19 out, according to Tod Armstrong, the Terra Linda residence,
20 right?

21 A That's right.

22 Q Okay. Now on August 17th, 1998 you had Tod
23 Armstrong, Ace Hart and Bryan Johnson down at your detective
24 bureau, correct?

25 A Yes.

IV-68

BUCZEK - CROSS

1 Q And you separated them out pursuant to your policy,
2 correct?

3 A That's correct.

4 Q Okay. Now when you talked to Ace Hart about that on
5 August 17th, 1998, Ace Hart never told you that he was in a
6 car that went by the Terra Linda residence, isn't that true?

7 MR. DASKAS: Judge, the same objection here. If
8 we're getting into statements by witnesses, it's only offered
9 for the truth of the matter and that's clearly hearsay.

10 MR. FIGLER: No, that's --

11 THE COURT: No, I don't think that's why it's
12 offered. And, of course, it's also beyond the scope of the
13 direct, but that would just mean we'd hear from Detective
14 Buczek later in the day.

15 MR. DASKAS: I understand that.

16 THE COURT: So I'll overrule the objection.

17 BY MR. FIGLER:

18 Q Do you want me to re-ask it or do you remember what
19 I asked?

20 A No, I remember what you asked.

21 Q And so what did Ace Hart say about driving by the
22 Terra Linda residence?

23 A That I don't recall.

24 Q Okay. In fact, in the first statement he gave you,
25 he didn't say anything about it. And you might remember if he

IV-69

1 did, right?

2 A I just don't recall.

3 Q Okay, there did come a time, however, though --

4 MR. FIGLER: The Court's indulgence.

5 (Pause in the proceedings)

6 BY MR. FIGLER:

7 Q -- when you specifically had asked Ace Hart if he
8 was involved in driving by the Terra Linda residence, isn't
9 that true?

10 A Again, I don't -- I don't recall. I did not review
11 Ace Hart's statements, the three of 'em, and it is a bit
12 confusing having the three individuals telling various similar
13 stories. If you could point it out to me and assist me.

14 Q Sure.

15 THE COURT: Would counsel approach the bench,
16 please?

17 MR. FIGLER: Sure.

18 (Off-record bench conference)

19 BY MR. FIGLER:

20 Q I'll say that in the first statements on August 17th
21 of 1998 this subject didn't come up, Ace Hart didn't give you
22 this information, but let me approach another statement you
23 took from Ace Hart.

24 Let me show you this and see if you recognize this
25 document.

BUCZEK - CROSS

1 A This would have been a statement taken on September
2 22nd of 1998 with myself and Detective Thowsen and also Ace
3 Hart.

4 Q Okay. Now I marked a page there for you in the
5 middle. Why don't you read that and see if that refreshes
6 your memory of whether you asked Ace Hart if he drove by the
7 Terra Linda residence.

8 A "Had you gone over prior to the" --

9 Q Oh, no, I don't want you to read it out loud. I'm
10 sorry, Detective. Read it to yourself and then I'll ask you a
11 question about it.

12 A Okay.

13 Q The rules of evidence and all that.

14 (Pause in the proceedings)

15 A Okay.

16 Q Okay, now do you remember specifically -- excuse me,
17 specifically asking Ace Hart whether he had driven by the
18 Terra Linda residence before the murder?

19 A Yes.

20 Q And he denied it, didn't he?

21 A Yes, he did.

22 Q Now when Tod Armstrong was separated, Ace Hart had
23 no way of knowing whether or not Tod had told you that Ace was
24 in that car, isn't that correct?

25 MR. GUYMON: Objection, calls for speculation,

IV-71

BUCZEK - CROSS

1 Judge.

2 THE COURT: Sustained.

3 BY MR. FIGLER:

4 Q Now eventually Ace Hart gave you information
5 regarding hearing a conversation where individuals known to
6 him as Red and Deco were allegedly discussing the murder,
7 correct?

8 A Yes.

9 Q That came from Ace Hart?

10 MR. DASKAS: Judge, can we -- can we approach on
11 this?

12 THE COURT: Sure.

13 MR. DASKAS: I think he's gonna get into an area he
14 doesn't want to open.

15 (Off-record bench conference)

16 BY MR. FIGLER:

17 Q Now you had asked Ace Hart if he had heard any
18 conversations when you first saw him concerning this murder,
19 hadn't you?

20 A Yes.

21 Q Okay. And initially Ace Hart told you --

22 MR. GUYMON: Objection to what Ace Hart tells him,
23 Judge. It's hearsay. Ace Hart's not been here to testify.

24 MR. SCISCENTO: No, it's not --

25 THE COURT: Well, to the extent --

IV-72

BUCZEK - CROSS

1 MR. FIGLER: I got it, Joe.

2 THE COURT: We're doing tag teams again?

3 MR. SCISCENTO: Well, I mean, Mr. Guymon got into
4 it, so I figured I could do it.

5 MR. GUYMON: I'm sorry, Judge.

6 THE COURT: That's true, but you might as well just
7 go to tag teams for the rest of the trial.

8 MR. FIGLER: I'll take care of myself, Judge.

9 THE COURT: You will?

10 MR. FIGLER: Yeah.

11 THE COURT: Okay, thank you.

12 I don't know, as we discussed at the bench, that it
13 is being used for the truth of the matter asserted. We've
14 also discussed relevance.

15 You want to ask generally, as we discussed at the
16 bench?

17 MR. FIGLER: It's all generally, Judge, and I'll do
18 it that way.

19 THE COURT: Well, it's getting very specific with
20 the problems that we discussed at the bench.

21 MR. FIGLER: Okay.

22 THE COURT: If you want to address a general
23 question about conflicting statements to this witness and ask
24 some follow-up on that, do that.

25 MR. FIGLER: Thank you, Judge.

IV-73

BUCZEK - CROSS

1 THE COURT: Otherwise it's sustained.

2 BY MR. FIGLER:

3 Q All right, we're talking about Ace Hart. We had
4 just gone over that he had denied driving by Terra Linda. Now
5 isn't it true that he denied hearing, initially, any
6 conversation regarding this murder, isn't that correct?

7 A Again, I don't recall. There's multiple statements
8 and multiple similar stories. If you could --

9 THE COURT: He's already asked something like that
10 and you've answered it.

11 Move on to another area, please, Mr. Figler.

12 MR. FIGLER: He didn't remember, Judge, so I'm just
13 gonna refresh his memory.

14 BY MR. FIGLER:

15 Q Again, if you could identify that that is a
16 statement that you took and see if that refreshes your memory.

17 MR. GUYMON: Counsel, can you tell me the statement
18 and the page?

19 MR. FIGLER: Statement number 1, page number 9,
20 question number 1.

21 (Pause in the proceedings)

22 BY MR. FIGLER:

23 Q So now does that refresh your memory that in the
24 first statement that Ace Hart gave you he denied hearing any
25 type of conversation at all regarding this murder?

IV-74

BUCZEK - CROSS

1 A Yes, that's correct.

2 Q And, in fact, same page, same document, he said --
3 or you had general information that he knew stuff about this
4 murder and he identified the source of that information, isn't
5 that correct?

6 A Yes, he did.

7 Q And who did he tell you was the source?

8 MR. GUYMON: Objection.

9 THE COURT: Sustained.

10 Move on to another area.

11 BY MR. FIGLER:

12 Q It came from another individual though, isn't that
13 correct?

14 MR. GUYMON: Same objection, Judge.

15 THE COURT: Sustained.

16 Move on to another area.

17 MR. FIGLER: Can we approach on that one, Judge?

18 THE COURT: Sure.

19 MR. FIGLER: Thanks.

20 (Off-record bench conference)

21 THE COURT: Sustained.

22 BY MR. FIGLER:

23 Q Was Ace Hart an important witness for you to rely
24 upon in your investigation?

25 A There were a lot of important witnesses in --

IV-75

BUCZEK - CROSS

1 Q I understand that, Detective. I'm asking you if Ace
2 Hart was important in your investigation.

3 A Somewhat.

4 Q He had lots of information to provide to you, isn't
5 that correct?

6 A Initially.

7 Q And you would agree that Ace Hart gave you
8 information that didn't match with what other witnesses, Tod
9 Armstrong and Bryan Johnson, were giving you, isn't that
10 correct?

11 A Yes, that's correct.

12 Q Okay. And Ace Hart was also a source of information
13 for you, was he not, about the kids in the Terra Linda
14 residence?

15 A Such as?

16 Q Well, now that you ask, such as the mass quantities
17 of drugs --

18 MR. GUYMON: Judge, I'm gonna object to that.

19 BY MR. FIGLER:

20 Q -- that were being sold out of their house.

21 MR. GUYMON: Judge, I'm gonna object.

22 THE COURT: Sustained.

23 BY MR. FIGLER:

24 Q Did you do an investigation with regard to the drugs
25 that were being sold out of the Terra Linda residence?

BUCZEK - CROSS

1 A No, I did not.

2 MR. DASKAS: Objection, assumes facts not in
3 evidence.

4 MR. FIGLER: I'm asking if he did an investigation.

5 THE COURT: Overruled.

6 BY MR. FIGLER:

7 Q You did not.

8 Do you recall if you had any information available
9 to you regarding the sale of acid, ecstasy, coke, weed and
10 mushrooms?

11 A I had that information available to me, however, I
12 wasn't conducting a drug investigation. I was conducting a
13 murder investigation.

14 Q Okay. Sometimes drugs and murders kind of come
15 together, isn't that correct?

16 A That is correct.

17 Q And, in fact, in this investigation you had lots of
18 information about lots of people with drugs, isn't that
19 correct?

20 A That is correct.

21 Q Selling drugs, buying drugs, using drugs, that sort
22 of thing, correct?

23 A That's right.

24 Q And, in fact, at the investigation of the Terra
25 Linda house, drugs were found, isn't that correct?

IV-77

BUCZEK - CROSS

1 A Yes, I believe there were mushrooms found there.

2 Q Okay, and some methamphetamine too? Would you
3 accept that, if there was already a stipulation between
4 counsel, that methamphetamine was found?

5 A I don't recall seeing that report.

6 Q Okay. You know that there were a lot of materials
7 that were found at the Terra Linda residence that have
8 previously been described as materials which could be utilized
9 for methamphetamine manufacturing, correct?

10 A I'm sorry, I'm not familiar with methamphetamine
11 manufacturing and I couldn't testify to that.

12 Q So if some other witness, a crime scene analyst,
13 someone like that, came in and said that they saw meth lab
14 materials there, they would be perhaps better versed in that
15 than yourself?

16 A Much better versed. I'm not familiar with the
17 manufacturing of drugs at all.

18 Q Okay. So then, I take it, you didn't follow up on
19 that aspect?

20 A No, I did not.

21 Q Okay.

22 A I was investigating the murder.

23 Q But you weren't investigating any of the background
24 information in that particular house about illegal activity?

25 A I had learned about drugs in that household being

IV-78

BUCZEK - CROSS

1 sold and being used, however, I wasn't investigating that and,
2 if it came up in obtaining a statement, then it did, but,
3 however, I wasn't going out and actively conducting a drug
4 investigation on the four boys who were murdered.

5 Q Okay. Now how long have you been a detective doing
6 murder cases?

7 A Three and a half years now.

8 Q And before that you were with Metro doing
9 investigation on cases?

10 A Yes, that's correct.

11 Q Now it's not uncommon for a house where drugs are
12 being sold to be ripped off, isn't that correct, in your
13 experience and training?

14 A It happens.

15 Q Okay. In fact, it results in murder sometimes,
16 doesn't it?

17 A Yes, it does.

18 Q Okay. And the reason why those two factors are
19 important to each other, and correct me if I'm wrong, is
20 because the people who are engaging in the illegal activity
21 draw other illegal activity, isn't that correct? In other
22 words, if you're mixed up in illegal stuff, bad stuff can
23 happen. Isn't that a good general statement?

24 A That's true.

25 Q You're not dealing with upstanding citizens

IV-79

BUCZEK - CROSS

1 normally. You're dealing with basically other people who are
2 engaged in illegal activity if you're selling drugs, correct?

3 A I'm sorry, I'm not understanding that question.

4 Q Okay. People who buy illegal drugs can be dangerous
5 people, people who carry guns and act irrationally, that sort
6 of thing?

7 MR. DASKAS: Judge, I'm gonna object to the
8 relevance of this.

9 THE COURT: Argument will be later today, Mr.
10 Figler. Sustained.

11 MR. FIGLER: Okay.

12 BY MR. FIGLER:

13 Q Now you also received information, during the course
14 of your investigation, that these individuals at the Terra
15 Linda house allegedly had a lot of money, isn't that correct,
16 or at least it was thought that they had a lot of money?

17 A It was believed that they had a lot of money, yes.

18 Q And through your investigation of people like Ace
19 Hart, you were told specifically that it was believed that
20 they had about ten thousand dollars (\$10,000)? That number's
21 come around quite a bit. Do you recall that?

22 A Yes, it has. That's correct.

23 Q And you say you don't have familiarity with the drug
24 trade, so you don't know how much money can be gained selling
25 a hundred sheets of acid a day?

IV-80

BUCZEK - CROSS

1 A None at all. I'm sorry.

2 Q Or any of these other drugs that I mentioned?

3 A No.

4 Q Okay. Now you never found ten thousand dollars
5 (\$10,000) in cash in this particular case, did you?

6 A I didn't conduct the crime scene investigation, so,
7 no, I did not.

8 Q You share information with Detective Thowsen, isn't
9 that correct?

10 A Yes, we do.

11 Q And Sergeant Hefner as well?

12 A That's correct.

13 Q Do you know if ten thousand dollars (\$10,000) was
14 ever recovered in this particular case?

15 A No.

16 Q Okay. Do you know if Bryan Johnson's house was ever
17 searched?

18 A No, it was not.

19 Q Okay, how about Ace Hart's house?

20 A No, not at all.

21 Q Was not?

22 A No.

23 Q Now you are aware that shortly after all this
24 occurred Tod Armstrong fled to Hawaii, isn't that correct?

25 A I don't believe he fled. He went to Hawaii.

BUCZEK - CROSS

1 Q So he definitely went to Hawaii?

2 A Yes.

3 Q Okay. And, Ace Hart, you know that he went
4 somewhere in the midwest, isn't that correct?

5 A I believe so, yes.

6 Q Okay. Now how did they pay for their trips?

7 A I'm not quite sure.

8 Q Okay.

9 MR. DASKAS: Judge, can we approach on that?

10 (Off-record bench conference)

11 BY MR. FIGLER:

12 Q Now these boys, Tod Armstrong, Bryan Johnson, Ace
13 Hart, on the night of August 18th, 1998 they were the ones who
14 led police to the Everman residence, isn't that correct?

15 A I believe it was August 17th, if I'm correct.

16 Q The 17th into the 18th?

17 A Correct.

18 Q Okay, I want to make sure I get that right.

19 And, in fact, these are the same boys who
20 specifically led police to a pager in the backyard, isn't that
21 correct?

22 A I don't know how the pager was found. I wasn't
23 present.

24 Q You do share information with Sergeant Hefner
25 though, correct?

IV-82

BUCZEK - CROSS

1 A That's correct. And I just don't know how the ---
2 how the pager was found. I don't know if they searched -- I
3 believe they searched for it in the backyard.

4 Q Okay.

5 A And found it.

6 Q Now generally there was also information about black
7 jeans and blood on black jeans and that was provided by those
8 three boys as well to the police, isn't that correct?

9 A That's correct.

10 Q Okay. Now there was also some testimony that Tod
11 Armstrong gave consent to search that house on Everman. Do
12 you recall that?

13 A Yes.

14 Q Okay. And he, in fact, did that?

15 A Yes.

16 Q Okay, there's a consent card that's in evidence?

17 A Yes.

18 Q Okay. Now he signed that card voluntarily, right?

19 A That's correct.

20 Q Cooperated fully with you at that time, is that
21 right?

22 A That's correct.

23 Q But isn't it true that he had a full day between
24 when he initially gave you statements and when he signed that
25 card to go and remove any information that might have

BUCZEK - CROSS

1 implicated him from that Everman house?

2 A No, that's incorrect.

3 Q Okay. Well, how about the 16th and the 15th, do you
4 know where Tod Armstrong's whereabouts were that day?

5 A No, I do not.

6 Q Okay, so he certainly could have rid the house of
7 anything during that time, isn't that correct?

8 A If he wanted to.

9 MR. DASKAS: Judge, I'll object. I think we're
10 getting into an area of speculation at this point.

11 THE COURT: Sustained.

12 BY MR. FIGLER:

13 Q You don't have the -- You don't know the whereabouts
14 of Tod Armstrong from the 14th, when this event occurred, 'til
15 the 17th, when he was in the Detective Bureau, isn't that
16 correct?

17 A That is correct.

18 Q By the way, where was Ace Hart the night of these
19 murders?

20 A I do not know.

21 Q Now you know that Ace Hart was friends with a lot of
22 people whose names keep coming up in this particular case,
23 isn't that correct?

24 A Yes.

25 Q And you also know that Ace Hart was friends with the

IV-84

BUCZEK - CROSS

1 people who lived in the Terra Linda residence, isn't that
2 correct?

3 A Yes.

4 Q And the same thing goes with Tod Armstrong, correct?

5 A Yes.

6 Q Okay, friends, acquaintances anyway?

7 A That is correct.

8 Q People who bought drugs back and forth? Isn't that
9 information that you had?

10 A Yes.

11 Q Now there has been testimony in this particular case
12 that there was no forced entry into the house, isn't that
13 correct?

14 A That's correct.

15 Q All right, so that would be consistent with someone
16 opening the door to someone that they were acquainted with?

17 A My understanding is that the door was --

18 MR. FIGLER: Object, Your Honor, non-responsive. I
19 asked if it was consistent. It's a yes or no. It calls for a
20 yes or no.

21 THE COURT: Ask your next question.

22 BY MR. FIGLER:

23 Q Was there any sign of forced entry into that house?

24 A No, there was not.

25 THE COURT: That's been asked and answered.

BUCZEK - CROSS

1 Do you have a new area to wrap this up, Mr. Figler?

2 MR. FIGLER: Sure, Judge.

3 BY MR. FIGLER:

4 Q Now Tod Armstrong was developed as a suspect in this
5 particular case, is that correct?

6 A Yes.

7 Q Okay. And had there been information or more
8 information that Tod Armstrong was involved in this particular
9 case, you would have arrested him for it, isn't that correct?

10 A Without a doubt.

11 Q Okay, would that be information like Tod Armstrong
12 planned this entire affair? It's yes or no again.

13 A Yes.

14 Q And how about that Tod Armstrong expected proceeds
15 from a drug rip-off, is that the type of information?

16 A Yes.

17 Q Now didn't you have that information from Charla
18 Severs? Didn't she tell you that information?

19 A She didn't tell me that, no.

20 Q So you don't have that information from Charla
21 Severs?

22 MR. DASKAS: And again, Judge, --

23 THE WITNESS: I did not --

24 MR. DASKAS: -- the objection is hearsay and, if
25 it's not offered for the truth, it's not relevant.

IV-86

BUCZEK - REDIRECT

1 THE COURT: Overruled.

2 THE WITNESS: I never interviewed her.

3 MR. FIGLER: Okay.

4 BY MR. FIGLER:

5 Q Now you wouldn't do anything at all to be protecting
6 Ace Hart, Bryan Johnson or Tod Armstrong, would you?

7 A No, not at all.

8 Q Nothing during this investigation that would
9 insulate them from being developed as suspects?

10 A No.

11 Q You had interaction with an individual named Ed
12 Guenther, who's a fingerprint examiner, isn't that correct?

13 A Yes.

14 Q Okay, certain requests were made of him to run
15 fingerprint comparisons?

16 A My partner provided the requests, yes.

17 Q Okay. Ace Hart, Bryan Johnson, those were never
18 submitted, were they?

19 A I don't recall.

20 MR. FIGLER: Nothing further, Your Honor.

21 THE COURT: Any redirect?

22 MR. DASKAS: Just one question.

23 REDIRECT EXAMINATION

24 BY MR. DASKAS:

25 Q The question about forced entry into the house, you

BUCZEK - REDIRECT

1 were asked if that's consistent with I guess the victim
2 knowing the perpetrator. Is it also consistent with the
3 victim being led into the house at gunpoint?

4 A Yes, it is.

5 MR. SCISCENTO: Your Honor, I'm gonna object to
6 that. This Court specifically requested that that answer --
7 not be specifically answered.

8 MR. DASKAS: Yeah, I was allowed to ask it.

9 MR. SCISCENTO: And so, therefore, if he's trying to
10 use this in redirect, --

11 THE COURT: I don't understand. I thought he did
12 ask that question.

13 MR. SCISCENTO: You didn't allow that question and
14 you asked him to move on to a different question.

15 THE COURT: Oh, I thought he had given the answer
16 yes or no.

17 MR. DASKAS: He did answer it.

18 MR. FIGLER: So it's just --

19 MR. SCISCENTO: It's gonna exceed the scope of
20 redirect.

21 THE COURT: And it also calls for speculation. And
22 we can have argument in about two hours or so.

23 Any other questions?

24 MR. DASKAS: Just a couple of follow-up, Judge.

25 THE COURT: But you promised just one.

IV-88

BUCZEK - RECROSS

1 MR. DASKAS: I promise less than five.

2 BY MR. DASKAS:

3 Q Detective, you were asked a lot of questions about
4 information you learned that resulted in Tod Armstrong
5 becoming a suspect. Do you recall those questions?

6 A Yes, I do.

7 Q Did you ever develop enough information about Tod
8 Armstrong's involvement in this case to arrest him?

9 A No, I did not.

10 Q Had you developed that information, what would you
11 have done?

12 A If we had more information, I would -- definitely
13 would have arrested Tod.

14 Q If you learn information after today that leads you
15 to believe that Tod is more involved than you know at this
16 point, what will you do?

17 A I'll be the first one at his door to arrest him.

18 MR. DASKAS: Nothing else, Judge.

19 THE COURT: Any recross?

20 RECROSS EXAMINATION

21 BY MR. FIGLER:

22 Q So if you are -- If you're told that Charla Severs
23 said that Tod Armstrong planned this and received it
24 afterward, is that enough?

25 A I don't believe so, because it's already been

IV-89

BUCZEK - RECROSS

1 discussed with the District Attorney's Office and we've been
2 advised that we do not have enough to make an arrest at this
3 point.

4 Q Okay, so Charla's evidence is not enough, correct?

5 A That's my understanding. That's correct.

6 MR. DASKAS: Nothing else, Judge.

7 THE COURT: Thank you, sir. You're excused.

8 THE WITNESS: Thank you, Your Honor.

9 THE COURT: Okay, folks, we're gonna take a recess.
10 The State has indicated they have one more witness, who you've
11 heard the name of before, which is Mr. Wahl, and the defense,
12 as I've indicated, doesn't have to call witnesses, but has
13 indicated they might. And so the schedule, what we're gonna
14 follow, is we're gonna take about a ten-minute break, hear
15 from Mr. Wahl, hear from any witnesses that the defense might
16 have, if they choose to call them, there might be a rebuttal
17 witness, depending on whether or not any witnesses are called
18 for the defense, then the lunch break's gonna occur and we're
19 going to get together, meaning us folks, and get some
20 instructions and other things ready for you. So we'll be
21 eating lunch a little late today and right after lunch you're
22 going to be receiving this case.

23 During this recess you're admonished not to talk or
24 converse among yourselves or with anyone else on any subject
25 connected with this trial or read, watch or listen to any

IV-90

WAHL - DIRECT

1 report of or commentary on the trial, or any person connected
2 with it, by any medium of information, including, without
3 limitation, newspaper, television and radio, or to form or
4 express any opinion on any subject connected with the trial
5 until it's finally submitted to you.

6 We'll be in recess 'til 25 minutes of 12:00.

7 And could I see counsel briefly in chambers?

8 (Court recessed)

9 (Jury is present)

10 THE CLERK: Please raise your right hand.

11 THOMAS WAHL, PLAINTIFF'S WITNESS, IS SWORN

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

14 THE WITNESS: First name Thomas, middle initial A,
15 last name is Wahl, spelled W-A-H-L.

16 DIRECT EXAMINATION

17 BY MR. GUYMON:

18 Q And, Mr. Thomas Wahl, what is your occupation or
19 profession?

20 A I am currently employed as a criminalist and DNA
21 analyst with the Las Vegas Metro Police Department, Forensic
22 Laboratory.

23 Q And have you had some special training in order to
24 hold that position?

25 A I hold a Bachelor of Science Degree in Medical

IV-91

WAHL - DIRECT

1 Technology with a minor in Chemistry. I have 20 years of
2 experience doing forensic biological analysis, 10 years of
3 which is in the DNA analysis field.

4 I have participated in a fair amount of workshops
5 and training to keep abreast with the new technological
6 advancements and also, in some of my previous jobs, I have
7 been an instructor and actually have provided training to
8 people in the DNA identification field. And I'm certified by
9 the American Board of Criminalists in DNA analysis methods and
10 am also a diplomate with the American Board of Criminalistics.

11 Q And, tell me, how long have you been with the Las
12 Vegas Metropolitan Police Department as a DNA analyst?

13 A It will be five years come this September.

14 Q And briefly outline your other job responsibilities
15 before you got to the Las Vegas Metropolitan Police Department
16 in the field of DNA analysis.

17 A I had approximately five years of experience working
18 in the forensic biology section in the Wisconsin State
19 Department of Justice Regional Crime Laboratory in Milwaukee,
20 Wisconsin. I had two years of experience working with the
21 Florida Department of Law Enforcement Regional Crime Lab in
22 Tampa performing basically the same job duties.

23 I was hired in 1989 to help set up a DNA lab in a
24 private forensic DNA testing laboratory called Analytical
25 Genetic Testing Center located in Denver, Colorado and some of

IV-92

WAHL - DIRECT

1 my job duties in that capacity were, as I said earlier,
2 training of other personnel from other laboratories in DNA
3 identification training.

4 And then I have two years experience working in a
5 private DNA testing laboratory in Seattle, Washington called
6 Genelex Corporation. I was a forensic supervisor there. I
7 was hired to set up a DNA laboratory with that company. And
8 then I was offered a job with the Las Vegas Metro Police
9 Department to set up a DNA laboratory here in 1995. We have
10 the laboratory set up and now we are doing DNA analysis there.

11 Q It sounds as though you've set up at least three DNA
12 laboratories then, is that correct?

13 A That's correct.

14 Q Or had jobs that you had that very responsibility?

15 A I was hired specifically for that reason, yes.

16 Q Tell me this, have you testified in courts of law as
17 a DNA expert? And let's start first with the Eighth Judicial
18 District Courts right here in the State of Nevada.

19 A Yes, I have.

20 Q And qualified as an expert?

21 A That's correct.

22 Q How about other states, have you qualified as an
23 expert in the field of DNA analysis in other states?

24 A Yes.

25 Q And so testified as an expert?

IV-93

WAHL - DIRECT

1 A Yes, approximately 13 other state jurisdictions and
2 I also am -- have testified in the country of Canada as a DNA
3 expert.

4 MR. GUYMON: Judge, at this time I would offer
5 Thomas Wahl as an expert in the field of DNA analysis.

6 MR. SCISCENTO: You may.

7 THE COURT: He'll be recognized as an expert.

8 Again, that just means he can give his testimony in
9 the form of opinions. What weight you give those opinions is
10 up to you.

11 Go ahead, Mr. Guymon.

12 BY MR. GUYMON:

13 Q Very briefly, Mr. Wahl, have you written
14 publications and published in the field of DNA analysis?

15 A I have co-authored some publications, yes.

16 Q Okay. Now then, tell me, just what is DNA?

17 A DNA is an acronym for a very long word called
18 deoxyribonucleic acid. DNA is found in all living organisms.
19 This would include viruses, bacteria, plants, animals and
20 humans. It's considered the basic building block or genetic
21 blueprint of all organisms.

22 It's comprised of four building blocks and the
23 sequence of these building blocks in a DNA molecule is what
24 determines the genetic code. The genetic code is responsible
25 for the development, organization and the function of

IV-94

WAHL - DIRECT

1 organisms from the time they are born 'til the time they die.

2 With respect to human DNA, DNA is found on cellular
3 structures known as chromosomes. These are found in cells in
4 the human body that contain a cell nucleus, so therefore
5 nucleoid cells contain DNA. The types of biological samples
6 that contain DNA that we deal with most often in the forensic
7 laboratory setting are biological substances, such as blood,
8 sperm, epithelial cells, skin, muscle, bone, teeth, hair
9 roots. So a lot of biological material of the human body
10 possesses nucleoid cells and, therefore, possesses DNA.

11 A vast majority of the DNA is the same in all human
12 individuals. In other words, the genetic code codes for the
13 making of one nose, two eyes, things of this type. A very
14 small percentage of the DNA in the human cell is genetically
15 variable. In other words, the structure arrangement of the
16 DNA building blocks is different in different individuals.
17 It's these regions of the DNA that scientists look at in order
18 to determine the genetic differences amongst individuals and
19 to be used for DNA identification purposes.

20 There's several things you need to know about DNA.
21 There is a -- or different regions of the DNA that we look at
22 that have genetic variability and we can refer to those as
23 regions where we can obtain DNA types. A combination of DNA
24 types is referred to as a DNA profile. The DNA profile, your
25 DNA profile, is determined from inheritance, the chromosomes

IV-95

WAHL - DIRECT

1 you inherit from your biological mother via the female egg
2 cell and the chromosomes you inherit via the sperm cell from
3 your biological father. The combination of those chromosomes
4 is what determines your DNA type and the combination of DNA
5 types is known as a DNA profile.

6 Secondly, the DNA profile does not change from birth
7 until death. When you are born you have a DNA profile and it
8 remains the same. It doesn't change. Secondly, the DNA
9 profile that you could obtain from, let's say, your blood is
10 the same as from a sperm cell in a male individual or from
11 your skin or from muscle tissue. It's the same.

12 And, thirdly, there's enough genetic variation in
13 these regions that we look at such that every individual has a
14 unique DNA profile, with one exception, and that is if you had
15 an identical sibling, such as an identical twin. Identical
16 twins have the same DNA profile. And there is enough
17 variations, as I said before, that everyone has a unique DNA
18 profile.

19 Scientists utilize technology to detect these
20 genetic differences to try to determine DNA profiles. In the
21 forensic lab setting we basically deal with two types of
22 evidence, known evidence and questioned evidence. Known
23 evidence is biological samples that are collected from
24 individuals. We refer to these as reference standards. These
25 could be liquid blood samples or cells that are scraped from

IV-96

WAHL - DIRECT

1 the inside of the mouth that contain nucleoid epithelial cells
2 called bucca cells and we can extract DNA from that as well.
3 So these are the two types of main biological samples that are
4 collected from individuals. They are known as reference
5 standards. We can obtain DNA profiles from those standards to
6 absolutely, positively determine the DNA profile of an
7 individual.

8 The second type of evidence is known as questioned
9 evidence and this is evidence that is submitted to the
10 laboratory that may be biological substances that are
11 deposited at crime scenes, may be blood stains or semen stains
12 on clothing in which the investigators are submitting it to
13 the laboratory to try to determine the DNA profile from the
14 evidence and whose is it. And this is called questioned
15 evidence. So we're dealing with comparative analysis.

16 The type of technology we use in our laboratory is
17 called PCR technology.

18 Q Let me, before we get to PCR technology, let me ask
19 you this. Can this process of typing DNA identify war dead?

20 A Pardon?

21 Q Through the typing of DNA can we identify war dead,
22 like soldiers that die that aren't identified?

23 A Yes. That's one of the applications of DNA
24 identification technology, yes.

25 Q Can this area of typing DNA exclude suspects in any

IV-97

1 given case?

2 A Yes, the power of exclusion is extremely strong with
3 DNA analysis.

4 Q And what do you mean by that?

5 A That if a sample, biological sample, truly did not
6 originate from somebody, the DNA analysis system will prove
7 that.

8 Q And you say prove it. With what degree of certainty
9 can it prove that a person's excluded?

10 A Absolutely, 100 percent, absolutely.

11 Q And can it identify suspects?

12 A Yes, it can.

13 Q And with what degree of certainty can it identify a
14 suspect?

15 A In my opinion with absolute certainty if -- and the
16 caveat being there's sufficient genetic information obtained
17 from the evidence.

18 Q Let's talk a little bit about if there's sufficient
19 genetic information then. You put an if there and why?

20 A An example is that in the early days of PCR
21 technology the DNA profiling systems, in most laboratories,
22 consisted of about six or seven DNA types. It was very
23 powerful exclusionary profiling systems, but the rarity of
24 their estimate of the DNA profile frequencies from that
25 battery of tests was not sufficient enough to positively

1 identify somebody.

2 Over the course of time there's been a lot of
3 research and development of new DNA typing methods and there
4 are now DNA typing methods available where the amount of
5 genetic information is so powerful and so discriminatory that
6 the rarity of DNA profiles that can be established are
7 extremely, extremely rare such that to a reasonable degree of
8 scientific certainty positive identification can be made with
9 this type of DNA profiling system.

10 Q Let me ask you, is the process of excluding a
11 suspect through DNA typing, is it commonly accepted within
12 those that practice in your field?

13 A Yes. And, in fact, I look at DNA typing analysis
14 from the exclusionary standpoint.

15 Q And, tell me, persons in your field, do they
16 commonly also use it, however, to positively identify
17 suspects?

18 A Yes.

19 Q And is this used across the country?

20 A In most laboratories, yes.

21 Q And even outside the United States is there DNA
22 testing? You mentioned Canada.

23 A From my understanding, I do believe Canada is now
24 making identity statements.

25 Q All right. Now, then, you mentioned PCR techniques.

WAHL - DIRECT

1 Just what is PCR techniques?

2 A Scientists like to use a lot of acronyms. PCR
3 stands for Polymerase Chain Reaction and this is a relatively
4 new DNA typing technology. It was developed in the late '80s,
5 but it has been recently used in forensic applications since
6 the early '90s and is basically the method -- method of DNA
7 technology of choice in most forensic laboratories across the
8 world.

9 PCR is a method that can enzymatically copy, sort of
10 like a Xerox copy, specific target regions of DNA such that we
11 can take very small amounts of evidentiary material DNA and
12 copy the DNA a million times fold so we have enough DNA to
13 type and then we can -- we have enough DNA to look at the
14 genetic differences we need to.

15 Q If I mention the phrase STR, does that mean anything
16 to you?

17 A STR is another acronym that stands for Short Tandem
18 Repeats. STRs are genetic types -- the STR genetic types are
19 determined by PCR technology, but they are a certain class of
20 genetic types that fall into a class called Short Tandem
21 Repeats. This is currently the DNA profiling/genetic typing
22 system that's used in most government laboratories and most
23 forensic laboratories across the world and it's also used for
24 the FBI's DNA databasing system.

25 So STRs are becoming -- or are the method of choice

IV-100

WAHL - DIRECT

1 for DNA profiling in forensic labs.

2 Q And is this process, of STR testing, is it reliable?

3 A Yes, it is.

4 Q Can it, in fact, with certainty, exclude suspects?

5 A Absolutely.

6 Q And with the same certainty can it identify suspects
7 through STR testing?

8 A If enough genetic information's obtained from the
9 evidence, yes.

10 Q Now then let's talk about contamination just for a
11 little bit. As a scientist or an analyst in DNA, is
12 contamination important to you?

13 A It's a concern because PCR is a very sensitive
14 method. Because we are actually copying or photocopying DNA
15 samples to perform genetic typing, it's absolutely imperative
16 for the laboratory to set up the laboratory and follow very
17 strict lab protocols to reduce or minimize introducing DNA
18 into the sample during the course of the analysis. And this
19 would be DNA that has nothing to do with the case. It could
20 be contamination from myself. It could be contamination from
21 some other source. So it's very, very important to set up the
22 laboratory and follow strict protocol.

23 And the contamination we're concerned with with PCR,
24 as I stated before, is the introduction of biological material
25 into the sample, so precautions are taken from the crime scene

IV-101

WAHL - DIRECT

1 people from the time they collect the evidence, package it,
2 store it, to the time it comes to our laboratory, our handling
3 and processing and returning the evidence to the evidence
4 vault. During that whole course of time there are protocols
5 that we need to follow to reduce that possibility from
6 happening.

7 Q Now in the lab that you're currently employed at,
8 the Las Vegas Metropolitan Forensic Lab, does that forensic
9 lab have protocols so as to satisfy your concerns regarding
10 contamination?

11 A Yes. Those are outlined in our PCR manuals, our
12 protocol manuals, and also these are guidelines that are
13 followed by many laboratories according to certain guidelines
14 set up by groups who oversee DNA analysis testing, one known
15 as the Technical Working Group of DNA Analysis Methods and the
16 other one, which is a federally set-up board, called the DNA
17 Advisory Board. They do set guidelines and we follow those
18 guidelines.

19 Q Are there controls or indicators, as an expert in
20 this field, that you can see that tell you that something's
21 been contaminated or hasn't been contaminated once you do the
22 testing?

23 A In our protocol we always set up controls. There
24 are several types of controls that we set up and each have a
25 specific purpose. One control is called a positive control

TV-102

WAHL - DIRECT

1 and this is a DNA sample of known DNA types. In other words,
2 we know what the DNA types are and this sample is carried
3 through the PCR typing process and then, at the end of the
4 process, the results of the positive control are interpreted
5 and the types of the positive control must reflect the known
6 DNA type. This ensures that the typing process worked as it
7 should.

8 Then there are several types of negative controls
9 that are implemented and each has a certain purpose. One is
10 known as -- what we call in our laboratory the DNA extraction
11 reagent control. When we are in the process of extracting DNA
12 from our evidence, and I'll use a bloodstain as an example,
13 let's say of a bloodstain on a shirt or a pair of pants, we
14 actually cut a small portion of that bloodstain out, put it in
15 a test tube and then we add some DNA extraction reagents to
16 that to try to extract the DNA out of the bloodstain. These
17 reagents, we set up a separate test tube with just those
18 reagents in it and carry it through the DNA extraction process
19 and all the way through the typing procedure.

20 At the end of the typing procedure we look at these
21 controls and we do not want to see any DNA types in that
22 sample. The purpose is that we want to demonstrate that no
23 DNA contamination has occurred in our extraction reagents.
24 That demonstrates that we haven't introduced contamination to
25 our samples with the extraction reagents.

IV-103

WAHL - DIRECT

1 The second type of negative control is referred to
2 as a negative amplification control. This control is a test
3 tube that uses the PCR reagents we use to enzymatically copy
4 the DNA. These reagents are part of a commercially available
5 kit that we purchase from a company that makes these reagents.
6 And this is carried through the typing procedure. At the end
7 of the typing procedure, we look at the typing results of this
8 sample and we do not want to see any DNA types in this sample.
9 This is a check to ensure that our PCR commercially available
10 reagents were not contaminated with DNA.

11 And then there is a third control that may or may
12 not be run, it's up to the discretion of the analyst, and this
13 is referred to as the substrate control. By substrate I mean
14 the material or the surface that a biological sample's
15 deposited on. We sometimes test an area adjacent to the stain
16 to ensure that there's nothing in the material that could be
17 contributing to the sample typing, because when we extract DNA
18 from let's say a bloodstain out of a piece of cloth, there
19 could be something on the cloth, as well as the bloodstain on
20 the cloth. So you may -- an analyst may run a substrate
21 control and in that control you may or may not see DNA types,
22 but if you do not see DNA types in the substrate control, this
23 is also a very good check that there is nothing on the
24 material itself that could be causing a DNA typing result.

25 Q Mr. Wahl, in this particular case, that being event

IV-104

WAHL - DIRECT

1 number 9808141600, did you actually obtain pieces of evidence
2 from the Las Vegas Metropolitan Police Department evidence
3 vault or have them sent to you so you could, in fact, analyze
4 them through PCR testing?

5 A Yes.

6 Q I'm gonna show you a series of pieces of evidence
7 and ask you if you recognize them. We'll start with Item
8 Number 183. Do you recognize it?

9 A Yes. State's Exhibit 183 is an envelope. It's the
10 original package containing a cigarette butt reportedly
11 recovered from the scene.

12 Q And did you have some involvement with the testing
13 of items within that particular piece of evidence or
14 associated with that piece of evidence?

15 A Yes, I did perform DNA analysis on a portion of that
16 cigarette butt shortly after the homicides.

17 Q Okay. And likewise Exhibit Number 194, 193 and 192,
18 in reverse order, are you familiar with each one of these
19 particular items of evidence and did you, in fact, perform
20 testing on each of those?

21 A Yes, I did. My identifying marks are on here, on
22 the evidence packages.

23 Q And you have another bag in your hands, 191. Are
24 you familiar with that particular bag?

25 A Yes. This is the original container containing a

IV-105

WAHL - DIRECT

1 pair of black Calvin Klein jeans.

2 Q Okay. And did you do some work on the black Calvin
3 Klein jeans?

4 A Yes.

5 Q And we'll get to those.

6 And lastly 183 -- or 182 is a series of cigarette
7 butts. This one here from Cellmark, 183, is associated with
8 those. In total there are 12 cigarette butts. Are you
9 familiar with those 12 cigarette butts?

10 A Yes. This is the original package container
11 containing all 12 cigarette butts and then one of the
12 cigarette butts was removed from this container, placed in
13 this container and then sent to another DNA testing laboratory
14 later on in the investigation for further DNA testing.

15 Q And, Mr. Wahl, as you began the analysis you also
16 obtained, did you not, the known samples of Jeffrey Biddle,
17 Tracey Gorringer, Matthew Mowen and Peter Talamantez, is that
18 correct?

19 A Yes.

20 Q And they were obtained during the autopsy of each
21 one of those four boys?

22 A Yes.

23 Q And impounded by Sheree Norman?

24 A Yes.

25 Q Okay. Now were each and every one of the items that

IV-106

1 you began to analyze, were they in a sealed condition when you
2 received them?

3 A Yes, they were.

4 Q And was that important to you?

5 A Yes. It's very important that the evidence have
6 intact evidence tape seals that indicates that the samples had
7 not been opened prior to my examining them.

8 Q And once you obtained all of those particular
9 samples, those that you have now and the known samples of the
10 four decedents, what type of testing did you begin to do
11 first?

12 A Back in August of 1998 we were performing PCR
13 technology to do DNA profiling with what I would consider the
14 first set of DNA battery tests. This is the -- a series of
15 profiling, that I indicated earlier in my testimony, in which
16 the testing is very discriminatory, but we couldn't achieve
17 positive identity with that particular set of typing systems.
18 The STR systems were currently in in-house validation. In
19 other words, we were at that time performing internal
20 validation studies on the STR systems to ensure that we could
21 reliably type our DNA samples with STRs, but we were not doing
22 casework typing yet because our validations had not been
23 completed.

24 So we were still doing the older phase DNA typing
25 and that's the type of technology I initially did on the

1 evidence back in 1998.

2 Q And were you able to form some conclusions
3 associated with that analysis?

4 A With respect to which items of evidence?

5 Q Well, which items did you first analyze?

6 A The very first --

7 Q You typed -- You typed the boys, correct?

8 A Well, the first thing I did was I examined the pair
9 of black Calvin Klein jeans.

10 Q Let's talk about that examination then.

11 A The request from the homicide division was to
12 determine if there was any blood on the black jeans, if it was
13 human blood and to determine a DNA profile of any blood that
14 may have been found on the jeans.

15 Q Mr. Wahl, was there, in fact, human blood on the
16 back of those Calvin Klein jeans?

17 A Yes. I identified eight human bloodstains on the
18 back right pant leg of the jeans. Six of the stains were
19 somewhat clustered close together on the lower portion of the
20 pant leg and then there were two additional stains that were
21 located in the area -- on the back of the knee area.

22 Q And did you photograph those pants once you had them
23 in the lab yourself?

24 A I did not photograph them at the time I did the
25 analysis. I did photograph them after I had done some

1 analysis.

2 Q Okay. And are the pants actually in State's Exhibit
3 191?

4 A They should be. They were -- The last seal on here
5 is from a private laboratory that received the jeans for
6 analysis purposes.

7 Q It says "Biohazard" on it. As a result, we have not
8 opened it, but can you safely accept the fact that there are,
9 in fact, the very black jeans that you worked on in this case
10 in that bag?

11 A My evidence seals are present on here, they appear
12 to be intact and there are some evidence seals on here from a
13 private DNA testing laboratory and they appear to be intact as
14 well. So, to the best of my knowledge, the jeans are inside.

15 (Pause in the proceedings)

16 Q With the biohazard sticker on there, is there
17 safety concerns or issues?

18 A Our policy is that when we deal with biological
19 evidence it's always considered a potential biohazard and this
20 is because of the reality of hepatitis or AIDS that could be
21 present in a bloodstain. We don't know where the bloodstain
22 came from and we don't know the health condition of the person
23 who deposited the stain, so it's always treated as a
24 biohazard.

25 Q I show you what has previously been marked as

WAHL - DIRECT

1 State's Exhibits 105 and 107. It is reported by Marc
2 Washington that he in fact impounded some black Calvin Klein
3 jeans being of a 34 waist and 30 length.

4 Are those, in fact, photographs of the black jeans
5 that you analyzed and found eight human bloodstains on the
6 back?

7 A It appears that one of these pairs of jeans is.

8 Q Okay, there's two pair of jeans in 107, the lower
9 leg in 105.

10 A Yeah. The jeans in this photograph on the left with
11 a leather patch up here appear to be similar to the ones I
12 examined.

13 Q Okay. Now, then, what type of test did you do in
14 order to determine whether or not this was human blood?

15 A The first test we do is a visual examination to see
16 if anything looks consistent with the appearance of a
17 bloodstain, a dried bloodstain. The pants are black, so blood
18 is a little more difficult to detect on a black background
19 versus a white background.

20 Upon careful examination I did observe the stains I
21 had mentioned on the lower back pant leg and the first step I
22 did was a test known as a presumptive test for blood. A
23 presumptive test is exactly what it sounds. It's a test that
24 if it is positive, based on the appearance and the positive
25 presumptive test result, we presume that the stains we're

IV-110

1 examining are indeed blood, but it is not confirmatory for the
2 presence of blood. We need to go to a next phase of analysis
3 to then confirm that the sample is indeed blood and to confirm
4 that it's human, human in origin.

5 So I did perform presumptive tests on all eight of
6 those stains and I did get positive presumptive tests for
7 blood using this test.

8 Q Did you do subsequent tests, without describing in
9 too much detail what the subsequent tests are, that assured
10 you that in fact it was positively human blood?

11 A I removed a portion of each stain, performed a DNA
12 extraction and evaluation test on it and it was determined to
13 be of human origin, so that test result confirmed that these
14 stains indeed were human blood.

15 Q Did you, through a series of tests, also identify
16 whose human blood it was?

17 A I did extract DNA from all eight stains. I
18 extracted DNA from each of the blood samples collected from
19 each of the four victims at autopsy. I was able to get
20 conclusive DNA typing results with all four reference
21 standards of the victim and all eight bloodstains on the
22 pants. And I excluded three of the victims as a source of the
23 blood and one victim was included as a source of the blood.

24 Q And what three victims were excluded as the source
25 of blood on those Calvin Klein jeans?

WAHL - DIRECT

1 A Matthew Mowen, Peter Talamantez and Jeffrey Biddle.

2 Q And you say that Tracey Gorringer, however, was
3 included as possibly being his blood?

4 A Yes.

5 Q In other words, he was the person --

6 A I could not exclude him with the DNA typing test.

7 Q Through yet further tests did you, in fact, do more
8 than not be able to exclude him, but rather identify him?

9 A Yes.

10 Q And tell me with what degree of certainty are you
11 that he cannot be excluded from being the person -- the owner
12 of that blood?

13 A I did STR testing once we went online with STR
14 testing in June of 1999 and I went back and performed STR
15 analysis on retention DNA extracts from each of those eight
16 stains and from the four victims, as well as the suspects, and
17 I was able to positively identify Tracey Gorringer as the
18 source of all eight bloodstains.

19 Q And with what degree of certainty are you that that,
20 in fact, is Tracey Gorringer's blood at the bottom of those
21 pants?

22 A In my opinion I'm absolutely certain that there's
23 sufficient genetic information obtained from the bloodstains
24 to render an opinion that that blood came from Tracey Gorringer
25 and nobody else.

IV-112

WAHL - DIRECT

1 Q Now, Mr. Wahl, did you also analyze the front of
2 those pants and, if so, why?

3 A I did a visual examination of the front of the pants
4 and I could not see any visible appearance of blood. And when
5 I found the blood on the back of the pants, I focused my
6 attention on the stains that I visibly could see on the back
7 of the pants.

8 Q And was your attention at a later date now focused
9 on the front of those pants?

10 A Upon my initial examination of the pants, I did
11 notice some whitish discolorations on the front zipper flap of
12 the jeans. It did not appear to --

13 Q You say the flap of the jeans. Where on the flap of
14 the jeans? Are we talking about the outside flap or the
15 inside flap zipper?

16 A There was some on the outside flap, but the majority
17 of the stains were on the inside zipper flap.

18 Q Can you, and I don't mean to embarrass anyone, can
19 you stand up and show the jury where that stain would be on
20 the jeans?

21 A It was actually a flap like this, although in the
22 jeans it's a little wider than the pants I'm wearing, but on
23 the inside flap area. And there was some overlap on the
24 outside, but the majority of it was here.

25 MR. SCISCENTO: Your Honor, can we have the record

IV-113

WAHL - DIRECT

1 reflect what he's showing to the -- He's pulling --

2 MR. GUYMON: He's pulled back the flap of his zipper
3 exposing now the zipper line and ran his finger down the
4 zipper line from about the middle of the zipper --

5 BY MR. GUYMON:

6 Q Down to the bottom of the zipper?

7 A Yes. I also have photos of this area.

8 Q Did you, in fact, photograph the very area and bring
9 the photo with you?

10 A I photographed them at a later date, yes.

11 Q Okay, can I grab a photograph that would show the
12 very area we're talking about?

13 MR. SCISCENTO: If I may, Your Honor.

14 BY MR. GUYMON:

15 Q And I take it you're the one that photographed this?

16 A Yes.

17 Q And why is it that you would photograph this
18 particular area?

19 A Because there had been a request by the defense to
20 have the pants photographed before they got sent off to
21 another laboratory. And I photographed these and provided a
22 copy to the defense and I kept a copy.

23 Q All right. If I could have those and have them
24 marked.

25 A Here's an overall view, here's the flap area, here's

IV-114

WAHL - DIRECT

1 the flap area in front and these are close-ups of that. And
2 we cut -- Some of the stains have been removed, so --

3 (Pause in the proceedings)

4 Q Now, then, once you saw some -- you described it as
5 a white crusty substance on the inside zipper area?

6 A Yes.

7 Q Is that correct?

8 Could you tell with the naked eye what that white
9 crusty substance was?

10 A It could be any material that upon drying looked
11 whitish and crusty.

12 Q Okay. And so what did you do to analyze it?

13 A Given the location and the appearance of the stain,
14 I tested it with a presumptive test for the presence of semen
15 and this presumptive test is known as an acid phosphatase
16 test.

17 Q And when you did that test did you get a result?

18 A I got no result. I got a negative result, a
19 negative result meaning that there was no acid phosphatase
20 enzyme activity detectable in the cuttings or the areas I
21 tested on that stain, indicating that it may not possess semen
22 at that point in time. It's a presumptive test.

23 Q Is it a proof positive test, a presumptive test?
24 Does that mean that there's just no semen there?

25 A No, not necessarily.

IV-115

WAHL - DIRECT

1 Q And explain.

2 A Presumptive tests, if positive, don't necessarily
3 mean a test of semen and, if it's negative, it indicates it's
4 probably not semen, but it doesn't preclude the possibility it
5 could be.

6 Q Did you test this a second time?

7 A I did test it a second time, yes.

8 Q And what did you find?

9 A I tested it a second time at the request of Sergeant
10 Hefner. Sergeant Hefner, upon receipt of my DNA report
11 regarding the bloodstains on the jeans, he contacted me at the
12 lab and requested that I reexamine the jeans to see if I could
13 find any biological -- other biological stains on there that
14 may contain DNA which I could type and then attribute to the
15 possible wearer of the jeans.

16 When I talked to Sergeant Hefner, I did tell him
17 that I recalled that there was a white crusty stain that I had
18 tested for semen that was negative, however, I would reexamine
19 it and do some confirmatory tests to determine whether it was
20 semen or any other biological fluid. And I did, indeed, do
21 that several days -- within a week after he received my
22 report.

23 Q And did you, in fact, -- Did the confirmatory tests
24 confirm to you what this substance was?

25 A Yes. I removed a portion of the stain, I extracted

IV-116

WAHL - DIRECT

1 it in a buffer solution and then performed a cellular
2 microscopic evaluation of the stain to determine what types of
3 cells may be in there and I identified sperm cells and
4 nucleoid epithelial cells present in that stain.

5 And the microscopic examination of sperm is a
6 confirmatory test for semen, so semen was proven to be present
7 in the stain.

8 Q And how certain are you that there was, in fact,
9 semen in that stain?

10 A Oh, absolutely positive.

11 Q Now let me ask you, as an expert, have you, on
12 occasion, done a presumptive test on something that you think
13 is semen and learned that in fact it's not?

14 A Yes, I have. It's rare, but I have, on a handful of
15 occasions, I have run across stains that do do that.

16 Q Subsequently, through confirmatory testing, the same
17 presumptive test that said negative may be positive after all?

18 A Yes.

19 Q All right. I want to show you what's been marked as
20 State's Proposed Exhibits 202 through 199, actually, in
21 backwards order, if that's all right.

22 A Starting from the top you said?

23 Q Well, do you recognize all four of those
24 photographs, 199, 200, 201 and 202?

25 A Yes, I do. I took these photographs and my

IV-117

1 identifying marks are on the back.

2 Q And do those photographs fairly and accurately
3 depict the pants after you had begun some work on them?

4 A Yes, they accurately reflect the pants after I had
5 removed some stains and prior to submitting this evidence to a
6 private lab for their testing.

7 Q There is areas on the pants that had been cut out.
8 Who was the one that cut those areas out?

9 A I did.

10 Q And why?

11 A It's our policy, in our laboratory, that
12 particularly if the stains are small that we cut the stains
13 out, remove portions that we need for our testing and any
14 unused portions of the stain are stapled to a three by five
15 index card, placed in a coin envelope and placed in a freezer.
16 The reason is we want to retain biological samples in a frozen
17 state to preserve them for possible reanalysis, either by our
18 laboratory or by an independent laboratory or a laboratory the
19 defense may want to select for reanalysis.

20 MR. GUYMON: And at this time I'd move to admit
21 State's Proposed Exhibit 199 through 202, Your Honor.

22 MR. SCISCENTO: No objection, Your Honor.

23 THE COURT: Received.

24 (Plaintiff's Exhibit Nos. 199 thru 202 admitted)

25 MR. GUYMON: And ask to publish the same.

1 THE COURT: Yes.

2 BY MR. GUYMON:

3 Q Once you had confirmed that in fact this white
4 crusty substance on the inside zipper of the pants was sperm
5 did you, in fact, attempt to DNA type it or test it?

6 A Yes, right away.

7 Q Okay. And tell me what your conclusions were and
8 what you did.

9 A Because the microscopic exam indicated that there
10 may be a semen -- a mixture with another biological fluid, by
11 virtue of the fact that I saw nucleoid epithelial cells in
12 there along with sperm, I performed a DNA extraction procedure
13 known as a differential DNA extraction. Differential DNA
14 extraction, the purpose of this extraction procedure, is to
15 separate the sperm cell DNA from the nucleoid epithelial cell
16 DNA, in that the observation of both cells indicated there may
17 be body fluids from two different individuals there as a
18 result of a possible sex act. That's always -- This is very
19 common, particularly in sexual assault cases. We deal with
20 this type of stain quite often.

21 I was able to get a very nice differential
22 extraction from one of the stains and I was able to obtain a
23 DNA profile from the sperm cell donor and I also was able to
24 obtain a DNA profile from the nucleoid epithelial cells that
25 originated from a female individual.

WAHL - DIRECT

1 Q So this stain, part of it was a male stain and part
2 of it was a female stain?

3 A That's correct.

4 Q Would that be consistent with, for instance, sexual
5 intercourse and a male putting his penis back in his pants
6 having some of the female fluid on him now?

7 A It's possible, yes.

8 Q And what would it also be consistent with or
9 possible?

10 A It could be consistent with vaginal drainage. The
11 female could be on top of the male individual when ejaculation
12 occurred and there was drainage onto the jeans. It also could
13 possibly be -- a semen saliva mixture is also a possibility,
14 where an act of fellatio occurred and there could have been a
15 mixture of saliva and semen present in that the nucleoid
16 epithelial cells also could be from the oral cavity.

17 Q Tell me, through DNA analysis were you able to
18 exclude Terrell Young as the possible donor of the semen on
19 those pants?

20 A Yes.

21 Q Were you -- Did you also do a comparison to any of
22 the other names we've mentioned, the victims and otherwise?

23 A I did a comparison to all four victims and all three
24 suspects in the case.

25 Q And, tell me, were you able to exclude all of the

IV-120

WAHL - DIRECT

1 persons you've spoken about so far?

2 A Everybody but one individual.

3 Q And who were you able to not exclude?

4 A Donte Johnson.

5 Q And with what degree of certainty are you or were
6 you that Donte Johnson could not be excluded as the donor of
7 the semen?

8 A In my opinion, absolutely. There is sufficient
9 genetic information obtained from the sperm DNA to, with a
10 reasonable degree of scientific certainty, to positively
11 identify the sperm as originating from Donte Johnson.

12 Q You say that you could actually not only exclude
13 him, but you could positively identify him?

14 A Yes, in my opinion.

15 Q Okay. Now, then, did you also analyze the 12
16 cigarette butts in order to find out who smoked the cigarette
17 butts?

18 A A majority of them, yes, I did. With a couple of
19 butts -- I think I did have some with no typing results and
20 some where the typing results were inconclusive, the typing
21 data was not interpretable to any reliability, but I do
22 believe on nine or ten of the cigarette butts, and I'd have to
23 check my notes, but I did obtain genetic information and could
24 render some conclusions as to the source of the DNA on the
25 cigarette butts.

IV-121

**PLEADING
CONTINUES
IN NEXT
VOLUME**

CHRISTOPHER R. ORAM, LTD.
520 SOUTH 4TH STREET | SECOND FLOOR
LAS VEGAS, NEVADA 89101
TEL. 702.384-5563 | FAX. 702.974-0623

IN THE SUPREME COURT OF THE STATE OF NEVADA

* * * * *

DONTE JOHNSON,

S.C. CASE NO. 65168

Appellant,

Electronically Filed
Jan 09 2015 02:00 p.m.
Tracie K. Lindeman
Clerk of Supreme Court

vs.

THE STATE OF NEVADA,

Respondent.

APPEAL FROM DENIAL OF PETITION FOR WRIT OF HABEAS CORPUS
(POST-CONVICTION)
EIGHTH JUDICIAL DISTRICT COURT
THE HONORABLE JUDGE ELISSA CADISH, PRESIDING

~~~~~  
APPELLANT'S APPENDIX TO THE OPENING BRIEF  
VOLUME XII  
~~~~~

ATTORNEY FOR APPELLANT

CHRISTOPHER R. ORAM, ESQ.

Attorney at Law
Nevada Bar No. 004349
520 S. Fourth Street, 2nd Floor
Las Vegas, Nevada 89101
Telephone: (702) 384-5563

ATTORNEY FOR RESPONDENT

CLARK COUNTY DISTRICT ATTORNEY

200 Lewis Avenue
3rd Floor
Las Vegas, Nevada 89101
(702) 671-2500

CATHERINE CORTEZ MASTO

Nevada Attorney General
Nevada Bar No. 0003926
100 North Carson Street
Carson City, Nevada 89701-4717

IN THE SUPREME COURT OF NEVADA

DONTE JOHNSON,

CASE NO. 65168

Appellant,

vs.

THE STATE OF NEVADA

Respondent.

OPENING BRIEF APPENDIX

<u>VOLUME</u>	<u>PLEADING</u>	<u>PAGE NO</u>
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
2			
3	7	CERTIFICATE OF MAILING OF EXHIBITS (FILED 04/17/2000)	1722
4			
5	19	CERTIFICATION OF COPY	
6	7	DECISION AND ORDER (FILED 04/18/2000)	1723-1726
7	2	DEFENDANT JOHNSON'S MOTION TO SET BAIL (FILED 10/05/1998)	294-297
8	6	DEFENDANT'S MOTION AND NOTICE OF MOTION TO SUPPRESS EVIDENCE ILLEGALLY SEIZED (FILED 12/03/1999)	1340-1346
9			
10	5	DEFENDANT'S MOTION FOR CHANGE OF VENUE (FILED 11-29-1999)	1186-1310
11			
12	5	DEFENDANT'S MOTION FOR DISCLOSURE OF ANY POSSIBLE BASIS FOR DISQUALIFICATION OF DISTRICT ATTORNEY (FILED 11/29/1999)	1102-1110
13			
14	5	DEFENDANT'S MOTION FOR DISCLOSURE OF EXCULPATORY EVIDENCE PERTAINING TO THE IMPACT OF THE DEFENDANT'S EXECUTION UPON VICTIM'S FAMILY MEMBERS (FILED 11/29/1999)	1077-1080
15			
16			
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
18			
19			
20			
21	5	DEFENDANT'S MOTION FOR INSPECTION OF POLICE OFFICER'S PERSONNEL FILES (FILED 11/29/1999)	1070-1072
22			
23	5	DEFENDANT'S MOTION FOR JURY QUESTIONNAIRE (FILED 11/29/1999)	1146-1172
24	15	DEFENDANT'S MOTION FOR NEW TRIAL (FILED 06/23/2000)	3570-3597
25			
26	5	DEFENDANT'S MOTION FOR PERMISSION TO FILED OTHER MOTIONS (FILED 11/29/1999)	1066-1069
27			
28	4	DEFENDANT'S MOTION IN LIMINE FOR ORDER PROHIBITING PROSECUTION MISCONDUCT IN ARGUMENT (FILED 11/29/1999)	967-1057

1	4	DEFENDANT'S MOTION IN LIMINE REGARDING CO-DEFENDANT'S SENTENCES (FILED 11/29/1999)	964-966
2			
3	4	DEFENDANT'S MOTION IN LIMINE TO PRECLUDE EVIDENCE OF WITNESS INTIMIDATION (FILED 10/27/1999)	776-780
4			
5	5	DEFENDANT'S MOTION IN LIMINE TO PROHIBIT ANY REFERENCES TO THE FIRST PHASE A THE "GUILT PHASE" (FILED 11/29/1999)	1063-1065
6			
7	5	DEFENDANT'S MOTION TO ALLOW THE DEFENSE TO ARGUE LAST AT THE PENALTY PHASE (FILED 11/29/1999)	1058-1062
8			
9	5	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 11/29/1999)	1081-1083
10			
11			
12	5	DEFENDANT'S MOTION TO BIFURCATE PENALTY PHASE (FILED 11/29/1999)	1142-1145
13			
14	5	DEFENDANT'S MOTION TO DISMISS STATE'S NOTICE OF INTENT TO SEEK DEATH PENALTY BECAUSE NEVADA'S DEATH PENALTY STATUTE IS UNCONSTITUTIONAL (FILED 11/29/1999)	1115-1136
15			
16			
17	5	DEFENDANT'S MOTION TO EXCLUDE AUTOPSY PHOTOGRAPHS (FILED 11/29/1999)	1098-1101
18			
19	5	DEFENDANT'S MOTION TO PRECLUDE EVIDENCE OF ALLEGED CO-CONSPIRATORS STATEMENTS (FILED 11/29/1999)	1091-1097
20			
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
22			
23			
24	5	DEFENDANT'S MOTION TO REQUIRE PROSECUTOR TO STATE REASONS FOR EXERCISING PEREMPTORY CHALLENGES (FILED 11/29/1999)	1137-1141
25			
26			
27	19	DEFENDANT'S MOTION TO SET ASIDE DEATH SENTENCE OR IN THE ALTERNATIVE MOTION TO SETTLE RECORD (FILED 09/05/2000)	4586-4592
28			

1	3	DEFENDANT'S OPPOSITION TO STATE'S MOTION TO VIDEOTAPE THE DEPOSITION OF CHARLA SEVERS (FILED 10/06/1999)	650-658
2	3	DEFENDANT'S OPPOSITION TO WITNESS SEVER'S MOTION TO VIDEOTAPE THE DEPOSITION OF CHARLA SEVERS (FILED 10/12/1999)	686-694
5	43	COURT MINUTES	8285 -8536
6	5	DONTE JOHNSON'S MOTION IN LIMINE TO PRECLUDE THE INTRODUCTION OF VICTIM IMPACT EVIDENCE (FILED 11/29/1999)	1111-1114
9	2	EX PARTE APPLICATION AND ORDER TO PRODUCE (FILED 05/21/1999)	453-456
11	2	EX PARTE APPLICATION AND ORDER TO PRODUCE JUVENILE RECORDS (FILED 05/14/1999)	444-447
13	2	EX PARTE APPLICATION AND ORDER TO PRODUCE JUVENILE RECORDS (FILED 05/14/1999)	448-452
15	2	EX PARTE APPLICATION FOR ORDER REQUIRING MATERIAL WITNESS TO POST BAIL (FILED 04/30/1999)	419-422
17	2	EX PARTE APPLICATION TO APPOINT DR. JAMES JOHNSON AS EXPERT AND FOR FEES IN EXCESS OF STATUTORY MAXIMUM (FILED 06/18/1999)	493-498
19	19	EX PARTE MOTION FOR RELEASE OF EVIDENCE (FILED 10/05/2000)	4629
21	15	EX PARTE MOTION TO ALLOW FEES IN EXCESS OF STATUTORY MAXIMUM FOR ATTORNEY ON COURT APPOINTED CASE FOR MATERIAL WITNESS CHARLA SEVERS (FILED 06/28/2000)	3599-3601
24	15	EX PARTE MOTION TO WITHDRAWAL AS ATTORNEY OF RECORD FOR MATERIAL WITNESS CHARLA SEVERS (FILED 06/20/2000)	3557-3558
26	15	EX PARTE ORDER ALLOWING FEES IN EXCESS OF STATUTORY MAXIMUM FOR ATTORNEY ON COURT APPOINTED CASE FOR MATERIAL WITNESS CHARLA SEVERS (FILED 06/28/2000)	3602

1	15	EX PARTE ORDER ALLOWING WITHDRAWAL OF ATTORNEY OF RECORD FOR MATERIAL WITNESS CHARLA SEVERS (FILED 06/20/2000)	3559
2			
3	42	FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER (FILED 03/17/2014)	8185-8191
4			
5	42	FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER (FILED 03/17/2014)	8192-8199
6			
7	1	INDICTMENT (FILED 09/02/1998)	1-10
8			
9	10	INSTRUCTIONS TO THE JURY (FILED 06/09/2000)	2529-2594
10	15	INSTRUCTIONS TO THE JURY (FILED 06/16/2000)	3538-3556
11	26	INSTRUCTIONS TO THE JURY	6152-6168
12	19	JUDGMENT OF CONVICTION (FILED 10/03/2000)	4619-4623
13			
14	30	JUDGMENT OF CONVICTION (FILED 06/06/2005)	7142-7145
15	19	JUDGMENT OF CONVICTION (FILED 10/09/2000)	4631-4635
16			
17	7	JURY LIST (FILED 06/06/2000)	1822
18	2	MEDIA REQUEST (FILED 09/15/1998)	274
19			
20	2	MEDIA REQUEST (FILED 09/15/1998)	276
21	2	MEDIA REQUEST (09/28/1998)	292
22			
23	2	MEMORANDUM FOR PRODUCTION OF EXCULPATORY EVIDENCE (FILED 05/12/1999)	432-439
24			
25	3	MEMORANDUM FOR PRODUCTION OF EXCULPATORY EVIDENCE (FILED 09/20/1999)	577-584
26			
27	3	MEMORANDUM IN PURSUANT FOR A CHANGE OF VENUE (FILED 09/07/1999)	570-574
28			

1	4	MEMORANDUM IN PURSUANT FOR A MOTION TO DISMISS INDICTMENT (FILED 11/02/1999)	783-786
2			
3	17	MEMORANDUM IN SUPPORT OF GRANTING STAY (FILED 07/18/2000)	4149-4152
4	17	MEMORANDUM REGARDING A STAY OF THE PENALTY PROCEEDINGS (FILED 07/19/2000)	4160-4168
5			
6	17	MEMORANDUM REGARDING THE THREE JUDGE PANEL (FILED 07/12/2000)	4102-4110
7			
8	2	MEMORANDUM TO THE COURT (FILED 03/23/1999)	394-399
9			
10	2	MEMORANDUM TO THE COURT (FILED 06/28/1999)	499-504
11	6	MEMORANDUM TO THE COURT (FILED 12/22/1999)	1457-1458
12			
13	6	MEMORANDUM TO THE COURT (FILED 12/29/1999)	1492-1495
14	7	MEMORANDUM TO THE COURT (FILED 02/02/2000)	1625-1631
15			
16	7	MEMORANDUM TO THE COURT (FILED 04/04/2000)	1693-1711
17	7	MEMORANDUM TO THE COURT (FILED 04/11/2000)	1715-1721
18			
19	7	MEMORANDUM TO THE COURT FOR REQUEST OF MOTION TO BE FILED (FILED 02/24/2000)	1652-1653
20			
21	4	MEMORANDUM TO THE COURT FOR REQUESTED MOTION TO BE FILED BY COUNSELS (FILED 11/15/1999)	956-960
22			
23	7	MOTION AND NOTICE OF MOTION FOR DISCOVERY OF PROSECUTION FILES, RECORDS, AND INFORMATION NECESSARY TO A FAIR TRIAL (FILED 04/26/2000)	1727-1732
24			
25	3	MOTION AND NOTICE OF MOTION IN LIMINE TO PRECLUDE ANY MEDIA COVERAGE OF VIDEO DEPOSITION OF CHARLA SEVERS (FILED 10/26/1999)	769-775
26			
27			
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
2			
3	2	MOTION FOR DISCOVERY (FILED 05/13/1999)	440-443
4			
5	5	MOTION FOR DISCOVERY AND EVIDENTIARY HEARING REGARDING THE MANNER AND METHOD OF DETERMINING IN WHICH MURDER CASES THE DEATH PENALTY WILL SOUGHT (FILED 11/29/1999)	1181-1185
6			
7			
8	17	MOTION FOR IMPOSITION OF LIFE WITHOUT THE POSSIBILITY OF PAROLE SENTENCE; OR IN THE ALTERNATIVE, MOTION TO EMPANEL JURY FOR SENTENCING HEARING AND/OR FOR DISCLOSURE OF EVIDENCE MATERIAL TO CONSTITUTIONALITY OF THREE JUDGE PANEL PROCEDURE (FILED 07/10/2000)	4019-4095
9			
10			
11			
12	6	MOTION FOR OWN RECOGNIZANCE RELEASE OF MATERIAL WITNESS CHARLA SEVERS (FILED 01/11/2000)	1496-1500
13			
14	5	MOTION TO APPLY HEIGHTENED STANDARD OF REVIEW AND CARE IN THIS CASE BECAUSE THE STATE IS SEEKING THE DEATH PENALTY (FILED 11/29/1999)	1173-1180
15			
16	2	MOTION TO DISMISS COUNSEL AND APPOINTMENT OF ALTERNATE COUNSEL (FILED 04/01/1999)	403-408
17			
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
19			
20			
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
22			
23			
24	2	MOTION TO COMPEL THE PRODUCTION OF ANY AND ALL STATEMENTS OF THE DEFENDANT (FILED 06/29/1999)	516-520
25			
26	3	MOTION TO COMPEL THE PRODUCTION OF ANY AND ALL STATEMENTS OF THE DEFENDANT (FILED 10/19/1999)	727-731
27			
28	2	MOTION TO CONTINUE TRIAL (FILED 06/16/1999)	481-484

1	6	MOTION TO CONTINUE TRIAL (FILED 12/16/1999)	1441-1451
2	2	MOTION TO PROCEED PRO PER WITH CO-COUNSEL AND INVESTIGATOR (FILED 05/06/1999)	429-431
3			
4	2	MOTION TO REVEAL THE IDENTITY OF INFORMANTS AND REVEAL ANY BENEFITS, DEALS, PROMISES OR INDUCEMENTS (FILED 06/29/1999)	505-510
5			
6			
7	3	MOTION TO REVEAL THE IDENTITY OF INFORMANTS AND REVEAL ANY BENEFITS, DEALS, PROMISES OR INDUCEMENTS (FILED 10/19/1999)	732-737
8			
9	19	MOTION TO SET ASIDE DEATH SENTENCE OR IN THE ALTERNATIVE MOTION TO SETTLE RECORD (FILED 09/05/2000)	4593-4599
10			
11	2	MOTION TO WITHDRAW COUNSEL AND APPOINT OUTSIDE COUNSEL (02/10/1999)	380-384
12			
13	19	NOTICE OF APPEAL (FILED 11/08/2000)	4647-4650
14			
15	42	NOTICE OF APPEAL (FILED 03/06/2014)	8203-8204
16	7	NOTICE OF DEFENDANT'S EXPERT WITNESSES (FILED 05/15/2000)	1753-1765
17			
18	42	NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER (FILED 03/21/2014)	8184
19			
20	2	NOTICE OF EVIDENCE IN SUPPORT OF AGGRAVATING CIRCUMSTANCES (FILED 06/11/1999)	460-466
21			
22	4	NOTICE OF EXPERT WITNESSES (FILED 11/17/1999)	961-963
23			
24	2	NOTICE OF INTENT TO SEEK DEATH PENALTY (09/15/1998)	271-273
25			
26	3	NOTICE OF MOTION AND MOTION TO PERMIT DNA TESTING OF THE CIGARETTE BUTT FOUND AT THE CRIME SCENE BY THE LAS VEGAS METROPOLITAN POLICE DEPARTMENT FORENSIC LABORATORY OR BY AN INDEPENDENT LABORATORY WITH THE RESULTS OF THE TEST TO BE SUPPLIED TO BOTH THE DEFENSE AND THE PROSECUTION (FILED 08/19/1999)	552-561
27			
28			

1	3	NOTICE OF MOTION AND MOTION TO VIDEOTAPE THE DEPOSITION OF CHARLA SEVERS (FILED 09/29/1999)	622-644
2			
3	3	NOTICE OF MOTION AND MOTION TO VIDEOTAPE THE DEPOSITION OF MYSELF CHARLA SEVERS (10/11/1999)	682-685
4			
5	17	NOTICE OF MOTION AND STATE'S MOTION IN LIMINE SUMMARIZING THE FACTS ESTABLISHED DURING THE GUILT PHASE OF THE DONTE JOHNSON TRIAL (FILED 07/14/2000)	4111-4131
6			
7	3	NOTICE OF WITNESSES (FILED 08/24/1999)	562-564
8			
9	6	NOTICE OF WITNESSES (FILED 12/08/1999)	1425-1427
10	4	NOTICE OF WITNESSES AND OF EXPERT WITNESSES PURSUANT TO NRS 174.234 (FILED 11/09/1999)	835-838
11			
12	19	NOTICE TO TRANSPORT FOR EXECUTION (FILED 10/03/2000)	4628
13			
14	31	OPINION (FILED 12/28/2006)	7284-7307
15	6	OPPOSITION TO DEFENDANT'S MOTION FOR DISCLOSURE OF ANY POSSIBLE BASIS FOR DISQUALIFICATION OF DISTRICT ATTORNEY (FILED 12/06/1999)	1366-1369
16			
17			
18	6	OPPOSITION TO DEFENDANT'S MOTION FOR DISCLOSURE OF EXCULPATORY EVIDENCE PERTAINING TO THE IMPACT OF THE DEFENDANT'S EXECUTION UPON VICTIM'S FAMILY MEMBERS (FILED 12/06/1999)	1409-1411
19			
20			
21	6	OPPOSITION TO DEFENDANT'S MOTION FOR DISCOVERY AND EVIDENTIARY HEARING REGARDING THE MANNER AND METHOD OF DETERMINING IN WHICH MURDER CASES THE DEATH PENALTY WILL BE SOUGHT (FILED 12/06/1999)	1383-1385
22			
23			
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
25			
26			
27			
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
2			
3	6	OPPOSITION TO DEFENDANT’S MOTION IN LIMINE FOR ORDER PROHIBITING PROSECUTION MISCONDUCT IN ARGUMENT (FILED 12/06/1999)	1397-1399
4			
5	6	OPPOSITION TO DEFENDANT’S MOTION IN LIMINE TO PRECLUDE THE INTRODUCTION OF VICTIM IMPACT EVIDENCE (FILED 12/06/1999)	1400-1402
6			
7			
8	6	OPPOSITION TO DEFENDANT’S MOTION IN LIMINE TO PROHIBIT ANY REFERENCES TO THE FIRST PHASE AS THE “GUILTY PHASE” (FILED 12/06/1999)	1392-1393
9			
10	6	OPPOSITION TO DEFENDANT’S MOTION TO ALLOW THE DEFENSE TO ARGUE LAST AT THE PENALTY PHASE (FILED 12/06/1999)	1386-1388
11			
12			
13	6	OPPOSITION TO DEFENDANT’S MOTION TO APPLY HEIGHTENED STANDARD OF REVIEW AND CARE IN THIS CASE BECAUSE THE STATE IS SEEKING THE DEATH PENALTY (FILED 12/06/1999)	1370-1373
14			
15			
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
17			
18			
19	6	OPPOSITION TO DEFENDANT’S MOTION TO BIFURCATE PENALTY PHASE (FILED 12/06/1999)	1359-1361
20			
21	6	OPPOSITION TO DEFENDANT’S MOTION TO DISMISS STATE’S NOTICE OF INTENT TO SEEK DEATH PENALTY BECAUSE NEVADA’S DEATH PENALTY STATUTE IS UNCONSTITUTIONAL (FILED 12/06/1999)	1403-1408
22			
23			
24	6	OPPOSITION TO DEFENDANT’S MOTION TO EXCLUDE AUTOPSY PHOTOGRAPHS (FILED 12/06/1999)	1377-1379
25			
26	6	OPPOSITION TO DEFENDANT’S MOTION TO PRECLUDE EVIDENCE OF ALLEGED CO-CONSPIRATORS STATEMENTS (FILED 12/06/1999)	1374-1376
27			
28			

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
2			
3			
4	6	OPPOSITION TO DEFENDANT’S MOTION TO REQUIRE PROSECUTOR TO STATE REASONS FOR EXERCISING PEREMPTORY CHALLENGES (FILED 12/06/1999)	1415-1417
5			
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
7			
8			
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
10			
11	6	OPPOSITION TO MOTION TO CONTINUE TRIAL (FILED 12/16/1999)	1434-14440
12			
13	6	ORDER (FILED 12/02/1999)	1338-1339
14	15	ORDER (FILED 06/22/2000)	3568
15			
16	17	ORDER (FILED 07/20/2000)	4169-4170
17	6	ORDER APPOINTING COUNSEL FOR MATERIAL WITNESS CHARLA SEVERS (FILED 12/02/1998)	1337
18			
19	2	ORDER DENYING DEFENDANT’S MOTION TO SET BAIL (FILED 10/20/1998)	378-379
20			
21	10	ORDER FOR CONTACT VISIT (FILED 06/12/2000)	2601-2602
22	17	ORDER FOR CONTACT VISIT (FILED 07/20/2000)	4173-4174
23			
24	7	ORDER FOR PRODUCTION OF INMATE MELVIN ROYAL (FILED 05/19/2000)	1801-1802
25			
26	7	ORDER FOR PRODUCTION OF INMATE SIKIA SMITH (FILED 05/08/2000)	1743-1744
27	7	ORDER FOR PRODUCTION OF INMATE TERRELL YOUNG (FILED 05/12/2000)	1751-1752
28			

1	19	ORDER FOR RELEASE OF EVIDENCE (FILED 10/05/2000)	4630
2	19	ORDER TO STAY OF EXECUTION (10/26/2000)	4646
3			
4	3	ORDER FOR TRANSCRIPT (FILED 09/09/1999)	575-576
5	2	ORDER FOR TRANSCRIPTS (FILED 06/16/1999)	486-487
6			
7	2	ORDER GRANTING PERMISSION OF MEDIA ENTRY (FILED 09/15/1998)	275
8	2	ORDER GRANTING PERMISSION OF MEDIA ENTRY (FILED 09/15/1998)	277
9			
10	2	ORDER GRANTING PERMISSION OF MEDIA ENTRY (FILED 09/28/1998)	293
11	7	ORDER GRANTING PERMISSION OF MEDIA ENTRY (FILED 01/13/2000)	1610-1611
12			
13	19	ORDER OF EXECUTION (FILED 10/03/2000)	4627
14	2	ORDER REQUIRING MATERIAL WITNESS TO POST BAIL OR BE COMMITTED TO CUSTODY	
15		(FILED 04/30/1999)	423-424
16	7	ORDER TO PRODUCE JUVENILE RECORDS (FILED 05/31/2000)	1805-1806
17	2	ORDER TO TRANSPORT (FILED 03/16/1999)	392-393
18			
19	2	ORDER TO TRANSPORT (FILED 03/25/1999)	400-401
20	3	ORDER TO TRANSPORT (FILED 07/27/1999)	549-550
21			
22	3	ORDER TO TRANSPORT (FILED 08/31/1999)	567-568
23	3	ORDER TO TRANSPORT (FILED 10/18/1999)	708-709
24			
25	15	PAGE VERIFICATION SHEET (FILED 06/22/2000)	3569
26	2	RECEIPT OF COPY (FILED 03/29/1999)	402
27			
28	2	RECEIPT OF COPY (06/16/1999)	485

1	3	RECEIPT OF COPY (FILED 06/29/1999)	521
2	3	RECEIPT OF COPY (FILED 06/29/1999)	522
3			
4	3	RECEIPT OF COPY (FILED 06/29/1999)	523
5	3	RECEIPT OF COPY (FILED 07/02/1999)	529
6			
7	3	RECEIPT OF COPY (FILED 07/28/1999)	551
8	3	RECEIPT OF COPY (FILED 09/01/1999)	569
9			
10	3	RECEIPT OF COPY (FILED 10/18/1999)	710
11	3	RECEIPT OF COPY (FILED 10/18/1999)	711
12			
13	3	RECEIPT OF COPY (FILED 10/19/1999)	757
14	3	RECEIPT OF COPY (FILED 10/19/1999)	758
15			
16	3	RECEIPT OF COPY (FILED 10/19/1999)	759
17	3	RECEIPT OF COPY (FILED 10/19/1999)	760
18			
19	3	RECEIPT OF COPY (FILED 10/19/1999)	761
20	4	RECEIPT OF COPY (FILED 10/27/1999)	781
21			
22	6	RECEIPT OF COPY (FILED 11/30/1999)	1311-1313
23	6	RECEIPT OF COPY (FILED 12/06/1999)	1418-1420
24			
25	6	RECEIPT OF COPY (FILED 01/11/2000)	1501
26			
27	6	RECEIPT OF COPY (FILED 01/12/2000)	1502
28	7	RECEIPT OF COPY (FILED 03/31/2000)	1692

1	7	RECEIPT OF COPY (FILED 04/27/2000)	1735
2	14	RECEIPT OF COPY (FILED 06/14/2000)	3248
3	15	RECEIPT OF COPY (FILED 06/23/2000)	3598
4	17	RECEIPT OF COPY (FILED 07/10/2000)	4101
5	17	RECEIPT OF COPY (FILED 07/20/2000)	4171
6	17	RECEIPT OF COPY (FILED 07/20/2000)	4172
7	19	RECEIPT OF COPY (FILED 09/06/2000)	4600
8	19	RECEIPT OF EXHIBITS (FILED 10/18/2000)	4645
9	40	RECORDER'S TRANSCRIPT OF EVIDENTIARY HEARING (FILED 04/11/2013)	7972-8075
10	41	RECORDER'S TRANSCRIPT OF EVIDENTIARY HEARING (FILED 04/11/2013)	8076-8179
11	41	RECORDER'S TRANSCRIPT OF EVIDENTIARY HEARING (FILED 04/11/2013)	8180-8183
12	42	RECORDER'S TRANSCRIPT OF HEARING EVIDENTIARY HEARING (FILED 09/18/2013)	8207-8209
13	42	RECORDER'S TRANSCRIPT OF HEARING STATUS CHECK (FILED 01/15/2014)	8205-8206
14	37	RECORDER'S TRANSCRIPT OF PROCEEDINGS DEFENDANT'S MOTION TO PLACE ON CALENDAR TO RESCHEDULE EVIDENTIARY HEARING (FILED 10/29/2012)	7782-7785
15	42	RECORDER'S TRANSCRIPT OF PROCEEDINGS DEFENDANT'S MOTION TO PLACE ON CALENDAR TO RESCHEDULE EVIDENTIARY HEARING (FILED 04/29/2013)	8281-8284
16	42	RECORDER'S TRANSCRIPT OF PROCEEDINGS EVIDENTIARY HEARING (FILED 06/26/2013)	8210-8280

1	37	RECORDER'S TRANSCRIPT OF PROCEEDINGS STATUS CHECK: EVIDENTIARY HEARING (FILED 10/01/2012)	7786-7788
2			
3	37	RECORDER'S TRANSCRIPT OF PROCEEDINGS STATUS CHECK: EVIDENTIARY HEARING (FILED 07/12/2012)	7789-7793
4			
5	37	RECORDER'S TRANSCRIPT OF PROCEEDINGS STATUS CHECK: EVIDENTIARY HEARING PETITION FOR WRIT OF HABEAS CORPUS (FILED 03/21/2012)	7794-7797
6			
7	37	REPLY BRIEF ON MR. JOHNSON'S INITIAL TRIAL ISSUES (FILED 08/22/2011)	7709-7781
8			
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
10			
11			
12	17	REPLY TO RESPONSE TO MOTION FOR NEW TRIAL (FILED 07/10/2000)	4096-4100
13			
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
15			
16			
17			
18	15	REPLY TO STATE'S OPPOSITION REGARDING THREE JUDGE PANEL (FILED 07/18/2000)	4153-4159
19			
20	7	REPLY TO STATE'S OPPOSITION TO MOTION TO SUPPRESS (FILED 02/16/2000)	1632-1651
21			
22	19	REPLY TO STATE'S RESPONSE TO MOTION TO SET ASIDE DEATH SENTENCE OR IN THE ALTERNATIVE MOTION TO SETTLE RECORD (FILED 10/02/2000)	4615-4618
23			
24	7	REPLY TO STATE'S SUPPLEMENTAL OPPOSITION TO MOTION TO SUPPRESS (FILED 03/30/2000)	1683-1691
25			
26	35	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)	7579-7613
27			
28			

1	1	REPORTER'S TRANSCRIPT OF SEPTEMBER 1, 1998 PROCEEDINGS (FILED 09/14/1998)	11-267
2	2	REPORTER'S TRANSCRIPT OF SEPTEMBER 2, 1998 RE: GRAND JURY INDICTMENTS RETURNED IN OPEN COURT (FILED 10/06/1998)	299-301
3	2	REPORTER'S TRANSCRIPT OF SEPTEMBER 8, 1998 ARRAIGNMENT (FILED 09/14/1998)	268-270
4	2	REPORTER'S TRANSCRIPT OF SEPTEMBER 15, 1998 SUPERSEDING INDICTMENT (FILED 10/20/1998)	309-377
5	2	REPORTER'S TRANSCRIPT OF PROCEEDINGS OF APRIL 12, 1999 PROCEEDINGS (FILED 05/03/1999)	425-428
6	2	REPORTER'S TRANSCRIPT OF APRIL 15, 1999 DEFENDANT'S PRO PER MOTION TO DISMISS COUNSEL AND APPOINTMENT OF ALTERNATE COUNSEL (FILED AND UNDER SEALED) (FILED 04/22/1999)	409-418
7	2	REPORTER'S TRANSCRIPT OF JUNE 8, 1999 PROCEEDINGS (FILED 06/17/1999)	491-492
8	3	REPORTER'S TRANSCRIPT OF JUNE 29, 1999 PROCEEDINGS (FILED 07/15/1999)	541-548
9	3	REPORTER'S TRANSCRIPT OF JULY 8, 1999 PROCEEDINGS (FILED 07/15/1999)	530-537
10	3	REPORTER'S TRANSCRIPT OF JULY 13, 1999 PROCEEDINGS (FILED 07/15/1999)	538-540
11	3	REPORTER'S TRANSCRIPT OF AUGUST 10, 1999 STATE'S MOTION TO PERMIT DNA TESTING (FILED 08/31/1999)	565-566
12	3	REPORTER'S TRANSCRIPT OF SEPTEMBER 2, 1999 STATE'S MOTION TO PERMIT DNA TESTING (FILED 10/01/1999)	647-649
13	3	REPORTER'S TRANSCRIPT OF SEPTEMBER 30, 1999 STATE'S REQUEST FOR MATERIAL L WITNESS CHARLA SEVERS (FILED 10/01/1999)	645-646
14			
15			
16			
17			
18			
19			
20			
21			
22			
23			
24			
25			
26			
27			
28			

1	3	REPORTER'S TRANSCRIPT OF OCTOBER 11, 1999 STATE'S MOTION TO VIDEOTAPE THE DEPOSITION OF CHARLA SEVERS (FILED 10/18/1999)	712-716
2			
3	3	REPORTER'S TRANSCRIPT OF OCTOBER 14, 1999 STATE'S MOTION TO VIDEOTAPE THE DEPOSITION OF CHARLA SEVERS (FILED 10/18/1999)	717-726
4			
5			
6	4	REPORTER'S TRANSCRIPT OF OCTOBER 21, 1999 STATUS CHECK: FILING OF ALL MOTIONS (FILED 11/09/1999)	821-829
7			
8	4	REPORTER'S TRANSCRIPT OF OCTOBER 26, 1999 VIDEO DEPOSITION OF CHARLA SEVERS (FILED UNDER SEAL) (FILED 11/09/1999)	839-949
9			
10	4	REPORTER'S TRANSCRIPT OF OCTOBER 28, 1999 DECISION: WITNESS RELEASE (FILED 11/09/1999)	830-831
11			
12	4	REPORTER'S TRANSCRIPT OF NOVEMBER 8, 1999 PROCEEDINGS (FILED 11/09/1999)	832-834
13			
14	6	REPORTER'S TRANSCRIPT OF NOVEMBER 18, 1999 DEFENDANT'S MOTIONS (FILED 12/06/1999)	1347-1355
15			
16	6	REPORTER'S TRANSCRIPT OF DECEMBER 16, 1999 AT REQUEST OF COURT RE: MOTIONS (FILED 12/20/1999)	1452-1453
17			
18	7	REPORTER'S TRANSCRIPT OF DECEMBER 20, 1999 AT REQUEST OF COURT (FILED 12/29/1999)	1459-1491
19			
20	6	REPORTER'S TRANSCRIPT OF JANUARY 6, 2000 RE: DEFENDANT'S MOTIONS (FILED 01/13/2000)	1503-1609
21			
22	7	REPORTER'S TRANSCRIPT OF JANUARY 18, 2000 PROCEEDINGS (FILED 01/25/2000)	1623-1624
23			
24	7	REPORTER'S TRANSCRIPT OF FEBRUARY 17, 2000 PROCEEDINGS (FILED 03/06/2000)	1654-1656
25			
26	7	REPORTER'S TRANSCRIPT OF MARCH 2, 2000 PROCEEDINGS (FILED 03/16/2000)	1668-1682
27			
28	7	REPORTER'S TRANSCRIPT OF APRIL 24, 2000 PROCEEDINGS (FILED 05/09/2000)	1745-1747

1	7	REPORTER'S TRANSCRIPT OF MAY 8, 2000 PROCEEDINGS (05/09/2000)	1748-1750
2			
3	7	REPORTER'S TRANSCRIPT OF MAY 18, 2000 PROCEEDINGS (FILED 05/30/2000)	1803-1804
4			
5	7	REPORTER'S TRANSCRIPT OF MAY 23, 2000 PROCEEDINGS (FILED 06/01/2000)	1807-1812
6			
7	7	REPORTER'S TRANSCRIPT OF JUNE 1, 2000 PROCEEDINGS (FILED 06/02/2000)	1813-1821
8			
9	11&12	REPORTER'S TRANSCRIPT OF JUNE 5, 2000 JURY TRIAL-DAY-1- VOLUME I (FILED 06/12/2000)	2603-2981
10			
11	8	REPORTER'S TRANSCRIPT OF JUNE 6, 2000 JURY TRIAL- DAY 2- VOLUME II (FILED 06/07/2000)	1824-2130
12			
13	9&10	REPORTER'S TRANSCRIPT OF JUNE 7, 2000 JURY TRIAL-DAY 3- VOLUME III (FILED 06/08/2000)	2132-2528
14			
15	15	REPORTER'S TRANSCRIPT OF JUNE 8, 2000 JURY TRIAL- DAY 4- VOLUME IV (FILED 06/12/2000)	2982-3238
16			
17	14	REPORTER'S TRANSCRIPT OF JUNE 9, 2000 JURY TRIAL (VERDICT)- DAY 5- VOLUME V (FILED 06/12/2000)	3239-3247
18			
19	14	REPORTER'S TRANSCRIPT OF JUNE 13, 2000 JURY TRIAL PENALTY PHASE- DAY 1 VOL. I (FILED 06/14/2000)	3249-3377
20			
21	15	REPORTER'S TRANSCRIPT OF JUNE 13, 2000 JURY TRIAL PENALTY PHASE- DAY 1 VOL. II (FILED 06/14/2000)	3378-3537
22			
23	16	REPORTER'S TRANSCRIPT OF JUNE 14, 2000 JURY TRIAL PENALTY PHASE- DAY 2 VOL. III (FILED 07/06/2000)	3617-3927
24			
25	17	REPORTER'S TRANSCRIPT OF JUNE 16, 2000 JURY TRIAL PENALTY PHASE DAY 3 VOL. IV (FILED 07/06/2000)	3928-4018
26			
27	15	REPORTER'S TRANSCRIPT OF JUNE 20, 2000 STATUS CHECK: THREE JUDGE PANEL (FILED 06/21/2000)	3560-3567
28			

1	17	REPORTER'S TRANSCRIPT OF JULY 13, 2000 DEFENDANT'S MOTION FOR A NEW TRIAL (FILED 07/21/2000)	4175-4179
2			
3	17	REPORTER'S TRANSCRIPT OF JULY 20, 2000 PROCEEDINGS (FILED 07/21/2000)	4180-4190
4			
5	18	REPORTER'S TRANSCRIPT OF JULY 24, 2000 THREE JUDGE PANEL- PENALTY PHASE- DAY 1 (FILED 07/25/2000)	4191-4428
6			
7	19	REPORTER'S TRANSCRIPT OF JULY 16, 2000 THREE JUDGE PANEL- PENALTY PHASE- DAY 2 VOL. II (FILED 07/28/2000)	4445-4584
8			
9	19	REPORTER'S TRANSCRIPT OF SEPTEMBER 7, 2000 PROCEEDINGS (FILED 09/29/2000)	4612-4614
10			
11	19	REPORTER'S TRANSCRIPT OF OCTOBER 3, 2000 SENTENCING (FILED 10/13/2000)	4636-4644
12			
13	20	REPORTER'S TRANSCRIPT OF APRIL 19, 2005 TRIAL BY JURY- VOLUME I- A.M. (FILED 04/20/2005)	4654-4679
14			
15	20	REPORTER'S TRANSCRIPT OF APRIL 19, 2005 TRIAL BY JURY- VOLUME I- P.M. (FILED 04/20/2005)	4680-4837
16			
17	21	REPORTER'S TRANSCRIPT OF APRIL 20, 2005 TRIAL BY JURY- VOLUME I-A.M. (FILED 04/21/2005)	4838-4862
18			
19	21	REPORTER'S TRANSCRIPT OF APRIL 20, 2005 TRIAL BY JURY- VOLUME II- P.M. (FILED 04/21/2005)	4864-4943
20			
21	21 & 22	REPORTER'S TRANSCRIPT OF APRIL 21, 2005 TRIAL BY JURY- VOLUME III-P.M. (FILED 04/22/2005)	4947-5271
22			
23	22	REPORTER'S TRANSCRIPT OF APRIL 21, 200 PENALTY PHASE- VOLUME IV- P.M. (FILED 04/22/2005)	5273-5339
24			
25	23	REPORTER'S TRANSCRIPT OF APRIL 22, 2005 TRIAL BY JURY- VOLUME IV- P.M. (FILED 04/25/2005)	5340-5455
26			
27	23	REPORTER'S TRANSCRIPT OF APRIL 22, 2005 PENALTY PHASE- VOLUME IV- B (FILED 04/25/2005)	5457-5483
28			

1	23	REPORTER'S TRANSCRIPT OF APRIL 25, 2005 TRIAL BY JURY- VOLUME V- P.M. (FILED 04/26/2005)	5484-5606
2			
3	24	REPORTER'S TRANSCRIPT OF APRIL 25, 2005 PENALTY PHASE- VOLUME V-A (FILED 04/26/2005)	5607-5646
4			
5	24	REPORTER'S TRANSCRIPT OF APRIL 26, 2005 TRIAL BY JURY- VOLUME VI- P.M. (FILED 04/27/2005)	5649-5850
6			
7	25	REPORTER'S TRANSCRIPT OF APRIL 26, 2005 PENALTY PHASE- VOLUME VI-A (FILED 04/26/2005)	5950-6070
8			
9	25	REPORTER'S TRANSCRIPT OF APRIL 27, 2005 TRIAL BY JURY- VOLUME VII-P.M. (FILED 04/28/2005)	5854-5949
10			
11	26	SPECIAL VERDICT	6149-6151
12	26	REPORTER'S TRANSCRIPT OF APRIL 27, 2005 PENALTY PHASE - VOLUME VII- A.M. (FILED 04/28/2005)	6071-6147
13			
14	26	REPORTER'S TRANSCRIPT OF APRIL 28, 2005 PENALTY PHASE - VOLUME VIII-C (04/29/2005)	6181-6246
15			
16	26 & 27	REPORTER'S TRANSCRIPT OF APRIL 29, 2005 TRIAL BY JURY- VOLUME IX (FILED 05/02/2005)	6249-6495
17			
18	27 & 28	REPORTER'S TRANSCRIPT OF MAY 2, 2005 TRIAL BY JURY- VOLUME X (FILED 05/03/2005)	6497-6772
19			
20	30	REPORTER'S TRANSCRIPT OF MAY 2, 2005 TRIAL BY JURY (EXHIBITS)- VOLUME X (FILED 05/06/2005)	7104-7107
21			
22	29	REPORTER'S TRANSCRIPT OF MAY 3, 2005 TRIAL BY JURY- VOLUME XI (FILED 05/04/2005)	6776-6972
23			
24	29	REPORTER'S TRANSCRIPT OF MAY 4, 2005 TRIAL BY JURY- VOLUME XII (FILED 05/05/2005)	6974-7087
25			
26	30	REPORTER'S AMENDED TRANSCRIPT OF MAY 4, 2005 TRIAL BY JURY (DELIBERATIONS) VOLUME XII (FILED 05/06/2005)	7109-7112
27			
28	30	REPORTER'S TRANSCRIPT OF MAY 5, 2005 TRIAL BY JURY- VOLUME XIII (FILED 05/06/2005)	7113-7124

1	31	RESPONDENT'S ANSWERING BRIEF (FILED 04/05/2006)	7226-7253
2	3	REQUEST FOR ATTENDANCE OF OUT-OF-STATE WITNESS CHARLA CHENIQUA SEVERS AKA KASHAWN HIVES (FILED 09/21/1999)	607-621
3			
4	4	SEALED ORDER FOR RLEASE TO HOUSE ARREST OF MATERIAL WITNESS CHARLA SEVERS (FILED 10/29/1999)	782
5			
6	33	SECOND SUPPLEMENTAL BRIEF IN SUPPORT OF DEFENDANT'S WRIT OF HABEAS CORPUS (FILED 07/14/2010)	7373-7429
7			
8	19	SPECIAL VERDICT (COUNT XI) (FILED 07/26/2000)	4433-4434
9			
10	19	SPECIAL VERDICT (COUNT XI) (FILED 07/26/2000)	4439
11			
12	19	SPECIAL VERDICT (COUNT XII) (FILED 07/26/2000)	4435
13			
14	19	SPECIAL VERDICT (COUNT XII) (FILED 07/26/2000)	4440-4441
15			
16	19	SPECIAL VERDICT (COUNT XIII) (FILED 07/26/2000)	4436
17			
18	19	SPECIAL VERDICT (COUNT XIII) (FILED 07/26/2000)	4442-4443
19			
20	19	SPECIAL VERDICT (COUNT XII) (FILED 07/26/2000)	4437-4438
21			
22	19	SPECIAL VERDICT (COUNT XIV) (FILED 07/26/2000)	4444
23			
24	2	STATE'S MOTION IN LIMINE TO PERMIT THE STATE TO PRESENT " THE COMPLETE STORY OF THE CRIME" (FILED 06/14/1999)	467-480
25			
26	17	STATE'S OPPOSITION FOR IMPOSITION OF LIFE WITHOUT AND OPPOSITION TO EMPANEL JURY AND/OR DISCLOSURE OF EVIDENCE MATERIAL TO CONSTITUTIONALITY OF THE THREE JUDGE PANEL PROCEDURE (FILED 07/17/2000)	4132-4148
27			
28	6	STATE'S OPPOSITION TO DEFENDANT'S MOTION FOR CHANGE OF VENUE (FILED 12/07/1999)	1421-1424
	6	STATE'S OPPOSITION TO DEFENDANT'S MOTION IN LIMINE REGARDING CO-DEFENDANT'S SENTENCES (FILED 12/06/1999)	1412-1414

1	4	STATE'S OPPOSITION TO DEFENDANT'S MOTION TO COMPEL THE PRODUCTION OF ANY AND ALL STATEMENTS OF THE DEFENDANT (FILED 11/04/1999)	787-790
2			
3	4	STATE'S OPPOSITION TO DEFENDANT'S MOTION TO REVEAL THE IDENTITY OF THE INFORMANTS AND REVEAL ANY DEALS PROMISES OR INDUCEMENTS (FILED 11/04/1999)	816-820
4			
5			
6	2	STATE'S OPPOSITION TO DEFENDANT'S MOTION TO SET BAIL (FILED 10/07/1998)	302-308
7			
8	2	STATE'S OPPOSITION TO DEFENDANT'S PRO PER MOTION TO WITHDRAW COUNSEL AND APPOINT OUTSIDE COUNSEL (FILED 02/19/1999)	385-387
9			
10	7	STATE'S OPPOSITION TO MOTION TO SUPPRESS EVIDENCE ILLEGALLY SEIZED (FILED 01/21/2000)	1612-1622
11			
12	4	STATE'S RESPONSE TO DEFENDANT'S MOTION TO COMPEL DISCLOSURE OF EXISTENCE AND SUBSTANCE OF EXPECTATIONS, OR ACTUAL RECEIPT OF BENEFITS OR PREFERENTIAL TREATMENT FOR COOPERATION WITH PROSECUTION (FILED 11/04/1999)	801-815
13			
14			
15	34	STATE'S RESPONSE TO DEFENDANT'S PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION) AND DEFENDANT'S SUPPLEMENTAL BRIEF AND SECOND SUPPLEMENTAL BRIEF IN SUPPORT OF DEFENDANT'S WRIT OF HABEAS CORPUS (POST-CONVICTION) ON 04/13/2011	7436-7530
16			
17			
18			
19	19	STATE'S RESPONSE TO DEFENDANT'S MOTION TO SET ASIDE SENTENCE OR IN THE ALTERNATIVE MOTION TO SETTLE RECORD (FILED 09/15/2000)	4601-4611
20			
21	3	STATE'S RESPONSE TO DEFENDANT'S OPPOSITION TO STATE'S MOTION TO VIDEOTAPE THE DEPOSITION OF CHARLA SEVERS	762-768
22			
23	15	STATE'S RESPONSE TO MOTION FOR NEW TRIAL (FILED 06/30/2000)	3603-3616
24			
25	2	STIPULATION AND ORDER (FILED 06/08/1999)	457-459
26			
27	2	STIPULATION AND ORDER (FILED 06/17/1999)	488-490
28			
	3	STIPULATION AND ORDER (FILED 10/14/1999)	695-698

1	6	STIPULATION AND ORDER (FILED 12/22/1999)	1454-1456
2	7	STIPULATION AND ORDER (FILED 04/10/2000)	1712-1714
3	7	STIPULATION AND ORDER (FILED 05/19/2000)	1798-1800
4	2	SUPERSEDING INDICTMENT (FILED 09/16/1998)	278-291
5	32	SUPPLEMENTAL BRIEF IN SUPPORT OF DEFENDANT'S WRIT OF HABEAS CORPUS (FILED 10/12/2009)	7308-7372
6	39	SUPPLEMENTAL EXHIBITS (FILED 04/05/2013)	7880-7971
7	3	SUPPLEMENTAL MOTION TO VIDEOTAPE DEPOSITION OF CHARLA SEVERS (FILED 10/18/1999)	705-707
8	7	SUPPLEMENTAL NOTICE OF EXPERT WITNESSES (FILED 05/17/2000)	1766-1797
9	2	SUPPLEMENTAL NOTICE OF INTENT TO SEEK DEATH PENALTY PURSUANT TO AMENDED SUPREME COURT RULE 250 (FILED 02/26/1999)	388-391
10	6	SUPPLEMENTAL OPPOSITION TO DEFENDANT'S MOTION IN LIMINE TO PRECLUDE EVIDENCE OF OTHER GUNS, WEAPONS AND AMMUNITION NOT USED IN THE CRIME (FILED 12/02/1999)	1314-1336
11	7	SUPPLEMENTAL OPPOSITION TO DEFENDANT'S MOTION IN LIMINE TO PRECLUDE EVIDENCE OF OTHER GUNS, WEAPONS AND AMMUNITION NOT USED IN THE CRIME (FILED 05/02/2000)	1736-1742
12	7	SUPPLEMENTAL POINTS AND AUTHORITIES IN OPPOSITION TO MOTION TO SUPPRESS (FILED 03/16/2000)	1657-1667
13	38	TRANSCRIPT OF PROCEEDINGS STATUS CHECK: EVIDENTIARY HEARING AND PETITION FOR WRIT OF HABEAS CORPUS (FILED 01/19/2012)	7798-7804
14	38	TRANSCRIPT OF PROCEEDINGS STATUS CHECK: EVIDENTIARY HEARING AND PETITION FOR WRIT OF HABEAS CORPUS (FILED 1/01/2012)	7805-7807

1	38	TRANSCRIPT OF PROCEEDINGS ARGUMENT: PETITION FOR WRIT OF HABEAS CORPUS ALL ISSUES RAISED IN THE PETITION AND SUPPLEMENT (FILED 12/07/2011)	7808-7879
2			
3	35	TRANSCRIPT OF PROCEEDINGS DEFENDANT'S MOTION TO PLACE ON CALENDAR TO EXTEND THE TIME TO FILE A REPLY BRIEF IN SUPPORT OF DEFENDANT'S WRIT OF HABEAS CORPUS (FILED 04/12/2011)	7614-7615
4			
5			
6	35	TRANSCRIPT OF PROCEEDINGS: HEARING (FILED 10/20/2010)	7616-7623
7			
8	36	TRANSCRIPT OF PROCEEDINGS DECISION: PROCEDURAL BAR AND ARGUMENT: PETITION FOR WRIT OF HABEAS CORPUS (FILED 07/21/2011)	7624-7629
9			
10	36	TRANSCRIPT OF PROCEEDINGS DEFENDANT'S MOTION TO PLACE ON CALENDAR TO EXTEND THE TIME TO FILE REPLY BRIEF IN SUPPORT OF DEFENDANT'S WRIT OF HABEAS CORPUS/HEARING AND ARGUMENT: DEFENDANT'S PETITION FOR WRIT OF HABEAS CORPUS (FILED 07/06/2011)	7630-7667
11			
12			
13	36	TRANSCRIPT OF PROCEEDINGS DEFENDANT'S MOTION TO PLACE ON CALENDAR TO EXTEND THE TIME TO FILE A REPLY BRIEF IN SUPPORT OF DEFENDANT'S WRIT OF HABEAS CORPUS (FILED 04/12/2011)	7707-7708
14			
15			
16	36	TRANSCRIPT OF PROCEEDINGS DEFENDANT'S MOTION TO PLACE ON CALENDAR TO EXTEND THE TIME TO FILE A REPLY BRIEF IN SUPPORT OF DEFENDANT'S WRIT OF HABEAS CORPUS (FILED 06/07/2011)	7668-7671
17			
18			
19	33	TRANSCRIPT OF PROCEEDINGS STATUS CHECK: BRIEFING/FURTHER PROCEEDINGS (FILED 06/22/2010)	7430-7432
20			
21	33	TRANSCRIPT OF PROCEEDINGS DEFENDANT'S MOTION TO PLACE ON CALENDAR TO EXTEND THE TIME FOR THE FILING OF A SECOND SUPPLEMENTAL BRIEF IN SUPPORT OF DEFENDANT'S WRIT OF HABEAS CORPUS AND TO PERMIT AN INVESTIGATOR AND EXPERT (FILED 10/20/2009)	7433-7435
22			
23			
24	35	TRANSCRIPT OF PROCEEDINGS DECISION: PROCEDURAL BAR AND ARGUMENT: PETITION FOR WRIT OF HABEAS CORPUS (FILED 07/21/2011)	7531-7536
25			
26			
27			
28			

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	
4		HABEAS CORPUS/HEARING AND ARGUMENT:	
5		DEFENDANT'S PETITION FOR WRIT OF HABEAS CORPUS	
6		(FILED 07/06/2011)	7537-7574
7	35	TRANSCRIPT OF PROCEEDINGS DEFENDANT'S	
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	
11		(FILED 06/07/2011)	7575-7578
12	10	VERDICT	
13		(FILED 06/09/2000)	2595-2600
14	19	VERDICT (COUNT XI)	
15		(FILED 07/26/2000)	2595-2600
16	19	VERDICT (COUNT XII)	
17		(FILED 07/26/2000)	4429
18	19	VERDICT (COUNT XIII)	
19		(FILED 07/26/2000)	4430
20	19	VERDICT (COUNT XIV)	
21		(FILED 07/26/2000)	4432
22	19	WARRANT OF EXECUTION	
23		(FILED 10/03/2000)	4624
24			
25			
26			
27			
28			

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:

CATHERINE CORTEZ-MASTO
Nevada Attorney General

STEVE OWENS
Chief Deputy District Attorney

CHRISTOPHER R. ORAM, ESQ.

BY:

/s/ Jessie Vargas
An Employee of Christopher R. Oram, Esq.

CHRISTOPHER R. ORAM, LTD.
520 SOUTH 4TH STREET | SECOND FLOOR
LAS VEGAS, NEVADA 89101
TEL. 702.384-5563 | FAX. 702.974-0623