

WAHL - REDIRECT

1 Q At the Fifth International Symposium on Human  
2 Identification?

3 A I believe some people have done it and we actually  
4 did it in-house in our laboratory.

5 Q It was done in --

6 MR. SCISCENTO: I have no further questions, Your  
7 Honor.

8 THE COURT: Any redirect?

9 MR. GUYMON: Yes, very briefly.

10 REDIRECT EXAMINATION

11 BY MR. GUYMON:

12 Q You talked about your notes and how a second  
13 analyst, a second expert, such as yourself, reviews your  
14 findings?

15 A That's correct.

16 Q Were all of your findings in this case charted,  
17 documented, and kept for review?

18 A Yes. And I might want to point out that when the  
19 secondary analyst reviews my data they actually pull up the  
20 raw data and create their own file from the data and look at  
21 that file, and then look at their interpretation of the type  
22 of results and what I had, and they -- it's just simply a  
23 matter of recording a result. So, in essence, part of their  
24 second reads is, in effect, blind, in that they take the raw  
25 data and create their own file and look at their raw data and

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1 compare it to mine.

2 Q Did you also -- and I take it the raw data is kept  
3 and preserved? In other words, it's documented?

4 A Yes, the second reader creates their file and it's  
5 stored in my case file. It's a documentation that they also  
6 look at.

7 Q You also document your bunch notes, do you not?

8 A Yes.

9 Q In other words you make notes as you go along?

10 A Yeah, I have a pretty big file.

11 Q And you provided those notes both to the State and  
12 to the defense?

13 A Yes, I did.

14 Q Okay. Now, let me ask you one area and that is  
15 about this semen and how it degraded. Semen that stays in a  
16 vaginal vault for a short period of time, does it change from  
17 the semen it is?

18 A No, if you're -- I mean if I understand your  
19 question, does degradative process of the vaginal cavity alter  
20 the DNA type? No, it just -- semen can stay in a vaginal  
21 cavity for a very -- various amounts of time. It depends upon  
22 whether the female douched, whether she bathed. There's a lot  
23 of variables that account for how long semen may or may not  
24 persist in the vaginal cavity.

25 Q If this -- Donte Johnson's semen, that you've

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1 identified, came from a woman's vagina, it wouldn't matter how  
2 long it was in her vagina, but that it wouldn't, in other  
3 words change, whose semen that was, it would still be Donte  
4 Johnson's?

5 A That's correct.

6 Q And likewise if this is, say, from oral sex, does it  
7 change some of the semen as to how long the semen's been in a  
8 woman's mouth?

9 A Doesn't alter the DNA types, no.

10 Q So no matter the time frame, this would be Donte  
11 Johnson's semen, his own?

12 A It's only his sperm.

13 MR. GUYMON: No other questions.

14 THE COURT: Any redirect -- recross?

15 MR. SCISCENTO: Yes, Your Honor.

16 RECROSS EXAMINATION

17 BY MR. SCISCENTO:

18 Q I want to make sure I understand it, though, the  
19 acetate phosphate is reduced the longer it is in the vaginal  
20 vault, so to speak? There's a -- we agreed with that earlier,  
21 right?

22 A Yes, that's possible.

23 Q Okay. So the longer it's in there, the greater the  
24 acetate phosphate may be reduced?

25 A That's correct.

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1 Q And that may be an indication of the amount of time  
2 that it spent in the vaginal vault?

3 A It may be but there's no way to know with any  
4 certainty.

5 MR. SCISCENTO: May we -- can we approach for a  
6 moment?

7 (Off-record bench conference)

8 BY MR. SCISCENTO:

9 Q Mr. Wahl, you said that you did some examination on  
10 the blood of the pants?

11 A Yes.

12 Q You noted blood on the back of the pants?

13 A Yes.

14 Q Did you do a cursory inspection of the front of the  
15 pants?

16 A I did a visual, a very close visual inspection, yes.

17 Q How did you do a close visual inspection?

18 A Under visible light, up real close.

19 Q Micro -- magnified?

20 A I did do some stereoscopic exam in some areas, but I  
21 didn't cover the entire front of the pants, no.

22 Q On the front of the pants?

23 A No.

24 Q I'm sorry, did you do --

25 A I didn't do an entire stereoscopic exam on the front

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1 of the pants.  
2 Q But you did do some exam on the front of the pants?  
3 A Oh, definitely, yes.  
4 Q Cursory?  
5 A Visual examination.  
6 Q Okay. With a -- with a --  
7 A Close visual examination --  
8 Q Okay.  
9 A -- with the naked eye.  
10 Q All right. Did you detect any blood there?  
11 A Not that I could see with the naked eye, no.  
12 Q Okay.  
13 MR. SCISCENTO: No further -- no further questions,  
14 Your Honor.  
15 THE COURT: Anything further?  
16 MR. GUYMON: Nothing else, Judge.  
17 THE COURT: Thank you, sir.  
18 Does the State rest?  
19 MR. GUYMON: Judge, I'd like to go check it -- take  
20 a look at the exhibit list. I'm -- we're not going to call  
21 any other witnesses, I just want to make sure all of the  
22 exhibits have been admitted.  
23 THE COURT: Okay. Well, let's -- we'll check that  
24 over the lunch recess.  
25 MR. GUYMON: There's one --

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1 THE COURT: Would counsel approach the bench,  
2 please?

3 MR. GUYMON: There's one other stipulation also, but  
4 no other witnesses.

5 (Off-record bench conference)

6 THE COURT: All right, folks, we're going to take  
7 the -- yeah.

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

16 You'll report back to Stony at ten minutes after  
17 2:00. We will intend to start at 2:15.

18 Terms of the end of the day, by the way, let me tell  
19 you this. You're going to get the argument this afternoon,  
20 whether we finish at 4:00 or 5:00, you're going to get the  
21 argument. There are judges who tell you exactly when you can  
22 deliberate. I don't think that's my business. I set certain  
23 limits. If you want to deliberate tonight, that's up to you.  
24 So whether you're -- of course, we're not going to sequester  
25 you, it's just whether you go home at 5:30 and start again

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1 tomorrow at 8:00 or if you deliberate tonight. So, if you've  
2 got people that you got to contact, that'll be a decision  
3 you'll be making later in the day whether you want to  
4 deliberate tonight or whether you've had a full day and you  
5 want start tomorrow morning or how you want to divide it up.  
6 So, I can't tell you exactly what time you're going to be  
7 leaving today.

8 We'll see you at 2:15.

9 Could I see counsel in chambers, please?

10 (Court recessed at 1:00 p.m., until 2:10 p.m.)

11 (Jury is not present)

12 THE COURT: All right. We're back on the record  
13 outside the presence of the jury.

14 There were contemporaneous objections to several of  
15 the exhibits that came in in terms of pictures yesterday.  
16 Among Exhibit 74 through 76, 135 to 148, 151, and Exhibits 113  
17 and 14, 116, 120, and 125, 127, 130 and 134, various pictures  
18 of the decedents. The objection was made contemporaneously  
19 that they were cumulative and prejudicial, which I overruled.

20 Off the record.

21 (Off record)

22 THE COURT: Secondly, there was a request at the  
23 appropriate time for a change of venue, which the Court  
24 overruled or did not grant, seeing as there was absolutely no  
25 basis whatsoever for a change of venue, but the defense has

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1 moved for that.

2 I hold in my hand instructions numbered 1 through 52  
3 with the appropriate A or B. You object to the giving of any  
4 of these instructions, Mr. Figler?

5 MR. FIGLER: Yes, Your Honor. There's numerous  
6 instructions in here that we find to be objectionable.

7 THE COURT: You had indicated 11 through 13, one of  
8 them did give the negative definition of conspiracy. What  
9 else do you specifically object to?

10 MR. FIGLER: Your Honor, with regard to the  
11 reasonable doubt instruction, there are two aspects of it.  
12 One we have introduced, and if the Court will mark it --

13 THE COURT: I'm asking you which ones you do object  
14 to.

15 MR. FIGLER: Well, I object to the reasonable doubt  
16 instruction, which I believe is Instruction Number 5.

17 THE COURT: Okay. That is the statutory  
18 instruction. I understand you have a supplement or one that  
19 would replace it. Other than that, do you have any other that  
20 you object to the giving of that I've indicated I'm going to  
21 give?

22 MR. FIGLER: Well, I have to -- I have to articulate  
23 for the record. Part of the --

24 THE COURT: We'll get to that in a minute, David.

25 MR. FIGLER: Okay. Yes, there is part of

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1 Instruction Number 7 dealing with direct and circumstantial  
2 evidence which we have an objection to.

3 THE COURT: And what is the objection?

4 MR. FIGLER: Line 9 and 10, we believe, places an  
5 overemphasis on circumstantial evidence and is superfluous and  
6 must be stricken.

7 THE COURT: Okay. Any other that you object to  
8 giving?

9 MR. FIGLER: Your Honor, even though the new  
10 statutes has come out with regard to the Byford instructions,  
11 we don't believe that they still adequately frame the law as  
12 well as the felony murder as being unconstitutional the way  
13 that it is designed and implemented. So, we object to those  
14 as well --

15 THE COURT: Okay.

16 MR. FIGLER: -- and we'd just submit it.

17 THE COURT: And do you have any objection to any of  
18 the instructions we've indicated we've going to give, Mr.  
19 Daskas or Mr. Guymon?

20 MR. DASKAS: No, Judge.

21 (Off-record colloquy)

22 THE COURT: Now did I give Elana that instruction  
23 that I said I wanted you to show Joe?

24 MR. FIGLER: No, not yet.

25 THE COURT: Do you still have it?

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1 MR. FIGLER: It should be amongst my materials.  
2 Here's the one with the stuff on the bottom.

3 THE COURT: Do the parties stipulate we can give the  
4 instructions, read the instructions to the jury before rather  
5 than after argument?

6 MR. GUYMON: Yes, Your Honor.

7 MR. FIGLER: That's fine, Judge.

8 THE COURT: There are lesser included offenses  
9 included in the instructions. Defense has called on that,  
10 voluntary manslaughter, things such as that. Take them out if  
11 the defense doesn't want them? What's your position? You  
12 want the lessers?

13 MR. FIGLER: We'll leave 'em in, Judge.

14 THE COURT: Okay. Okay. The only instruction --  
15 what instruction do you proffer that I've indicated I will not  
16 give?

17 Have that marked by Carol, please.

18 MR. FIGLER: Approaching, Judge, with that right  
19 now.

20 THE COURT: That's A -- that's an additional  
21 instruction to me on reasonable doubt. Don't believe it's  
22 proper under established law. That leaves only one more  
23 instruction, which we'll discuss at the bench, conduct subject  
24 to motives, at some later point. Now, if we use Sciscento's  
25 here.

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1 MR. SCISCENTO: Right here.  
2 THE CLERK: I'm sorry, this is in court.  
3 THE COURT: Yes, that does not go to the jury. I'm  
4 going to give this if you want it.  
5 Off the record.  
6 (Off-record)  
7 THE CLERK: The other one though we have -- we have  
8 29 and 29B.  
9 MR. FIGLER: Oh, then this should be B. Be  
10 consistent.  
11 THE COURT: Okay. The last thing on the record is  
12 the defense has proffered -- the defense has proffered and are  
13 you --  
14 MR. SCISCENTO: I'm going to argue that, Your Honor,  
15 then, on the record. I'm going to argue.  
16 THE COURT: We're on the record, Joe. The defense  
17 has proffered a adjudication in juvenile court approximately  
18 three years prior to the incidents in this case which shows,  
19 we will assume for the record, an adjudication of Tod  
20 Armstrong of several offenses.  
21 MR. FIGLER: And just to correct it, it's five years  
22 from today's date.  
23 THE COURT: I said several years from before the  
24 incident. I didn't say how many years and you can mark that  
25 as an exhibit. Do you have that, Joe?

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1 MR. FIGLER: Do you have the adjudication? The  
2 general adjudication?

3 MR. SCISCENTO: Yes, we have it, Your Honor.

4 THE COURT: Okay. That'll go into the record as a  
5 defense exhibit. The State has objected to it on several  
6 bases. Number one, the statute specifically forbids it. I  
7 don't think that's particularly important because the cases  
8 such as Davis and Azbill would say there are things that  
9 supersede statutes such as that. I do agree with the State's  
10 arguments as to relevance. I agree with the State's argument  
11 as to the fact that this is not legitimate impeachment of the  
12 defendant -- of the witness, Armstrong, on issues that were  
13 raised during the cross-examination. Finally, I think that  
14 under -- it's also violative of 50.085, sub 3, that is that it  
15 might be able to be inquired into as something that affects his  
16 truthfulness, but it can't be proved by extrinsic evidence.  
17 For any of those reasons or a combination of them all, I'm not  
18 going to let it in.

19 MR. SCISCENTO: Your Honor, for the record, I  
20 received this after Mr. -- I received these records after Mr.  
21 Armstrong took the stand and testified. Specifically, while  
22 he was on the stand I asked him specifically, so was any -- so  
23 was -- is that the only time that you ever planned to do any  
24 kind of robbery? I'm referring to page 224 of the record.

25 THE COURT: Was this a robbery, Mr. Sciscento?

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1 MR. FIGLER: Any kind.

2 THE COURT: Was the adjudication you proffered a  
3 robbery? I thought it was an auto burglary.

4 MR. FIGLER: They all called it autos.

5 MR. SCISCENTO: Okay.

6 MR. FIGLER: They're all about cars.

7 MR. SCISCENTO: And I go on further. Okay. "Any  
8 other time that you asked anybody to commit any robberies?"  
9 Answer: "No." It was a burglary, grand larceny, possession  
10 of burglary tools, which is similar in nature to -- in nature  
11 to robbery, Your Honor. Just because nobody's present --

12 THE COURT: That's similar enough to me and we have  
13 somebody -- we've already got Armstrong, of course, admitting  
14 that more recently he committed a crime very similar to the  
15 one he was adjudicated for several years ago.

16 MR. SCISCENTO: No, no, no, no, Your Honor. He  
17 said, well, I talked about it, I wasn't serious about it, I  
18 just was -- at that time nothing happened. I was upset with  
19 this guy, Chris, and I wanted to do it. But then he says, we  
20 didn't do it, it never happened, and I'm a nice clean white  
21 guy. That's the problem I have.

22 THE COURT: I see the problem and I've made my  
23 ruling and that is the way it's going to be.

24 Now, off the record.

25 (Off record)

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1 THE COURT: Now, are we on the record, Shirlee?  
2 THE CLERK: We are.  
3 THE COURT: I don't even see where you are.  
4 THE CLERK: I am here.  
5 THE COURT: What would like to discuss about the  
6 high tech stuff, Mr. Figler?  
7 MR. FIGLER: First of all, Your Honor, I think it's  
8 a grand inequity that the prosecutors with their unlimited  
9 resources can bring in all this high tech gadgetry to try to  
10 fool and with smoke and mirrors present a case, more so than  
11 what they have, to the jury where the defendant doesn't have  
12 those particular resources to use and we certainly can't use  
13 theirs. Secondly, I don't know what they intend to magnify to  
14 such a large extent.  
15 THE COURT: I don't know why you make that  
16 assumption by the way. I -- have you -- representing on the  
17 record that you have --  
18 MR. FIGLER: No money, yes.  
19 THE COURT: -- entered into negotiations with the  
20 district attorneys that proved fruitless to try to share some  
21 of this --  
22 MR. FIGLER: I could tell you this, Judge, that in  
23 every case where they've used this high tech machine, if we go  
24 anywhere near it they freak out.  
25 THE COURT: I see. So that's your basis for saying

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1 that if your boss, Philip Kohn, entered into negotiations with  
2 them, they wouldn't even let you touch it. Well, if that's  
3 the basis of it, that's just --

4 MR. FIGLER: I would believe that to be true, Your  
5 Honor.

6 THE COURT: I believe, Mr. Figler, that your office  
7 is very well equipped to do it. I'll also give you my  
8 personal feeling, which is this doesn't enhance the  
9 presentation at all, but I'm old fashioned. But, to me, it's  
10 a individual choice by counsel on both sides how they wish to  
11 present their cases, and I believe it's a discretionary thing  
12 always with the Court and I'm going to exercise my discretion  
13 in favor of letting them use the bells and whistles if they  
14 would like to use the bells and whistles. Anything else?

15 MR. FIGLER: Yeah, Your Honor, I just want to note  
16 that it says County of Clark tag on it, that this would be  
17 county property so if we wanted to use it we would have the  
18 ability to just go in and use it. Secondly, I'd like to know  
19 what the size on the record is because when there's a  
20 reviewing authority they're going to want to know exactly how  
21 big these screens are. And I'd also like an offer of proof of  
22 what they're going to use it for.

23 THE COURT: Well, we'll put that in the record, Mr.  
24 Figler, but I disagree based on thirty-two years in this  
25 profession that it's going to be of much concern to a higher

1 court, the size of the screen.

2 MR. FIGLER: Well, if nobody every raises it, Your  
3 Honor, I guess we'll never find out.

4 THE COURT: Well, I'm just telling you, Mr. Figler,  
5 that my opinion is that when you assert that as fact, you're  
6 incorrect factually. No one's going to care whether it's  
7 twenty-four inches. Is that about what it is?

8 MR. GUYMON: Actually, I think the -- forty-two-inch  
9 monitors? Forty-two-inch monitors, Judge.

10 MR. FIGLER: Forty-two inch monitor, Okay.

11 THE COURT: Fine. For the record, forty-two inch  
12 monitor.

13 MR. FIGLER: And what do they intend on showing and  
14 using that for?

15 THE COURT: Off the record.

16 (Off record)

17 MR. DASKAS: -- make --

18 THE COURT: Yes. Back on the record.

19 MR. DASKAS: -- one point and that is before we ever  
20 started trial, at the beginning of this week, I informed both  
21 you and defense counsel it was my intention to use this  
22 equipment. I did not hear an objection by defense counsel at  
23 that point.

24 THE COURT: Oh. So they're objecting now. I see no  
25 legitimate basis for objection.

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1 MR. FIGLER: Can I ask what's going to be projected  
2 on there so I don't have to stop 'em during their closing and  
3 make an objection if they want to show some sort of  
4 photographs on that? I don't know what they're using it for.

5 THE COURT: You make a contemporaneous objection  
6 then.

7 MR. FIGLER: I really don't want to interrupt him  
8 during his thing if I could take care of it now. Can they  
9 just tell us what they're using this thing for?

10 THE COURT: They don't have to preview their final  
11 argument for you and if you have some specific objection,  
12 you --

13 MR. FIGLER: I'm not asking for substance, I'm  
14 asking for form, Judge.

15 THE COURT: You can ask and I'm telling you listen  
16 to final argument and if you have an objection then it's your  
17 duty to make it. I understand the tactical reasons for not  
18 wanting to do so, but we're not going to make them preview it.

19 THE BAILIFF: Can I go ahead and unlock the door?

20 MR. FIGLER: Let me just make a record then if  
21 they're going to use any photographs, any enhancements,  
22 anything that is different from what is actually evidence in  
23 the record that we will be objecting to that.

24 THE COURT: You have put them on notice. Anything  
25 else to come on the record before we take a little break, get

1 the jury back in here?

2 MR. SCISCENTO: I don't know, Your Honor, if we've  
3 put on the record that defense's feel -- feeling about the way  
4 that this trial has run, that we have to do it by Wednesday,  
5 although today is Thursday. My belief and my understanding at  
6 the time of voir dire and during some of the questioning, this  
7 Court has attempted to rush us along. We have delayed ruling  
8 on a matter regarding Tod Armstrong's prior criminal  
9 convictions up until minutes before I would be doing --  
10 opening my evidence. I disagree with that.

11 THE COURT: Now, we did -- we -- here's --

12 MR. SCISCENTO: I understand, Your Honor --

13 THE COURT: No, let's make a record as you're doing  
14 it, Joe, because let me give you my views on that. Ten days  
15 to two weeks ago for the very first time in a case where there  
16 was, oh, somewhere around a year or more that your office  
17 represented Donte, there was some issue about juvenile  
18 records. Finally, for the first time, about a day or so ago,  
19 if you want to make a record of this, there was some  
20 development of this record that I've now said is irrelevant  
21 and other -- for other reasons isn't going to come in. I  
22 asked at the time that you had it to proffer appropriate  
23 authority that I might make an intelligent decision about it.  
24 I did not receive then and never did receive from the defense  
25 things in terms of case law that would allow me to see the

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1 defense's side on that. About, oh, thirty minutes or so ago,  
2 because I understand all four of you are in trial, it's hard  
3 to do the research during trial, I was finally proffered what  
4 I considered was appropriate authority to dispose of the issue  
5 and I did it then.

6 Now, in terms of rushing the case, what are you  
7 talking about specifically?

8 MR. SCISCENTO: Well, Your Honor, my client has  
9 indicated to me, too, he feels that we've been rushed along  
10 and that this is a hurry-up trial and leaves it --

11 MR. FIGLER: Long hours, no chance to do any --

12 THE COURT: Oh, I think the record will reflect  
13 exactly what we've been doing, Joe, and I'll tell you --

14 MR. SCISCENTO: I don't -- I don't --

15 THE COURT: -- that it might be on the record in  
16 case this case results in a conviction. I think that in terms  
17 of justice it makes no difference whether we do it in four  
18 days or fourteen days. You have always been allowed any time  
19 that you need to get ready for this case and there have been  
20 prior continuances.

21 I know there are courts in this courthouse where a  
22 trial day means you spend maybe the four hours in the  
23 afternoon; after the courts go slowly through their morning  
24 calendar, they have a trial. In order to get this thing done  
25 in such a way that the jurors don't disrupt their lives.

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1 unnecessarily, I've started my calendar early. I think that  
2 makes the day better so that we can have about an equal amount  
3 of testimony in the morning and the afternoon. A generalized  
4 feeling that we're rushing without an articulation of any  
5 specific prejudice doesn't impress me at all.

6 MR. SCISCENTO: I'm not saying the hours.

7 THE COURT: And I would just -- I would say for the  
8 record that I've indicated to you if we haven't scheduled a  
9 penalty hearing because it's premature, there might be some  
10 specific problems in adhering to the schedule that I had  
11 initially suggested, which is Monday and Tuesday. But, if you  
12 could, for the record, so that you don't get up there on  
13 appeal and start making allegations that were never made to  
14 this Court, indicate to me what you have been unable to do  
15 because of this rush that you would specifically point to as  
16 prejudice?

17 MR. SCISCENTO: Your Honor, for one is when we were  
18 voir diring the jury members, we first were informed that we  
19 would pass for cause all of them. Then, when we passed them  
20 for cause that was denied, then we had to -- each one that we  
21 were going to do then we had to -- we had to exclude for  
22 cause. It was -- it seemed to us that it was a waste of -- it  
23 didn't waste our time, but we had to rush through the  
24 selection of the jury. We weren't allowed to ask questions  
25 and you kept -- at some point you had said to move on or

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1 continue asking questions and move on to another section. Our  
2 client has noted this and remarked it on the record, and I  
3 feel that that --

4 THE COURT: Okay. Well, let's make a record on  
5 that.

6 MR. SCISCENTO: Your Honor, I'm --

7 THE COURT: Yeah.

8 MR. FIGLER: Let me finish. I have no problem going  
9 from 8:00 to 6:00, that's okay and I applaud that because we  
10 can get on there and do the case. What I disagree with is the  
11 fact that we were told then to move on, move on, that's enough  
12 questioning, then it's "can we just stip to this," "can we  
13 move to this." We feel that we were placed under the gun to  
14 move along quickly on this.

15 THE COURT: And you are under the gun to move along  
16 quickly because I perceive that that's the best way to try a  
17 case. Now, whether that helps the prosecution or it helps the  
18 defense, I don't know. I guess there are people who would say  
19 if you go really quick it's an open and shut case, and I guess  
20 there are people who say if you go quick it shows there isn't  
21 much to the case, so it can go either way.

22 In terms of the voir dire, we spent a full day in  
23 voir dire, the questionnaires which were given were strictly a  
24 matter of discretion. You were able to gain through the  
25 questionnaires more information than you could possibly get

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1 through supplemental voir dire. The law on voir dire in this  
2 state permits reasonable supplemental voir dire, and I think  
3 you had it. I think you not only had reasonable supplemental  
4 voir dire, but you had engaged in voir dire, and especially  
5 Mr. Figler, that was in violation of our local district court  
6 rules that argued the case to the jury, that got into  
7 hypotheticals touching on their verdict, and I think, if  
8 anything, I was very lenient in the amount.

9 Anything else you want to make a record of, Mr.  
10 Sciscento?

11 MR. SCISCENTO: No, Your Honor.

12 MR. FIGLER: Yes, I do, Judge. In addition to that,  
13 while 8:00 to 6:00 is fine, Judge, with regard to a normal  
14 case --

15 THE COURT: We were never in here at 8:00, were we,  
16 Mr. Figler?

17 MR. FIGLER: That is correct, we were yesterday,  
18 Your Honor.

19 THE COURT: Oh, one day out of four. Okay.

20 MR. FIGLER: Right. When going, the entire length  
21 of the day in a normal case, sure, maybe that would work out  
22 great. But, in fact, this case is a lot more complicated,  
23 involves a lot more witness preparation time, involves -- in  
24 fact, these legal issues that do come up and we've had  
25 absolutely no time to do adequate preparation and presentation

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1 of those issues, especially since we're getting ruled against  
2 on areas that we inherently think we have the right side of.

3 Now, as Your Honor is aware, not only are we having  
4 to on such a hurried and rushed schedule with regard to this  
5 case, but Your Honor knows that I did cases Kevin Camp  
6 [phonetic] and Daris Taylor [phonetic] and Johnny Walker  
7 [phonetic], which were three- and four-week-long murder trials  
8 directly leading up into this with no time off between Daris  
9 Taylor, which ended on Wednesday, and Donte Johnson which  
10 started on Monday.

11 With regard to the voir dire, we were not allowed to  
12 inquire into questions that talked about these individual's  
13 beliefs.

14 THE COURT: We're not going to re-litigate voir  
15 dire. We've gone over this again and again. Now --

16 MR. FIGLER: You indicated that what you thought  
17 were --

18 THE COURT: -- in terms of the schedule of the  
19 trial, you were told the schedule for the trial a good ten  
20 days in advance of the trial. They had sixteen or seventeen  
21 witnesses. The penalty may be death that is being sought by  
22 the State, but this is not a complicated case. When you folks  
23 needed a continuance, and maybe it was more than one occasion,  
24 you got a continuance. I see absolutely nothing that could  
25 have been done relative to the guilt of Mr. Johnson in these

1 four days that you could have done any better if you'd a had  
2 forty days.

3 MR. FIGLER: Okay, Your Honor.

4 THE COURT: Anything else you'd like to make a  
5 record of?

6 MR. FIGLER: Yes, your ending our ability to  
7 thoroughly do cross-examination on witnesses, most  
8 specifically Detective Buczek, felt that it was more in line  
9 with the Court's desire to rush this through than to allow us  
10 to do as complete and thorough examination as we are allowed  
11 to do under the Sixth Amendment.

12 THE COURT: Right. What I wanted to do is follow  
13 the rules of evidence and the concepts of due process, not  
14 allow you, Mr. Figler, to do all these things that you wanted  
15 to do that I think violates the rules of evidence.

16 Anything else on the record before we take a little  
17 break?

18 MR. DASKAS: Judge, one point. Mr. Figler mentioned  
19 his involvement in the Daris Taylor trial. I can represent to  
20 the Court that I appeared at the calendar call for Daris  
21 Taylor and Mr. Figler was there. He and I had a conversation  
22 outside the courtroom where I told him I was concerned that he  
23 would make a record in this court of ineffective assistance if  
24 he went to trial on both Daris Taylor and Donte Johnson.  
25 Outside of court he assured me that Mr. Sciscento was lead

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1 counsel on this case and that he would not make such a record.

2 MR. FIGLER: That's not in -- absolutely correct,  
3 Your Honor. Mr. Sciscento is lead counsel and I tried to get  
4 Daris Taylor removed and Mr. Daskas actually tried to help us  
5 do that so that I wouldn't have to be in this position.  
6 Unfortunately, I am, because Judge Gibbons wouldn't move Daris  
7 Taylor.

8 THE COURT: All right.

9 MR. FIGLER: And additionally, Your Honor, I --

10 THE COURT: And let me point out when I turn to the  
11 defense, who I've granted prior continuances to, at the  
12 beginning of this trial, and it was in full possession of the  
13 schedule that I had outlined for this trial and had not one  
14 word of objection to. The very first three or four sentences  
15 I turned to the defense, knowing what the schedule was, said  
16 are you ready? I don't hear a motion to continue orally, I  
17 don't see a motion to continue in writing. You knew what the  
18 schedule was going to be and all we did was adhere to it. Now  
19 your specific rulings you've already got a record of.

20 MR. SCISCENTO: We -- and I have never at this  
21 juncture, and I -- you know when I came on this case. I -- we  
22 asked for a continuance one time. We were prepared to go  
23 forward on this one, I understand there's changes that  
24 happened. What I'm saying, is my client feels that this Court  
25 is rushing him along and I, Your Honor --

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1 THE COURT: And can't I be more -- anymore clear  
2 about that?

3 MR. SCISCENTO: I understand but I just --

4 THE COURT: How your client feels is totally,  
5 completely, a hundred percent irrelevant to me.

6 MR. SCISCENTO: And, Your Honor, I --

7 THE COURT: I'm not here to satisfy the prosecutors,  
8 I'm not here to satisfy Donte, I'm not here to satisfy the  
9 defense. What I'm here to satisfy, as the Judge in this  
10 court, is what the law is, and what's what I'm doing. And if  
11 there's a conviction and you don't agree, you'll take it up  
12 with a higher court.

13 We'll be in recess for five minutes then we'll do  
14 final arguments.

15 MR. SCISCENTO: I'm sorry, Judge, are you going to  
16 -- I don't know if you've admonished the defendant as to  
17 whether or not he has a right to testify. We've talked --  
18 we've talked about --

19 THE COURT: I don't do that if he's not going to  
20 testify.

21 MR. SCISCENTO: Okay. Well, there's an instruction  
22 still that they've been talking about whether or not they're  
23 going to use --

24 THE COURT: They have not proffered the Carter  
25 instruction. Do they want it?

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1 MR. FIGLER: Well, we're looking at it.

2 MR. SCISCENTO: I don't know but they -- there was  
3 some talk about it, I just wanted to mention it, Judge. And  
4 if I could approach, Judge, with the playback or read back  
5 here. It's actually play back of testimony instructions.

6 THE COURT: Before I go back there, do you wish to  
7 proffer the Carter instruction, Mr. Sciscento?

8 MR. SCISCENTO: Can we have one moment, Your Honor?

9 THE COURT: Sure.

10 (Colloquy between the Court and Clerk)

11 MR. SCISCENTO: Your Honor, we are going to  
12 proffer --

13 THE COURT: A-Z-B-I-L-L.

14 MR. FIGLER: Proffer the Carter instruction.

15 THE COURT: What?

16 MR. SCISCENTO: And we'll proffer the Carter  
17 instruction.

18 THE COURT: Okay. Could I have the Carter  
19 instruction, please?

20 MR. DASKAS: I think that's the only copy --

21 THE COURT: All right. We're going to label this as  
22 5 -- let's see. We'll make it 5A. Now a Carter instruction  
23 is something that I care what you feel about, Mr. Johnson or  
24 Mr. White, because the law makes that a concern of mine. The  
25 Carter instruction is it's a constitutional right of a

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1 defendant in a criminal trial that he --

2 MR. FIGLER: Your Honor, can we hold on a second?

3 THE COURT: This is something that I do need to  
4 concern myself with your feelings about, Mr. Johnson, Mr.  
5 White. It's a constitutional right of a defendant in a  
6 criminal trial that he may not be compelled to testify. This  
7 is the instruction that you and your counsel are asking for.  
8 But I only give this if the two of you agree that you'd like  
9 this instruction read to the jury. It goes like this:

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

18 You don't want that instruction, I don't read it. You want  
19 this instruction?

20 THE DEFENDANT: No.

21 THE COURT: What?

22 THE DEFENDANT: It don't matter, I ain't testifying  
23 so it don't matter.

24 THE COURT: No, but I'm saying this is something --

25 MR. SCISCENTO: Your Honor, may I?

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1 THE COURT: Yeah.

2 (Colloquy between Mr. Sciscento and Defendant)

3 THE COURT: Yes, the record should reflect you and  
4 Joe Sciscento, your lead counsel, have discussed this. Is it  
5 clear to you now what I'm asking you is --

6 THE DEFENDANT: Yeah.

7 THE COURT: -- do you want this instruction read to  
8 the jury?

9 THE DEFENDANT: Yeah.

10 THE COURT: Okay. So -- and you understand if you  
11 don't want it read to the jury, I won't read them anything  
12 that even talks about you not testifying. Do you understand  
13 that?

14 THE DEFENDANT: Yeah.

15 THE COURT: Okay. And you do want it?

16 THE DEFENDANT: Yeah.

17 THE COURT: Okay. All right. Let's take a recess  
18 'til 2:45.

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

20 (Jury is present)

21 THE COURT: Well, hello there.

22 Does the defense intend to call witnesses?

23 MR. SCISCENTO: No, Your Honor, we don't.

24 THE COURT: Defense rests then?

25 MR. SCISCENTO: Defense rests, Your Honor.

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DEFENDANT RESTS

THE COURT: All right. Folks, that means --

MR. GUYMON: There was -- there was one housekeeping matter that --

THE COURT: Oh, a stipulation that we didn't get in?

MR. GUYMON: That's correct.

THE COURT: Right.

MR. GUYMON: You had asked us, Judge, at the -- right before break if we rest and I indicated yes with the exception of a stipulation and to check the evidence chart.

MR. SCISCENTO: Yeah, I reviewed the evidence and the stipulation, Your Honor, and agree to that. If this Court wants --

THE COURT: You want that read to the jury before we instruct them? Want it read?

MR. GUYMON: Yes, Your Honor.

THE COURT: This is a stipulation that's been labeled Exhibit 206, which you'll be getting along with those other stipulations I've read you in the past.

"Sheree Norman is a crime scene analyst employed with the Las Vegas Metropolitan Police Department. On August the 15th, 1998, Sheree Norman attended the autopsy of the four decedents in this case, identified as Jeffrey Biddle, Tracey Gorringer, Matthew Mowen, and Peter Talamantez. Sheree

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1 Norman's responsibilities, while attending the  
2 autopsies, were to collect and preserve any evidence  
3 associated with the autopsies. Sheree Norman  
4 impounded the clothing and personal items associated  
5 with each of the decedent's bodies. Sheree Norman  
6 did not find any U.S. currency, paper currency or  
7 any foreign currency on any of the decedent's  
8 persons."

9 (Colloquy between Court and Bailiff)

10 THE COURT: "Sheree Norman was present when Dr.  
11 Bucklin recovered bullet fragments from each of the  
12 deceased's bodies. Sheree Norman impounded all of  
13 the other bullet fragments she" -- excuse me -- "all  
14 of the bullet fragments she received from Dr.  
15 Bucklin."

16 Anything else before instructions, folks?

17 MR. GUYMON: No, Your Honor.

18 THE COURT: Okay. The thing I'm going to need is,  
19 because this is blocking some of them, can we just move it  
20 over until I'm through reading the instructions? Thanks.  
21 I'll be right back.

22 (Pause in the proceedings)

23 THE COURT: Okay, folks, I'm going to read you the  
24 instructions. There's a lot of them and these are, of course,  
25 what the law tells -- they tell you what the law is in the

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1 state of Nevada. I could read them to you very, very slowly  
2 and it could take, my best guess is, somewhere around an hour  
3 just to read you the instructions, somewhere around forty-five  
4 minutes or so.

5           If I read these instructions at the very slowest to  
6 a group of lawyers, if the lawyers didn't engage in criminal  
7 prosecution or criminal defense work, they wouldn't understand  
8 it the first time through. In most federal courts, maybe this  
9 is changing, I don't know that it is, but they read the  
10 instructions to you once and you don't even get a copy of  
11 them. You're going to get a copy of all of these, one copy,  
12 which will be in jury deliberations with you and you can read  
13 them over as much as you need to or want to so that you  
14 understand them.

15           So, rather than drone on and have you listen to the  
16 sound of my voice for quite a period of time, I'm not going to  
17 read them as fast as I read the admonition that I read every  
18 time you leave the room, but I'm going to read them pretty  
19 quick. And if you don't catch them the first time around, you  
20 think they're important, you'll get another chance at them  
21 later today.

22           You'll notice there's As and Bs and that there're  
23 different typewriters and things. Neither -- none of that  
24 makes any difference. As a group, these are the instructions  
25 of law that you're bound to follow.

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1 (Court reads the jury instructions, not transcribed)

2 \* \* \* \* \*

3 THE COURT: Mr. Daskas, it's my understanding you're  
4 going to give the first of the closings?

5 MR. DASKAS: Yes, Judge, if I might have the monitor  
6 moved back to the position, please?

7 THE COURT: Certainly.

8 David, do you have the verdicts?

9 MR. FIGLER: I handed that to you, Judge. I have  
10 another one here. You could have mine.

11 MR. DASKAS: May I proceed, Judge?

12 THE COURT: Sure.

13 MR. DASKAS: It was Andrew Young who said "it's a  
14 blessing to die for a cause, because you can so easily die for  
15 nothing." On August 14th, 1998, Matt, Peter, Tracey and Jeff  
16 died for nothing.

17 These four boys, none of whom were more than twenty-  
18 one years of age, were killed because Donte Johnson, this  
19 defendant, concluded that a pager was more valuable than Peter  
20 Talamantez's life, a VCR was more valuable to Donte Johnson  
21 than Matt Mowen's life, two hundred dollars was more valuable  
22 than Jeff Biddle's life, and a Sony Play Station was more  
23 valuable to Donte Johnson than the life of Tracey Gorringer.

24 Over the last three days you've heard a lot of  
25 testimony from twenty-some witnesses, crime scene analysts,

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1 coroners, fingerprint experts and DNA experts, but this case,  
2 like every criminal case before it and after it, comes down to  
3 two simple questions, what crimes have been committed and who  
4 committed those times. When you retire to deliberate it'll be  
5 your duty to answer those two questions. I would like to  
6 discuss the answers to those two questions with you this  
7 afternoon.

8           Let me start with the first question, that is, what  
9 crimes have been committed. And you've heard the indictment  
10 read and you now know that the defendant's charged with  
11 fourteen counts, including burglary, conspiracy, robbery,  
12 kidnapping, and murder, everything except Count II, including  
13 an enhancement because deadly weapons were used in this case.  
14 At this point there should be no doubt in anybody's mind that  
15 all of these crimes were committed, that serious, violent  
16 crimes were perpetrated on Peter, Matt, Tracey and Jeff. In  
17 fact, I'm sure defense counsel would concede that crimes were  
18 committed.

19           Nevertheless, the instructions that pertain to these  
20 crimes, as you can tell by the instructions that were read to  
21 you, can be somewhat technical, so I'd like to discuss some of  
22 those instructions with you this afternoon. And let me begin  
23 actually out of order with Count II of the indictment, which  
24 is the conspiracy count. The reason I began out of order will  
25 become apparent in a few moments.

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1           You probably all have a preconceived notion, at  
2 least before you came into court, about the crime of  
3 conspiracy. Perhaps it brings to mind visions of the JFK  
4 assassination and a complex government plot to conceal the  
5 true killer of JFK, or maybe you think about Area 51 and the  
6 government's actions to conceal what's going on in Area 51.  
7 But the legal definition is something entirely different and  
8 certainly much less complex. In its simplest form a  
9 conspiracy is simply an agreement to commit a crime between  
10 two or more persons.

11           Was there an agreement in this case to commit a  
12 crime and was Donte Johnson part of that agreement? You'll  
13 recall the testimony of Charla Severs and LaShawnya Wright.  
14 They clearly established that Donte Johnson met with Sikia  
15 Smith and Terrell Young and the three of them agreed to rob  
16 the occupants of the Terra Linda home.

17           How do we know that? Well, we know they gathered up  
18 their tote bag packed with duct tape, packed with rifles;  
19 packed with a .380 handgun, and the three of them went to the  
20 Terra Linda residence. That agreement that three of these  
21 people had is a conspiracy and it's a crime. It's that  
22 simple. For you to conclude that there is no conspiracy  
23 there, you would have to conclude, essentially, that Donte,  
24 Terrell and Sikia just happened to show up at the Terra Linda  
25 household at the same time with guns, with gloves and with

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1 duct tape. It's unreasonable to conclude that. Certainly  
2 there's an agreement in this case.

3 There's an important consequence, though, of finding  
4 a conspiracy, and that's why I started out of order in the  
5 indictment, actually with Count II. That consequence is  
6 actually delineated in instruction number 12, and it reads as  
7 follows:

8 "When two or more individuals join together in a  
9 common design to commit any unlawful act," which is  
10 what the defendant did with Terrell and Sikia, "each  
11 is responsible for the acts of his confederates  
12 committed in furtherance of the design. In  
13 contemplation of law, the act of one is the act of  
14 all."

15 Let me give you a --

16 MR. FIGLER: Your Honor, we would object at this  
17 time. That is not the complete instruction 12. In fact,  
18 there's limiting language that comes after that that is  
19 provided in the actual instruction. It's improper to be  
20 showing just part of an instruction.

21 THE COURT: Overruled.

22 MR. DASKAS: You will have the instructions when you  
23 deliberate. It's certainly not my intention to withhold a  
24 portion of the instruction. I'll let you read the instruction  
25 and interpret it yourselves.

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1 But there's an important consequence, as I said,  
2 once you find a conspiracy. The act of one is the act of all.  
3 Let me give you an example of this, and actually it was  
4 alluded to during the voir dire examination. Let's assume  
5 that you and I agree to commit a robbery. We agree that we'll  
6 go to a 7-Eleven, that we'll drive my car, that I'll be the  
7 getaway driver. I'll transport us to the 7-Eleven and you'll  
8 go inside the gun and rob the clerk while I wait outside so  
9 that we can flee once the robbery is complete. I never  
10 entered the 7-Eleven, I never touched the gun, I never robbed  
11 the clerk. Because we had this agreement, this conspiracy to  
12 commit this crime and because I participated in that  
13 conspiracy, your actions are now imputed or attributed to me.  
14 In the eyes of the law, in other words, I did hold the gun, I  
15 did enter 7-Eleven, and I did rob the clerk. In the eyes of  
16 the law, the act of one is the act of all.

17 Let's talk about that instruction and how it applies  
18 to this particular case. Once Donte Johnson agreed with  
19 Terrell and Sikia to rob the occupants of the Terra Linda  
20 home, they each became responsible for the other person's  
21 actions. In other words, it doesn't matter who taped up the  
22 victims. In the eyes of the law they all taped the victims.  
23 And it doesn't matter who stole the VCR, or the Play Station  
24 or the pager, in the eyes of the law, in a conspiracy, each of  
25 them stole the VCR and the Play Station and the pager. And it

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1 doesn't matter who pulled the trigger that killed those four  
2 boys, in the eyes of the law they all pulled the trigger.

3           And if you think about it there's wisdom in this  
4 room. The legislature recognizes that dangerous things happen  
5 when the Donte Johnsons of this world get together with the  
6 Terrell Youngs and the Sikia Smiths, innocent people get  
7 killed. Tragic consequences happen and so the law recognizes  
8 that they should all be held responsible for each other's  
9 actions. The act of one is the act of all. And actually the  
10 consequences are even more significant.

11           Instruction Number 13 tells us that when the purpose  
12 of the conspiracy is to a commit a dangerous felony, each  
13 member of that conspiracy runs the risk that that criminal  
14 venture will end in homicide. Accordingly each conspirator is  
15 guilty of murder if any one of them commits homicide.

16           What do we know in this case? The purpose of this  
17 conspiracy was to commit a robbery, and robbery is a dangerous  
18 felony. They all ran the risk that somebody would get killed,  
19 and so each became responsible, that is, Donte Johnson,  
20 Terrell Young and Sikia Smith became responsible for murder if  
21 somebody got killed. And so before we even get to the murder  
22 instructions in this case, and we'll get there shortly, you  
23 already know that Donte Johnson is responsible, is guilty of  
24 four counts of first degree murder with use of a deadly  
25 weapon.

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1           Let me move on to Count I actually, of the  
2 indictment, going backwards, burglary while in possession of a  
3 firearm -- and I should say at this point with respect to the  
4 enhancement, the deadly weapon enhancement for some of these  
5 crimes, I won't mention it as we discuss each crime, I'm  
6 certain that you all would understand at this point guns were  
7 used, you saw a couple of the weapons in this case, and you  
8 saw the injury, the fatal wounds inflicted by the .380 handgun  
9 that Donte and his partners took in to the terror in the  
10 household. So certainly the deadly weapon enhancements have  
11 been established.

12           Burglary is simply entering a home with the intent  
13 to steal or to commit a felony. What do we know in this case?  
14 We know that Donte and his partners went into the Terra Linda  
15 household with a duffel bag loaded with duct tape and guns.  
16 We see the Black and Mild cigar box inside the Terra Linda  
17 home that held Donte Johnson's fingerprints. Evidence proved  
18 that he actually went into that home on August 14th.

19           Now, how can we be satisfied at the time Donte  
20 entered the Terra Linda household he intended to steal or  
21 commit a felony? And I'll ask you this, what other intentions  
22 did Donte Johnson have when he entered the household carrying  
23 these two weapons?

24           MR. FIGLER: Your Honor, I object to (A) the photo  
25 off the media, and also that there is no conclusion evidence

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1 regarding these being in anyone's hand, it goes beyond  
2 argument, Your Honor, there's no evidence in the record.

3 THE COURT: Overruled.

4 MR. DASKAS: And Let me mention this again, there's  
5 no evidence, it's true, that Donte Johnson held any one of  
6 these guns when he walked into the Terra Linda household, but  
7 let me remind you, in the eyes of the law the act of one is  
8 the act of all. It doesn't matter if Terrell held those guns  
9 or Sikia held those guns, their actions are imputed to Donte  
10 Johnson, and his actions to them. It is of no significance  
11 that Donte Johnson, if he didn't hold those weapons, truly  
12 didn't hold them when he entered the household. He is  
13 responsible for Terrell's actions and for Sikia's actions.

14 Counts III through VI, robbery with use of a deadly  
15 weapon. And you'll realize that there is one count for each  
16 victim in this case.

17 Instruction Number 26 tells us that robbery in its  
18 simplest form is taking the personal property of somebody else  
19 by means of force, by means of fear, or by means of violence.  
20 And we see in the photographs the property that Donte and his  
21 partners took from the Terra Linda household from the four  
22 victims in this case.

23 The entertainment center from the Terra Linda home  
24 which once housed the VCR that was found in Donte Johnson's  
25 residence. We see the picture to the left, the actual VCR and

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1 the Sony Play Station that once were located in the victims'  
2 household. And we see the pager. Peter Talamantez's pager  
3 that's buried in the backyard where Donte Johnson stays.  
4 Certainly personal property was taken in this case.

5 The only remaining question is whether force or fear  
6 or violence was used? It's not my intention to insult  
7 anybody's intelligence here today, but let me ask you if fear  
8 was used in this case? Imagine the fear in the minds of these  
9 three boys as they laid face down, duct taped at their ankles  
10 and wrists, completely defenseless as they hear the first shot  
11 that kills their friend Peter Talamantez. Imagine the fear in  
12 their minds. And imagine the fear as they all lay waiting for  
13 their turn.

14 MR. FIGLER: Your Honor, golden rule objection.

15 MR. DASKAS: I'm arguing an element of the offense.

16 THE COURT: What is the objection, Mr. Figler?

17 MR. FIGLER: Can we approach on this then?

18 THE COURT: Is it to the imagine?

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

20 THE COURT: If you could rephrase that. Sustained.

21 MR. DASKAS: I will, Judge.

22 There should be no doubt in anybody's mind that  
23 these three boys had fear in their minds as they laid face  
24 down, duct taped and defenseless, waiting for the bullet that  
25 would send each of them into eternity. I'm certain that they

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1 were in fear as Donte placed the barrel of the gun two inches  
2 from the skull of each boy. And as they were defenseless to  
3 even crawl away because he was so thorough in how he taped  
4 their ankles. It's not my intention to insult your  
5 intelligence when I tell you that there was fear in this case,  
6 and that's a robbery.

7           Count VII through X, kidnapping with a deadly  
8 weapon. Instruction Number 26 tells us that kidnapping is  
9 simply confining or concealing somebody for the purpose of  
10 committing robbery or the purpose of committing murder. And  
11 you'll gather -- you'll glean from the instructions that you  
12 must find the victims were physically restrained. Were these  
13 four boys confined in the Terra Linda household so that Donte  
14 and his partners could rob and murder them? And is there  
15 physical restraint when you see the duct tape at their wrists  
16 and at their ankles? The overwhelming evidence in this case  
17 is that Donte and his partners entered that home to rob these  
18 boys, and they were taped, they were physically restrained for  
19 that purpose. Certainly Donte is guilty of Counts VII through  
20 X.

21           And that brings us finally to the murder counts,  
22 Counts XI through XIV, again, one count for each victim. Now,  
23 we already know he's guilty under a conspiracy theory of  
24 murder, we discussed that fact. It was a dangerous felony,  
25 the felony resulted in homicide, he is responsible. The

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1 reason we discuss some other theories though is because .  
2 there's an instruction that tells you that you do not have to  
3 agree on the theory under which you find Donte Johnson guilty  
4 of murder. In other words, some of you might conclude that  
5 he's guilty under the conspiracy theory, others might conclude  
6 that he guilty under the felony murder rule, and still others  
7 might find that he's guilty under the premeditative theory.  
8 So long as each of you agrees that he's guilty under one or  
9 all of those theories, you still must find him guilty.

10 So let me discuss the remaining two theories. The  
11 first being premeditated murder and the second being felony  
12 murder. In order to convict Donte Johnson of premeditated  
13 murder you must find the existence of three elements,  
14 willfulness, deliberation and premeditation. And willfulness  
15 is simply an intent to kill. Did Donte Johnson form an intent  
16 to kill in this case? You recall the evidence, what the  
17 physical evidence suggests, that the gun placed two inches, no  
18 more than two inches from the skull of each one of these boys  
19 as he fired a fatal shot. Certainly that evidence is an  
20 intent to kill on Donte Johnson's part. Is there a  
21 deliberation? Don't be fooled by the deliberation  
22 instruction, it is simply the process of determining that he  
23 desires to kill somebody. And that there's some evidence that  
24 he considered the consequences, considered the reasons for and  
25 against killing these victims. Most importantly though the

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1 instruction tells you that -- that determination can be  
2 arrived at in a very short period of time.

3           What do we know about Donte Johnson's determination  
4 in this case? Charla Severs told us that Donte told her he  
5 decided to kill Peter Talamantez because he was Mexican and  
6 because he was talking mess, to use Charla Severs words.  
7 Based on those words, the fact that he doesn't like Mexicans  
8 anyway, according to Charla, and because Peter was talking  
9 mess, Donte Johnson was determined to kill Peter Talamantez.

10           What do we know about the other three boys he  
11 killed? The testimony was that he had to get rid of the  
12 witnesses. He was determined to kill the three remaining boys  
13 because they would have been witnesses to the murder of Peter  
14 Talamantez. That's deliberation. In fact there was some  
15 testimony that he didn't want to kill one of the victims  
16 because he cooperating. In other words, he's considering the  
17 reasons against his actions, yet he did it anyway.  
18 Deliberation.

19           MR. FIGLER: Your Honor, we'll object at this time,  
20 that's not the full law of 683] deliberation, especially after  
21 Byford, it's not the instructions that are given. I gave them  
22 the opportunity to give the entire law and that's when I made  
23 my objection.

24           THE COURT: Overruled.

25           MR. DASKAS: Finally, you must find premeditation to

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1 convict him of first degree premeditated murder. Three  
2 elements. Before I went to law school I had a preconceived  
3 notion of premeditation, that it meant that somebody had to  
4 decide they wanted to kill a particular victim, come up with a  
5 plan, determine the best way to execute the plan without  
6 getting caught, and then actually committing the act. Well,  
7 the legal definition is something entirely different. In fact  
8 it is simply a design or a determination to kill which can be  
9 formed in the mind anytime up until the time of the killing.  
10 There need not be the planning of the killing, so long as the  
11 killer decides, at some point, at the time he pulled the  
12 trigger that's he is going to kill, that's premeditation. In  
13 fact the instruction goes on, premeditation need not be for a  
14 day, an hour or even a minute, it may be as instantaneous as  
15 successive thoughts of the mind.

16 We know that Donte Johnson decided to kill Peter  
17 after he was talking mess, that's premeditation. Donte  
18 Johnson decided to kill the other three boys because they were  
19 witnesses, that's premeditation. As quickly as he placed the  
20 gun to the back of each of their heads, is as quickly as he  
21 could form premeditation. Don't be fooled by the instruction.

22 Those three elements, willfulness, deliberation and  
23 premeditation make this first degree premeditated murder. But  
24 I told you that's just one theory, one of three.

25 The felony murder rule, perhaps you've heard of it,

1 it's also an instruction you'll receive in this case. There's  
2 a kind of murder which carries with it conclusive evidence of  
3 premeditation and malice of forethought, in other words, you  
4 don't have to find the existence of the three elements we just  
5 talked about if you find felony murder. This class of murder  
6 is murder committed in the perpetration of robbery and/or  
7 kidnapping. A killing committed in the perpetration of  
8 robbery is deemed to be murder of the first degree. All you  
9 have to conclude is that these four individuals were killed  
10 during the commission of a robbery. And if you conclude that,  
11 and the evidence has established that, then you must convict  
12 Donte Johnson of first degree murder with use of a deadly  
13 weapon, times four.

14           And that answers the first question, that is, what  
15 crimes have been committed in this case. A conspiracy, a  
16 burglary, four robberies, four kidnappings and four murders,  
17 all with use of a deadly weapon. And so the only remaining  
18 question is who committed these crimes? It's certainly not my  
19 intention to recount for you every piece of evidence and  
20 testimony in this case, but what I would like to do is discuss  
21 some of the points that were established throughout the course  
22 of this trial. And ask yourself this question, to whom does  
23 all this evidence point?

24           Point number one, Deco confessed to Charla. You  
25 recall Charla Severs the defendant's ex-girlfriend, the story

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1 she conveyed. Donte's confession as he returned home that  
2 night from Terra Linda, kissed her on the cheek and told her  
3 that he's got to go to sleep after he kills somebody. If you  
4 believe Charla Severs testimony you must convict Donte  
5 Johnson. In fact, if you believe Charla Severs that in itself  
6 is proof beyond a reasonable doubt that he's guilty.

7 And so the only question is, can you believe Charla  
8 Severs? Is there other evidence, other testimony that  
9 corroborates Charla Severs?

10 She told us that Donte mentioned the first victim  
11 was Mexican, he didn't like Mexicans. And what do we see from  
12 the picture, from the last name of Peter Talamantez that  
13 indeed he's Hispanic. Her testimony is corroborated by the  
14 fact that Peter Talamantez is, in fact, Hispanic.

15 Corroborated by the print on the cigar box. Charla  
16 Severs told us that Donte smokes Black and Mild, there's a  
17 Black and Mild box at the crime scene, and lo and behold Donte  
18 Johnson's print is on the cigar box.

19 She's corroborated by the blood on Donte's pants.  
20 She told you from the stand that he wears black jeans, that he  
21 was dressed in black the night of the murders. And in fact  
22 scientific proof that the victims' blood are on Donte  
23 Johnson's pants. Corroboration of Charla Severs.

24 Matching cartridge cases. It was Charla's testimony  
25 that Donte Johnson shot each and every one of the victims in

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1 this case. And what do we know from Richard Good, the  
2 firearms expert, all four cartridge cases came from the same  
3 gun, at least a suggestion that the same person shot all four  
4 victims.

5 And finally corroborated by Tod Armstrong, Bryan  
6 Johnson and LaShawnya Wright. You've all taken copious notes  
7 throughout the trial, you can compare the stories.  
8 Inconsistencies yes, but that's human nature. They  
9 corroborate the testimony of Charla Severs. You can believe  
10 Charla Severs.

11 Point number two, Deco confessed to Tod Armstrong.  
12 If you believed Tod Armstrong that, in itself, is enough to  
13 convict Donte Johnson, it's proof beyond a reasonable doubt.  
14 And so the question is, can you believe Tod Armstrong? Was  
15 there corroboration to his testimony?

16 Tod told us that Donte told him he took the first  
17 victim into the back room and shot him. And what do we know  
18 based on the photos of the crime scene analyst that Peter  
19 Talamantez is the only one in the back dining room, kitchen  
20 area. Corroboration of Tod Armstrong's testimony.

21 We heard, again, testimony that Donte's print was on  
22 a cigar box, doesn't that corroborate Tod when Tod says Donte  
23 told him he went inside that household, and we find a  
24 fingerprint?

25 Tod told us that Donte told Tod he shot all the

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1 victims in the head. And what do we know from the crime scene  
2 photos? One gunshot wound to the head of each victim.

3 Corroboration.

4 Matching cartridge cases, suggesting that one person  
5 shot all four victims.

6 And finally the other eye -- I'm sorry, the other  
7 witnesses in this case, Charla, Bryan and LaShawnya, similar  
8 confessions by Donte to all those witnesses. Corroboration.

9 Point number three, Deco confessed to Bryan Johnson.  
10 You recall Bryan's testimony, he shows up at the Everman home  
11 the 15th for an interview. Deco is there. Deco begins to  
12 tell the story. Confesses to Bryan. Brags to Bryan. Can you  
13 believe Bryan Johnson? Because if you believe Bryan Johnson,  
14 you must convict Donte.

15 Corroborated by Pete's location in the house, again  
16 Bryan's testimony was that Donte confessed that he took the  
17 first victim into the back room and shot him. Peter  
18 Talamantez was found in the back room. Corroborated by Pete's  
19 nationality. Bryan too told us that Deco's words were the  
20 first kid he shot was Mexican.

21 Blood on Deco's pants, Bryan Johnson testified that  
22 Donte told him on August 15th he got blood on the back of his  
23 pants. You've heard from Tom Wahl, one of the crime scene  
24 analyst. You saw the photos of blood on Donte Johnson's  
25 pants. Corroboration of Bryan Johnson. Corroborated by again

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1 Charla, Tod and LaShawnya.

2 And finally by Dr. Bucklin. If you remember Bryan  
3 Johnson told us that Deco confessed to Bryan that when Peter  
4 Talamantez thought it was a joke, Peter Talamantez was kicked,  
5 was hit, was beat up as he was brought into a back room. And  
6 Dr. Bucklin, the coroner, told us there was trauma, fresh  
7 trauma to Peter Talamantez's head, as though he was hit by the  
8 butt of a gun. Corroboration of Bryan Johnson.

9 Point number four, Deco confessed to LaShawnya. Can  
10 there be anybody -- any doubt in anybody's mind that LaShawnya  
11 Wright was telling the truth. You saw her emotions from the  
12 witness stand. You heard about the feelings she has for Donte  
13 Johnson, how she doesn't want to get him in trouble. And you  
14 watched as she struggled to tell you the confession that Donte  
15 gave to her. Can you believe LaShawnya Wright?

16 LaShawnya told us that Saturday, the 15th of August,  
17 she walked by a newspaper stand with Donte Johnson and Tiny  
18 Bug, Sikia Smith, that they saw an article about the quadruple  
19 slaying. And you recall Donte's words, "look, we" -- "we made  
20 the front page", referring to himself and others. "We made  
21 the front page." Well, that's important because if you look  
22 at that newspaper article, there are no suspects named, there  
23 had been no defendants arrested, nobody knew who committed  
24 this crime as of August 15th, 1998, yet Donte Johnson says to  
25 LaShawnya, "look, we made the front page". Corroboration of

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1 LaShawnya.

2 Corroborated by the enforcer rifle, the duffel bag  
3 and the tape. LaShawnya Wright saw the bag that contained the  
4 weapons, before Donte left with Tiny Bug and Terrell. And  
5 you'll see the photos, and you can handle those items, they're  
6 in evidence.

7 Corroborated by the VCR that holds Sikia Smith's,  
8 Tiny Bug's palm print. LaShawnya told you that when Tiny Bug  
9 came home the next day, some fourteen hours after leaving with  
10 Donte and Terrell, he carried a VCR into the apartment. And  
11 you heard from Ed Guenther that the VCR contained Sikia  
12 Smith's palm print. Corroboration of LaShawnya Wright. And  
13 finally corroboration by the other witnesses who testified in  
14 this case.

15 Point number five, Tracey's blood on Donte Johnson's  
16 pants. We know those pants were found in a room where Donte  
17 Johnson kept his personal belongings. The witnesses told us  
18 that they've seen Donte Johnson wear black jeans. And you  
19 heard from Thomas Wahl, there was a semen stain on the zipper  
20 area of those pants. Absolute identification of Donte Johnson  
21 being the donor of the semen on those black jeans.

22 Mr. Sciscento said something interesting in his  
23 opening statement, he said somebody else deposited Donte  
24 Johnson's semen on Donte's black jeans. You've heard no  
25 evidence to suggest that. In fact, I would encourage you to

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1 read the instruction on reasonable doubt, because it says that  
2 doubt to be reasonable must be actual, not mere speculation.  
3 It is sheer speculation to suggest that somebody --

4 MR. FIGLER: Your Honor, I'm going to object at this  
5 point, neither side can ask the jury to speculate as to  
6 anything, and this entire process is then asking to draw  
7 inferences, any kind of inference can be drawn, and there's no  
8 burden of proof on the defense.

9 THE COURT: Of course there's no burden of proof on  
10 the defense, but I don't understand quite what you're saying  
11 in terms of the objection. Overruled.

12 MR. DASKAS: It is speculation to suggest that some  
13 other unknown person deposited Donte Johnson's semen on his  
14 black jeans. Scientific evidence now corroborates Charla,  
15 Tod, Bryan and LaShawnya. When those witnesses told you that  
16 Donte wears black pants, when Bryan Johnson told you that  
17 Donte told him he got blood on the back of his pants, there's  
18 corroboration. Scientific proof that those witnesses are  
19 telling the truth. You can believe the witnesses in this  
20 case.

21 Point number six, Deco's DNA at the murder scene.  
22 Do you recall the evidence about the cigarette butts that were  
23 impounded from the crime scene, twelve cigarette butts, sent  
24 to be analyzed. Saliva on a cigarette butt, Donte Johnson's  
25 saliva, scientific proof that Donte Johnson was at the crime

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1 scene. More importantly scientific evidence that corroborates  
2 the witnesses in this case, all of whom said Donte Johnson  
3 confessed that he was at that household, and now we have  
4 scientific proof.

5 Mr. Sciscento asked some questions of Tom Wahl. Tom  
6 Wahl testified that there was major component and a minor  
7 component on the cigarette butt, that the major component, the  
8 source of the major component was Donte Johnson. And Tom Wahl  
9 couldn't exclude some of the victims as the source of the  
10 minor component. And Mr. Sciscento asked him how is that  
11 possible? It is one possibility that somebody might have had  
12 dried lips when he took a drag on that cigarette.

13 What happens when people get nervous and scared?  
14 Do they get cottonmouth? Did Donte Johnson allow the victim  
15 to take one last drag before he put a bullet in the back of  
16 his --

17 MR. FIGLER: Your Honor, this is my objection with  
18 speculation. They can't do it, we can't do it, no one can do  
19 it.

20 THE COURT: Overruled.

21 MR. DASKAS: Did Donte Johnson allow the victim to  
22 take one last drag of that cigarette before he put a bullet in  
23 the back of his head? Is that why there's two sources of DNA  
24 on that cigarette? We know Donte Johnson smoked the  
25 cigarette, we know Donte Johnson was at that crime scene.

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1 Point number seven, Donte's fingerprint at the crime  
2 scene. We've alluded to this, the Black and Mild cigar box.  
3 Charla told us, Bryan told us that Donte smokes Black and  
4 Milds. 100 percent positive that is Donte Johnson's  
5 fingerprint. Corroboration, scientific evidence that the  
6 witnesses who testified are telling the truth.

7 Point number eight, Matt's VCR at Donte's house.  
8 The VCR was found at the Everman home shortly after Donte was  
9 arrested. The VCR didn't appear there until August 14th,  
10 1998, the morning following the murders. And what do we know  
11 about that VCR? The remote control that is kept by Matt's  
12 father turned on that VCR, proof that that is Matt's VCR in  
13 the defendant's home. And we know that Donte's co-  
14 conspirator, Sikia Smith, held that VCR, you recall the  
15 testimony again of Ed Guenther. And we also have  
16 corroboration of LaShawnya's testimony, she told us that Sikia  
17 bought -- I'm sorry, Sikia sold the VCR to Donte for twenty  
18 dollars (\$20). We know Sikia's palm print is on there, we  
19 know the VCR turned up at Donte's home. Scientific evidence  
20 that corroborates LaShawnya Wright.

21 Point number nine, Pete's pager at Donte's house.  
22 Pager found buried in the backyard of the Everman home where  
23 Donte Johnson stayed. You heard the stipulation that that  
24 Peter [sic], in fact, belonged to Peter Talamantez.  
25 Corroboration of all the witnesses in this case when they told

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1 you Donte confessed to committing these crimes, to killing  
2 Peter Talamantez because he doesn't like Mexicans. Scientific  
3 corroboration. Physical corroboration when the pager is  
4 buried in the defendant's backyard.

5 Point number nine, gun in Deco's car. You saw the  
6 enforcer rifle that Sergeant Honea impounded after he stopped  
7 Donte and Terrell just three days after the quadruple murders.  
8 Charla, Tod and LaShawnya all identified that gun as a gun  
9 that was commonly kept in the tote bag, and we know that the  
10 tote bag left the Everman home shortly before Donte committed  
11 the crimes. Corroboration.

12 Point number nine, gun in Deco's room. When  
13 Sergeant Hefner searched the Everman home after arresting  
14 Donte Johnson he found the collapsible Ruger rifle that  
15 everybody described in this case. Just three days after the  
16 murder it's recovered. And Charla and Tod described that gun  
17 as the gun that was commonly kept in the tote bag, and the  
18 tote bag left the Everman home the night that Donte Johnson  
19 killed these boys.

20 Point number twelve, duct tape in Deco's room. All  
21 four victims in this case restrained with duct tape. You saw  
22 the photographs. And isn't it interesting that there's a  
23 partial roll of duct tape recovered from the room where Donte  
24 Johnson's stays, sitting in the duffel bag that everybody  
25 testified about in this case. And doesn't that evidence

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1 corroborate the testimony you heard from the witness stand,  
2 the witnesses who said Donte told them about the victims being  
3 taped up with duct tape.

4 Twelve points, if you will, that establish Donte  
5 Johnson's guilt.

6 Now, I suppose it's possible we can take each one of  
7 these points and explain it away. I guess Charla Severs is  
8 lying, perhaps Tod Armstrong is lying, Bryan Johnson he must  
9 be lying too.

10 MR. FIGLER: Your Honor, they objected during the  
11 course as to that terminology, we would have to object at this  
12 time for that as well.

13 THE COURT: I think he's saying in terms of argument  
14 what might be anticipated, as such it's overruled.

15 MR. DASKAS: And if Donte Johnson is not guilty then  
16 LaShawnya Wright must be lying too. So Charla is lying, Tod  
17 is lying, Bryan is lying and LaShawnya Wright is lying. And  
18 apparently somehow the victims' blood just turned up on Donte  
19 Johnson's pants. Somebody -- the true killer apparently wore  
20 Donte Johnson's pants to the crime scene and then returned  
21 those pants to Donte Johnson's bedroom before the police  
22 showed up. And let's not forget that somebody must have  
23 deposited Donte Johnson's semen on his own pants.

24 Deco's DNA at the murder scene. Apparently  
25 somebody, for Donte Johnson to be found not guilty, took a

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1 cigarette butt that Donte Johnson had smoked and placed it at  
2 the crime scene. Unlucky for Donte Johnson.

3           Deco's fingerprint at the murder scene. For Donte  
4 Johnson to be found not guilty you must conclude that somebody  
5 took the cigar box holding his fingerprint, and they planted  
6 it at the crime scene. Unlucky Donte Johnson.

7           Matt's VCR at Deco's house. For Donte Johnson to be  
8 found not guilty, apparently somebody took Matt's VCR from the  
9 Everman home -- from the Terra Linda and placed it in the home  
10 where Donte Johnson stayed. Is that reasonable to believe?

11           Peter's pager at Deco's house. For Donte Johnson to  
12 be found not guilty you must conclude, speculate that somebody  
13 else buried the pager in Donte's backyard, along with all  
14 these other speculations you must conclude.

15           The Ruger in Deco's room. Isn't it interesting that  
16 all these witnesses described the guns that Donte had  
17 possession of, and sure enough we find the Ruger rifle in his  
18 -- in his room. I guess somebody planted that. The Enforcer  
19 rifle in Donte's car, you heard the testimony about the fact  
20 that that gun was kept in the duffel bag, the duffel bag left  
21 the night of the murders, and it just happened to be found in  
22 his room -- in his car rather, three nights after the  
23 homicides.

24           And the duct tape in Deco's room. Apparently the  
25 true killer, for you to find Donte Johnson not guilty, placed

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1 a partial roll of duct tape in Donte Johnson's room before the  
2 police showed up.

3 I suppose it's possible to explain away each of  
4 these points, but the thing about reasonable doubt is, it must  
5 be reasonable. And is it reasonable to conclude that all  
6 these witnesses are lying, that the evidence was planted, that  
7 the guns were planted in his car. Is it reasonable to  
8 conclude that Donte Johnson is not guilty?

9 This evidence does not point to Ace Hart, and the  
10 evidence does not point to Bryan Johnson as having committed  
11 these crimes, and no, the evidence does not even point to Tod  
12 Armstrong in this case. The evidence points to one person and  
13 only one person, Donte Johnson. And you must find him guilty  
14 of all the crimes with which he's charged, including four  
15 counts of first degree murder with use of a deadly weapon.

16 Thank you.

17 THE COURT: Thank you.

18 Would counsel approach the bench please.

19 MR. FIGLER: Can we pull the screen down?

20 THE COURT: Why don't we do it in the order -- this  
21 order that I'm going to suggest.

22 MR. FIGLER: Note for the record, it's still up.

23 (Off-record bench conference)

24 THE COURT: Okay. Take the screens out and turn  
25 them off please.

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1 By the way, because you're going to be here about  
2 another hour before we take the break, Mr. Figler did object  
3 at some point to excerpts from instructions, just so that it's  
4 clear to you, of course Mr. Daskas was taking parts of these  
5 instructions in making his argument and focusing on certain  
6 parts of them, they were not the entire instructions in many  
7 cases, and the entire instructions are in this package and  
8 will be given to you.

9 We're just going to wait a few minutes while they  
10 take these out, because neither Mr. Sciscento nor Mr. Guymon  
11 are going to be using them. And they've estimated that it's  
12 going to take about, between the two of them somewhere around  
13 an hour. Are there any of you, and it really only takes one  
14 or two votes, who would like to take a little break before  
15 hearing another hour? Okay. Let's do that.

16 During this recess your admonished not to talk or  
17 converse among yourselves or anyone else on any subject  
18 connected with this trial; read, watch or listen to any report  
19 of or commentary on the trial, or any person connected with it  
20 by any medium of information including, without limitation,  
21 newspaper, television or radio; or to form or express any  
22 opinion on any subject connected with the trial until it's  
23 finally submitted to you.

24 We'll be in recess until 4:15. Thank you.

25 Let's remain in session briefly outside their

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1 presence.

2 (Jury recessed)

3 THE COURT: Okay. Two matters, Mr. Figler  
4 approached in the presence of the District Attorney just  
5 before argument and asked that there be a general objection to  
6 aspects of the bells and whistles, the use of the screens and  
7 the laser devices, in terms specifically of what, Dayvid?

8 MR. FIGLER: Your Honor, with regard to this new  
9 technological component that probably wasn't contemplated by  
10 the Legislature in providing their rules of evidence. With  
11 regard to the size of the screen, noted that the prosecutor  
12 had previously said that each screen was 42 inches, should  
13 note for the record that there were two screens positioned so  
14 that jury, even if they wanted to, pretty much couldn't avoid  
15 the sight of the images that were being projected by the  
16 prosecutors from the two 42 inch screens that were  
17 approximately one -- one and a half, two feet away from the --  
18 where the jury was sitting. A very large monolithic objects.  
19 On those objects various pictures were shown.

20 THE COURT: You compare these to like 2001 is that  
21 the reference?

22 MR. FIGLER: That would be correct, Your Honor.

23 THE COURT: You realize of course that these  
24 screens, and I'm not kidding about it, presents the circle of  
25 guilt about half the size that the District Attorney used to

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1 present the circle of guilt when they just drew it the old  
2 fashioned way.

3 MR. FIGLER: Certainly. Well, with the colors and  
4 the way that the visuals work, and the way that the technology  
5 operates, I think it's even more impactful that way. But  
6 what's more concerning to us, and I made some notes, were  
7 regard to the pictures. The pictures of the decedents in this  
8 case repeatedly being shown four times, blown up to the 42  
9 inch size. The pictures in comparison with the pictures of  
10 the defendant and the co-defendants in this case, it was the  
11 same objection that we made during the opening, regard to the  
12 certain type of picture with the decedents, and then the  
13 mugshots of the three black individuals in this particular  
14 case. And the absence of any photograph of Tod Armstrong or  
15 anything like that being in there.

16 Donte's picture was also made larger than the other  
17 ones, framed in a heavy red border. And so basically the  
18 argument is that by making these pictures in such a fashion,  
19 what it does is it inflames the passions of the jury, which  
20 certainly is in contravention of the rules, no matter what  
21 time it comes in, whether it be during the opening, the  
22 presentation of evidence or the closing. But the enlarged  
23 pictures of the -- of the young men, who -- of the unfortunate  
24 victims in this case, with the words printed above it on both  
25 screens. And then the juxtaposition with that of the fade in

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1 to the pictures of these young men dead. And then the  
2 pictures of these very harsh looking black individuals, all is  
3 appealing to the passions and prejudices of the jury.

4 To that end, Your Honor, I would ask that whatever  
5 the program that was utilized by the prosecutors in this  
6 particular case be saved onto a floppy disk, or whatever kind  
7 of CD rom technology they have, so that it may be made part of  
8 this record, so that if any reviewing authority allows, in the  
9 event of a conviction in this particular case, the ability to  
10 fully review exactly what it is that I'm referring to, because  
11 I think it can be saved.

12 The second --

13 THE COURT: If it can be saved, by the way, I think  
14 that's a perfectly legitimate request. Anything else briefly,  
15 Dayvid, on this point?

16 MR. FIGLER: Not on this point, other than the fact  
17 that during the course of the closing argument, to our  
18 surprise the State, approximately fifteen to twenty times  
19 called this Deco's room, Deco's house, Deco's yard, in fact it  
20 even shows up in the text on the various exhibits, so what we  
21 would do at this time is make motion for mistrial, or in the  
22 alternative, a motion for a new trial, based on our previous  
23 motion to suppress the evidence. It was presented by the  
24 State at that time that this was not Donte's house, that this  
25 was not Donte's room, that this was not anything that Donte

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1 had a legitimate interest in.

2 THE COURT: Just for the sake of the record would  
3 you like to address that specific point, Mr. Daskas?

4 MR. DASKAS: Judge, when we allude to this as either  
5 Donte's home or Donte's room it's for simplicity sake. It's  
6 not our suggestion that he own the house, that's clear, we  
7 elicited testimony that it's Tod Armstrong's mother home --  
8 mother's home. That Donte simply had his personal belongings  
9 in the master room, that when he stayed in the home that's  
10 where he stayed, and he had belongings in that room and the  
11 living room, and that also was borne out through testimony in  
12 this case.

13 It's difficult to argue to a jury each time that the  
14 room where Donte stayed, or the room where Donte kept his  
15 belongings, and so we referred to it on occasion as Donte's  
16 room. It's not an inconsistent position, in fact I think this  
17 Court's ruling was that Donte wasn't a co-tenant of that home,  
18 and that's not inconsistent with our position.

19 THE COURT: And that was my ruling, and the record  
20 is whatever it is on that, and the motion is denied.

21 MR. DASKAS: Judge, can I make one other point --

22 THE COURT: Yeah.

23 MR. DASKAS: -- with respect to the display in  
24 closing argument. Nothing was displayed that was not an  
25 exhibit admitted in this trial.

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1 THE COURT: Yeah, I'll --

2 MR. FIGLER: It's the manner, which is our  
3 objection, Your Honor, that is correct. We'll concede that.

4 THE COURT: Yeah, and I'll note as I said --

5 MR. FIGLER: With the exception to the text that was  
6 added.

7 THE COURT: Yeah. And my -- my own personal  
8 observation for the record is, I mean, maybe I'm just an old  
9 fashion guy, I think that these things are less effective than  
10 the old fashion way. I don't see anything inflaming about  
11 them, even at these size, they're not the size of the formerly  
12 living four young men there. I don't see anything in these,  
13 whatsoever, that is any worse than the old fashion way of just  
14 standing in front of the jury and arguing with the exhibits  
15 that are admitted. And I tell you that honestly, Dayvid, I  
16 really don't.

17 The only other housekeeping thing is, Instruction 5B  
18 I don't think we made a record of, Mr. Figler, which is if the  
19 evidence in this case is subject to two constructions of  
20 interpretation, I think we discussed it off the record. In  
21 terms of the appellate record, this was specifically requested  
22 by you, and it was at that point that I added it to the  
23 package, right? It's Instruction 5B.

24 MR. FIGLER: Well, if you like to single me out, it  
25 was by the defense, Your Honor.

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1 THE COURT: Okay. You and Mr. Sciscento, in  
2 conjunction, suggested that, and that's why I agreed to give  
3 it, right?

4 MR. SCISCENTO: Yes, Your Honor.

5 THE COURT: Thank you.

6 What time did I tell them, 3:15 -- 4:15?

7 THE CLERK: Yes, sir, 4:15.

8 MR. FIGLER: There was a typo on there, Your Honor,  
9 I noted, I don't know if you want to just fix that.

10 THE COURT: In the second line?

11 MR. FIGLER: Yeah, on 5B.

12 THE COURT: Where that little --

13 MR. FIGLER: Two instead of T, or T instead of two.

14 THE COURT: You mean where that little round zero  
15 now is, or O now is? Right there?

16 MR. FIGLER: That's fine, Your Honor, thank you.

17 THE COURT: Okay. Thank you so much.

18 (Court recessed at 4:10 p.m., until 4:20 p.m.)

19 (Jury is present)

20 THE COURT: Mr. Sciscento, whenever you're ready.  
21 Whenever I guess Gary is through too.

22 DEFENDANT'S CLOSING ARGUMENT

23 MR. SCISCENTO: May it please this Court, opposing  
24 counsel.

25 You know I'm never sure what evidence is going to

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1 come out during a trial. And I'm still not sure what evidence  
2 came out in this trial. There was a lot of conflicting  
3 stories. There was a lot of statements by some people about  
4 the time, who was there, who was not there. There was a lot  
5 of arguments that the District Attorney made, there's a lot of  
6 arguments made by everybody. But there's one thing that I  
7 want you to remember is this, the one thing I'm going to tell  
8 you, the most important thing I think, is if you believe  
9 Charla Severs and the story that she said, if you believe her,  
10 then Tod Armstrong should be sitting in that chair.

11 Remember the -- in the very beginning when did the  
12 picking of the jury, where we kept describing on the 7-Eleven  
13 incident, and it was mentioned again in closing, saying if you  
14 wanted somebody to go in and rob a 7-Eleven and you drove them  
15 there and you waited, and then they came back out and somebody  
16 was killed inside, well you're responsible. Charla Severs  
17 said specifically that Tod Armstrong expected cocaine and  
18 mentioned money, and talked about the ten thousand dollars  
19 (\$10,000).

20 Now, the problem that I have with that is Charla  
21 Severs wants -- the State wants you to believe what she said  
22 on that stand, but when we asked Detective Buczek, what about  
23 somebody else who says they were there expecting some benefit  
24 from that, would you charge him with robbery? Oh, yes. With  
25 the murder? Oh, yes. I'd charge him with that. I'd be the

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1 first through his door in Hawaii to charge him with it. They  
2 themselves cannot believe Charla Severs because her testimony  
3 alone would have put Tod Armstrong away, that was the other  
4 evidence that Buczek needed. So they're telling you that  
5 Charla Severs is not believable, because if she was Tod  
6 Armstrong would be up there. I'm not throwing guilt anywhere  
7 else, I'm asking you to follow the conclusions here.

8           If she's up there saying he, Tod Armstrong, expected  
9 drugs, and if the scenario is correct that you expect  
10 something and a murder happens you're reliable -- you're  
11 liable for that murder, it's got to flow. So who do we  
12 believe? Do we believe Charla and therefore Tod's a suspect,  
13 so therefore there's his motivation?

14           Charla Severs I told you was gonna be weird. The  
15 weirdest thing I ever heard is the fact that Jacquinia  
16 [phonetic], some baby that she sent a picture of to John White  
17 saying this is your child. She took a picture of a baby she  
18 was -- she was baby sitting. I mean and then sent it over  
19 there, gave it a birthday, May 9th, 1999 -- or 1998. She gave  
20 a birthday to a baby she wasn't -- it wasn't even hers. Said  
21 it was mine, and it's yours and we have a kid. And then she  
22 gets on there, oh, no, that's -- that's not true. I just made  
23 that up. How sick is that? But we've got to believe her.  
24 That's wild.

25           She's the one that said Tod wanted the drugs. She

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1 gave how many different stories? Five different stories. We  
2 got it out of her, five different stories she told.

3           Very important, each story didn't quite fit, when  
4 she finally made up her mind to work with the D.A., each story  
5 didn't fit. She forgot about the pants, and so they had to  
6 tweak it a little more. Who told you about the black pants?  
7 Remember I asked her that. The District Attorney. Who told  
8 you about the blood on the pants? Remember I asked her that.  
9 It's in the transcripts, the District Attorney. They tweaked  
10 it and tweaked it until they finally got the story out that  
11 they wanted. And when did she finally give that story, after  
12 she was placed in handcuffs. After she was returned from New  
13 York she finally gave the story that they wanted to hear.  
14 After they placed her in custody, promised her freedom to let  
15 her go see her child, after all that, then she gives the  
16 complete story.

17           Tod Armstrong, he's probably back in Hawaii right  
18 now. Incidentally, what did Charla Severs do after the murders?  
19 She went to New York. What did Tod Armstrong do after the  
20 murders? He went to Hawaii. Ace Hart left town too.  
21 Armstrong, I'm testifying here today because it's the right  
22 thing to do. It's a morally right thing to do two years  
23 later. Four days he waited. Four days he waited before he  
24 did the morally right thing. He did the morally right thing  
25 because his best friend Bryan Johnson was getting ready to go

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1 to jail. Four days later, after three of them talked about  
2 this, then he says let's tell the police while they're getting  
3 close to Bryan Johnson, while the police were there on a  
4 domestic violence cause -- call.

5 Charla Severs, if you believe her again then we got  
6 to believe Tod, that he said -- she said he wanted to do a  
7 lick with Ace. Well, a lick we've understood means robberies.  
8 Robbing for drugs. Tod says, ah, I didn't do any drugs. I  
9 stopped doing drugs. Charla said he did them almost every  
10 day. Four or five times a day from morning to night, crack  
11 cocaine. He stayed up all night long. Well, that's  
12 contradiction. Charla says he doesn't do it, he says she does  
13 it. He says he doesn't do it. It's a total contradiction of  
14 what's happened. The stories up there are not meshing,  
15 they're not coming together.

16 Tod Armstrong is the best friend of Ace Hart, we  
17 talked about that, and B.J. The three of them together, after  
18 the murders, got on their nice clothes and drove out to  
19 Stallion Mountain Golf Course, ah, but we never talked about  
20 the murders. Four people were just murdered, you're saying  
21 the people that did it are living with you and you're not  
22 gonna talk about this. And four days later you're gonna  
23 finally make a decision.

24 Who told Sergeant Hefner where that beeper was? Tod  
25 Armstrong, B.J. and Ace Hart. They told Sergeant Hefner that

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1 information. And when he showed it to him he said, yeah,  
2 that's one of Matt -- that's Matt Mowen's. He was wrong about  
3 that, but he was right about where it was at.

4 And the keys to the Thunderbird Motel that were  
5 found in Tod Armstrong's, at his house, in his backyard,  
6 buried. The Thunderbird Motel keys. Who are the keys rented  
7 to? They fit -- they fit a hotel room with Ace Hart who  
8 rented that room. Ace Hart who knows everybody, where is he?  
9 He knows everybody.

10 LaShawnya Wright who said that she was closer to Ace  
11 than she was to Deco, as she called him. I love Deco. I  
12 didn't quite understand half of what she said. She said I  
13 love Deco, I don't want to be up here. But you're closer to  
14 Ace Hart than you are to Deco? Yes. And you don't want to be  
15 here today? No.

16 When's the first time, out of curiosity, that you  
17 spoke to the District Attorney regarding this case? That  
18 would be when I was in custody like the rest of the people.  
19 When I was in custody. So you want to be released? Oh, yes.  
20 You have a probation violation. She has a felony. And I  
21 asked her about the probation violation. She said, yes, I can  
22 go back to prison. They're continuing that. Mr. Guymon  
23 called so that she could testify here. I'm not casting any  
24 dispersions on Mr. Guymon, but I'm saying the motivation to  
25 lie is freedom.

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1           If I put somebody up here, if I put a witness up  
2 here and I handed them a couple bucks, one hundred, two  
3 hundred, three hundred dollars, and I said now tell your story  
4 but tell the truth, you'd question that wouldn't you? I'm  
5 giving the guy money to testify. Well, compensation comes in  
6 many forms. Be it drugs, sex or freedom. Doesn't have to be  
7 just money. And the freedom to be out of prison would be  
8 enough to say anything, and it wouldn't be the first time that  
9 it happened, it won't be the last.

10           Ace Hart was doing crack every day. Was supposed to  
11 do a lick with Armstrong.

12           LaShawnya Wright sat up here quivering, crying,  
13 yeah, she was upset. It's up to you to decide why she was  
14 upset. I mean was she upset because she was telling on her  
15 best friend? I don't know. Maybe she didn't want to be here  
16 because she didn't want to do what she had to do. I don't  
17 know. To get her freedom to take care of her three kids. The  
18 three kids who she wasn't sure if Sikia was the father of --  
19 my daddy is watching them -- my baby's daddy is watching the  
20 kids. Well, who could that be? Well Sikia may be the baby's  
21 daddy, but Sikia is not there watching them. It's a different  
22 lifestyle there.

23           She was the girlfriend of Sikia Smith. She says  
24 that VCR, that damaging evidence that was found at Tod  
25 Armstrong's house was purchased for twenty dollars (\$20)

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1 through John White. Well, if he stole it why would he have to  
2 buy it from somebody. That doesn't make any sense.

3           Who had that .38 she talked about, it's a .380 or  
4 .38 that somebody sold? Sikia Smith. It's all around him,  
5 but not on him. Sikia got rid of the .38, sold it the next  
6 day, did something else. I don't quite understand the time  
7 frame, because the times don't mix. Charla says they come  
8 back and they leave at a different time, she says that they  
9 are at Fremont Street, but they're not. None of the times mix  
10 together to place John White at that house on that day.

11           Bryan Johnson smoked crack every day. He testified  
12 to that. That came out. Charla Severs said he was the worst.  
13 He's best friends with Tod and Ace. Again, he waited four  
14 days. Police came on a domestic violence call. They came out  
15 there because he was in a heated argument of such magnitude  
16 with his mother that the police had to come out there. And  
17 after four days of this moral dilemma of what do we do, he  
18 then says the police are here for me, maybe I should talk to  
19 them and tell them. Four days he waited. Four days.

20           The other weird thing he says, and this is the part  
21 that, again, when all the evidence doesn't match. He says,  
22 oh, Deco says there's blood on the back of the pants, I did  
23 this lick and there's blood on the back of the pants, I left  
24 it there. Well, then Severs says, well, he forgot about the  
25 blood on the back of the pants otherwise I would have washed

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1 it. For four days, five days, they were supposedly sitting  
2 there, and he forgot about it. But then he tells Bryan  
3 Johnson, oh, he talked about it. Well it doesn't make any  
4 sense. He either forgot about it, or he talked about it. But  
5 does he do both? Charla says, oh, I woulda washed the jeans  
6 for him, I loved him that much. Nothing's meshing here.  
7 There's problems with the whole case.

8           The fingerprints. I talked about the Black and  
9 Milds, and I told you before Charla Severs is going to say  
10 that the Black and Milds were used by Donte sometimes when he  
11 sold drugs. He's no angel. John White over there is no angel  
12 and I'm not going to put halos on him, and wings. He's a  
13 crack dealer, I'll give you that. He sold crack. Probably  
14 why it's easy to do everything and look at him and say he's a  
15 bad guy. But he sold drugs, and Charla Severs said this, 30  
16 percent of the times in the Black and Milds. She saw him give  
17 the Black and Milds away to somebody, the box itself, with  
18 crack cocaine in there.

19           How long do fingerprints last? Indefinitely.  
20 There's no set time. It could be there for hours, it could be  
21 there for days, it could be there for years. Their expert,  
22 Mr. Guenther, specifically said that. It's transitory, we've  
23 seen it numerous times. Mr. Figler picked up the cup and said  
24 if it was transitory, if I touch it here, and somebody else  
25 grabbed it and moved it somewhere else, doesn't mean I was in

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1 that room does it? No. No. And that's what they've got to  
2 place him there is this Black and Mild which we know was used  
3 to deliver drugs. It's been done before. And one  
4 fingerprint, we know he sold drugs to Matt Mowen. Is that it?

5 Black jeans. Now I am going to say, we maybe  
6 listened to two separate trials, but I specifically asked Mr.  
7 Wahl, could that have been deposited by somebody else? Yes,  
8 it looked like the main deposit with DNA was from a female.  
9 We went through this whole thing, I asked him about the  
10 acetone phosphate, and if it's in the vaginal vault if it  
11 loses the acetate phosphate, which means it diminishes it so  
12 you won't detect it right away? Yes. And if it gets out on  
13 the air it's 50 percent drier, you lose it. And I said there  
14 was significant amount of epithelium? Yes. And we determined  
15 that was female? Yes. And that could have deposited it  
16 there. Now I did not say that somebody walked over and  
17 grabbed his semen and put it in her and then deposited that on  
18 there. I'm not saying that. What I'm saying is, and Mr. Wahl  
19 agreed, that that was transitory. It could have been placed  
20 there by another person who was carrying the semen at the  
21 time, which fits nicely in the fact that it could have been  
22 Charla Severs. She admitted fooling around with him on those  
23 jeans.

24 Those black jeans -- we know -- then I asked Mr.  
25 Wahl, did you do an examination of the front to look at that

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1 blood. There was no blood on the front.

2 Now, Dr. Bucklin, you get him -- he finally says one  
3 to two inches away. One to two inches away was that bullet,  
4 was that barrel of that gun. One to two inches away. So he  
5 leaned down here, yeah, I -- maybe he was standing up, maybe  
6 he was sitting down, but one to two inches away. There's got  
7 to be some reaction, because there's no other hole, anything  
8 to come out of, but to shoot back out. If any blood is coming  
9 out, any tissue, anything, any matter, it's coming out back at  
10 him. Two inches away -- one to two inches away, puts him  
11 close enough there should be something on the front. But  
12 there's not, and it doesn't match. Everything they find is on  
13 the back. Doesn't say it spatter or splatter. If he gets  
14 blood on the back he wasn't the shooter, but that doesn't fit  
15 the theory of what they're saying. There's nothing on the  
16 front to show that he actually did the shooting, so therefore  
17 it doesn't -- it doesn't fit their theory.

18 You know, they can sit here and they can wave these  
19 guns at you with the pointer and they will. They'll stand up  
20 here and they'll show you these guns, and they'll say look how  
21 bad these people are because of the guns that they have. Look  
22 how bad they are. They're going to show you those guns. Is  
23 there anybody who ever got there and said on the night of the  
24 murders we saw John White in possession of those guns?

25 An officer, Trooper Honea, got up and said I pulled

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1 'em over, John White came back, which he called Donte Fletch,  
2 came back to the car, was very cooperative, didn't have a gun,  
3 his passenger Red got out, and Red had the gun. Red pulled  
4 the gun out. The officer said drop it, that's when Donte ran.  
5 It was Red with the gun.

6 Now everybody talks about Red having these guns.  
7 Was there any information that these were ever used in  
8 anything? Was there anybody who got up there and said -- they  
9 got to allude to it, it's a duffel bag, it's very important we  
10 keep talking about that duffel bag, but we didn't see what was  
11 inside of it that night.

12 The duct tape, I almost forgot about that. Charla  
13 Severs, if you believe her, she says I got there, I moved into  
14 the Everman house, a couple days later I saw the duct tape.  
15 Where? In the living room on the coffee table, or under the  
16 coffee table. Remember she said that. Under the coffee table  
17 was the duct tape. But they've got to put it into that box,  
18 in that bag. And they got to put the guns in the bag, and  
19 they got to make it heavy that night, but they cannot say that  
20 these guns, which they're going to hold up and show you that  
21 these guns, which I can't play with anymore, were there that  
22 night.

23 Thunderbird Motel key found buried at Tod  
24 Armstrong's house. Whose was it? Ace Hart. The pager.  
25 Armstrong knew everything about it.

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1           Now, we have been here for four days now, and we've  
2 talked about this case, and you've heard evidence and cross-  
3 examination. And at this point, closing arguments, this is  
4 where I end it, I have nothing more. I will sit over there  
5 while Mr. Guymon, who is a seasoned prosecutor will get up  
6 there and testify -- or I'm sorry, will get up here and give  
7 the closing argument. He knows a lot about this, he's done a  
8 lot of trials. He knows one thing too, emotions are very  
9 powerful. He's going to want to grip you with that emotion.  
10 He's going to want to close your eyes to reality, and he's  
11 going to want you to be angry. He may show you the autopsy  
12 pictures, and that should upset you. Because he'll want you  
13 to stare at them and get angry and close the reality, and  
14 close your mind to nothing but anger. He may do that, I don't  
15 know. He may sit there and tell you about these kids and how  
16 wonderful they are, and I'm not taking that away from them. I  
17 do not know them, and I do not cast any dispersions on them.  
18 What I'm saying is, this is not the forum for emotions.

19           There are instructions that you're going to be  
20 getting, and one of them is number 50:

21           "Although you are to consider only the evidence in  
22 the case in reaching a verdict, you must bring to  
23 the consideration of your evidence -- of the  
24 evidence of everyday common sense and judgment as  
25 reasonable men and women. Thus you are not solely

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1 -- limited solely to what you see and hear as the  
2 witnesses testify, you may draw reasonable  
3 inferences from the evidence which you feel are  
4 justified in light of common experience, keep it in  
5 mind that such inferences should not be based on  
6 speculation or guess.

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

11 Don't fall into the hype, the anger. Whichever way  
12 your decision is made, whatever you base on the evidence.

13 Instruction Number 48:

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

21 "If you believe that a witness had lied about any  
22 material fact in the case, you may disregard the  
23 entire testimony of that witness or any portion of  
24 his testimony which is not proved by other evidence.  
25 We've got a lot of problems here. They have a lot

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1 of witnesses with motivations, and they just don't tell the  
2 same stories. Their times are off, their identifications are  
3 off, their information is off.

4           Instruction -- I could go on and keep reading on  
5 these instructions, you will get them. I ask you to review  
6 them before you make the decision. When you go back there  
7 hold onto your beliefs, the presumption of innocence. Review  
8 all the evidence, that's all I'm asking. No emotions. Hold  
9 onto that belief. That's what being a juror is about. It's  
10 about being able to look at all this evidence without the  
11 anger or emotions. Bring in your common knowledge, every day  
12 experience and review it, and after you review it, then you  
13 make your decision. If one of you feels different than the  
14 others, it's your duty, your obligation to stand up there and  
15 say no. It's your duty to go against the tide if you believe  
16 in it. Please, this may be the only chance you ever get to  
17 sit in judgment, hold back, follow through, don't rush to  
18 judgment on anything, and review everything. If you need a  
19 read back, I don't care if it's time consuming, do it.  
20 Because if you can walk out of here with your decision, with  
21 your head held up high, you've done your job. Hopefully I've  
22 done my job to show you the problems of this case.

23           How easy it is to turn to Mr. White and say he's  
24 just another crack seller, let's get rid of him. It's easy.  
25 A crackhead sitting up here, as Charla Severs says,

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1 testifying, who cares. When I sit down it's the last you're  
2 gonna hear on the guilt of Mr. White from me.

3 Mr. Guymon is going to get up and testify, he's  
4 going to give his closing argument, and I ask one thing,  
5 please, as I would argue against the evidence, he will argue  
6 for, and he's already writing down what he's going to say  
7 against me, please question it, question it all. Only then  
8 can you be free [sic].

9 Thank you.

10 THE COURT: Thank you.

11 Mr. Guymon, when you're ready.

12 PLAINTIFF'S REBUTTAL ARGUMENT

13 MR. GUYMON: Thank you. Ladies and gentlemen of the  
14 jury, I appreciate Joseph Sciscento's comments about my  
15 skills, whether he's right or he's wrong that's not what this  
16 case is about. This case is not about Mr. Daskas, it's not  
17 about Mr. Guymon, it's not about Mr. Joe Sciscento or Mr.  
18 Dayvid Figler, and it's not about the Judge. It's about Donte  
19 Johnson. Is he accountable for those four boys' deaths or  
20 not. And I'm going to disappoint Mr. Joe Sciscento because  
21 I'm not going to hold up those guns. I'm not going to hold up  
22 autopsy pictures.

23 I told you at the start of this case that I would  
24 not apologize for the evidence in this case, and I will not  
25 apologize for the fact that you had to view the evidence you

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1 did. I will not apologize for that. Because it is the  
2 evidence that you must sit in judgment on, that you must see  
3 in order to make a conclusion as to whether or not Donte  
4 Johnson is guilty or innocent. Because in the very near  
5 future, within minutes this case will be yours, and you'll  
6 have verdict forms. For each one of those fourteen counts  
7 you'll be asked to check a box, and it will be you who will  
8 have to judge whether or not Donte Johnson is guilty of  
9 burglary, guilty of kidnapping, guilty of robbery and guilty  
10 of murder. And you'll have to do that based on the evidence.

11 Now, I want to show you just for minute what the  
12 jury instructions are that guide you on that, it will be  
13 brief, if you'll just indulge me long enough to note the  
14 numbers of the instructions. There's a jury instruction at  
15 number 6 that talks about not judging the guilt of anyone else  
16 in this case. You are not to pass judgment or judge whether  
17 or not Terrell Young is guilty in this case, you are not to  
18 pass judgment or judge whether Sikia Smith is guilty, or  
19 whether Tod Armstrong is guilty in this case. This is not  
20 their trials. You are to judge the guilt of Donte Johnson,  
21 and Donte Johnson only.

22 When you ask yourself whether or not a burglary is  
23 committed, it's jury instruction number 8 through 11. If  
24 there's any question what a burglary is, if you need to know  
25 the definition, 8 through 11. Conspiracy, 11 through 20. And

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1 of course the act of one is the act of all is at number 12.  
2 What is a robbery and how is a robbery defined, jury  
3 instruction 21 through 25. What is a kidnapping, defined in  
4 jury instructions 26 through 30. Murder defined at 32 through  
5 42. And felony murder, the definition of felony murder, a  
6 murder that occurs during the commission of a felony is found  
7 at jury instruction 40.

8           The jury instruction that talks about your common  
9 sense. And as I begin to argue the evidence I'm going to  
10 remind you that your common sense is important in this case.  
11 As you take the law and the instructions in each one of these  
12 numbers, and you begin to look at the evidence, use your  
13 common sense, I invite you to do that. And remember that the  
14 burden that the State has is at jury instruction number 5,  
15 which is a reasonable doubt. A reasonable doubt is one based  
16 on reason. It goes on to say, doubt to be reasonable must be  
17 actual, not mere possibility or speculation.

18           There's a jury instruction that talks about  
19 circumstantial evidence. And just what is circumstantial  
20 evidence? Circumstantial evidence is the proof of a chain of  
21 facts and circumstances which tend to show whether the  
22 defendant is guilty or not guilty.

23           So what are the facts and circumstances of this  
24 case? What is circumstantial evidence?

25           You know, an example of circumstantial evidence

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1 might be this, at night tonight when you go to bed you may  
2 look outside and it could be a little stormy, the clouds could  
3 be out, you could say to yourself, it feels like rain, it  
4 looks like rain, Channel 8 tells me it's going to rain, and  
5 you could go to bed that night. And you may wake up in the  
6 morning and you may look out your door, and your car may be in  
7 the driveway and there may be rain all over your car, on the  
8 lawn, dew on the flowers, rain on the sidewalk, rain all over  
9 the neighborhood, that would be circumstantial evidence that  
10 in fact it rained that night. You may not have seen the rain  
11 last night as it came down, but that would be circumstantial  
12 evidence that yes, in fact, it rained. Or one might believe  
13 that someone took a big hose over your neighborhood and just  
14 squirted it out. And squirted all over your flowers and your  
15 car and your driveway and the sidewalk.

16           What will you believe of the evidence in this case?  
17 Is it reasonable to believe, ladies and gentlemen, that the  
18 very droplet of blood, one of the droplets that's shown in  
19 105, that red looking substance, is it reasonable to believe  
20 that that, in fact, is blood. Mark Washington tells you it's  
21 blood, he tells you he did a presumptive test, and that yes,  
22 that is blood.

23           Thomas Wahl tells you that he did conclusive  
24 testing, that not only is this blood, but it is human blood.  
25 He tells you that not only is it human blood, but that it is

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1 Tracey Gorringer's blood on those pants. Is it reasonable to  
2 believe that Tracey Gorringer bled from the injury he  
3 sustained. You saw those bloody photographs of Tracey  
4 Gorringer and the other boys as they laid there taped up. Is  
5 it reasonable to believe that Tracey Gorringer bled, and more  
6 importantly, is it reasonable to believe that scientific  
7 evidence in this case proves, beyond any doubt, that Tracey  
8 Gorringer cannot be excluded as the person who bled on this  
9 pair of pants. Not only can he not be excluded, but it is  
10 absolutely certain, through scientific evidence, that that is  
11 Tracey Gorringer's blood. Will you doubt that fact? Is it  
12 reasonable to doubt it? Not in the -- not in the face of  
13 scientific evidence. Proof positive.

14 Is it reasonable to believe that Donte Johnson's  
15 semen were found on this very pair of pants? Does it matter  
16 who deposited that semen there. It doesn't matter if Charla  
17 Sever deposited that semen there, it came from her in an  
18 exchange of sex, because Charla Sever doesn't have semen, only  
19 males have semen. So who -- what male was part of the semen  
20 that was put on that -- those pants. And proof positive,  
21 scientific evidence says that it was Donte Johnson's semen.  
22 Is it reasonable to believe that those were Donte Johnson's  
23 pants? After all they were in the very room that Donte  
24 Johnson stays at, or stays in. Charla Severs tells you that  
25 those pants were, in fact, Donte Johnson's pants. LaShawnya

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1 Wright tells you that Donte Johnson was dressed entirely in  
2 black that night. Is it reasonable to believe that they are  
3 Donte's pants, in light of the fact that they have Donte's  
4 semen on it? Absolutely it is. And is it reasonable to  
5 believe that those pants that are Donte's were at the crime  
6 scene that night if they have Tracey Gorringer's blood on them?  
7 And the question is, absolutely, there is not a reasonable  
8 doubt of those two facts.

9 Donte Johnson's fingerprint at the murder scene.  
10 Well, there is no reasonable doubt that these, in fact, are  
11 fingerprints. They are the known prints of Johnny Lee White,  
12 or John Lee White, also known as Donte Johnson. Fingerprints  
13 and palm prints of Donte Johnson. There is not a reasonable  
14 doubt that State's Exhibit 188 is a fingerprint. You people  
15 can see it. There is no reasonable doubt that this is a  
16 fingerprint.

17 There is no reasonable doubt that this is anyone's  
18 fingerprint other than Donte Johnson. After all Ed Guenther  
19 told you that he is absolutely certain that it is Donte  
20 Johnson's fingerprint, that no two people have the same  
21 fingerprints, and that that in fact is Donte Johnson's  
22 fingerprint. And lo and behold that very fingerprint is at  
23 the crime scene.

24 Now, is there a reasonable doubt that Tracey was at  
25 the crime scene and that Tracey bled, absolutely not. That

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1 Tracey bled on Donte's pants, absolutely not. That Donte's  
2 pants -- that those are in fact Donte's pants, absolutely. I  
3 should say absolutely not actually, if I'm talking about  
4 reasonable doubt. And then I asked you is it reasonable to  
5 believe that Donte Johnson was at that murder scene when his  
6 fingerprint is left there.

7           There's been some talk about the gloves. And one  
8 might say well, gee, there's some confusion here. After all  
9 LaShawnya Wright said that the three of them had gloves, we  
10 call them brownies, I think she said -- or she called them  
11 brownies. And Bryan Johnson said, gee, there was gloves  
12 there, about three or four pair, the guys call them brownies,  
13 I call them brownies, and he described those gloves. And  
14 Charla Severs said they had gloves. And you might say, well,  
15 if the guys wore gloves, Sikia Smith, Terrell Young and Donte  
16 Johnson, then why is Donte Johnson's fingerprint there? Is it  
17 possible when you look at the circumstances, the chain of  
18 events that took place, that that cigarette, that Black and  
19 Mild cigarette box that Donte Johnson would carry might have  
20 fallen out of his pants pocket as he fled the scene. If he  
21 bent over may it have come out of a pocket, or might he, at  
22 the end, grabbed that Black and Mild, that last one out of the  
23 package, throw the package down, not thinking about it, not  
24 realizing that he had handled this very package perhaps an  
25 hour, two hours or days before, when he didn't have gloves,

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1 and throw it down in a careless act, gleefully as he leaves  
2 and gets in his car. Yes, his glove is still on, but having  
3 touched that earlier.

4           The defense wants you to believe that somehow Donte  
5 Johnson packaged up some rock cocaine and put it in this box  
6 and sold it to the kids, Matt Mowen at some unknown time, and  
7 yet there is not a single witness that comes in and says that  
8 Donte Johnson sold Matt Mowen rock cocaine and put it in that  
9 very type of box on any occasion. Is it a coincidence that  
10 that box is lying there at the feet of one of the decedents?  
11 Or someone would have had to stand over it, or Donte Johnson  
12 would have to stand over as he puts that gun within two inches  
13 and shoots and kills him. What's the coincidence or chances  
14 of that, that these kids are slobs and they just throw things  
15 around and leave them on the ground for two, three, five, six  
16 days. That perhaps Donte Johnson being over there earlier,  
17 days earlier, just throws a cigarette butt down on the carpet  
18 of a house. What's the chances of that? And is that  
19 reasonable to believe?

20           Is it reasonable to believe that Donte's DNA is  
21 there at the crime scene, but yet Donte is not there? How  
22 reasonable is it to believe that Donte Johnson smoked that  
23 cigarette there days earlier? There is not a single bit of  
24 evidence that would suggest that Donte Johnson went to that  
25 house earlier? Not a single witness came to this courtroom

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1 and talked about that.

2 No VCR or Play Station at the murder scene. And I  
3 should show you the picture just very briefly of the pants in  
4 the room that Donte stayed in. Is it reasonable to believe  
5 that those were his pants and that they are at that scene?

6 And is it reasonable to believe that there was once  
7 a VCR or a Nintendo Play Station in this very console  
8 entertainment center moments before the three villains fled  
9 the scene? Absolutely it's reasonable to believe that. You  
10 see patch cords, it is true, proven by the evidence that a VCR  
11 and a Nintendo Play Station was stolen from that very  
12 residence that very night.

13 Is it reasonable to believe that the VCR and the  
14 Play Station that is now missing from the home is in the very  
15 home that Donte Johnson stays at? And yet believe that Donte  
16 Johnson wasn't there. Is it reasonable to believe that? Or  
17 is the evidence beginning to mount so very tall against Donte  
18 Johnson? Is it beginning to strip him of his presumption of  
19 innocence, because as you know as he sat there in this court  
20 and there was no evidence at the very beginning of this case,  
21 nothing had been spoken of evidence to you, he sat there with  
22 the presumption of innocence. But I submit to you that each  
23 one of these points begins to strip him of that presumption.  
24 And the innocence begins to fade away and you begin to see  
25 that Donte Johnson is guilty of the most horrific crimes one

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1 could imagine.

2           Is it just a coincidence, or is it evidence that in  
3 the very home that Donte Johnson stayed at on occasion, the  
4 home of Tod Armstrong, that there is duct tape? How many  
5 coincidences is it going to take until each of you  
6 individually says I believe, beyond a reasonable doubt, that  
7 Donte Johnson shot and killed, in cold blood, murdered four  
8 boys, as they lost their lives in an execution style murder.  
9 As each one of those acts being deliberate and being  
10 calculated, the pulling of a trigger, a deliberate act, but  
11 within inches from each boy.

12           Successive thoughts of the mind is the definition of  
13 premeditation. And I submit to you that one's intentions are  
14 made quite clear when you put a .380 handgun, a semiautomatic  
15 and you aim it to the head of somebody, and you pull the  
16 trigger, there can be little doubt -- there can be no doubt  
17 that your intention -- your intentions are clear and that is  
18 to shoot and kill each one of these boys.

19           But I submit to is the evidence of a premeditated  
20 murder is much stronger than that, Donte Johnson knew these  
21 fellows, he knew Matt Mowen, and he went over there without  
22 any disguise whatsoever. He didn't mask his face, there is no  
23 evidence that he wore a mask, that he covered his face, that  
24 he did a thing to disguise himself, because he knew he was  
25 going to shoot and kill each one of these boys before he left.

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1 And just as he told Charla Severs why, he said because I  
2 couldn't leave any witnesses. Tracey Gorringer cooperated, I  
3 didn't want to have to kill him, but if I left the one alive  
4 what would happen, there would be an eyewitness. And so  
5 calculatedly Donte Johnson shoots and kills each one of those  
6 boys.

7 And there can be little doubt when the pager of  
8 Peter Talamantez, and I failed to grab the picture, you've  
9 seen it, is in the backyard of the Everman residence.

10 And the defense wants to make something of those  
11 keys, the keys that went to the Thunderbird, that somehow  
12 because the room was rented in the name of Ace Hart, perhaps  
13 Ace Hart is the killer. You heard the testimony of Charla  
14 Severs, she said that that room was rented in the name of --  
15 or by, as the result of the use of Ace Hart's identification,  
16 but that it was Donte Johnson, Terrell Young and Charla Severs  
17 that stayed in those rooms. And it was Charla Severs who said  
18 Donte Johnson had the keys to the Thunderbird Hotel, the very  
19 person who had the keys to the Thunderbird Hotel had the keys  
20 to the -- or had the pager, and he, Donte Johnson, buried both  
21 of those items, because it would be hard evidence.

22 The newspaper, the very paper that excited, that  
23 thrilled Donte Johnson is the paper that Donte Johnson  
24 purchased on August 15th, 1998. And I ask you, if you had  
25 never been in this very home that's depicted here, when you

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1 look through the front door and you see a psychedelic poster  
2 on the wall, if you've never been in that home what would  
3 cause you to say, wow, there we go, we made the front page.  
4 If Donte Johnson wasn't there that night, he would have never  
5 made that statement, because that picture would mean nothing  
6 to him. His name didn't appear in the headline, but he knew  
7 he and his companions had made the front page. And it  
8 thrilled him. And that is a sick, sick mind that is thrilled  
9 by that kind of activity.

10 Well, Donte Johnson makes some confessions, and I'll  
11 conclude with that. And there's something interesting and  
12 that is this, Donte Johnson perhaps knew what Charla Severs  
13 knew, Charla Severs knew and she distinguished on the witness  
14 stand that hard evidence was the evidence that would truly,  
15 truly, truly convict Donte Johnson, and I submit to you that  
16 this blood is hard evidence, and that semen on those pants is  
17 hard evidence, it's proof positive evidence. It's a  
18 scientific evidence. You can't argue about crackheads when it  
19 comes to DNA evidence. And whether you're a crackhead or not,  
20 you can see with your own eyes that that is blood.

21 And so Charla Severs knew something about the hard  
22 evidence. The evidence that truly, truly would hurt Donte  
23 Johnson, but you know somehow the defense wants you to believe  
24 Charla Severs on the one hand and not believe her on the  
25 other. They want you to believe -- or they want you to .

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1 believe her when they say Tod Armstrong is the one that did  
2 this. Believe it. He's an ugly guy. He's a crackhead,  
3 believe it. Ace Hart's a crackhead, believe it, that's what  
4 Charla Severs says.

5           And I say to you, believe Charla Severs because she  
6 told you very painfully, she sat there and she wept at times,  
7 or cried at times, put her hands over her face and said, Donte  
8 Johnson, my boyfriend, the fellow I fell in love with, the  
9 person I lived with, the person I slept with, the person I had  
10 sexual relations with, the very person I wanted to leave to  
11 California with, is the one who shot and killed each one of  
12 those boys. The Mexican boys smarted off to him.

13           And I think we learned in this trial from one of the  
14 witnesses that Donte Johnson bragged about beating that boy,  
15 and there is some corroboration in that very statement. That  
16 was Bryan Johnson, and Bryan Johnson knew something that the  
17 evidence would prove. Bryan Johnson doesn't know Dr. Bucklin  
18 and had no idea that Dr. Bucklin would do an external  
19 examination and would move the hair around on Peter Talamantez  
20 and would find a blunt trauma laceration, or a laceration  
21 that's caused from blunt trauma on the back of Peter  
22 Talamantez's head.

23           And perhaps Donte -- or BJ, Bryan Johnson is right  
24 when he tells you that this very man that sits in this  
25 courtroom said, I beat him, I smacked him, I hit him, I kicked

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1 him, I think he said. Was Peter Talamantez beaten before he  
2 was shot? There is proof positive, hard evidence that that is  
3 true. And Bryan Johnson has no relationship to Dr. Bucklin  
4 and has no reason to say that but for the fact that Donte  
5 Johnson confessed, bragged, and even boasted about it to him.

6 So I say to you, believe Charla Severs. I say to  
7 you, believe Tod Armstrong. You may not like Tod Armstrong  
8 for going by that house; you don't have to like him, but you  
9 can believe him, because what he tells you is supported by the  
10 evidence. He tells you that Donte Johnson confessed to  
11 killing those four boys, and one of those four boys was  
12 Tracey, and Tracey's blood is on those pants, and those pants  
13 are Donte's. And you begin to see how it snowballs, how it  
14 begins to roll as momentum carries the truth in this case.

15 As you consider the evidence, as you weigh it, you,  
16 too, will have to believe what Justin Perkins did not want to  
17 believe that day as he stood there at the door, and that is  
18 that this home was burglarized, that there were weapons  
19 involved, that these kids were kidnapped, and they were duct  
20 taped tightly, that they were robbed as you look at their  
21 empty wallets. The defense hasn't argued that those crimes  
22 didn't commit -- didn't get committed, it's just about who did  
23 it. Ladies and gentlemen, I submit to you that all four of  
24 those crimes clearly occurred, times four in some cases.

25 Should you make something of the fact that every lay

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1 witness that came into this courtroom didn't mirror the next  
2 witness. That somehow Charla Severs didn't say exactly what  
3 LaShawnya Wright said, or exactly what Tod Armstrong said, or  
4 exactly what Bryan Johnson said? And I submit to you that if  
5 they did, the defense would stand here and say to you, this  
6 whole thing was staged, this whole thing was rehearsed; Mr.  
7 Guymon, the person whose integrity I'm not gonna impugn, made  
8 all of this up. Mr. Daskas made all of this up. Each one of  
9 these kids took the confession and they came in this  
10 courtroom, they told you what their perception was, what they  
11 thought they heard, what they knew they heard Donte Johnson  
12 tell them. And each one of them tells you how they were alone  
13 with Donte Johnson as Donte Johnson told them those things.  
14 And so while their testimonies may change, that, too, should  
15 give you reliability as to why it's true and how it's true.

16 Was there motivation by LaShawnya Wright as she came  
17 into this courtroom and as she wept and she said: I love him,  
18 I feel like I'm killing him by being here; I don't want to be  
19 here, I don't want to have to do this, he was my friend. You  
20 saw the resistance that she offered as I asked each question.  
21 Tell me how it made Donte Johnson feel? How did he act? It  
22 excited him. She stared right through me when I said, do you  
23 have another word for it. She had taken an oath and she said,  
24 it -- well, it scared Sikia Smith, but it thrilled Donte  
25 Johnson.

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1           The evidence is overwhelming in this case, ladies  
2 and gentlemen, it clearly, clearly establishes the defendant's  
3 guilt beyond a reasonable doubt. And twenty-two months later  
4 I stand here, having to expose each one of you to horrific,  
5 horrific offenses, but I ask you now to hold Donte Johnson  
6 accountable. And I call upon your promise that you will  
7 follow the law. That as I asked each one of you, would you  
8 give the witnesses a chance to be believed; and you said, yes.  
9 And I asked you, will you believe the evidence in this case,  
10 the scientific evidence, confessions from Donte Johnson,  
11 physical evidence. There is not a reasonable doubt; there is  
12 a killer in this courtroom, ladies and gentlemen, his name is  
13 Donte Johnson.

14           Thank you.

15           THE COURT: Thank you, Mr. Guymon.

16           Okay, folks, the case will be yours as soon as we do  
17 a little housekeeping in terms of swearing the people who are  
18 gonna watch over you. The two alternates are gonna be kept  
19 somewhere else while the jury deliberates in case still  
20 something happens in terms of illness.

21           I mentioned when you folks were picked that the wild  
22 card in calculating how long trials last is deliberation.  
23 There is no set amount of time for deliberation. If you can  
24 reach a just verdict in five minutes, it's five minutes; if  
25 it's five hours, it's five hours; if it's fifty hours or fifty

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1 days, whatever it takes for you folks to be satisfied.

2           The only parameters I'm going to establish are, as I  
3 indicated earlier in the day, closing time is up to you in  
4 that if you want to deliberate now with the hope of reaching a  
5 verdict today, that's up to you. If you don't want to  
6 deliberate at all, or you want to deliberate for a few hours,  
7 that's up to you. But in order to take a verdict we have to  
8 get everybody reassembled, and that takes about, somewhere  
9 between a half an hour and forty-five minutes. So if you do  
10 want to deliberate today, you're not gonna deliberate past  
11 9:30. If you don't reach a verdict today, and that'll depend  
12 on whether you deliberate today, you will start tomorrow at  
13 8:00 a.m.

14           So if you'd swear them in.

15                           BAILIFF SWORN

16           THE COURT: Okay. We're off -- gonna be off the  
17 record, Shirlee, we have some things to do, but you can take  
18 the alternates --

19                           (Jury retired to begin deliberations)

20                           (Court adjourned to the following day, June 9, 2000)

21                                   \* \* \* \* \*

22

23

24

25

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DEFENDANT'S WITNESSES

None

EXHIBITS

DESCRIPTION	ADMITTED
<u>PLAINTIFF'S EXHIBITS</u>	
169/169A Remote for VCR and packaging	64
171 Latent lift card with palm print	18
172 Certified copies of fingerprint standards of Sikia Smith	14
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DEFENDANT'S EXHIBITS

None

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CERTIFICATION

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

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6/9/00  
DATE

OPTIONAL

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

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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

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?

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.

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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?

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

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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.

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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.

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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

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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.

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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

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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

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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

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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

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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?

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

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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

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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

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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

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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

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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

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

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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.

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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

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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

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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

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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

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WAHL - DIRECT

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

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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

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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

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WAHL - DIRECT

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?

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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.

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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

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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

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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.

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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

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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

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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.

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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.

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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

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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.

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WAHL - DIRECT

1 Q And would you give us your conclusions on the  
2 cigarette butts --

3 A Okay.

4 Q -- through your DNA analysis?

5 A Can I refer to my notes, because there were many,  
6 many butts?

7 Q Will that assist you?

8 A Yes, it will.

9 Q All right.

10 A I have a quick synopsis here that I can refer to.  
11 Give me a second here.

12 (Pause in the proceedings)

13 There were 12 cigarette butts. Ten were a Marlboro  
14 brand, two were no brand. There were -- There were four  
15 Marlboro cigarette butts in which I positively identified  
16 Jeffrey Biddle as the source of the DNA on the cigarette  
17 butts.

18 Q So four of the cigarette butts at the scene -- And  
19 are you able to tell us, and I don't want to have to go  
20 through too many other charts or papers, are you able to tell  
21 me where those four cigarette butts came from?

22 A The ones I just talked about?

23 Q Yeah, what area?

24 A The DNA -- The cigarette butts were recovered from  
25 the scene, reportedly recovered from the scene, and the DNA on

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WAHL - DIRECT

1 there has positively been identified as coming from Jeffrey  
2 Biddle.

3 There were three other cigarette butts where there  
4 was -- appeared to be an indication of some DNA mixture, a DNA  
5 mixture on the cigarette butts, but the major DNA component of  
6 the mixture was identified as coming from Jeffrey Biddle. All  
7 other people were excluded.

8 There was a cigarette butt with no brand name where  
9 there was DNA from a male individual on there that did not  
10 originate from either of the four victims or the three  
11 suspects. And then I had three cigarette -- two cigarette  
12 butts with no -- that were inconclusive and one cigarette butt  
13 that no human DNA was recovered from.

14 And then I had one cigarette butt where there was a  
15 DNA mixture indicated on the butt. The major DNA component  
16 was consistent with Donte Johnson's DNA profile and there was  
17 enough genetic information there to positively identify Donte  
18 Johnson as the major DNA component of that cigarette butt.

19 Q That cigarette butt was previously labeled, was it  
20 not, by Crime Scene Analyst Fletcher, as 22-1. Is that  
21 consistent with your notes?

22 A Yes.

23 Q Okay. She had testified that 22-1 came from the  
24 floor there in the living room. Is that also consistent with  
25 your notes?

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WAHL - DIRECT

1           A     I don't know where in the crime scene it was  
2 actually recovered from.

3           Q     Okay. That cigarette butt, 22-1, that was impounded  
4 by Fletcher, Crime Scene Analyst Fletcher, you said -- could  
5 Donte Johnson be excluded from it?

6           A     No, he could not.

7           Q     Could he, in fact, be identified?

8           A     Yes, he could, with the combination of the DNA  
9 typing I did and the STR typing an independent lab performed  
10 on the cigarette butt.

11          Q     Okay. Tell me, could Terrell Young and Sikia Smith  
12 be excluded from any of the other cigarette butts or all the  
13 other cigarette butts?

14          A     They were excluded as a source of the DNA on all the  
15 other cigarette butts.

16          Q     Okay. Now, then, did you chart some of your  
17 findings for the jury to see actually what DNA typing is and  
18 what types of DNA each individual we've talked about has in  
19 this case?

20          A     Yes, I did.

21                   (Pause in the proceedings)

22          Q     And will the charts assist you in describing to the  
23 jury what the DNA typing really is for each one of these  
24 people or persons?

25          A     I think it would be an important aid, yes.

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WAHL - DIRECT

1 Q Okay. Now let me ask you, we talked a little bit  
2 about Cellmark, are you familiar with Cellmark and what  
3 Cellmark is?

4 A Yes, I'm familiar with the company and I know quite  
5 a few people who work there.

6 Q Okay, what is Cellmark Diagnostics?

7 A Cellmark Diagnostics is a private laboratory that  
8 does DNA identification testing both from a forensic  
9 standpoint and a paternity standpoint.

10 Q And did Cellmark Diagnostic do any work in this  
11 particular case as it relates to any of the samples that we've  
12 talked about thus far?

13 A Yes. They did work on one item.

14 Q And what item did they do work on?

15 A It's the cigarette butt that we just recently  
16 discussed in which Donte Johnson was identified as a DNA  
17 component of the cigarette butt.

18 Q And tell me, if you know, why Cellmark would have  
19 done that work instead of yourself?

20 A Back in 1998, as I indicated earlier, we were -- had  
21 not implemented STR typing in casework as of yet 'cause we  
22 were in the process of validating the procedure. I removed  
23 approximately one half of the filter paper that surrounds the  
24 cigarette butt to do DNA testing and left the remaining half  
25 for possible referee analysis, independent analysis. In the

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1 process of doing my initial DNA typing, I had to consume --  
2 First off, there was not much DNA recovered from that filter  
3 paper during my process.

4 Q Is that common?

5 A It can be common, 'cause the amount of DNA that can  
6 be recovered from a cigarette butt can vary quite a bit and it  
7 has to do with how a person smokes a cigarette, how much  
8 saliva's deposited on the cigarette.

9 And I ended up consuming all of the extracted DNA  
10 from my half of the cigarette butt, so when it came time to do  
11 STR analysis on the other retention DNA extracts from the  
12 bloodstains and the reference standards, the situation  
13 occurred where I felt there was certainly enough DNA to do STR  
14 testings, but I may have to consume all of the rest of the  
15 cigarette butt to do that.

16 And part of our policy in our laboratory is that we  
17 try or attempt, if at all possible, to save half the sample  
18 for other independent analysis, particularly by the defense  
19 lab, if they so desire, so I voiced my concerns to Mr. Guymon  
20 regarding doing the STR analysis in-house and my concern was  
21 that if I tried to separate half of the cigarette butt that  
22 was remaining, and leave half for the defense, that may  
23 compromise both labs -- one or both labs' ability to get STR  
24 typing.

25 So I posed that to Mr. Guymon and then it was my

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1 understanding he approached defense counsel to discuss some  
2 options available to both parties in order to get STR typing  
3 results from the cigarette butt.

4 Q In short, you assisted, did you not, both parties in  
5 sending items to Cellmark Diagnostic, which was an independent  
6 lab agreed to by both parties, by way of stipulation, for  
7 further testing of that cigarette butt, correct?

8 A That's correct.

9 Q Now, then, I'm showing you --

10 THE COURT: Before I get to the charts -- Before you  
11 get to the charts, can I see you at the bench, please?

12 (Off-record bench conference)

13 BY MR. GUYMON:

14 Q I'm showing you what has been marked as State's  
15 Exhibit 203. Do you recognize this particular exhibit? .

16 A Yes, I do.

17 Q All right, can you come --

18 MR. GUYMON: I'd move for its admission, Your Honor.

19 MR. SCISCENTO: No objection.

20 THE COURT: Received.

21 (Plaintiff's Exhibit No. 203 admitted)

22 BY MR. GUYMON:

23 Q Let me have you come on down, if you would, and  
24 position yourself on this side of the table so that all of the  
25 jurors could see and tell me just what it is we're looking at.

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1 And I want to do it as briefly as possible, yet with some  
2 understanding.

3 A I'll just go down by the columns. This is a chart  
4 that represents the DNA profile typing results obtained from  
5 all the known reference standards. There are no questioned  
6 samples on the chart. This is of all the individuals who were  
7 victims, Gorringe, Mowen, Biddle, Talamantez, and the three  
8 suspects, Johnson, Young and Smith.

9 Locus is a Latin word for location. This could be  
10 referred to as the DNA regions that I alluded to earlier that  
11 we look at to determine DNA types, there's a space here, all  
12 these loci, plural for locus, all these different DNA types,  
13 13 DNA types here, plus sex. We can actually determine the  
14 sex of the DNA from something called amylagener [phonetic],  
15 these are the STR DNA profiling system. From the space down  
16 are seven DNA types that were used in our lab way back in 1998  
17 before we implemented STR typing.

18 So the DNA profiles we're looking at here are 13 STR  
19 DNA types, plus the sexing, and seven more DNA types, so for a  
20 total of 20 DNA types. So we have a very extensive profile  
21 here.

22 The purpose of this chart is just to show you the  
23 numbers or just the scientific nomenclature to determine the  
24 DNA type, but the important thing I want to just point out  
25 with this chart is that the DNA profiles are different. All

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1 these individuals can be differentiated from each other if you  
2 look at the charts.

3 Q I'm showing you Exhibit 204. Do you recognize it?

4 A Yes, I do.

5 Q And did you, in fact, prepare it?

6 A Yes, I did. I also prepared it.

7 MR. GUYMON: I'd move for the admission of 204 as  
8 well, Judge.

9 MR. SCISCENTO: No objection.

10 THE COURT: Admitted.

11 (Plaintiff's Exhibit No. 204 admitted)

12 BY MR. GUYMON:

13 Q I'm gonna show you 204 and tell the jury just what  
14 204 is. What are we looking at now?

15 A This is a chart that has Donte Johnson's DNA profile  
16 on it, the DNA profile obtained by me on the first phase of  
17 the DNA typing test and then the STR typing results that  
18 Cellmark Diagnostics performed. And then this is a sperm DNA  
19 profile from one of the stains on the black jeans, the one on  
20 the zipper flap. All other individuals were excluded as a  
21 source of the DNA on the cigarette butt and as a sperm donor.  
22 And this chart just demonstrates that there are genetic --  
23 cords of genetic similarities across all loci.

24 I do want to point out that on the cigarette butt  
25 there are some indications of some other DNA from another

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1 individual there, but for the most part everything matches up.

2 Q All right, now let me talk about that. Are you  
3 surprised -- You said this was the known DNA of Donte Johnson  
4 from the earlier chart and this is Cellmark's findings. This  
5 is yours on the bottom. Are you surprised by the additional  
6 numbers?

7 For instance, his known is coded 1313, yet you have  
8 some additional numbers and, likewise, here in this region  
9 that are just downward.

10 A That was, yeah, observed in three of the STR loci  
11 and one of the loci down here. No, I'm not surprised. It is  
12 not that unusual to find DNA mixtures on cigarette butts.  
13 People do share cigarette butts smoking and it's actually  
14 quite common to see that on a marijuana cigarette.

15 Q Are your findings, using your testing and Cellmark's  
16 findings, inconsistent or consistent with one another? You  
17 said here you have an additional in your own testing as well.

18 A Yes. In my report I indicated that there is a  
19 predominant major component DNA source in the mixture and what  
20 I mean by that is that the typing data demonstrated that there  
21 was a -- a large percentage of the DNA in that cigarette butt  
22 came from one individual and that there's a very small  
23 percentage of DNA present on the butt that may be from some  
24 other type individual, such that when you typed the cigarette  
25 butt there is a very -- that there was typing results here

IV-130

WAHL - DIRECT

1 that were consistent with a predominant or major component  
2 DNA.

3 My typing results are very consistent with Donte  
4 Johnson's DNA profile. There is some indication of some other  
5 DNA types in the GC DNA type. And with Cellmark's the DNA  
6 typing profiles are generally consistent across all loci, but  
7 there are some indications in the DWA that there's DNA from  
8 another individual, a minor component, as is in the D8, S1179  
9 and the D5.

10 I did have -- I had the raw data from Cellmark to  
11 look at and the typing data was very consistent with what I  
12 saw here in that there was a major component DNA and minor  
13 component DNA. Both laboratories indicated there was a  
14 mixture. Both laboratories indicated that there was a major  
15 DNA component that could be interpreted.

16 Q And who was the major DNA component that could be  
17 interpreted, whose DNA?

18 A The major component in the cigarette butt is  
19 consistent with Donte Johnson across all 20 loci.

20 Q With the minor contributor that you found through  
21 your testing and the independent testing of Cellmark, is that  
22 -- would that be consistent with one of the other boys at the  
23 house or one of the other individuals, period, also taking a  
24 drag on that cigarette?

25 A It's possible. Some of the alleles detected here

IV-131



WAHL - DIRECT

1 can be attributed to one or more of the victims in the house.

2 Q Okay, could they also be attributed to one or more  
3 of the suspects in the house?

4 A On some of the alleles, yes, on some of the alleles,  
5 no.

6 Q Okay. Now then, lastly, the next column is the  
7 black -- sperm on the black jeans. Who typed this through STR  
8 and PCR?

9 A I did the sperm. I did both.

10 Q All right. And in the sperm, in the known sample of  
11 Donte Johnson, I take it that being the buccal swab?

12 A Yes, that's correct.

13 Q And this being the sperm?

14 A Yes. If you could look across each DNA type, you  
15 see consistency across each DNA type all the way down. There  
16 were a couple of DNA types from the sperm that were  
17 inconclusive, I couldn't get an interpretive result, but we  
18 have an 18 DNA type match.

19 Q And an 18 DNA type match, is that enough for  
20 identification?

21 A Oh, most definitely.

22 Q With certainty?

23 A Yes.

24 Q Lastly, take a look at that board right behind you,  
25 if you would, 205. Do you recognize it?

IV-132

WAHL - DIRECT

1 A Yes, I do. I prepared this chart.

2 Q All right.

3 MR. GUYMON: I'd move for the admission of State's  
4 Proposed Exhibit 205.

5 MR. SCISCENTO: Submitted, Your Honor.

6 THE COURT: Admitted.

7 (Plaintiff's Exhibit No. 205 admitted)

8 BY MR. GUYMON:

9 Q And what does 205, lastly, show?

10 A This chart represents the DNA profile of one of the  
11 victims, Tracey Gorringer, in this column. Seven of the eight  
12 bloodstains identified on the back pant legs of the black  
13 Calvin Klein jeans are in this column and then one -- the last  
14 or the remaining eighth stain is in this column. The reason  
15 why this stain is in this column is that with one of the DNA  
16 types here I got an inconclusive result, but the point I want  
17 to show is that there is a DNA consistency across each DNA  
18 type, all 20 loci, and 19 out of the 20.

19 Q The first column would be the known blood, in other  
20 words, the blood that was taken out of Tracey's body at the  
21 autopsy?

22 A That is correct.

23 Q And this would be seven of the bloodstains on those  
24 black pants that Donte Johnson's sperm was on?

25 A That is correct.

IV-133

WAHL - DIRECT

1 Q And the last would be the last of the black -- the  
2 eighth stain --

3 A Yes.

4 Q -- with Donte's sperm on the front?

5 A That is correct. The only reason this wasn't  
6 grouped here is I did have one inconclusive result.

7 Q Okay. Now you had an inconclusive on the chart  
8 there and an inconclusive on 204. Does the inconclusive tell  
9 you that somehow the charts aren't right or the testing was  
10 done wrong?

11 A No. It just indicates that the typing data obtained  
12 was not -- didn't meet our interpretational criteria to report  
13 a conclusive result.

14 Q And, Mr. Wahl, tell me, in the procedures that have  
15 generated these results did you use controls in order to  
16 assure you that each substance was handled properly and not  
17 contaminated?

18 A Yes.

19 Q Did you use the proper protocol in order to assure  
20 that the procedures that are in place and that can give  
21 reliable results were, in fact, used for each one of these  
22 samples?

23 A Yes.

24 Q Was there a second examiner that analyzed or  
25 reviewed your work in this case?

IV-134

WAHL - DIRECT

1           A     It's our lab policy. We always have a second  
2 independent, qualified examiner to review the technical data  
3 and the report, the conclusions, and they do sign off on it.  
4 And following a satisfactory technical review, it's turned  
5 over to the DNA lab manager for administrative review before  
6 the report goes out the door.

7                     This is just a checks and balances system to ensure  
8 that a quality work product is sent out to the criminal  
9 justice system and ensure that no mistakes -- any mistakes  
10 made could be detected.

11           Q     And that's reviewed in-house?

12           A     That's reviewed in-house.

13           Q     And Cellmark's work you said also was looked at and  
14 you reviewed it?

15           A     Yes, I reviewed Cellmark's work.

16           Q     And the two labs are completely independent of one  
17 another?

18           A     Yes.

19           Q     Do the findings, however, of Cellmark and your  
20 findings, are they consistent with one another and support --

21           A     The conclusions are consistent with one another,  
22 yes.

23                     MR. GUYMON: I pass the witness, Your Honor.

24                     THE COURT: Cross.

25                     MR. SCISCENTO: Your Honor, may I have five minutes

IV-135

WAHL - CROSS

1 to prepare for this?

2 (Pause in the proceedings)

3 MR. SCISCENTO: Is that a yes?

4 THE COURT: Well, I mean, I'm just deciding whether  
5 we're gonna leave the room. If it's only gonna be five  
6 minutes, I think we'll just stay at ease. And if you want to  
7 stand up and move around, go ahead, walk around.

8 (Off the record)

9 THE COURT: Go ahead.

10 CROSS-EXAMINATION

11 BY MR. SCISCENTO:

12 Q Mr. Wahl, can I have the photographs that you took  
13 of the pants?

14 (Pause in the proceedings)

15 Mr. Wahl, let's start first with the stains on the  
16 pants, on the jeans, that being the semen epithelial stains.  
17 They were located on the, as we understood it, the outside --  
18 on the inside part of the flap?

19 A The vast majority of the stain was, yes.

20 Q Okay. So that means that it appeared, if I'm  
21 correct, on this area which -- and I'm pointing to the flap,  
22 the inside of the flap?

23 A Yes. And then I think there maybe was a little bit  
24 of stain on the opposite side as well.

25 Q On the outside here?

IV-136

WAHL - CROSS

1           A     There, on the inside and then on the opposite side  
2 of the zipper as well there's a little bit extra.

3           Q     Okay, which could have been transferred from the  
4 stain on the outside?

5           A     If it was wet, yes.

6           Q     Okay. And so, as I understand it, and I wish I had  
7 a better prop, that area that we're talking about is pretty  
8 much protected when the zipper's closed?

9           A     Yes, I think that flap is designed to cover the  
10 zipper.

11          Q     Okay. And all it is is mostly it just covers up the  
12 zipper. You have a zipper and then you have the flap that  
13 goes on top of it, am I right?

14          A     Yes.

15          Q     And then in between that, so we understand, and I'm  
16 making a movement with my hand showing that one layer's on the  
17 bottom and one's on top, in between there is where you find  
18 the majority of the stain, am I right?

19          A     Well, it's on the surface of the inside flap.

20          Q     Okay, so here's the zipper, here's the flap and on  
21 the inside of the flap itself?

22          A     Yes, that's correct.

23          Q     And easy access to that would be to flip it  
24 backwards?

25          A     Yes.

IV-137

WAHL - CROSS

1 Q That way.

2 And other than that, you probably wouldn't have  
3 access to it any other way, am I right?

4 A Either that or the pants could be unzipped and then  
5 the flap could --

6 Q When they're unzipped, though, the flap goes down  
7 and the zipper is pretty much on top of it, follows it?

8 A I would guess so, yeah.

9 Q Would you agree with that?

10 A Yes.

11 Q So again, really, the easy access to it is to flip  
12 back the flap?

13 A That would probably be the easiest access, yes.

14 Q Okay. Now you ran a test called an acetate  
15 phosphate, am I right?

16 A Acid phosphatase test.

17 Q Acid phosphatase.

18 And you came AP negative 3 in your test?

19 A I tested three different areas and came up negative  
20 all three times.

21 Q Acetate phosphate [sic] is basically a detection of  
22 semen?

23 A It's a presumptive test for the presence of semen.  
24 It does not confirm the presence of semen.

25 Q You use it as a precursor to see if there is semen

IV-138

1 and it's not an exclusion.

2 A I use it as a screening tool when screening stains.

3 Q And if it's there, then you know for sure that  
4 there's semen there?

5 A No, I don't know for sure there's semen there. If I  
6 get a positive acid phosphatase, it's highly probable the  
7 stain contains semen and then I definitely will go into  
8 confirmatory testing.

9 Q And if it's not there, that doesn't mean there's not  
10 semen there?

11 A It does not mean there's not semen there, but there  
12 most likely isn't.

13 Q Now acetate phosphate is -- that test is exclusive -  
14 - Well, you use it specifically to find the semen?

15 A I use it to screen for the presence of semen.

16 Q The lack of phosphate in the semen can be attributed  
17 to what?

18 A There are several possibilities. I could --

19 Q One is time?

20 A Time, yes.

21 Q The time that it is -- Well, do you know if there's  
22 been any studies done on diminishing phosphate in semen while  
23 it is in a vaginal area?

24 A Yes, I have a copy I can give you right now.

25 Q If I may see that.



WAHL - CROSS

1 (Pause in the proceedings)

2 A Source Pick of Forensic Serology and there is a  
3 section here where there's been some studies.

4 (Pause in the proceedings)

5 Q In this one, if I'm correct, the epithelial -- the  
6 semen found inside the vagina has some diminishing, is that  
7 right?

8 A If I understand your question correctly, semen  
9 ejaculated inside the vagina can undergo some degraded  
10 processes --

11 Q Yes.

12 A -- because of the vaginal cavity. Yeah, yes, that's  
13 a known fact.

14 Q And over time it may decrease even more?

15 A Yes, the longer semen remains in the vaginal cavity,  
16 the more likely it's gonna be subjected to degraded  
17 processes.

18 Q Okay. And if it's subject to the air drying, you  
19 can lose 50 percent?

20 A It's possible. Some of the studies have indicated  
21 that's possible.

22 Q Now the longer it's inside the vaginal area, the  
23 greater the phosphate would decrease?

24 A It may, yes.

25 Q Okay, it's a given -- I mean, nothing's certain.

IV-140

WAHL - CROSS

1 A Nothing's certain, but that would be an accurate  
2 assessment, yes.

3 Q But it's a theorem that we can follow?

4 A Yes.

5 Q Okay. So we don't know how long that semen was in  
6 the vaginal area, do we?

7 A No, I don't.

8 Q Focusing on the epithelium stain -- And I am saying  
9 it wrong. Could you pronounce it for me once and maybe I can  
10 figure it out.

11 A Epithelial cell.

12 Q Epithelial. I'm not gonna get it.

13 That stain -- They're found in two locations on the  
14 pants, correct?

15 A No, the sperm was mixed in with the epithelial cell.

16 Q Okay, but there were two stains in H and K?

17 A I selected two areas that were located a bit apart  
18 from each other and tested two separate areas.

19 Q And you designated them as I and K, I think it was.

20 A That's correct.

21 Q Okay. And that's what you designated as two  
22 separate areas of stains?

23 A Those are the areas I tested for the -- to do a  
24 cellular evaluation and also to do DNA typing.

25 Q And I'm not saying that they're two separate stains.

IV-141

WAHL - CROSS

1 It's just you divided --

2 A They were adjacent to each other, so I tested two  
3 different areas.

4 Q And you went in there and you determined that there  
5 was semen found in the I and the J, that you designated I and  
6 J stains?

7 A That's correct, yes.

8 Q The two stains, okay, two separates.

9 Now on those you found a reading of semen at a 1 in  
10 one of those?

11 A I think you're alluding to my notes in which when I  
12 perform my cellular evaluation I write down in my notes  
13 whether I detect or identify sperm and I also try to give some  
14 type of grading to the concentration of sperm I see on the  
15 microscope slide. It gives me a rough estimate of the sperm  
16 cell concentration or density in the stain relative to the  
17 nucleoid epithelial cells.

18 Q And you designated that as a 1?

19 A 1 plus or 1 and a half, my recollection was.

20 Q One was a 1 and one was 1 plus, would you agree with  
21 me on that?

22 A Yes, I think that's accurate. I can check my notes  
23 to be sure, but that sounds right.

24 Q We could check your notes, but I'll give you that  
25 it's a 1 and a 1 and a half, if you agree with that.

IV-142

WAHL - CROSS

1 A Okay. That sounds right.

2 Q But the epithelial stain you gave a 4?

3 A 3 plus or a 4, which indicates that there was a  
4 three or fourfold higher concentration of nucleoid epithelial  
5 cells relative to the sperm in the stain.

6 Q Okay.

7 A At least the area I tested.

8 Q Okay, which means that the epithelial cells had a  
9 higher concentration?

10 A Relative to the sperm cells, yes.

11 Q Yes.

12 Okay, did you ever identify where the epithelial  
13 cells came from?

14 A I did obtain a complete DNA profile, but I was never  
15 given a female reference standard for comparison purposes.

16 Q We know it was a female?

17 A Yes, it's definitely from a female.

18 Q We know it was vaginal?

19 A I didn't say it was vaginal. I said it could be  
20 vaginal.

21 Q Okay, what are the chances of that being vaginal?  
22 Did you do any tests to determine that?

23 A There are no known tests I'm aware of that could  
24 positively identify vaginal fluid to the exclusion of all  
25 other body fluids.

IV-143

WAHL - CROSS

1 Q Okay, but we know the epithelial cells were female  
2 in nature?

3 A That's correct.

4 Q Excluding any male?

5 A Yes, they're from a female.

6 (Pause in the proceedings)

7 Q Now when you check -- When you do your process in  
8 your lab for determining the DNA -- where you're extracting  
9 it, the DNA from semen and epithelial cells, there's a  
10 different process you must follow, is that correct?

11 A Yes. It's called a differential extraction.

12 Q As a matter of fact, in your notes -- I'm sorry, in  
13 your handbook in the lab that you work at they specifically  
14 say, "If epithelial and sperm cells are detected, proceed with  
15 different lysis procedure beginning with Step 7," am I right?

16 A That sounds familiar, yes.

17 MR. SCISCENTO: If I may approach.

18 THE WITNESS: Sure.

19 BY MR. SCISCENTO:

20 Q And the reason I'm asking, you agree with me that --  
21 First, what I'm handing you is the STR manuals for the Las  
22 Vegas Metropolitan Lab Department -- Metropolitan Evidence  
23 Lab.

24 A Okay. And which step are you referring to?

25 Q Well, where it says "Note."

IV-144

1 A Uh-huh.

2 Q Okay. And it does, in fact, say what, 'cause I  
3 don't want to say that word?

4 A Do you want me to read this out?

5 Q Well, it does say what I had said, the epithelial  
6 and sperms cells --

7 A "If epithelial and sperm cells are detected, proceed  
8 with differential lysis procedure beginning with Step 7,"  
9 okay.

10 Q All right.

11 A Yes.

12 Q And that being because you need to separate the two?

13 A Yes, you want to -- The purpose is to try to get a  
14 DNA profile from the sperm cell and separate it from the DNA  
15 profile from the epithelial cell, because they very well may  
16 be from two different individuals. If you did not do that,  
17 you'd get a DNA mixture and it would be very difficult to  
18 interpret the results.

19 Q Okay. And later on it says, when it talks about the  
20 washing, it says, "Additional wash steps are recommended when  
21 the ratio of sperm to epithelial cells is low," am I right?

22 A Yes, it's recommended.

23 Q So how many washings did you have to do in this case  
24 in order to get the DNA profile or DNA --

25 A I did three -- I did three washes.

WAHL - CROSS

1 Q Normally, you do one to two washes, correct?

2 A No, I always do three.

3 Q You always do three? Regardless if it's semen  
4 epithelia?

5 A I always do three and then following the washes I do  
6 another microscopic exam, and the purpose is to determine  
7 whether my cell extract is -- the sperm cells are still  
8 present and I've lysed the epithelial cells. If the  
9 microscopic evaluation indicates that that's the case, I see  
10 no reason to do any additional washes.

11 Q So based on your knowledge of this and your  
12 interpretation and review of the work you figured that you had  
13 extracted the DNA separately and you had made it into separate  
14 DNAs?

15 A Yes.

16 Q And you had no problem with that?

17 A No.

18 Q There is a major concern when you interpret DNA in  
19 the contamination?

20 A Yes, there's a concern.

21 Q You want to keep it free of contamination?

22 A Definitely.

23 Q And when there is a mixture of DNA that is when the  
24 greatest contamination can happen?

25 A A mixed sample by definition is contaminated. The

IV-146

WAHL - CROSS

1 definition of contamination in the dictionary is the act of  
2 making a substance impure by mixture or contact. It's a  
3 forensic reality that we deal with mixed stains. Vaginal  
4 fluid mixed with semen is a very common type of evidence in  
5 our laboratory.

6 Q And when you have a mixed stain you can get false  
7 readings, correct?

8 A No.

9 Q Not always?

10 A You can get false stains but you get -- you  
11 could get false readings in any analysis. It's always a  
12 possibility --

13 Q Or --

14 A -- performed improperly.

15 Q Would you agree that contamination can give you a  
16 false reading?

17 A Sure.

18 Q How do you extract the DNA? There's three methods,  
19 I believe, chloro -- there's staining jelly and --

20 A There's a procedure known as -- an organic procedure  
21 called phenyl-chloroform.

22 Q Thank you.

23 A There's another procedure known as celex [phonetic].  
24 There are modifications of procedures where both organic and  
25 celex are combined. There are commercial companies that have

IV-147



1 made available on the market DNA extraction methods that use  
2 latex beads. There are -- the company I used to work for uses  
3 a different type of DNA extraction method. There are -- there  
4 are several out there.

5 Q Let me stop you. Where -- what procedure do you --  
6 do you follow? Did you use?

7 A I use -- right now currently I use a combination of  
8 organic extraction followed by celex.

9 Q Is it staining -- a staining method that they talk  
10 about?

11 A I'm not sure I under -- the only staining I really  
12 do is I stain microscope slides in order to aid in the  
13 detection of sperm cells and nucleate epithelial cells.

14 Q All right. Let me get back real quick. You had  
15 checked first the semen to see if there was the acetate  
16 phosphate. It wasn't there. You then moved on, you sent the  
17 results to Sergeant Hefner?

18 A I -- well, when I tested the stain I didn't know it  
19 was semen. I got a negative AP result so there was no  
20 indications that it was semen so I didn't do any confirmatory  
21 testing. It was then after I -- shortly after I issued my  
22 first DNA typing report that Sergeant Hefner contacted me.

23 Q Okay. Let me stop you there. Sergeant Hefner  
24 contacted you and asked you to run the test again?

25 A Sergeant Hefner called me and asked me to reexamine

1 the pants to see if I could find any other type of biological  
2 fluid on the pants which could be attributed to the wearer of  
3 the pants.

4 Q Okay. And that being -- biological fluid also means  
5 semen?

6 A Could be saliva, it could be semen, it could be  
7 sweat, it could be fecal matter, it could be any biological  
8 fluid. Urine.

9 Q Now, let me focus. You had done a test or you had  
10 Cellmark do a test on the cigarette butts?

11 A Well, I do believe prosecution and defense agreed to  
12 have it done. I just had some in --

13 Q There was a test done at Cellmark on the cigarette  
14 butts, correct?

15 A That's correct.

16 Q The cigarette butt is kind of like a pen here, this  
17 cap I'm showing you. It's a small little cylinder --

18 A It was a cigarette butt that had been partially  
19 smoked and all that was remaining was a small portion of  
20 tobacco in the butt -- the filter.

21 Q Mr. Guymon asked you if DNA testing can work on dead  
22 soldiers, meaning you can identify people who have been dead  
23 or who --

24 A The purpose of that is that body remains either from  
25 war or a plane crash or -- in which all that's remaining is

WAHL - CROSS

1 maybe a small piece of tissue, you can't -- there's no way to  
2 identify who the tissue came from, they do use DNA testing and  
3 do genetic reconstruction and compare it to family members to  
4 determine if they can identify the --

5 Q Now, how long would DNA stain samples or how long,  
6 if I was -- let me rephrase this. If I was to smoke a  
7 cigarette, put the cigarette down, without any other  
8 interference, how long would the DNA be there for you to test?

9 A It could be in -- it could be there indefinitely if  
10 the cigarette butt was stored under conditions that reduced  
11 environmental degradation.

12 Q Which is as long as it wasn't wet?

13 A Freezing, keeping -- the rule of thumb is the drier  
14 the biological sample and the colder you store it the longer  
15 the -- the more preserved the biological sample will be and  
16 the better chance you have of getting a DNA result over time.

17 Q The drier though, but if heat doesn't have a direct  
18 -- heat would have an effect on it?

19 A Heat may have an effect on it, yes.

20 Q May have an effect but not a direct effect?

21 A It could have a direct effect if a -- I mean, if you  
22 threw a cigarette butt in a burning fire that'd probably  
23 destroy the DNA.

24 Q Talking about Las Vegas in August, it's hot.

25 A Las Vegas in August is pretty hot so heat could have

IV-150

1 an effect on it, sure.

2 Q But if it's inside, it wouldn't have much of an  
3 effect?

4 A It'd have less of an effect; it'd be in a cooler  
5 environment.

6 Q So, if it's kept inside of a home that has an air  
7 conditioning running in the middle of August, it's -- the  
8 ability for you to extract that DNA would be longer?

9 A Most likely; not necessarily, but most likely.

10 Q So the shelf -- if I can use the word the shelf  
11 life, the shelf life with DNA on a cigarette butt could be a  
12 few weeks?

13 A I've obtained DNA on a eight-year-old cigarette butt  
14 in a private laboratory, so.

15 Q So we can go almost in -- up to eight years -- I'm  
16 sorry you said eight weeks?

17 A I said eight years --

18 Q Eight years.

19 A -- but there are documented cases of analysts being  
20 able to get DNA types from evidence ten, twenty years old  
21 depending on how this -- how the sample's been stored.

22 Q Now, let me ask you on some of these -- I think it's  
23 State's Exhibit 204, the loci DS -- D5S818, we have a 13 in  
24 parentheses on the cigarette butt, correct?

25 A Yes.

1 Q Okay. And that usually indicates that as the  
2 examiner is reading it or reviewing it he notices the loci is  
3 there but it's a weak loci?

4 A Yes, the -- I contacted the analyst who did -- from  
5 Cellmark who did the analysis and they --

6 MR. GUYMON: Your Honor --

7 THE WITNESS: You're asking me?

8 BY MR. SCISCENTO:

9 Q Well, I'm just asking you --

10 MR. GUYMON: Can we approach?

11 (Off-record bench conference)

12 THE COURT: Go ahead.

13 BY MR. SCISCENTO:

14 Q Mr. Wahl, let me ask you when a number is in  
15 parentheses like this, of different locis, it usually means  
16 that it was identified but it's a weak identification, is that  
17 correct?

18 A Again, you're asking me about that 13 with the  
19 parentheses and that's Cellmark's interpretational annotation  
20 and I -- what I was trying to tell you earlier is what  
21 Cellmark indicated to me what their parentheses around that  
22 number means.

23 Q Which is what?

24 A That there's a very low, very small DNA typing  
25 result obtained with that 13 that may be attributed to a true

WAHL - CROSS

1 DNA type or could be an artifact.

2 Q Okay. So in other words, they did see something  
3 there and they marked it down but they noted that it was a  
4 weak loci?

5 A Yes. If you -- if what you're asking me is that 13  
6 parentheses mean it's a very weak result, the answer is yes.

7 Q Same thing on loci D8S1179, we have a 9 which is a  
8 low -- a low identification?

9 A It's known as an allele or -- it's called an allele  
10 in that locus.

11 Q Well, we have a 14 and an 8 --

12 A That's correct.

13 Q -- that 9 is in parentheses and may be stronger?

14 A No, I actually looked at the data and it was --  
15 those 8 and 14 was also very weak. Wasn't much more intense  
16 than the 9.

17 Q The cigarette butt on here for loci of D18S51,  
18 Cellmark comes up with a 10.2 on the 17, but it's inconclusive  
19 on the other ones?

20 A It was inconclusive on Donte Johnson. I had run  
21 Donte's DNA twice. I got a result one time and I got a  
22 different result the other time, and I didn't -- I didn't test  
23 it the third time.

24 Q All right. We know that the sperm on the black  
25 jeans was mixed with epithelial cells, correct?

IV-153

WAHL - CROSS

1 A Yes.

2 Q We know that the cigarette butt was also mixed --  
3 the DNA there was mixed with another DNA?

4 A There's indications of that, yes.

5 Q Did you extract that second DNA from the cigarette  
6 butt?

7 A I'm not --

8 Q Did you -- were you able to extract --

9 A -- I'm not sure I understand your -- I'm not sure I  
10 understand your question.

11 Q Well, you realized that there were two different  
12 sources of DNA?

13 A No, not at the time I did the extraction, I didn't.

14 Q Okay. But eventually you found out that there are  
15 two separate sources on the cigarette butts?

16 A There's indications of a major/minor component  
17 mixture on the --

18 Q Okay.

19 A -- on the cigarette butt, but I did not know that  
20 until after I interpreted the data.

21 Q Meaning somebody may have taken a drag and had dry  
22 lips or didn't leave a lot of fluid?

23 A That would -- that would be the most probable  
24 explanation for that, yes.

25 Q Okay. Now, what I'm talking about, so we know that

IV-154

WAHL - CROSS

1 there's two separate DNAs -- profiles on that cigarette butt?

2 A Well, there's -- indicates it's two different DNA  
3 sources.

4 Q Sources, you mean two separate people?

5 A Yes.

6 Q Okay. You extracted the DNA from that other source?

7 A I think what you're -- if I understand your question  
8 is that we do not do differential extractions on cigarette  
9 butts, differential extractions are only done on sperm and  
10 other cell mixtures. The DNA found on cigarette butts is from  
11 nucleate epithelial cells that line the inside lining of your  
12 mouth and the cells slough off into the saliva and the saliva  
13 is deposited on the cigarette butt when someone smokes a  
14 cigarette. There is no way to differentially extract buccal  
15 cells from two different individuals. They're gonna co-  
16 extract.

17 Q So the problem is we have two known source -- well,  
18 they're not known. We have two sources of DNA found on the --  
19 on the cigarette butts, correct?

20 A In my opinion, yes, there's two sources.

21 Q And there is no --

22 A At least two sources.

23 Q -- there is no extraction to divide the two of 'em  
24 up?

25 A No. The extraction procedure for epithelial cells

IV-155



WAHL - CROSS

1 is the same, so if you have epithelial cells from two  
2 different individuals there you're going to co-extract the  
3 DNA. There's no way to separate 'em.

4 Q You said there was at least two?

5 A There's always a possibility there could be a third  
6 one but the typing data doesn't -- isn't -- doesn't suggest  
7 that there is more than a third person.

8 Q When you do examination of the DNA and you have a  
9 second examiner look at your results, what you're having is --  
10 you have the results placed up in one point, you have the  
11 photograph, is it the butts that you look at?

12 A No, the data -- well, there's two different parts to  
13 here.

14 Q Now, let's talk about STR.

15 A Okay. STRs, we're just talking about STRs. The  
16 data is actually computerized, it's data that's present in a  
17 computer program. We save a file and the analyst brings up  
18 the file on the computer and then analyzes the raw data.

19 Q When you look at the alleles -- am I'm saying that  
20 right, allies -- the alleles?

21 A The alleles, yes.

22 Q Alleles. You look at the alleles and you notice if  
23 there is any colorate -- correlation in the alleles?

24 A Well, you look at the peaks, the alleles appear as  
25 peaks in a -- in a --

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WAHL - CROSS

1           Q     I guess I'm talking PCR, go back to STRs. You look  
2 for the peaks in the alleles and if you notice a high peak you  
3 indicate that's an allele?

4           A     We do -- well, the computer program will call a peak  
5 an allele if it's high -- if the peak is high enough, exceeds  
6 a threshold level that we set in the -- in the computer  
7 program, and also if the peak occurs in a what's called a bin  
8 that we know that the allele size is there. So, if it meets  
9 those two criteria the computer will call it an allele but the  
10 examiner still has to look at the raw data and make some  
11 determinations whether this is a true allele or it might be an  
12 artifact.

13          Q     All right. Let me get to the raw data. When you  
14 look at the raw data you have a note with all the different  
15 locis and you mark down the numbers that you see on the  
16 alleles?

17          A     There is a work sheet that the primary analyst, in  
18 this case, myself, would record the results down on -- based  
19 on what he sees in the computer program file. The secondary  
20 reader would come in with the case file and write -- and  
21 look --

22          Q     Write --

23          A     -- at the data and determine whether they concur  
24 with my interpretation of that.

25          Q     And basically what he does is you write down, you

WAHL - CROSS

1 check the alleles. I think we probably have one here. You  
2 look at the alleles and then you mark 'em on the locis and the  
3 locis are located on here?

4 A That's correct.

5 Q And then the second reader comes in and he marks  
6 down here?

7 A He doesn't write anything down but if he -- if he  
8 sees something that -- he or she sees something which they do  
9 not agree with or might want to talk to the analyst, then they  
10 make a notation on the right side and then confer with the  
11 analyst.

12 Q So, it's not really a blind reading that the second  
13 person is doing? In other words, he's reviewing, he sees that  
14 you mark down as a loci a 19 or 18, and then he looks at the  
15 -- these and if he sees an 18 or a 19 -- when he sees an 18 or  
16 19 he checks it off?

17 A Yeah. It would not be blind. They have my results  
18 in front of them.

19 Q So, if they wanted to do it quickly they could just  
20 look over quickly and not really take the time to investigate  
21 it?

22 A They do take the time to investigate it --

23 Q But I'm saying it could happen --

24 A -- but they have my results in hand.

25 Q -- it could happen?

IV-158

1 A What could happen?

2 Q They don't do a blind reading, do you agree with  
3 that?

4 A They don't do a blind reading, no.

5 Q We'll just leave it at that.

6 MR. SCISCENTO: May I have the Court's indulgence  
7 for one moment, Your Honor?

8 BY MR. SCISCENTO:

9 Q You had mentioned earlier when you first -- when Mr.  
10 Guymon first asked you, you said that DNA is mostly used for  
11 human identification? I'm sorry. Let's see if I can get this  
12 right. You say you can do the DNA testing to determine human  
13 sources of DNA?

14 A That's one application of DNA technology, yes.

15 Q There is some crossover between other origins --  
16 other species, would you agree?

17 A Crossover? I'm not sure I understand your question.

18 Q Well, could you get DNA reading of a human being on  
19 a primate?

20 A You can get -- you can get DNA results testing high  
21 primates, yes. I've done it.

22 Q And that has --

23 A I've done it.

24 Q -- that has been done, the --

25 A I -- we did it in our validation.

ORIGINAL

FILED IN OPEN COURT  
JUN 12 2000 20DISTRICT COURT  
CLARK COUNTY, NEVADA  
\* \* \* \* \*  
SHIRLEY B. PARKAGUIRRE, CLERK  
BY *Carole D'Aloia*  
CAROLE D'ALOIA DEPUTY

STATE OF NEVADA

Plaintiff

vs.

DONTÉ JOHNSON,  
aka John Lee WhiteDefendant  
.....

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

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District Court

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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.

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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

IV-9

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.

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,

IV-11

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

IV-13

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

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.

IV-15

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?

IV-16

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

IV-17

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

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.

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

IV-21

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

IV-23

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?

IV-24

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

IV-25

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.

IV-26

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

IV-30

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.

IV-32

GUENTHER - CROSS

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

IV-33

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

IV-35

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



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 - 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

IV-41

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.

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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

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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

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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

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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

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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.

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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

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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

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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

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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

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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

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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?

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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.

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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

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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.

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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,

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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 --

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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.

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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?

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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 --

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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?

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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?

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IN THE SUPREME COURT OF THE STATE OF NEVADA

\* \* \* \* \*

DONTE JOHNSON,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

S.C. CASE NO. 65168

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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 XIII  
~~~~~

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**CERTIFICATE OF SERVICE**

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on the 9<sup>th</sup> day of January, 2015. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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