

1 (Whereupon the Court adjourned for the noon recess.)

2 THE COURT: Do we have anything else outside
3 presence of the jury?

4 MS. PUSICH: No, Your Honor.

5 MR. YOUNG: No, Your Honor.

6 THE COURT: Okay. Go ahead and bring in the jury.
7 Counsel, will you stipulate to the presence of the jury?

8 MR. YOUNG: State will, Your Honor.

9 MS. PUSICH: Yes, Your Honor.

10 THE COURT: Thank you. Please be seated. The State
11 will call the next witness.

12 MR. LEE: State calls Jim Steuart.

13 THE COURT: You may proceed

14

15 JIM STEUART

16 called as a witness, having been first duly sworn,

17 took the witness stand and testified as follows:

18

19 DIRECT EXAMINATION

20 BY MR. LEE:

21 Q Sir, if you could state your full name and spell
22 your last?

23 A Jim Steuart. S-T-E-U-A-R-T.

24 Q Sir, are you retired now?

1 A Yes, I am.

2 Q What was your career in?

3 A Law enforcement.

4 Q With whom?

5 A Churchill County Sheriff's Office.

6 Q How long have you been retired?

7 A Since 2005. Ten years.

8 Q How many years total in law enforcement?

9 A Twenty-two, twenty-three years. Approximately
10 twenty-two, twenty-three years.

11 Q Where did you start out?

12 A I started out with the Mineral County Sheriff's
13 Office. I had also done some reserve time with the Fallon
14 Police Department. I started my career with Mineral County
15 Sheriff's Department, was hired on with Fallon Police
16 Department and then from there I went to the Churchill County
17 Sheriff's Office.

18 Q How long were you with Churchill County?

19 A Approximately seventeen years.

20 Q What position or assignment did you retire from in
21 2005?

22 A Sergeant of Investigations, Supervisor for
23 Investigations.

24 Q How long were you in that position?

1 A I was in Investigations for seventeen years, right
2 at seventeen years, then supervisor for approximately six.

3 Q What were your duties as a supervisor of the
4 Investigations Division?

5 A You have to oversee and be aware of all cases that
6 came into the department. Even the cases generated by the
7 Patrol Division. Send any paperwork to the District Attorney's
8 Office, and coordinate with the District Attorney's Office on
9 any of the major crimes, and the core preparation, things of
10 that nature. Also to supervise investigations. Sometimes
11 actively investigating the case myself, but also supervising
12 other investigators as they investigated the case.

13 Q Were you in that capacity as the Investigations
14 sergeant in October 1997?

15 A Yes, I was.

16 Q Do you recall the incident on US 95 October 14,
17 October 15, 1997?

18 A Yes, I do.

19 Q What role did you play in that investigation?

20 A On October 14th late at night probably close to
21 midnight that night, I was home and I had received a call from
22 the office, Sheriff's Office that there was a report of a
23 shooting that occurred on US 95 south, south of Fallon, and
24 they were requesting that I come in and investigate, which I

1 did.

2 Q Where did you stop first? Where did you go first as
3 part of your investigation? Did you respond to the Sheriff's
4 Office?

5 A I responded to the Sheriff's Office.

6 Q Excuse me just a moment, please. With respect to
7 that shooting and the investigation, did you have an
8 assignment in that? Were you the lead detective or
9 investigator?

10 A I was going to be the lead investigator or
11 supervisor for that investigation which would consist of
12 supervising other members of our department and the
13 investigation team.

14 Q So if someone is giving out assignments with regard
15 to that investigation, was it you?

16 A It would have been me, yes.

17 Q So you mentioned the early morning hours of the 15th
18 of October that you responded, you got that call and responded
19 into the Sheriff's Office. What did you see? Was there a
20 vehicle?

21 A I had met with the people that had reported the
22 shooting out on the highway. They were there at the Sheriff's
23 office. Their vehicle was parked in our parking lot.

24 Q Do you recall an individual named Abraham Lee?

1 A Yes, I do.

2 Q Do you recall what his or his passenger's demeanor
3 was like?

4 A He was upset. He was scared. He had told me upon my
5 arrival that him and his friend, David, were driving
6 northbound south of Fallon coming toward Fallon. It was
7 nighttime, and someone had shot at his vehicle.

8 Q As a result of that, did you take a look at the
9 vehicle, yourself?

10 A Yes, I did.

11 Q What did you see on that vehicle just briefly and
12 generally?

13 A There was actually a total of five bullet type holes
14 in the vehicle and in the glass. The passenger door, the
15 splash plate underneath the door had damage to it. The rear
16 quarter panel on the passenger side had a hole in it and
17 damage. The window on the passenger side but at the rear of
18 the vehicle also had damage to it, and then the rear window at
19 the rear of the vehicle had a hole in it or damage. If I
20 remember correctly, there was damage to the front windshield,
21 but that was determined caused by projectiles that passed
22 through the vehicle.

23 Q Mr. Steuart, at that point, just after that, after
24 talking with Mr. Lee, his passenger and looking at the Jeep

1 itself, did you have any leads on that, any suspect right off
2 the bat?

3 A No.

4 Q What was the next thing that happened in the case?

5 A Well, after interviewing with Abe Lee, we secured
6 his vehicle to process it in the morning, and then for the
7 next three or four weeks --

8 Q Let me back you up before that time, actually. On
9 the 16th of October were you informed that a possible scene of
10 the shooting was done?

11 A Yes. We started checking the highway south of
12 Fallon is what we did.

13 Q Were you informed by another officer, anyway, a
14 possible scene was located?

15 A Yes. That would have been on the 16th, two days
16 later. We had search and rescue, other officers, reserve
17 officers walking the highway south of Fallon.

18 Q Did you respond out to that scene?

19 A Yes. Investigator Coleman and I responded to the
20 area where they had located some evidence indicating the
21 shooting had occurred.

22 Q Investigator Coleman, is that Bill Coleman?

23 A Bill Coleman.

24 Q With regard to that scene, what did you find? Why

1 did you guys believe that was the scene of the shooting?

2 A We had found nine expended shell casings and a
3 scanner, portable type scanner laying on the embankment of the
4 highway, the dirt embankment of the highway. The shoulder I
5 guess you could say, but it was quite an embankment. Those
6 items were located in that location.

7 In addition to that, we could see impressions in the
8 soft soil as if someone had been laying in the soil or moving
9 around in the dirt along that embankment.

10 Q Do you recall the nine casings, what they were?

11 A The shell casings were 7.62 caliber.

12 Q Did you also see prints, any other prints in the
13 area?

14 A We found a shoe impression that led to a dirt road
15 that ran somewhat parallel but distanced itself from the
16 highway.

17 Q Did those prints lead you to that road?

18 A Investigator-- Yes, it did.

19 Q On that road, did you see other markings that were
20 of interest to you?

21 A We found tire tracks. A set of tire tracks. We
22 backtracked the shoe impressions to the dirt road, and at that
23 location, we had found where a vehicle had come down that
24 road. So we found tire tracks and where a vehicle had turned

1 around and then drove forward like back toward the highway and
2 then stopped. And that is where the shoe impressions had
3 taken us to that location.

4 Q Was there anything unique about those tire tracks?

5 A Oh, the tire tracks, we noted the two front tires,
6 the left and the right front tires had a street type tread
7 with three distinct or three lines that actually went around
8 the entire tire. So there was three lines. The right rear tire
9 was somewhat of a mud or snow type tire, and the left rear
10 tire was somewhat of the street type tire only with four lines
11 going around the tire. So out of four tires, it had three
12 different types of tire tread on that vehicle.

13 Q Did you direct someone to diagram the impressions of
14 the tires?

15 A The impressions of the tires and the shoe
16 impressions. I had investigator Bill Coleman do that.

17 Q Okay. Then on October 16th then, beside the Jeep,
18 you have the shoe prints, the casing, the tire tracks. Any
19 suspect at that point?

20 A No suspects.

21 Q What was the plan then at that point? How did the
22 investigation further?

23 A Now that we had tire tracks, we started -- This was
24 not an effort to identify any one person. It was a collective

1 effort on a lot of personnel from our department, but we
2 started checking public parking lots, apartment complexes
3 anywhere you could park the car we were looking at tires to
4 find that combination of tire tread, you know, on a vehicle.
5 And we did that for probably a couple of weeks or so.

6 Q Was this something a lot of law enforcement officers
7 had a diagram of the tire treads they were just randomly
8 looking at?

9 A I don't remember if we actually gave to each officer
10 a diagram. You know, we showed them probably pictures, photos
11 of the tire impressions that we had found located out at the
12 scene, and coupled with showing diagrams to officers, and then
13 many of us just walking the parking lots during the day and at
14 night.

15 Q About a month after the shooting, middle portion of
16 November, did you respond to the Frontier Plaza?

17 A Yes, I did.

18 Q What did you find there?

19 A There was a vehicle parked in the Frontier Plaza.
20 The Frontier Plaza has several stores, and it is just an open
21 parking lot. But the vehicle in question that was parked in
22 the parking lot had tire treads at the scene, that was
23 consistent with what we found out at the scene on US 95 in
24 what was one of the stores that was in the Frontier Plaza.

1 Q Radio Shack?

2 A Correct.

3 MR. LEE: Your Honor, may I approach the witness?

4 THE COURT: You may.

5 BY MR. LEE:

6 Q Sir, let me show you an exhibit marked as Exhibit
7 4-a. Do you recognize what is depicted there?

8 A Yes, I do.

9 Q What is that?

10 A It is the vehicle that was in the Radio Shack
11 parking lot with the same tread at the scene or consistent
12 tread at the scene we found out at the scene.

13 Q Does that fairly and accurately depict the vehicle
14 you described?

15 A Yes, it does.

16 MR. LEE: Move to admit 4-a.

17 THE COURT: Any objection?

18 MS. BOND: No objection.

19 THE COURT: Exhibit 4-a is admitted.

20 (Exhibit 4-a admitted in evidence.)

21 MR. LEE: May I publish?

22 THE COURT: You may.

23 BY MR. LEE:

24 Q Mr. Steuart, this is Exhibit 4-a. That is the

1 vehicle you saw outside the Radio Shack?

2 A Yes, it is.

3 Q Was the registration run on the vehicle?

4 A Yes, it was.

5 Q Who did it come back registered to?

6 A Registered to Shawn Harte.

7 Q After that then you see the vehicle. Did a swarm of
8 officers come and surround the vehicle at that point?

9 A No, we didn't.

10 Q What happened?

11 A We were at the early stages of identifying this
12 vehicle and the registered owner, and we also wanted to make
13 sure that we had the right vehicle, the tire tread design.
14 And so there was some investigation going on as far as that
15 goes. We photographed or I photographed the tires in the
16 parking lot when the vehicle was parked in the Radio Shack
17 parking lot at Frontier Plaza.

18 Q After you guys initially saw that in the Radio Shack
19 parking lot, did you direct surveillance be done on the
20 vehicle?

21 A Yes, I did.

22 Q Was there an address that was linked to this vehicle
23 where surveillance watched it go?

24 A From our surveillance, we watched it go to 1051

1 Aimme Lane and also 247 south -- North Laverne Street which is
2 an apartment.

3 Q How far is North Laverne street from the Sheriff's
4 Office?

5 A Only a few blocks.

6 Q One of the nights was this vehicle parked there
7 overnight, at least in the dark?

8 A It was. The vehicle was parked at the North Laverne
9 apartment address at night overnight.

10 Q Did you and other investigators then seek anymore
11 confirmation that this was the vehicle while it was parked at
12 the North Laverne address?

13 A Yes, we did. Myself, investigator Bill Coleman and
14 investigator Mark Joseph, at night we went over to the
15 apartment complex and walked up to the vehicle. We, again I
16 again photographed the tires to be sure we had also gotten --
17 we had also brought a tape measure along with us and measured
18 the wheel base of the vehicle and then left the area.

19 Q Based on those measurements and everything, what did
20 you believe?

21 A We felt that we had the right vehicle that was on
22 the dirt road south of 95 as far as the tire tracks that we
23 had found out there.

24 Q Was that under the cover of darkness you went and

1 did that at Laverne?

2 A Yes.

3 Q Was it your intent to make contact with Mr. Harte
4 that night?

5 A No, it wasn't.

6 Q So then after you had that information, what did
7 you -- what did your investigation lead to next?

8 A That morning, that next morning, I believe that
9 would have been the 12th of November, I had the photos
10 developed and, again, we looked or I looked at the photos of
11 the tires that were on this vehicle and the tire impressions
12 that we had photographed and diagramed out at the scene south
13 of 95. They were consistent with each other, and so I went to
14 the District Attorney's office to obtain Search Warrants.

15 Q At that point, did you have a tip on ownership of a
16 weapon?

17 A During that time when we initially had seen the
18 vehicle parked in the Radio Shack parking lot and ran the
19 registration, we had a tip that the registered owner, Shawn
20 Harte, worked, was employed at Radio Shack and that he had
21 made-- he had, in conversation, told people that he had an SKS
22 rifle.

23 Q With all that information, is that how you obtained
24 the search warrant?

1 A That's correct.

2 Q Where were you intending on searching? What
3 locations?

4 A We wanted to search the vehicle, the 1985 Honda
5 Accord registered to Shawn Harte. We wanted to search the
6 apartment at 247 Laverne Street, and contained within the
7 Search Warrant was an address of 1051 Aimme Lane there in
8 Fallon which was Shawn Harte mother's residence.

9 Q With those Search Warrants then what was the plan?
10 How were they all to be executed?

11 A The plan that we came up with after that, for almost
12 two days we had done surveillance on the vehicle and watched
13 Shawn Harte leave work, go to the Aimme Lane address and also
14 go to the North North Laverne address. So on the 12th, that
15 evening, I had planned a traffic stop. That I would have a
16 patrol officer make a traffic stop on Shawn Harte's vehicle
17 after work, and then I would show him the Search Warrants that
18 I had obtained for his vehicle, the apartment and the house.

19 Q Did everything go smooth with that stop of the
20 vehicle?

21 A Everything went smooth as far as the stop of the
22 vehicle except for one thing. Not knowing where someone is
23 going to go when you are tailing them or doing surveillance,
24 he had left work, driven over to the Aimme Lane address and

1 then from Aime Lane just a couple blocks away he left that
2 address, too. He was only there momentarily. And then he
3 turned, and he went to a restaurant there in Fallon on the end
4 of town that is called Cock & Bull, and he stopped there.

5 Q At this time, what was going on?

6 A I designated a patrol deputy to make the stop upon
7 my command, my order. I had investigator Bill Coleman,
8 investigator Mark Joseph out with us also at the Sheriff's
9 Office. You had the Sheriff, Undersheriff, the Captains and
10 agent Kip Steel from the FBI. So we had a lot of officers not
11 just the ones I named. There were several others. And the
12 plan was to make this traffic stop as safe as possible, show
13 Shawn Harte the paperwork, the Search Warrants and then go
14 from there. And when Shawn had made a right turn to go south
15 on South Taylor Street and then immediately turned into Cock &
16 Bull. It kind of threw things off a little bit. We didn't
17 know what was going on. We knew he had occupants and other
18 people in the vehicle. I had called into advise my supervisors
19 back at the Sheriff's Office and said, hey, this is what is
20 happening out here. And a Captain had come back over the
21 radio, and because it wasn't-- it was going according to plan
22 but it wasn't, he instructed me to abort the mission, not make
23 the traffic stop and we would replan something. But he said
24 abort the mission over the radio.

1 Q At that point, did you abort the mission?

2 A As he was saying that over the radio, I observed
3 Shawn Harte coming out of the Cock & Bull restaurant and
4 getting into his car. That stop was only momentary. With no
5 disrespect meant or anything, I got back on the radio, and I
6 was a Sergeant, I told the Captain negative, and I gave the
7 order to make the traffic stop. From that point on, we were
8 back on schedule. Everything was going as we had planned.

9 Q Was that on November 12th of '97?

10 A November 12, 1997.

11 Q Again, you didn't light the vehicle up, meaning you
12 didn't make the stop, another deputy made the stop?

13 A I had a deputy, patrol deputy in a marked unit with
14 red lights to make the stop.

15 Q Who was the first to make contact with Mr. Harte?

16 A I was. That was the other part of the plan that I
17 was the supervisor in charge and I wanted-- and I knew I would
18 be interviewing Shawn Harte back at the Sheriff's office. FBI
19 agent Steel and myself would be conducting an interview. I
20 also had the paperwork, the Search Warrant, and I wanted to
21 make, first make contact with Shawn Harte to develop a rapport
22 with him and talk and explain to him the Search Warrant
23 process.

24 Q Was he in the driver's seat of the vehicle?

1 A Shawn Harte was identified and was in the driver's
2 seat of the 1985 Honda Accord.

3 Q Do you see Mr. Harte in the courtroom today?

4 A Yes, I do.

5 Q Could you please identify Mr. Harte for us?

6 A The light blue shirt sitting at this table over here
7 in the center.

8 MR. LEE: May the record reflect Mr. Steuart's
9 identification of the defendant?

10 THE COURT: It will so reflect.

11 BY MR. LEE:

12 Q Upon making contact, who else was in the vehicle
13 with Mr. Harte?

14 A Also identified in the vehicle was a girl by the
15 name of Latisha Babb and a small infant child.

16 Q Was Latisha Babb in the front passenger seat?

17 A Yes, she was.

18 Q In your contact then with Mr. Harte, what did you
19 say first?

20 A I identified myself and then advised him -- I had
21 him taken out of the vehicle, and I identified myself and I
22 explained to him that we had a Search Warrant for the car, for
23 his car for the North North Laverne address apartment, and the
24 Aimme Lane residence. And I also told him that we had,

1 included in that Search Warrant was a seizure warrant for his
2 fingerprints.

3 Q Did you have him read the warrants?

4 A I showed Shawn the original search and seizure
5 warrant and had him read it and asked him if-- after he was
6 done reading it, I asked him if he understood the warrant, and
7 he stated yes.

8 Q What did you state to him regarding his custody
9 status at the time?

10 A I told him he was not under arrest. At this point in
11 time in the investigation, we were confident that the tire
12 impressions that were left out at the scene were very
13 consistent with the tires on this vehicle. With the other
14 information as far as Shawn Harte owning a rifle, we -- I was
15 not going to arrest him. I wanted to interview him and find
16 out what took place, what happened or if he was connected or
17 knew anything about the shooting that had occurred on South
18 95. He was not under arrest. He was not handcuffed. One of
19 the things I did ask him was if he had any weapons in the car.

20 Q What did he say?

21 A He told me, yes, he had a .22 pistol in between the
22 front and the front passenger seat. The driver and the
23 passenger seat.

24 Q Did you request Mr. Harte go with you to the

1 Churchill County Sheriff's Office for an interview?

2 A I told him he could ride with us to the Sheriff's
3 Office which was only maybe a mile, little over a mile away.
4 It was all in close proximity and ride with myself and
5 investigator Bill Coleman, and if he would give permission for
6 a deputy to drive his vehicle to the Sheriff's office so we
7 could conduct the search. At the Sheriff's Office we would
8 obtain his fingerprints and then do an interview.

9 Q Did he go with you?

10 A Yes, he did.

11 Q What about his vehicle?

12 A Investigator Mark Joseph drove his vehicle to the
13 Sheriff's Office and another deputy had given Latisha Babb and
14 the child a ride to the Laverne Street address.

15 Q Was something going on at the Laverne Street address
16 at the same time?

17 A As the investigation progressed, we were going to
18 search the Laverne Street address so, yes, we had officers at
19 the Laverne Street address. We had officers waiting for
20 assignment at the Sheriff's Office and that we were coming in
21 with Shawn Harte who was riding in with us to the Sheriff's
22 Office for an interview.

23 Q Would you be able to describe the attitude or
24 demeanor of Shawn Harte there at the scene of the traffic

1 stop?

2 A Yes.

3 Q How would you describe it?

4 A Shawn Harte was cooperative. I asked him if he
5 understood the warrant, and he stated he did. Going on my
6 experience and observing Shawn Harte's outwardly demeanor, he
7 didn't seem to be concerned. I wrote in my report he was
8 indifferent. Most people, from my experience, are going to ask
9 questions. You have got a Search Warrant for their car, for
10 their fingerprints, for the apartment they are living in and a
11 Search Warrant indicated in there the 1051 Aimmune Lane street
12 address which was his mother's house. To me, I expected some
13 type of response, good or bad, but he was just okay with it.
14 It didn't seem to be a concerning matter to him on the
15 outward.

16 Q Detective, when you get to Churchill County and the
17 Sheriff's Office still on November 12th, again, is Mr. Harte
18 under arrest at that point when you arrive there?

19 A When we arrived at the Sheriff's Office, no, he was
20 not under arrest.

21 Q Was he handcuffed?

22 A No, he wasn't.

23 Q Was he given his Miranda rights still?

24 A Yes, he was.

1 MR. LEE: May I approach the witness, Your Honor?

2 THE COURT: You may.

3 BY MR. LEE:

4 Q I am going to show you what has been marked as
5 Exhibit 38-a. Take a moment and look over that and look up at
6 me when you have had enough time. Do you recognize what
7 Exhibit 38-a is?

8 A Yes, it is a form indicating a person's Miranda
9 rights.

10 Q Does your signature appear on that form?

11 A Yes, it does.

12 Q Does Mr. Harte's name appear on that form?

13 A Yes, it does.

14 Q Is that the form that was gave to Mr. Harte and
15 signed by Mr. Harte on this interview that we are discussing?

16 A Yes, it is.

17 MR. LEE: Move to admit 38-a.

18 MS. BOND: No objection, Your Honor.

19 THE COURT: Exhibit 38-a is admitted.

20 (Exhibit 38-a admitted in evidence.)

21 MR. LEE: May I publish, Your Honor?

22 THE COURT: You may.

23 BY MR. LEE:

24 Q So, Mr. Steuart, pointing on the right side toward

1 the bottom about two-thirds of the way down, whose signature
2 does that appear to be?

3 A Shawn Harte's.

4 Q Is this your signature on the left side second line
5 from the bottom?

6 A Yes, it is.

7 Q With this Waiver of Rights form, did Mr. Harte still
8 wish to speak to you?

9 A Yes, he did. He was willing to sit there and talk
10 with investigators and speak with us.

11 Q Do you recall about how long the interview was?

12 A Approximately three and a half to four hours that he
13 was willing to sit there and talk with us.

14 Q What did he state with regard to the 247 North
15 Laverne Street address?

16 A He said that he had just recently moved into that
17 address where his girl friend, Latisha Babb, was staying.

18 Q Do you recall the date he said he moved there?

19 A October 14th or 15th of 1997.

20 Q Is that right around the same time as the shooting?

21 A Yes, it was.

22 Q Did he state where his parents reside?

23 A Told me in the interview his mom lived at 1051 Aimme
24 Lane there in Fallon.

1 Q Did he tell you where he worked at?

2 A He told me he worked at Radio Shack.

3 Q As well, in asking him what kind of equipment,
4 electronic equipment he had in the vehicle, what did he state
5 to you?

6 A I asked him what type of equipment that he had in
7 the vehicle or that he owned, and he told me he had a CB
8 radio, hand type radio, and portable scanner.

9 Q Did you ask him about weapons that he owned?

10 A I asked him to describe to us the weapons that he
11 owned, and he, again, told us about the .22 pistol which was
12 tucked between the two front seats, and he told us about a .22
13 rifle that he had and an SKS type rifle that he had, and those
14 were at the Laverne Street address.

15 Q Did you ask him about whether anyone borrowed that
16 SKS rifle?

17 A I asked him if he loaned or anyone had ever borrowed
18 his weapons and he stated no.

19 Q What did you ask him with regard to the actual
20 shooting on US 95?

21 A When I explained to him about the shooting case we
22 were investigating, and if he knew of if he was involved or
23 knew of or had any information related to that shooting case,
24 his response was I had no reason for-- I would have no reason

1 for going down there, meaning south.

2 Q Did he state how he learned of the shooting, how he
3 heard of it?

4 A He told me he had probably read it in one of the
5 papers.

6 Q Did you ask him about shooting in general, who he
7 goes shooting with?

8 A I asked him if he had a friend, a buddy that he
9 liked to go shooting with, and he had told me no, but he does
10 go out shooting and he usually goes to the old shooting range
11 out north of town, Tarzan Road area.

12 Q What did he state with regard to being at that
13 location south of Fallon on October 14th, late night, early
14 morning October 15th?

15 A Said he had never gone south, traveled south on US
16 95 except for when he was on his way back to the military base
17 that he was assigned to. And that would have been in the
18 Summer of 1967.

19 Q Did he tell you about an individual named Weston
20 Sirex?

21 A I asked him if he had a friend by the name of Weston
22 Sirex, and he told me, yes, that he had met Weston when he was
23 in the Army and Weston lived in Reno. And in that interview,
24 he also indicated that him and Weston had gone out shooting

1 also.

2 Q Did he tell you where Weston worked?

3 A Yes, he did.

4 Q Where was that?

5 A At a taxicab company in Reno.

6 Q And then last -- Did he ask you when the last time
7 he saw or did he tell you the last time he saw Weston Sirex?

8 A Yes, he did.

9 Q When was that?

10 A He stated it had been about two weeks prior to that
11 interview that he had saw Weston or met Weston with Latisha
12 Babb in Reno, and they had gone to Circus Circus.

13 Q Mr. Steuart, at this point in your investigation,
14 were you aware of a murder that had happened in Reno toward
15 the end of October with a cab driver?

16 A Yes, I was.

17 Q At that point, again just at this point in your
18 investigation, did you believe that these had any links to
19 each other, the murder of the cab driver and the shooting on
20 US 95?

21 A No, I did not. I had only known that a murder had
22 occurred in the Reno, Washoe County area, and that was from
23 the news on TV. I did not know that the two crimes, Churchill
24 County and Washoe County were connected.

1 Q With regard -- Let me ask, subsequent to your
2 interview with Mr. Harte, did his custody status change?

3 A Yes, it did. We had several, the Department had
4 several things going on, and I would be stepping out of the
5 interview room on occasion to find out what was happening at
6 the Laverne Street address, what was going on with other
7 deputies and investigators that had assignments. I was
8 informed we also had two officers going to Reno to meet up
9 with a Washoe County detective and locate Shawn's friend,
10 Weston. We also had another deputy going to Reno to the
11 Washoe County lab to meet with a lab tech.

12 Q Based on, without even going there, based on the
13 results of all of those, did you place Mr. Harte under arrest?

14 A Yes. About the last time I stepped out of the
15 interview room between 10:00 and 10:30 that evening, I was
16 discussing with my supervisor, the Sheriff, the Undersheriff
17 the collection of information that we were obtaining in those
18 hours, evening hours, and Shawn Harte. And agent, FBI agent
19 Kip Steel came walking down the hallway, and I could see them
20 coming toward us to the front office. And Kip Steel told me
21 that Shawn was tired and wanted to go home. That was the end
22 of the interview, and that he would come back the next day if
23 we needed him to. And at that time, I placed him under arrest
24 for the shooting incident that occurred in Churchill County

1 south on 95.

2 Q Was he under arrest for anything relating to the
3 murder of John Castro?

4 A No.

5 Q Do you know what happened to the case, the shooting
6 in Churchill County?

7 A Yes.

8 Q What happened with it?

9 A As this investigation completely unfolded and
10 basically went toward the investigation that Reno and Washoe
11 County was doing with the murder of the taxicab driver --

12 Q Mr. Steuart, let me interrupt you there if I could.
13 Was the case ever pursued to the courtroom?

14 A No, it was not.

15 Q Was that based simply on a conviction sustained in
16 Reno?

17 A Yes.

18 Q Let me bring you back to that traffic stop,
19 Mr. Steuart. I'm just about finished up with this. When you
20 first made contact with Mr. Harte and you stated in his
21 vehicle was Latisha Babb and an infant; is that right?

22 A That's correct.

23 Q Were they with him that entire evening?

24 A Shawn Harte had left work at the Radio Shack store

1 and then picked Latisha Babb and the child up at another
2 location and then we made the traffic stop after.

3 Q Did you -- Was part of your plan that Latisha Babb
4 and the infant would be in the car or was that a surprise?

5 A We didn't know who would be in the car with him. At
6 that time, we were looking at the car as possibly being the
7 vehicle that we were interested in. And also the registered
8 owner, Shawn Harte. At that point in time, we did not know
9 anybody else would be involved.

10 Q At this point, Mr. Steuart, without telling me what
11 the content of this was, did you subsequently learn any
12 information from Mr. Harte about his intentions during that
13 stop?

14 A Yes, I did.

15 Q As a result of that, how did you feel?

16 MS. BOND: Objection. Relevance.

17 THE COURT: Sustained.

18 BY MR. LEE:

19 Q Let me ask you, what did you understand his
20 intentions were during that stop?

21 A To shoot the officer that came up on the vehicle.

22 Q Did that have an affect on you?

23 A Yes. I was the officer.

24 MR. LEE: Thank you. Pass the witness.

1 THE COURT: Cross-examination.

2 MS. BOND: Thank you, Your Honor.

3

4

CROSS-EXAMINATION

5 BY MS. BOND:

6 Q Mr. Steuart, I am going to show you what has been
7 marked 4-b and ask if you recognize that?

8 A Yes, I do.

9 Q Can you tell me what that is a photograph of?

10 A The interior of Shawn Harte's car with the gun in
11 between the seats that he told us about-- told me about.

12 Q And that is the gun you were talking about at the
13 time of the traffic stop you had been discussing right outside
14 the Cock & Bull that he said was in the car?

15 A He told me on the traffic stop that he had a gun in
16 between the seats. I asked him do you have any weapons in the
17 car? And he said I have a pistol in between the front seat,
18 the driver's seat and the passenger front seat. I never saw
19 the weapon at that time.

20 Q Is that the front seat of his car?

21 A That's the front seat of his car.

22 Q There is a pistol there that appears to be exactly
23 what he described?

24 A Yes.

1 Q And did you not take that photograph?

2 A No.

3 Q Did you ever see the inside of the car at that time?

4 A Yes, I did, when we had secured it at the bay area
5 at our local Fire Department.

6 Q Were you able to see that inside or had it already
7 been removed?

8 A Pardon?

9 Q I am sorry. The gun, had the gun already been
10 removed when you saw the car?

11 A I don't remember.

12 Q Is that in a location where it could be easily
13 grabbed by the driver?

14 A Yes, it is.

15 Q But on that occasion, Mr. Harte did not use that gun
16 when you stopped him; is that right?

17 A He did not use it.

18 Q He didn't take it out and point it at you?

19 A No.

20 Q He didn't threaten you with it?

21 A No, he did not.

22 Q The first you learned was when you asked if he had a
23 weapon and he told you about that?

24 A That's right. He told me about it.

1 Q When you interviewed -- I am sorry. When you first
2 talked to him about the warrant to search his mother's house,
3 you said he seemed indifferent?

4 A That's correct.

5 Q That was a little surprising to you?

6 A Yes, it was.

7 Q In fact, he seemed to lack any real response?

8 A That would be correct, yes.

9 Q Have you had any -- Let me rephrase this. Outside of
10 any courtroom appearances, have you seen Shawn Harte in the
11 last ten years?

12 A No, I have not.

13 Q And you have not had any conversation with him since
14 2000?

15 A No conversation.

16 Q You have had no correspondence with him either
17 direction since at least 2000?

18 A No correspondence.

19 Q In fact, no contact of any kind in the last ten to
20 fifteen years?

21 A No.

22 MS. BOND: I have no further questions, Your Honor.
23 Thank you.

24 THE COURT: Anything further?

REDIRECT EXAMINATION

BY MR. LEE:

Q Mr. Steuart, the question was asked, Mr. Harte didn't use the gun that day on the stop, right?

A That's correct.

Q Why didn't he?

MS. BOND: Objection. Speculation.

MR. YOUNG: I will ask a follow-up question, Your Honor.

THE COURT: Okay.

BY MR. LEE:

Q Did you learn why he did not use the gun?

A Yes, I did.

Q Why didn't he use the gun that day?

MS. BOND: Objection, foundation to how he learned it.

MR. LEE: Fair enough.

BY MR. LEE:

Q Did you learn about his intention that day, what he was going to do and why he didn't do it?

A Yes, I did.

Q Do you recall where you learned that information?

A After he was arrested that evening, the following day there was interviews going on at the Churchill County

1 Sheriff's office, our office, re-interviewing Shawn Harte and
2 involving detectives from Washoe County and our office also.
3 After those interviews were done, again getting together on
4 what information was obtained from those interviews, one of
5 the officers made a comment that, but because of the baby in
6 the car, Shawn Harte, he would have shot the officer that
7 walked up on the vehicle.

8 Q Were you aware of a letter that was also written by
9 Mr. Harte to a former girlfriend?

10 A Yes, I was.

11 Q About a year after this incident all happened?

12 A Sometime after, yes.

13 Q Did this similar information appear there as well?

14 A Yes, it did.

15 Q So were you grateful Latisha Babb and the infant
16 were in the car that day?

17 A Yes. My intention was to keep everybody safe, the
18 public safe, my officers that were out there that I gave
19 assignments to, including myself and keep the occupants of the
20 vehicle, whoever was in the vehicle at the time that we
21 stopped it. I wanted a safe, everybody to be kept safe. And
22 I am extremely thankful for the reason given that Shawn Harte
23 did not use that weapon, because I was the officer that walked
24 up on that vehicle that night.

1 MR. LEE: Thank you. No further questions.

2 MS. BOND: No further questions.

3 THE COURT: May this witness be excused?

4 MS. BOND: Yes.

5 MR. LEE: Yes.

6 THE COURT: Thank you, sir, you may step down. You
7 are excused.

8 (Witness Excused.)

9 MR. LEE: Our next witness is Bill Coleman.

10 THE COURT: You may proceed.

11 MR. LEE: Thank you, Your Honor.

12

13 BILLY COLEMAN

14 called as a witness, having been first duly sworn,
15 took the witness stand and testified as follows:

16

17 DIRECT EXAMINATION

18 BY MR. LEE::

19 Q Sir, could you please state your full name and spell
20 your last name for the court?

21 A My name is sergeant Billy Coleman. C-O-L-E-M-A-N.

22 Q How are you employed?

23 A I am with the Churchill County Sheriff's office in
24 Fallon, Nevada.

1 Q What capacity right now?

2 A I am a sergeant assigned to the Patrol Division.

3 Q How long have you been a sergeant?

4 A 1998.

5 Q How many years have you been a law enforcement
6 officer?

7 A Just about 23 years.

8 Q Let's bring you back to 1997. What was your
9 assignment, position, if you will?

10 A I was a corporal investigator assigned to the
11 investigation Division at the Sheriff's office.

12 Q Who was your lead supervisor?

13 A Sergeant Jim Steuart.

14 Q Sergeant Coleman, bringing you just to the late
15 night of October 15th-- 14th, excuse me, early morning October
16 15, 1997, do you recall a shooting incident on US 95 south of
17 of Fallon?

18 A Yes, I do.

19 Q Explain how you first became involved in that?

20 A In the morning hours of October 16th, I received a
21 call from my agency asking me to respond to an area about 23
22 miles south of Fallon in reference to a shooting that occurred
23 to a motor vehicle.

24 Q Twenty-three miles south of Fallon. Was it on US

1 95?

2 A Yes, sir.

3 Q Did you indeed respond to that scene?

4 A I did.

5 Q What side of the roadway were you interested in?

6 A The east side of the highway was of particular
7 interest.

8 Q Is that what scene you were drawn to on the east
9 side?

10 A Yes, sir.

11 Q If I am driving north in my vehicle, that would be
12 on my right side?

13 A That's correct.

14 Q What was found there at the scene on October 16th?

15 A On October 16th there was approximately nine shell
16 casings and a hand-held radio transmitter receiver.

17 Q What kind of shell casings.

18 A Shell casings from a 7.62 millimeter.

19 Q Do you have a gun that shoots that kind of caliber
20 weapon?

21 A Yes, sir.

22 Q What is that?

23 A Commonly known as an SKS.

24 Q Could you describe a SKS briefly for us?

1 A Yes, sir. It is a Soviet or Warsaw block assault
2 rifle, semi-automatic. Often times they have a bayonet and
3 other accessories attached.

4 Q When you arrived at the scene looking at the east
5 side of the highway, did you actually see the casing?

6 A Yes, I did.

7 Q How close to the road were they?

8 A Very close. Close proximity to the roadway, varied
9 in distance from just a matter of four feet to nine feet. It
10 was all in a pretty close group.

11 Q Now an SKS, is it single shot, you have to reload
12 each bolt action?

13 A No, sir. Semi-automatic weapon.

14 Q Once a round is fired, what happens to the
15 cartridge?

16 A It ejects and another one is chambered each time the
17 trigger is pulled.

18 Q Besides shell casings and the scanner, did you
19 notice anything of an impression on the ground?

20 A Yes, sir. There was two impressions on the side of
21 the road on the soft shoulder that appeared to be consistent
22 with someone in a prone position or laid down in a prone
23 position. There were actually two impressions side by side.

24 Q Did you see any shoe tracks?

1 A Yes, sir.

2 Q Describe those, if you could?

3 A Searchers located shoe tracks leading away from this
4 position beside the road. We back tracked the shoes that
5 basically were a flat sole type of deck shoe, if you will. It
6 had a horizontal wavy line extending from one side to the
7 other. It was pretty distinctive because it had a line that
8 circled the entire circumference of the shoe print, itself.

9 Q Did these -- Was it a random shoe print or did it go
10 somewhere?

11 A It was definitely leading away from the highway and
12 it crossed through a fence approximately -- If I could
13 describe the scene a little?

14 Q Please?

15 A The highway, itself, had an asphalt type curb beside
16 it. And then it was a dirt shoulder, and then it was a very
17 steep, about 27 foot embankment that went down. About 40 feet
18 later there was a barbed wire fence which is common among
19 highways to keep the cattle off the road. We followed the
20 single set of shoe tracks from the highway area down through
21 the fence in an easterly direction towards a dirt road.

22 Q Did that dirt road ever lead back to the highway?

23 A It does. It intersects with the highway. It is
24 actually a dirt road that we believe was used by N.S. Fallon

1 for the workers on the range.

2 Q Did you follow the tracks back to the road?

3 A Back to the dirt road from the highway, yes.

4 Q From the highway back to the dirt road. About how
5 far did you follow the shoe tracks?

6 A Altogether about 150 yards to the road. The dirt
7 road, itself.

8 Q On the dirt road, did the tracks continue?

9 A Yes, sir. For about a tenth of a mile still in an
10 easterly direction.

11 Q Then what happened?

12 A We actually found where the shoe tracks lead us to
13 some vehicle tracks that were along the dirt road, itself.
14 And it appeared that whoever made the shoe tracks actually
15 exited the vehicle at that point.

16 Q Were the shoe tracks leading to the highway or from
17 the highway?

18 A From the highway.

19 Q From the highway to the dirt road?

20 A Correct.

21 Q Is that location on the dirt road you just described
22 where the shoe tracks ended?

23 A Yes, sir.

24 Q What did you pick up at that point?

1 A We followed the vehicle tracks. And the vehicle
2 tracks were pretty unique. If I may?

3 Q Describe that?

4 A Well, the vehicle tracks had mixed matched tires.
5 It was pretty easy to determine that the same vehicle had
6 three different sets of tires on it. Actually different sizes
7 as well.

8 Q Were they easily visible in the dirt?

9 A Yes, sir.

10 Q Did you do anything with the scene there,
11 specifically with the shoe prints and the tire tracks?

12 A Yes, sir, I did. I diagramed both the shoe tracks
13 and the vehicle tracks.

14 MR. LEE: Thank you. Your Honor, may I approach?

15 THE COURT: You may.

16 BY MR. LEE:

17 Q Let me show you what has been marked as Exhibit 35.
18 Do you recognize that?

19 A Yes, sir. That's my document.

20 Q I am sorry?

21 A That's my document. I performed the diagram of
22 this.

23 Q What is that a diagram of?

24 A It is basically the four tire tracks we found on

1 scene and the shoe tracks we found from the highway back to
2 the road.

3 Q Was that something you included in your report with
4 the Sheriff's Office?

5 A Yes, sir.

6 MR. LEE: Move to admit 35.

7 THE COURT: Any objection?

8 MS. BOND: No objection.

9 THE COURT: Exhibit 35 is admitted.

10 (Exhibit 35 admitted in evidence.)

11 MR. LEE: And may I publish?

12 THE COURT: You may publish.

13 BY MR. LEE:

14 Q Can you see that okay on the scene in front of you,
15 sergeant?

16 A Yes, sir.

17 Q So let's start off at the bottom. Looking at
18 Exhibit 35, what do we see on specifically the bottom middle
19 diagram?

20 A That is the flat sole shoe track that we followed.

21 Q Did you draw this physically?

22 A I did.

23 Q You said there was something distinct about the
24 shoe. What was that?

1 A Absolutely. Around the circumference of the track,
2 itself, you could see the line, how the border of the line or
3 the end of the shoe has a line that basically follows the
4 contour of the sole.

5 Q Okay. And then is that the shoe that you have then
6 followed back to the road, itself?

7 A That's correct.

8 Q Okay. Does this diagram also show the tire
9 impressions of the vehicle you described earlier?

10 A Yes, sir. The top two tracks represent the front
11 tires of the motor vehicle tracks that we found. As you can
12 see, they are both the same type of tread pattern.

13 Q Let me stop you on this for a moment.

14 A Okay.

15 Q Can you see that okay?

16 A Yes, sir. What it represents, the top two left and
17 right tire impressions, you will see how it has three groves,
18 if you will, that roll around the circumference of the tire
19 and are intersected by diagonal lines, diagonal groves.

20 Q Did you measure the width of each tire?

21 A Yes, sir. Both those front are six inches in width.

22 Q How about the wheel base, did you measure that?

23 A We did. The outside outside wheel base was
24 sixty-four inches. I believe the inside inside was fifty and

1 three quarters inches from inside of the tire to inside of the
2 tire. That is typically done on the rear of the vehicle.

3 Q At this point, again, this is being worked off of
4 just the dirt impressions?

5 A Yes, sir.

6 Q Was it light outside when you were doing this?

7 A Yes, sir.

8 Q Explain then the rear tires that we see.

9 A The rear tires, you notice the left rear has four
10 center grooves that will go along the circumference of the
11 tire. It also is intersected by a diagonal line, but those
12 diagonal lines are actually opposite of the front tire. That
13 tire, itself, was five and a half inches in width which was
14 also unique.

15 Q How about the right rear tire?

16 A Right rear was more aggressive snow or mud type
17 tread design six inches in width, and it is not very common we
18 would run into a vehicle that had three different sets of
19 tires on it.

20 Q Then as well, sergeant, this bottom one, the
21 measurements, are those-- were those done by you?

22 A Yes, sir.

23 Q So again at this point did you diagram the entire
24 scene as well as distances?

1 A Yes, sir, I did.

2 Q At this point then in the investigation, did you
3 have any leads?

4 A Aside of the shell casings, the radio, we did send
5 the radio off to the laboratory for processing. We wanted to
6 know a couple things off the radio: What frequency was being
7 used and if there were any latent fingerprints found on the
8 battery within the radio.

9 Q Apart from all of this, the things found at the
10 scene were the impression tire tracks?

11 A That's all we had, sir.

12 Q Any suspects?

13 A No, sir.

14 Q About a month later, early part or the middle of
15 November, are you aware a possible match was found?

16 A Yes, sir.

17 Q Where did that happen?

18 A Possible match on the vehicle -- Now if I can
19 backtrack a little. We know using the measurements that we
20 had off the tires and doing a little checking at parking lots
21 and things, different types of vehicles with this type of
22 wheel base, those types of tires, we had an idea of basically
23 it is a smaller mid size type of vehicle we were looking for.

24 Q Not a big truck you were looking for?

1 A No, sir.

2 Q That is what the investigation continued on then?

3 A Absolutely. We were looking for a car, passenger
4 car with three different types of tires. Almost a month later
5 a vehicle such as that was located in the Frontier Plaza on
6 West William in Fallon.

7 Q What kind of vehicle was that?

8 A 1985 black Honda Accord.

9 Q Was a registration run?

10 A Yes. It came back to Mr. Shawn Harte.

11 Q Do you recall the address it was registered with?

12 A 1051 Aimme Lane in Fallon, City of Fallon.

13 Q Sergeant Coleman, were you involved in surveillance
14 then of that vehicle?

15 A Yes, I was.

16 Q Did you know who Mr. Harte was?

17 A No.

18 Q I guess I am just asking did you know who you were
19 looking for, essentially?

20 A I knew the name now that we had this vehicle and we
21 had run the plate. It came back to us as Shawn Harte. I
22 personally never had any contact with him.

23 Q Did you see an individual get into the vehicle
24 during the course of your surveillance?

1 A Yes, sir. I surveilled the vehicle while it was
2 parked in front of Radio Shack, in front of Frontier Plaza.
3 At the noon hour, a subject later identified as Shawn Harte
4 had exited Radio Shack, got in his vehicle, proceeded to the
5 address of 247 North Laverne Street in Fallon.

6 Q Do you see Shawn Harte in the courtroom today?

7 A Yes, sir. He's the gentleman sitting next to the
8 defense attorneys in the blue shirt.

9 MR. LEE: May the record reflect the identification,
10 Your Honor?

11 THE COURT: Record will so reflect.

12 BY MR. LEE:

13 Q Did you continue to surveil the 247 Laverne address?

14 A Yes, sir.

15 Q Did you ever see another individual or individuals
16 in the car?

17 A Yes, sir. The same evening, it would have been
18 October 10th 1997 after Mr. Harte got off work at Radio Shack,
19 he returned to 247 North Laverne Street and picked up a person
20 by the name of Latisha Babb.

21 Q Officer, you said October 10th. Was it November
22 10th?

23 A I am sorry, November 10th.

24 Q So in the dark hours of November 11th, were you

1 involved in trying to confirm whether this vehicle was indeed
2 the one?

3 A Yes, sir. Sergeant Steuart and investigator Joseph
4 who is my partner and I all went to 247 North Laverne under
5 the cover of darkness. And where the vehicle was parked was
6 kind of a common area at that residence in the parking lot
7 area. We were able to take measurements and photographs of
8 the tires and the wheel base of the vehicle.

9 Q Which measurements were you interested in?

10 A I was really interested in the inside wheel base and
11 photographs and measurements of each tire.

12 Q What did you find?

13 A I found it was consistent with what we were looking
14 for and information we found at the scene.

15 Q Was it consistent in theses measurement on 35?

16 A Yes, sir. I measured the inside wheel base to be
17 fifty and three quarter inches wide, so it was consistent with
18 what I found on the scene.

19 Q With that information then, were Search Warrants
20 obtained?

21 A Yes, sir. The following day sergeant Steuart and I
22 applied for and obtained a Search Warrants for 247 North
23 Laverne, the Honda Accord, and also seizure for Mr. Harte's
24 fingerprints.

1 Q Then were you involved in the traffic stop of Shawn
2 Harte's vehicle?

3 A Yes, I was. His vehicle, he was under surveillance
4 during that time, and there was a safe location to conduct the
5 traffic stop on South Taylor Street in Fallon.

6 Q And then you were there at the stop, itself?

7 A Absolutely. Sergeant Steuart made contact with
8 Mr. Harte. I was basically a cover officer at the time.
9 Sergeant Steuart advised Mr. Harte of the Search Warrants that
10 we had and the Seizure Warrant for the fingerprints. He
11 seemed pretty indifferent about it. We gave him a ride to the
12 office. We confirmed the seizure of his fingerprints.

13 Q After the office, did you go to execute one of the
14 other warrants?

15 A It proceeded to 247 North Laverne Street to execute
16 that Search Warrant.

17 Q Were other officers already there when you arrived?

18 A Yes, sir.

19 Q Was any of the residents there?

20 A Latisha Babb and her minor child or infant child is
21 there.

22 Q Had they been driven from the site of the traffic
23 stop to the address?

24 A Absolutely. They were given a public service ride,

1 if you will, to their residence.

2 Q So inside the residence, how many rooms -- Describe
3 the residence for us if you could.

4 A Single family dwelling. There was a southwest
5 bedroom and southeast bedroom. Small living room, small
6 kitchen. If I had to guess, it was 800 to a thousand square
7 feet home.

8 Q Was it your understanding Mr. Harte occupied one of
9 those rooms?

10 A Yes. Latisha Babb, the resident of the house,
11 directed us -- directed me to the southwest bedroom. And
12 through our investigation, we found they had a boyfriend-girl
13 friend type relationship, however, he occupied his own room in
14 the residence.

15 Q Let me then, in the course of your search, were
16 items photographed? Were they collected, things like that?

17 A Yes, sir.

18 Q Were you looking -- What type of stuff were you
19 looking for?

20 A I was looking for a semi-automatic rifle or a rifle
21 that shot a 7.2 millimeter casing which we found, shoes,
22 things consistent with our scene.

23 Q Looking for something to confirm Exhibit 35, your
24 shoe impression?

1 A That's correct.

2 Q What is the name of the local newspaper in Fallon?

3 A Lahonton Valley News.

4 Q Did you find a Lahonton Valley newspaper?

5 A Yes, I did.

6 Q What was interesting about that newspaper?

7 A What was very interesting, there was a newspaper
8 folded up as you would get from a newsstand. It actually had
9 the article, the front page article of the shooting that they
10 were investigating.

11 Q Did you find shoes?

12 A Yes, sir. The newspaper, itself, was in Mr. Harte's
13 room, and a pair of brown shoes with flat soles that looked
14 like what I diagramed.

15 Q Did you find it to match, consistent?

16 A Yes, sir.

17 Q Did you find any of those rifles you were looking
18 for?

19 A I found two rifles. One rifle was the one I was
20 looking for was the SKS. It was on the top shelf of
21 Mr. Harte's closet.

22 Q Was there another rifle along with it?

23 A There was a Stevens model .22-caliber rifle.

24 Q Where were these? You said on the top shelf?

1 A Yes, sir. They were actually laying on the top
2 shelf partially obscured by some clothing articles.

3 Q Let me show you a couple of exhibits, sergeant. I am
4 going to show you what has been marked 5-d and Exhibit 36.

5 MR. LEE: May I approach, Your Honor?

6 THE COURT: You may.

7 BY MR. LEE:

8 Q Looking at 5-d first if you will, do you recognize
9 what is depicted there?

10 A Yes, sir.

11 Q What is that?

12 A That is a SKS semi-automatic rifle in an after
13 market type of stock.

14 Q Where did you find that?

15 A This was the rifle on the top shelf of Mr. Harte's
16 closet.

17 Q Look at Exhibit 36. What do you see there?

18 A That is the Stevens .22-caliber rifle.

19 Q Do both those exhibits fairly and accurately depict
20 the rifles you just described that you found in the residence
21 on Laverne Street?

22 A Yes, sir.

23 MR. LEE: Your Honor, move to admit 5-d and 36.

24 THE COURT: Any objection?

1 MS. BOND: No objection.

2 THE COURT: Exhibit 36 and Exhibit 5-d are admitted.

3 (Whereupon Exhibit 5-d and 35 admitted in evidence.)

4 MR. LEE: May I approach?

5 THE COURT: You may.

6 BY MR. LEE:

7 Q Quickly showing you Exhibit 36, what is this?

8 A That is a Stevens model .22-caliber rifle.

9 Q Okay. I see it doesn't appear to be on top of a
10 closet.

11 A No, sir. I removed the rifles from the top of the
12 closet. The SKS rifle was laying in a manner I could see the
13 chamber was clear, however, the bolt was cocked to the rear
14 and there was ammunition in the affixed magazine.

15 Q Did you remove it from the top of the closet?

16 A Yes, sir.

17 Q Photographed them after you removed them?

18 A Yes, sir.

19 Q Exhibit 5-d, explain what are we looking at here?

20 A That is the SKS semi-automatic rifle, assault rifle.

21 Q That is what you described as it was cocked, you
22 said?

23 A Yes, sir. The bolt was locked to the rear. It was
24 laying in a manner I could actually see. You could actually

1 see it in this picture, too, the brass cartridge.

2 THE COURT: Counsel, do you want him to point to the
3 scene?

4 BY MR. LEE:

5 Q Yes. Let me zoom in a little bit. Can you see what
6 you were just describing there?

7 A Yes, sir.

8 Q If you can touch that screen in front of you, it
9 will put a little arrow on what you are talking about.

10 A Okay.

11 Q What are we looking at there?

12 A That is one of cartridges that was in the magazine
13 of the weapon.

14 Q Okay. Is that the magazine that extends and curves
15 outward?

16 A Yes, sir.

17 Q Does that indicate to you it was actually open,
18 locked back?

19 A Yes, sir. That bolt is locked to the rear.

20 Q What kind of ammunition was inside?

21 A 7.62 x 39 millimeter.

22 Q Explain the relation to that to what you found at
23 the scene?

24 A Those -- It is the same ammunition as the casings we

1 found on scene, all nine.

2 Q The same 7.62 x 39, correct?

3 A That's correct.

4 Q Did you find any electronic equipment?

5 A Yes, sir. There was a wireless receiver also found
6 in Mr. Harte's room.

7 MR. LEE: May I approach, Your Honor?

8 THE COURT: You may.

9 BY MR. LEE:

10 Q Let me first show you what has been marked as
11 Exhibit 33. What are we looking at in Exhibit 33?

12 A The wireless trans receiver that is laying on the
13 shelf in the center of the photograph. It is black in color.

14 Q And go ahead and take a look at Exhibit 26. If you
15 want gloves I can certainly provide gloves for you. Just take
16 a look at it without pulling it out if you can anyway. Can you
17 see that?

18 A Yes, sir.

19 Q What is that?

20 A This is the trans receiver depicted in the
21 photograph.

22 MR. LEE: Move to admit 26 and 33.

23 THE COURT: Any objection?

24 MS. BOND: No objection, Your Honor.

1 THE COURT: Exhibit 26 and Exhibit 33 are admitted.

2 (Exhibit 26 and 33 admitted in evidence.)

3 BY MR. LEE:

4 Q Sergeant, let me ask you now to pull that out of the
5 bag. Exhibit 26. There is a base and a cord; is that right?

6 A Yes, sir.

7 Q What is that at the end of the cord?

8 A That is a microphone.

9 Q Is there a clip with that microphone?

10 A Yes, sir.

11 Q That was indeed found in Mr. Harte's residence?

12 A Yes, sir.

13 Q Go ahead and stuff that back in if you would.

14 MR. YOUNG: Your Honor I failed to ask. Can we
15 publish those to the jury?

16 THE COURT: You have already done one of them, but,
17 yes, you may show the other.

18 BY MR. LEE:

19 Q Exhibit 33 on your screen, sergeant, is that the
20 microphone you just held up?

21 A Yes, sir, that's the one.

22 Q This was found inside Mr. Harte's residence?

23 A Yes, sir.

24 Q What is that on? What kind of furniture?

1 A It is a desk.

2 Q Did you also find documents of some sort, documents,
3 paragraph written documents?

4 A Yes, sir. There was publication in Mr. Harte's
5 room, publications that were titled Assassination,
6 Elimination, Ambushing.

7 MR. LEE: Your Honor, may I approach?

8 THE COURT: You may.

9 BY MR. LEE:

10 Q Detective Coleman, I will ask you a couple of
11 questions then go back to that. Showing you marked as Exhibit
12 5-c as well as Exhibit 9. First of all, 5-c, what are you
13 looking at there?

14 A This is some of the publications I was referring to.
15 This one is in reference to elimination.

16 Q Is it actually a photograph of those publications?

17 A Yes, sir.

18 Q Let me show you what has been marked Exhibit 9. Go
19 ahead and take a look inside. Do you recognize what is in
20 Exhibit 9?

21 A Yes, sir.

22 Q What is depicted in this photograph?

23 MR. LEE: Your Honor, at this point, I am going to
24 move to admit Exhibit 9 and Exhibit 5-c.

1 THE COURT: Counsel, any objection?

2 MR. BOND: If I could just see 5-c for a moment. No
3 objection to 9. No objection to 5-c.

4 THE COURT: 5-c and 9 are admitted.

5 (Exhibits 5-c and 9 admitted in evidence.)

6 MR. LEE: May I publish these?

7 THE COURT: You may.

8 BY MR. LEE:

9 Q Look at Exhibit 5-c first and describe this now that
10 we can see it. Can you describe it again? What are we
11 looking at?

12 A Yes, sir. These are some of the publications I was
13 referring to. The one on top, the first two Elimination, is
14 basically, it is kind of a how to type of publication.

15 Q Elimination, what does that mean?

16 A Like an assassination, to eliminate somebody.

17 Q Looking at the content of Exhibit 9, you stated
18 Exhibit 9 contains these documents?

19 A Yes, sir.

20 Q From Exhibit 5-c. I should be more clear?

21 A Yes, sir.

22 Q First page of Exhibit 9, just briefly, you don't
23 need to read the whole thing, what are we looking at?

24 A This is Mr. Harte's description of the 7.62 x 39

1 millimeter cartridge.

2 Q Was that the cartridge you found inside the SKS?

3 A Yes, sir.

4 Q Same as the casings found at the scene on 95?

5 A Yes, sir.

6 Q Looking at the second page, what is this?

7 A That is the document that was on top of the several
8 documents you see in the photograph titled Elimination.

9 Q You will see five paragraphs; is that right?

10 A Yes, sir.

11 Q Starting with the second paragraph, what are the
12 first words of each paragraph starting with the second
13 paragraph? Let me zoom in for this, make it a little easier.

14 A Assassinry Method. Or Assassinry is the Method,
15 Sniping, Planting, Cleaning.

16 Q Look at the next page in Exhibit 9. What is this?

17 A It is a document relating to firearms.

18 Q Also found there with these other documents?

19 A Yes, sir.

20 Q Two pages of firearms; is that right?

21 A Correct.

22 Q Moving to the next, what is that document entitled?

23 A Explosives.

24 Q Again, this was found with all the other documents

1 you just described?

2 A It was.

3 Q What is the content of this, generally?

4 A Basically, it is a little description and how to
5 methods.

6 Q Then one, two, three, is this roughly three pages?

7 A Correct.

8 Q Sergeant, along with these documents, you found a
9 name associated with those?

10 A Yes, sir.

11 Q What was that?

12 A It was a Sterling Enterprises which we thought was
13 pretty unique because Sterling Enterprises, to our
14 investigation, revealed Sterling Enterprises was actually
15 addressed there at 1051 Aimm Lane in Fallon, and it basically
16 was a correspondence type for assassination, elimination, so
17 you could basically write to Sterling Enterprises and get this
18 information.

19 Q Who resided at 1051 Aimm lane?

20 A Mr. Harte.

21 Q I guess, let's be clear, it is your understanding he
22 was residing, staying at Laverne, right?

23 A That's correct. 1051 Aimm Lane was occupied by
24 Mr. Harte's parents. He had lived there. Our investigation

1 revealed he had lived there, however, his mother wasn't
2 comfortable having firearms in the residence, therefore, he
3 moved out and moved in with Ms. Babb.

4 Q 1051 Aimee Lane, is that what his vehicle was
5 registered under his name with that address?

6 A Yes, sir.

7 MR. LEE: May I approach, Your Honor?

8 THE COURT: You may.

9 BY MR. LEE:

10 Q Exhibit 5-b, do you recognize that?

11 A Yes, sir.

12 Q What are we looking at?

13 A This is a map of Churchill County that usually gets
14 distributed through the phonebooks. It is a pretty generic
15 map. Populated areas of Churchill County.

16 Q Why was that map significant to you?

17 A It was significant to us because there were routes
18 highlighted as well as businesses such as convenience stores
19 that were highlighted that seemed to be of some interest.

20 Q Did you subsequently learn why?

21 A Yes, sir. Through our investigation, we found that
22 these particular areas were items of interest or possibly
23 planned robbery areas Mr. Harte had planned or had spoke
24 about.

1 MR. LEE: Move to admit 5-b.

2 THE COURT: Any objection?

3 MS. BOND: None beyond what we already discussed
4 pretrial.

5 THE COURT: May I see 5-b, please? Okay. 5-b is
6 admitted.

7 (Exhibit 5-b admitted in evidence.)

8 MR. LEE: Just briefly may I publish it, Your Honor?

9 THE COURT: You may.

10 BY MR. LEE:

11 Q 5-b, was this indeed the map you are describing?

12 A Yes, sir. That is a portion of it.

13 Q It is a photograph of it, right, not the actual map?

14 A Correct.

15 Q Thank you.

16 MR. LEE: May I approach the witness?

17 THE COURT: You may.

18 BY MR. LEE:

19 Q Showing you Exhibit 5-a, do you recognize what that
20 is?

21 A Yes, sir. This is a Reno Gazette-Journal newspaper
22 with the headline showing from October 27th.

23 Q Is that a photograph of that newspaper?

24 A Yes, sir.

1 Q Is it a photograph of where you found that
2 newspaper?

3 A Yes, sir.

4 Q Where was that? Where did you find it?

5 A It was like on the top shelf of Mr. Harte's desk
6 inside the southwest bedroom at 247 Laverne Street, Fallon,
7 Nevada.

8 Q Let me show you Exhibit 24. Go ahead and if you
9 could look inside that. At this point, it is not admitted.
10 Try to refrain from showing it to all of us. And just let me
11 know if you recognize what that is. Sergeant, if you need to
12 kind of turn and open it up, that is all right, too?

13 A This would be the item depicted in the photograph.

14 Q Okay.

15 MR. LEE: Your Honor, move to admit 5-a and 24?

16 THE COURT: Any objection?

17 MS. BOND: No objection.

18 THE COURT: 5-a is admitted and Exhibit 24.

19 (Exhibits 5-a and Exhibit 24 admitted in evidence.)

20 MR. LEE: Thank you. May I publish?

21 THE COURT: You may.

22 BY MR. LEE:

23 Q Exhibit 5-a is the photograph you just described?

24 A Yes, sir.

1 Q What type of newspaper is that?

2 A Reno Gazette-Journal of October 27, 1997.

3 Q In the picture at the bottom right in the newspaper,
4 what is the article about?

5 A That is of the cab driver that was murdered in
6 Washoe County. It also depicts a composite drawing of the
7 possible suspect.

8 Q Thank you.

9 THE COURT: Counsel, would you let me see that
10 exhibit?

11 MR. LEE: Which one?

12 THE COURT: 24 is it? 24 or 24-a.

13 MR. LEE: 24 and 5-a.

14 THE COURT: Okay. Thank you. Counsel.

15 MR. LEE: I was going to ask to show Exhibit 24 to
16 the jury.

17 THE COURT: Okay.

18 MR. LEE: With that 5-d, 5-a, that is okay?

19 THE COURT: Yes.

20 MR. LEE: Your Honor, if we could have the light on
21 this, that would be fine.

22 THE COURT: Okay. Counsel, would you, I think there
23 is two exhibits in that envelope.

24 ///

1 BY MR. LEE:

2 Q Sergeant, I am going to show you 24. Go ahead and
3 pull that out. If you could show it to the courtroom. If you
4 could hold it up for us and make sure it is the same one we
5 see in the photograph. It is on the bottom right there. Is
6 that an article about the driver shot?

7 A Yes, sir.

8 Q What is the date of that newspaper article?

9 A October 27, 1997.

10 Q There is some writing in the top left. Is that
11 yours?

12 A Yes, sir. These are my initials. My badge number.
13 It was common in our agency to, when we actually document the
14 evidence, we take and put our first initial, our badge number
15 and our last initial.

16 Q Now at the time when you first saw that newspaper,
17 did you understand the significance of that? Let me ask you a
18 different way. Did you know about the cab driver that had
19 been murdered?

20 A I did read the paper.

21 Q Did you understand the significance of it being with
22 Mr. Harte's residence, or was it simply a newspaper that he
23 had?

24 A It was a newspaper, however it was significant

1 because it was found in close proximity to the newspaper of
2 our case.

3 Q The Lahonton Valley newspaper?

4 A That's correct.

5 Q Do you recall the date of the Lahonton newspaper?

6 A October 17, 1997.

7 Q That was how long after the actual shooting?

8 A The shooting occurred October 14th late hours
9 approximately half hour before midnight. When our office got
10 involved, it was shortly after midnight. It would have been
11 the 15th.

12 Q So those two, the Reno Gazette-Journal and Lahonton
13 Valley newspaper were together?

14 A Yes, sir, on the same piece of furniture.

15 Q If you wouldn't mind stuffing that Exhibit 24 back
16 inside the bag, sergeant. Thank you.

17 Lastly, you stated Latisha Babb was there at the
18 Laverne residence when you did the search?

19 A Yes, sir.

20 Q Did you speak with Ms. Babb?

21 A I did.

22 Q As a result of that conversation, did other
23 investigators go to Reno to make contact with an individual
24 named Weston Sirex?

1 A Absolutely. While I was questioning her about the
2 case that we were investigating, she gave information as far
3 as what she was doing that night, and she had mentioned how
4 she and Harte had been in Reno that particular day of our
5 shooting and been with a person there in Reno. We had learned
6 who Weston Sirex was at that time.

7 Q Just because of that, your investigators from
8 Churchill County interviewed Mr. Sirex?

9 A Correct.

10 Q Were you aware he worked at a tattoo company?

11 A Yes, sir.

12 Q Is that where they were going to find him?

13 A They were going to find him at the taxi company,
14 itself.

15 MR. LEE: One brief moment, please, Your Honor?

16 THE COURT: Yes.

17 MR. LEE: Thank you. I will pass the witness.

18 THE COURT: Cross-examination.

19 MS. BOND: Thank you, Your Honor.

20

21 CROSS-EXAMINATION

22 BY MS. BOND:

23 Q Sergeant Coleman, have you ever personally spoken
24 with Shawn Harte?

1 A I have no recollection of speaking with Shawn Harte.

2 Q Have you ever corresponded or received
3 correspondence from Mr. Harte?

4 A That was directed towards me?

5 Q Yes, toward you, to you, from him or from you to
6 him?

7 A I don't believe so.

8 Q Outside of courtroom proceedings, have you had any
9 contact with Mr. Harte in the past since the year 2000?

10 A No, ma'am.

11 MS. BOND: No further questions. Thank you.

12 THE COURT: Anything further?

13 MR. LEE: Quick moment, Your Honor.

14 THE COURT: Yes.

15 MR. LEE: That's all I have, Your Honor. Thank you.

16 THE COURT: May this witness be excuse?

17 MR. YOUNG: Please.

18 MS. BOND: Yes, Your Honor.

19 THE COURT: Thank you, sir. You may step down and
20 you are excused.

21 (Witness Excused.)

22 THE COURT: Counsel, I think this is a good time to
23 grant a recess.

24 MR. YOUNG: Yes.

1 THE COURT: Ladies and gentleman of the jury, we are
2 going to take our afternoon recess now. During the recess,
3 remember until the trial is over you may not discuss the case
4 with anyone including your fellow jurors, members of your
5 family, people involved in the trial or anyone else, and do
6 not allow anyone to speak of the case to you. This includes
7 discussing the case on the internet, internet chat rooms,
8 through internet blogs, internet bulletin boards such as
9 Facebook, twitter, e-mail or text messaging. If anyone tries
10 to communicate with you regarding this trial, please let me
11 know immediately.

12 Do not read, watch, listen to or view any news media
13 accounts or any other accounts regarding this case or anyone
14 associated with it including online information.

15 Do not do any research such as consulting
16 dictionaries, searching the internet or using reference
17 materials, and do not make any investigation into or about the
18 trial or the parties.

19 Go ahead and enjoy your afternoon recess,
20 approximately 15 minutes. We will be in recess.

21 (Short recess taken.)

22 THE COURT: Counsel, do you have anything outside
23 the presence of the jury?

24 MR. YOUNG: Just a scheduling to give Your Honor a

1 heads up as to scheduling. We initially -- The last witness
2 was the last one we had scheduled to come in today because we
3 were tracking along quicker than we thought. We were able to
4 obtain the presence of Captain Joseph who will finish up the
5 Churchill County testimony and also Chuck Lowe, the forensic
6 for today. That is all we have. The next person would be
7 reading a transcript. We have had to juggle around who would
8 actually do that because of the other court obligations. We
9 can try to get that person here to read that transcript. The
10 person who was going to read it was just provided the
11 transcript today. I would like him to look it over. If that
12 is the case, we may be done by 4:15, 4:30. I just wanted to
13 alert the Court of that. We could see if the reader is
14 available, but, if not, we only have two live witnesses left
15 for today. We are still on track and anticipate being done
16 tomorrow afternoon with the State's case.

17 THE COURT: Okay.

18 MS. BOND: With that in mind, we were discussing
19 earlier at the lunch break how quickly they are moving. We
20 are trying to anticipate when we'll be putting on witnesses.
21 It wouldn't be early tomorrow afternoon. We are moving very
22 quickly. That is just something for everybody to keep in mind
23 as we discuss schedule so we know when to have people ready.

24 Tomorrow is Wednesday. If you want to try to get in

1 some tomorrow afternoon or start Thursday morning, we are
2 anticipating maybe half a day for our case.

3 THE COURT: Including your expert?

4 MS. BOND: And she's not available until Thursday.
5 She'll get back from teaching in Las Vegas late tomorrow
6 night.

7 THE COURT: Okay. Are you foreseeing any rebuttal
8 case?

9 MR. YOUNG: The only rebuttal I anticipate at this
10 point is really dependent on what Dr. Piasecki says. As this
11 has gone along, I am hopeful that we don't have, but it is a
12 possibility. Again, at this point, it would only be McDaniel,
13 and that is a question mark.

14 THE COURT: Why don't we, I guess your question to
15 me is do I want you to bring your reader in this afternoon or
16 not.

17 MR. YOUNG: Mr. Digesti is checking right now if he
18 is available. We told him it would be tomorrow, but if he is
19 comfortable doing so without previously reading it, if he is
20 comfortable and available, I think we can put that on today.
21 If for some reason he's not comfortable simply based on some
22 of the terminology used in the transcript, I want to make sure
23 it is clean reading. So long as he is comfortable, short of
24 that, I am giving the Court a heads up we may be ending a

1 little bit early.

2 THE COURT: Okay. Tomorrow who do you have
3 available?

4 MR. YOUNG: The only witness left is the transcript
5 of Mr. Lattyak depending on today or tomorrow. Jim Beltron
6 who is the lead detective on the Washoe County case, and then
7 Lanette Anderson who is formerly Lanette Bagby. Based on your
8 in limine rules with respect to what she can get into,
9 frankly, it would just be a very brief how she knows the
10 defendant and the reading of the letter, and Palosaari, the
11 pathologist. Again, I don't anticipate him being lengthy at
12 all. Detective Beltron will take some time. Mainly we will be
13 playing the interview of the defendant through him. It is
14 about two hours, I want to say and fifteen minutes, somewhere
15 in that ballpark.

16 THE COURT: Okay. Well I guess the question is does
17 my crystal ball say the defense will start Wednesday
18 afternoon?

19 MR. YOUNG: We will be done, short of something
20 unexpected, we will be done tomorrow afternoon probably mid
21 afternoon. However the Court wants to go as far as having the
22 defense start their case Wednesday afternoon or into Thursday,
23 I will leave that to Your Honor and counsel.

24 THE COURT: Well, if we actually did finish the

1 State's case midday Wednesday and the defense case all but Dr.
2 Piasecki is done Wednesday afternoon, we are in closings on
3 Thursday as opposed to the following Monday. So everybody
4 knows we have that as a possibility Friday midday or Thursday.

5 MR. YOUNG: As far as scheduling, the only thing to
6 remind the Court, the family of Mr. Castro will also address
7 the Court. Again, that would be after the defense case. It
8 wouldn't be a rebuttal case. That won't be too long. I expect
9 fifteen minutes at the most. But it is, as well, I think
10 Thursday is a possibility. I am kind of thinking family, Jury
11 Instructions, closing.

12 THE COURT: I think family if you say fifteen
13 minutes, the Jury Instructions usually take 15 to 20 minutes
14 to read then your closing argument. If we really are finished
15 Thursday by 10:30, we really should keep going and get the
16 case to the jury Thursday.

17 MR. YOUNG: That's fine with the State.

18 THE COURT: Let's call your witnesses and find out.
19 Maybe you know the answer now.

20 MR. YOUNG: Mr. Lattyak's reading of his transcript
21 could be today.

22 THE COURT: Okay. Let's just keep going and see how
23 much we can get done today and tomorrow. We will hit it.
24 Bring in the jury.

1 Counsel, will you stipulate to the presence of the
2 jury?

3 MR. YOUNG: State will, Your Honor.

4 MS. BOND: Yes, Your Honor.

5 THE COURT: Thank you. Please be seated. You may
6 proceed.

7 MR. YOUNG: State calls Captain Joseph.

8 THE COURT: You may proceed, counsel.

9
10 MARK JOSEPH

11 called as a witness, having been first duly sworn,
12 took the witness stand and testified as follows:

13
14 DIRECT EXAMINATION

15 BY MR. YOUNG:

16 Q Good afternoon, sir. If you could state your first
17 and last name and spell both for our reporter?

18 A Mark Joseph. First name M-A-R-K. Last name is
19 J-O-S-E-P-H.

20 Q Sir, are you recently retired?

21 A Yes, sir.

22 Q From what occupation?

23 A Churchill County Sheriff's Office.

24 Q How long in total were you employed with the

1 Churchill County Sheriff's Office?

2 A Twenty-three years.

3 Q When did you retire?

4 A September of last year.

5 Q So within the last six months?

6 A Yes.

7 Q Could you explain to the jury your 23 years with
8 Churchill County how that was broken down and in what capacity
9 you were employed?

10 A Yes. I started in the Detention Center. I spent
11 about two years in the Detention Center, then I worked street
12 patrol as a deputy for three years. And then I spent the next
13 two years as an investigator, and then I was promoted to
14 sergeant. I spent about twelve years as a sergeant. And four
15 of those twelve years were as the sergeant supervising the
16 Investigations Division. And then I spent the last four years
17 as a Captain over the Operations Division.

18 Q We have heard Investigations from some other
19 Churchill County Sheriff's employees, is Investigation
20 effectively Churchill County's Detective Unit?

21 A Yes.

22 Q Now, sir, in October, specifically October 15th of
23 1997, were you employed in the Investigations?

24 A Yes. I was an investigator.

1 Q That is fine. What we are discussing is similar to
2 a detective unit?

3 A Yes.

4 Q So when will investigators be called out on a case?

5 A Any time day or night. It is a plain clothes job.
6 It is an investigations or detectives job.

7 Q Around midnight on October 15th of 1997, were you
8 called out in that capacity?

9 A Yes, I was.

10 Q Was that in regards to a shooting on highway 95?

11 A Yes.

12 Q Did you respond to the Churchill County Sheriff's
13 department?

14 A Yes.

15 Q Upon arrival, did you make contact with two
16 individuals who reported the shooting?

17 A I did.

18 Q What were their names?

19 A One was Abe Lee. The other one was David Burnett.

20 Q With respect -- Did you have an opportunity to speak
21 with both Mr. Lee and Mr. Burnett?

22 A I did.

23 Q Specifically, with respect to Mr. Burnett what did
24 he inform you?

1 A I don't know if it was Burnet or Abe. One of them
2 gave me an overview of what took place.

3 Q Did you speak to them separately or collectively?

4 A Collectively.

5 Q Could I have you explain what their, Mr. Lee and
6 Mr. Burnett's, demeanor was like when you were speaking with
7 them?

8 A I would call it very unsettled and upset about what
9 had just happened.

10 Q Now, based on your contact with both individuals,
11 did you learn neither was from that area?

12 A Yes, I did.

13 Q Were they able to give you a general location of
14 where the shooting occurred?

15 A They did, sir. They said approximately a mile north
16 of the Rawhide turnoff on Highway 95.

17 Q Even with that, is that a pretty large area to
18 cover?

19 A It is an extremely large area.

20 Q At the time of the reporting, it is the middle of
21 the night, is it fair to say it was dark outside?

22 A It was.

23 Q In the area they were reporting, are there street
24 lights or other business type lighting to illuminate that

1 area?

2 A No, sir.

3 Q In any event, did you respond out to the area as
4 described to you in an attempt to find the scene of the
5 shooting?

6 A I did.

7 Q Were you able to do that at that night?

8 A No, sir?

9 Q In part because of the lighting?

10 A Yes.

11 Q Okay. The following day, on October 16th, are you
12 aware that the shooting scene was in fact discovered and
13 located?

14 A Yes.

15 Q And was that roughly consistent with the area as
16 described by Mr. Lee and Mr. Burnett?

17 A I wasn't there, but it is in the general area, yes.

18 Q Okay. Now going back to the night in question when
19 you responded, did you have an opportunity to inspect a
20 vehicle that was being driven by Mr. Lee?

21 A I did.

22 Q Do you recall what vehicle that was?

23 A I remember it was a blue Jeep. I think it was a
24 Cherokee.

1 Q And did you, as part of the investigation,
2 photograph that scene?

3 A I don't believe I photographed it.

4 Q Were photographs taken?

5 A Yes.

6 Q As part of it, did you diagram the Jeep?

7 A I did diagram the Jeep.

8 Q What was the purpose of the diagram?

9 A The purpose was to show the location of the holes in
10 the Jeep.

11 Q We have already gone through that a little bit.
12 Instead of showing you the pictures and rehashing it in total,
13 could you briefly describe some of the damage done to that
14 Jeep?

15 A Yes. There was a hole in the front windshield.
16 There was a hole in the back hatch glass. There was a hole in
17 the rear passenger side, the rear cargo window on the
18 passenger side, and there was a hole in the lower, below the
19 rear passenger side rear cargo window. And then there was
20 another hole by the floor boards by the passenger, where the
21 passenger's feet would be but below where the passenger's feet
22 would be.

23 Q Was the Jeep processed for evidentiary purposes?

24 A Yes, it was.

1 Q Did that include locating and collecting bullet
2 fragments from that Jeep?

3 A It did.

4 Q Were those fragments booked into evidence?

5 A I believe so.

6 Q Now again I am not going to have you rehash
7 everything that has already been discussed, but as weeks went
8 on and the investigation ensued, was there a black Honda
9 vehicle that was identified matching the tire pattern of some
10 tracks out at the scene?

11 A Yes.

12 Q Okay. And through that investigation, did you learn,
13 you being collectively the Churchill County Sheriff's
14 Department, who the registered owner of that vehicle was?

15 A Yes.

16 Q Who was that?

17 A Shawn Harte.

18 Q Based on the investigation on November 12 of 1997
19 were there Search Warrants applied for and granted by a judge
20 in Churchill County?

21 A Yes.

22 Q And I understand, I am skipping, kind of having you
23 skip over a lot of details of this, do you recall where or for
24 what items the Search Warrant was for?

1 A I do.

2 Q Would you explain that?

3 A There were Search Warrants for the black Honda.
4 Search Warrant for 247 Laverne Street and there was another
5 one for 1051 Aimme.

6 Q 1051 Aimme, 247 Laverne, are those both residences
7 in Churchill County?

8 A Yes, sir.

9 Q Based on the investigation, were both those
10 associated with Shawn Harte?

11 A Yes.

12 Q Did you partake or assist in a traffic stop on that
13 same vehicle, that being November 12th, of the black Jeep,
14 excuse me, of the black Honda?

15 A Yes, I did.

16 Q Who was driving the Honda on that date?

17 A Shawn Harte.

18 Q Did you make contact either verbally or visually
19 with Mr. Harte?

20 A Visually.

21 Q Do you see Mr. Harte in the courtroom today, sir?

22 A I do.

23 Q Point him out please and describe to the jury what
24 he's wearing.

1 A Yes, sir. He's sitting over there wearing a blue
2 shirt, tan pants, I think black shoes.

3 MR. YOUNG: Can the record reflect the
4 identification?

5 THE COURT: Record will so reflect.

6 MR. YOUNG: Thank you.

7 BY MR. YOUNG:

8 Q Who was with Mr. Harte, if anybody, if you recall,
9 in the vehicle upon the traffic stop?

10 A Yes, sir. There was a lady in the front passenger
11 seat, and there was a child in the back seat in a car seat.

12 Q When you say child, approximately how old?

13 A I don't recall.

14 Q Young enough to be in a car seat?

15 A Very small.

16 Q Now was Mr. Harte shown a copy or the original of
17 the Search Warrants?

18 A I didn't show him anything. I believe Steuart did.

19 Q You were made aware he was presented with it?

20 A Yes.

21 Q As part of that, what role did you take with respect
22 to the vehicle, the Honda?

23 A I took the vehicle back to the Sheriff's Office. I
24 drove it back to the Sheriff's Office.

1 Q Okay. For what purpose?

2 A For searching.

3 Q That was one of the items authorized by the Search
4 Warrant, correct?

5 A Yes, sir.

6 Q And when you drove the vehicle back, did you,
7 yourself, conduct a full and thorough search of the vehicle?

8 A No, sir. I did a very thorough look around, but I
9 didn't go through everything.

10 Q The actual search would have been at a later time?

11 A Yes, sir.

12 Q I am going to show you what has been admitted as
13 4-a. Do you recognize that, sir?

14 A I can't see that.

15 Q You actually have a screen right in front of you,
16 sir?

17 A Oh, okay. Yes.

18 Q What is that?

19 A That's the Honda.

20 Q I am sorry?

21 A That is the Honda that we stopped.

22 MR. YOUNG: If I could approach.

23 THE COURT: You may.

24 ///

1 BY MR. YOUNG:

2 Q I will show you what has not been admitted yet, but
3 marked 4-c and 4-b. Take a look at that. Do you recognize
4 those, sir?

5 A Yes, I do.

6 Q When you were doing those visual inspections of the
7 Honda as driving it back, what did you see and observe?

8 A I saw a pistol between the front seat and the center
9 consul that is depicted here in these pictures. I also saw a
10 magazine with rounds in the magazine sitting somewhere in the
11 center console as I recall or on the dash. I also saw in the
12 vehicle, I don't remember if it was the back seat or front
13 seat, but there was a spotlight. There was some sort of a
14 hand-held radio and a pair of binoculars. There were some
15 papers. One of them was a calendar, and I think it was for
16 the month of October. And there was also I believe some
17 cellphone bills in the vehicle or receipts, and the glove box
18 had a knife and some more loose rounds in the glove box.

19 Q When you say loose rounds, bullets?

20 A Bullets, sorry.

21 Q Based on your background and experience, you have
22 had, training and experience with respect to handguns and
23 ammunition; is that correct?

24 A Some.

1 Q I am not saying you are asking to be an expert, but
2 you have handguns and the like, correct?

3 A Yes, sir.

4 Q Based on your inspection of the bullets that you
5 observed, were you able to pinpoint a caliber?

6 A I believe they were .22 caliber.

7 Q Okay. 4-b and 4-c, do those appear to be accurate
8 pictures of the Honda you observed when you drove it back to
9 the station?

10 A Yes.

11 MR. YOUNG: Ask that 4-b and c be admitted.

12 MS. BOND: No objection.

13 THE COURT: 4-b and c are admitted.

14 (Exhibits 4-b and 4-c admitted in evidence.)

15 BY MR. YOUNG:

16 Q These are effectively the same photographs from
17 different angles, correct?

18 A Yes.

19 MR. YOUNG: Ask to publish.

20 THE COURT: You may publish.

21 BY MR. YOUNG:

22 Q What is that, sir? You can actually touch the
23 screen. If you touch it, a little arrow or circle if you
24 like, that will mark it up on there if you like?

1 THE COURT: The screen in front of you is a little
2 television.

3 THE WITNESS: Well, that's the pistol I saw.

4 THE COURT: You have to touch the screen if you want
5 it to show.

6 THE WITNESS: Oh, I see. That is the pistol that I
7 saw right there. And I can't see it, but there is some sort of
8 scanners and radios in the vehicle, too. I don't know what
9 type of scanners or radios they were, but there were scanners
10 and radios.

11 BY MR. LEE:

12 Q Do you see those scanners and radios in that area of
13 the photograph?

14 A It looks like a couple of items.

15 Q Was there more than depicted in that photo?

16 A I don't remember.

17 Q Okay. Fair enough. Showing you 4-c, sir. That is
18 a different angle of 4-b?

19 A That is the pistol that I saw.

20 Q Okay. Do you see what I am circling here between the
21 two seats? What is that?

22 A Switches.

23 Q Of different colors?

24 A Yes.

1 Q Where did you drive the Honda to?

2 A I drove it to our Sheriff's Office.

3 Q Okay. Where did you specifically park the Honda?

4 A I think I parked it on the south side of our
5 substation.

6 Q Is there a fire station nearby the Sheriff's
7 Department there?

8 A Yes. Right nextdoor to our substation which our
9 substation is 40 North Main Street.

10 Q Was there a time later in the investigation that
11 this Honda was thoroughly searched by law enforcement?

12 A Yes, sir.

13 Q From the time that you got back to the substation
14 until that search took place, was a Churchill County Sheriff
15 deputy constantly watching that vehicle to make sure nobody
16 entered that vehicle?

17 A I assigned a deputy to watch that vehicle.

18 Q To your knowledge was that done?

19 A Until I left the area, I can say it was.

20 Q Did you later go back to that vehicle when it was
21 searched. Yes?

22 Q

23 A To your.

24 A Had there been interference between the time you

1 left and the time you returned?

2 A No, sir.

3 Q Okay. Did you assist or participate in any way with
4 the shearch of 247 Laverne?

5 A Yes.

6 Q And, again I won't have you go into detail because
7 it has already been discussed, but do you recall newspaper
8 clipping being located or newspapers being located during that
9 search?

10 A I do recall that.

11 Q Do you recall one of them being a Reno
12 Gazette-Journal?

13 A I recall one of them being a Reno paper.

14 Q Okay. I am going to show you, sir, this has already
15 been admitted as 5=a. Do you recognize that?

16 A I am sorry, my vision is really bad.

17 Q Okay. Let me show you the picture, sir.

18 MR. LEE: If I could approach, Your Honor?

19 THE COURT: You may.

20 MR. LEE: Thank you.

21 BY MR. YOUNG:

22 Q Do you recognize that?

23 A Yes, I do.

24 Q Specifically, paper it references the shooting and

1 murder of a taxi driver in Reno, correct?

2 A Yes, sir.

3 Q Okay. Up to that point prior to seeing that
4 newspaper clipping, was there any knowledge either on
5 yourself, or collectively with the Curchill County Sheriff's
6 Department there was any link between the shooting you were
7 investigating and the murder of John Castro in Reno?

8 A I had no knowledge.

9 Q Once that paper was discovered, did that trigger
10 possibly some interest in the Reno case?

11 A Yes, it did.

12 Q Okay. Did the name through your investigation Weston
13 Sirex come up?

14 A The name did come up, yes.

15 Q Was that through conversation with Latish Babb and
16 Shawn Harte?

17 A I believe Latish Babb is who told us about Weston
18 Sirex.

19 Q All right. Based on the information of the name of
20 Weston Sirex, what did you do?

21 A When we found out about that paper and the name
22 Weston Sirex, myself and sergeant Wood went to Reno to try to
23 find the cab company he was working at and speak to him.

24 Q Was contact made about Mr. Sirex?

1 A Yes.

2 Q Where was contact made?

3 A Mr. Sirex was contacted at I believe Twhittelsea
4 taxicab company.

5 Q He was working at the time?

6 A Yes.

7 Q At least he was at the office?

8 A Yes. He answered the phone.

9 Q Okay. And who responded to Whittlesea to speak with
10 Mr. Sirex?

11 A It was sergeant Wood, myself, corporal Kelly was
12 there too from the Churchill County Sheriff's Office, and
13 detective Canfield. It is Canfield or Canfield with Washoe
14 County Sheriff's Office.

15 Q You were part of that group though to make contact.

16 A Yes, sir.

17 Q Did you in fact make contact with Mr. Sirex?

18 A Yes.

19 Q Would you describe what Mr. Sirex demeanor was like
20 upon contact?

21 A He was very shaky and upset.

22 Q And what transpired at Whittlesea Taxi?

23 A When we got there, sergeant Wood told Sirex that
24 Mr. Harte was in custody and that we were there to get his

1 side of what had happened.

2 Q At that point, was Mr. Harte in fact in custody
3 related to the Churchill County shooting?

4 A I believe so.

5 Q What happened?

6 A Mr. Sirex started talking about the taxi cab
7 shooting.

8 Q Related here in Reno, Nevada?

9 A Correct.

10 Q Based on that, did the initial contact at Whittlesea
11 Taxi end?

12 A Yes.

13 Q What happened at that point?

14 A Detective Canfield stepped in, and he volunteered to
15 go to the Washoe County Sheriff's Office with Detective
16 Canfield.

17 Q For what purpose?

18 A For an interview.

19 Q Did Mr. Sirex agree to go to Washoe County Sheriff's
20 Office?

21 A Yes, he did.

22 Q And at the station, was there an interview done to
23 your knowledge regarding the murder of John Castro?

24 A Yes.

1 Q Were you a part of that [ortunion of the interview?

2 A No.

3 Q Did you at any point interview Mr. Sirex at the
4 Washoe County Sheriff's Department?

5 A Yes, I did.

6 Q Was that after the detectives from Washoe County
7 interviewed him?

8 A Yes.

9 Q Without getting into the detail of what was said did
10 you speak with Mr. Sirex about the Churchill County shooting
11 you were investigating?

12 A Yes.

13 Q Prior to any the interview at the Sheriff's
14 department with Mr. Sirex, to your knowledge was he advised of
15 his Miranda rights?

16 A Detective Beltron not only advised him verbally, but
17 I had him sign a waiver form.

18 Q Outlining what his Miranda rights were?

19 A Yes.

20 Q Did he agree to speak?

21 A Yes.

22 Q To your knowledge, was the interview of Mr. Sirex
23 audiot and video recorded?

24 A Yes. They told me they were going to audio and

1 video record it.

2 Q Now based on the interview with Mr. Sirex, was there
3 a search of his residence executed?

4 A Yes.

5 Q And do you recall the exact address or where he was
6 staying?

7 A Second Street in a trailer in Reno.

8 Q You believe Reno?

9 A Yes I don't remember the neumeric.

10 Q 1300 W. Second, does that sound right?

11 A Yes.

12 Q Specifically number the two?

13 A Yes.

14 Q We are going back 17 years ago. Does that sound
15 right?

16 A Yes.

17 Q Were you present during the search of that trailer?

18 A Yes.

19 Q And was there anything collected as part of that
20 search that was related to the Reno murder of John Castro?

21 A Yes, by Washoe.

22 Q Wahoe County deputies or detectives?

23 A Yes.

24 Q What did they collect?

1 A I remember they collected a wallet, and I remember
2 they collected some sort of a money pouch, and they collected
3 some cloth dark colored clothing. That is what I remember
4 them collecting.

5 Q Was the wallet and money pouch related to John
6 Castro?

7 A Yes. The wallet I was told belonged to John Castro.

8 Q Now based on the interview with Weston Sirex and the
9 search of his trailer, did you respond back to Churchill
10 County Sheriff's Department and have an opportunity to meet
11 and speak with Latisha Babb?

12 A Yes, sir.

13 Q Were there Washoe County detectives that also
14 responded to your office?

15 A Yes.

16 Q Did Ms. Babb agree to go to the Churchill County
17 Sheriff's Department for an interview?

18 A Yes.

19 Q And was she interviewed with respect to both the
20 Reno murder and the Churchill County shooting?

21 A Yes.

22 Q Similar to Mr. Sirex, did you take any part in the
23 interview of Ms. Babb related to the homicide in Reno?

24 A No, sir.

1 Q Again, similar to Mr. Sirex, was Ms. Babb advised of
2 her Miranda rights.

3 A Yes. By Washoe County deputies detectives.

4 Q Was it your understanding she waived those rights
5 and did speak?

6 A Yes.

7 Q Similar to Mr. Sirex, is it your understanding the
8 interview of Ms. Babb was audio and video recorded?

9 A Yes.

10 Q Did you speak to Ms. Babb regarding the Churchill
11 County investigation you were doing?

12 A I and one other person did.

13 Q Who was the other person?

14 A FBI agent Kip Steel.

15 Q He's been mentioned in this hearing before.

16 Q Why was the FBI involved in this case?

17 A Mr. Steel was involved because the location of our
18 shooting into a vehicle was possibly on Federal or reservation
19 land, and he was concerned about it, so he wanted to be
20 involved in the interview.

21 Q All right. Now after the interview tracking forward
22 with Ms. Babb, was a full and thorough search of the Honda
23 performed?

24 A Yes.

1 Q Okay. Now as part of your investigation in Churchill
2 County, was a handgun of direct interest?

3 A No.

4 Q Did you learn through your investigation and
5 interview that the handgun shown in 4-b and c had some
6 relevance to the Reno murder case?

7 A Yes.

8 Q So was that, along with other items, collected for
9 purposes of the Reno prosecution?

10 A It was collected by Washoe County detectives.

11 Q Now did you then have an opportunity to speak with
12 and interview Mr. Harte?

13 A Yes, I did.

14 Q And, again, how did that go about? What was the
15 transition of interview with Mr. Harte?

16 A Similar. The Washoe County detectives spoke to him
17 first. Detective Canfield and detective Beltron, and then I
18 spoke to him about the Fallon incident.

19 Q So in all interviews, the questioning was first done
20 by Washoe County detectives regarding the murder of Mr. Castro
21 followed up by you related to the Churchill County shooting;
22 is that fair?

23 A Correct.

24 Q Was Mr. Harte, prior to any questioning by detective

1 Beltron, advised of his Miranda rights?

2 A Yes, sir.

3 Q To your knowledge did he in fact sign a written
4 Miranda waiver form?

5 A He was advised and he signed the written waiver
6 form.

7 Q Agreeing to speak with detectives?

8 A Yes.

9 Q To your knowledge, was the interview of Mr. Harte
10 both related to the Reno murder and Churchill shooting audio
11 and video recording?

12 A Yes, it was.

13 Q Did you take any part in the interview related to
14 the Reno case?

15 A No, sir.

16 Q You did then go interview Mr. Harte related to the
17 Churchill County shooting?

18 A Yes, and detective Beltron.

19 Q Again, the entire thing was captured by video,
20 correct?

21 A Yes, sir.

22 Q We wont have you go into great detail because we'll
23 see the interview. But very briefly, what was the nature of
24 your interview with Mr. Harte related to the Churchill County

1 shooting?

2 A It was in regards to what happened the night that
3 the vehicle was shot.

4 Q Did Mr. Harte admit to participating in that
5 shooting?

6 A Yes, sir.

7 Q Did he advise you who he participated in that
8 shooting with?

9 A He did, sir.

10 Q Who was that?

11 A Latish Babb and Weston Sirex.

12 Q Now did you also go to the 247 North Laverne
13 residence and assist in any way with the search of that
14 residence?

15 A I did, after the interview with Shawn Harte, go to
16 247 Laverne.

17 Q The Churchill County investigation that you were
18 doing related to your shooting, did that play a major role in
19 the Reno Washoe County murder case being able to progress
20 forward?

21 A I would say so.

22 Q Just a final area I want to discuss with you, sir,
23 that is you had an opportunity, as I understanding your
24 testimony to meet and interview all three subjects, that being

1 Ms. Babb, Mr. Sirex and Mr. Harte, correct?

2 A Yes, sir, I did.

3 Q Were all three arrested related to the Churchill
4 County shooting case?

5 A I'm not sure. I know Mr. Harte was, but I'm not
6 certain the other two were arrested on our charges.

7 Q Okay. Fair enough. In your interview with Ms. Babb,
8 Mr. Sirex and Mr. Harte, could you explain the demeanor of all
9 three during those interviews and specifically any showings of
10 remorse by any of those three?

11 A Yes.

12 Q Starting with Weston Sirex.

13 A Weston Sirex was I guess the term would be a basket
14 case. He was broke down, upset, at points crying. And so I
15 don't know if that was remorse or just that he was upset.
16 Latisha Babb was very matter of fact, told us, answered the
17 questions and was very even and matter of fact. Mr. Harte
18 unemotional, somewhat aloof and definitely unremorseful.

19 Q At any time in your contact with Mr. Harte did he
20 show any signs of remorse.

21 A No, sir, not to me.

22 Q Did you take an either strategy or attack when
23 interviewing Mr. Harte?

24 A Yes, sir.

1 Q Could you explain that to the jury?

2 A I like to go in and interview people with the
3 attitude that I'm not a know it all and that am humbled by
4 talking to them. So my strategy was I definitely was not the
5 smart guy in the room.

6 Q How did Mr. Harte respond to that that?

7 A It was clear that he knew a lot more about
8 electronics and other things than I knew.

9 Q Did he like to tell you about the fact that he knew
10 that?

11 A He several times told me certain things about math
12 and radios and weapons that I truly didn't know.

13 MR. LEE: Captain, that is all the questions I hae.
14 Thank you.

15 THE COURT: Cross-examination.

16 MS. BOND: Thank you.

17

18 CROSS-EXAMINATION

19 BY MR. LEE:

20 Q Captain Joseph the interviews that you had you
21 participated in with Latisha Babb, Weston Sirex and Shawn
22 Harte, di all three of those interviews take place in 1997?

23 A Yes, ma'am.

24 Q Since that time when you interviewed Mr. Harte in

1 1997, have you had any further conversation with Mr. Harte?

2 A No.

3 Q Have you had any written correspondence either from
4 you to him or him to you since 1997?

5 A No, I have not.

6 Q Other than seeing him during courtroom appearances,
7 have you had any contact at all with Mr. Harte since say the
8 year 2000?

9 A No.

10 MS. BOND: No further questions, thank you.

11 MR. YOUNG: No questions.

12 THE COURT: May this witness be excused?

13 MR. YOUNG: Yes. Thank you, Your Honor.

14 THE COURT: Any objection?

15 MS. BOND: No objection.

16 THE COURT: Thank you, sir, you may be excused.

17 (Witness excused.)

18 THE COURT: Call your next witness.

19 MR. LEE: Charles Lowe.

20 THE COURT: You may proceed.

21 ///

22 ///

23 ///

24 ///

1 CHARLES HOWARD LOWE

2 called as a witness, having been first duly sworn,
3 Btook the witness stand and testified as follows:
4

5 DIRECT EXAMINATION

6 MR. LEE:

7 Q Good afternoon, sir. Could you please state your
8 name for us and spell your last name?

9 A Charles Howard Lowe, L-O-W-E.

10 Q Do you go by Charles. Charles or Chuck, yeah.

11 Q And I understand you are retired at this point; is
12 that right?

13 A Yes, sir.

14 Q From what?

15 A Washoe County Crime Lab.

16 Q How long were you at the Crime Lab?

17 A Eleven years.

18 Q In what capacity?

19 A Forensic investigator, certified expert.

20 Q What does that mean?

21 A Just that we are pretty well skilled in
22 fingerprinting, photography crime scene investigations,
23 diagraming and basically just checking out and documenting the
24 scenes.

1 Q So if there is a crime scene you are called to
2 respond to, what do you do?

3 A Well we respond. Normally we are approached, I
4 should say we are briefed by the detectives or first
5 responders, patrol, EMTs of what they have at that point. And
6 then we basically work for the agency that we are responding
7 to, whether it be Washoe County or anywhere else north of
8 Clark County.

9 Q How long, I may have asked, excuse me, how long did
10 you do this?

11 A The Crime Lab for 11 years.

12 Q Were you in law enforcement before that?

13 A I was on patrol for eight years.

14 Q With the Sheriff's Office as a deputy?

15 A Yes. Yes.

16 Q In all what is your total law enforcement
17 experience?

18 A Well, I had seven years in the military as a
19 detective in CID. But so since, oh, '73 up until '99.

20 Q Is '99 when you retired?

21 A When I retired,

22 Q So, Mr. Lowe, in investigating crime scenes, did you
23 do it often, hundreds of times?

24 A Oh, yes.

1 Q Is there a method of tracking items that you collect
2 as evidence all the way through if it is submitted to the lab?

3 A Yes. We take, basically, copious notes, and then we
4 translate it into basic reports, then if there is any evidence
5 collected or it is photographed before it is collected, then
6 the evidence, itself, is put into what we refer to as a chain
7 of custody. So it is documented from the minute that I
8 personally collect it, I bag it, sign it, seal it and then it
9 is transferred back to the evidence lab for further
10 processing.

11 Q Okay. During some point, are there certain numbers
12 assigned to certain items of evidence when it goes to the
13 Crime Lab?

14 A Yes, documented or tracked.

15 Q If you have a piece of evidence here in court
16 relating to evidence you collected back in 1997, would there
17 be tracking of that that would say your name, what the
18 evidence is, things like that?

19 A Yes, sir.

20 Q Is the point of that to make sure it is itemized
21 what it is and remains with that case and things like that?

22 A Yes, sir.

23 Q Mr. Lowe, back on October 26, 1997, were you called
24 out to the scene at 1765 Cold Springs Drive out in Cold

1 Springs?

2 A Yes, sir, I was.

3 Q Was it relating to a taxicab?

4 A Yes, sir.

5 Q Sir, I am showing you what has been previously
6 marked and admitted as Exhibit 2-a. Can you see that there on
7 your screen?

8 A Yes, I can.

9 Q Let me also show you Exhibit 2-b. Is that the same
10 scene, just a different angle?

11 A Yes.

12 Q Do you recall, did you take these photographs?

13 A Pardon?

14 Q Did you take these photographs, if you recall?

15 A I believe I did, yes, sir.

16 Q Is that the taxicab and the scene you were
17 responding to out in Cold Springs that day?

18 A Yes, it is.

19 Q When you got there, when you arrived there, was Mr.
20 Castro still there?

21 A He wasn't at the scene. He had been removed by, I
22 believe, it was EMT.

23 Q As part of your duty and obligation as a forensic
24 investigator, did you search the cabin of that cab we see

1 there in the exhibit?

2 A Yes, I did.

3 MR. LEE: May I approach the witness, Your Honor?

4 THE COURT: You may.

5 BY MR. LEE:

6 Q Exhibit 2-c I am going to hand you. Take a look at
7 that if you would. Do you recognize that?

8 A Just a second, sir. Yes, I do.

9 THE COURT: They are going to try to get the poer
10 back in here in just a minute.

11 Whatever you plugged in it works again. For a
12 minute.

13 MR. LEE: We'll move on.

14 THE COURT: You had it a second ago.

15 MR. LEE: I can get to the TV. I just can't get to
16 the overhead.

17 BY MR. LEE:

18 Q I can move on without it. Sir, have you had a moment
19 to look at that exhibit?

20 A Yes. I recognize it.

21 Q 2-c, how do you recognize that?

22 A The fact with the hatch and this little missile
23 here, casing, was on the I believe passenger seat.

24 Q Was that depicting the cab we just saw in the

1 previous exhibits?

2 A Yes, it is.

3 MR. LEE: Move to admit Exhibit 2-c.

4 THE COURT: Any objection?

5 MS. PUSICH: No, Your Honor.

6 THE COURT: Exhibit 2-c is admitted.

7 (Exhibit 2-c admitted in evidence.)

8 BY MR. LEE:

9 Q If you could hold that up for the members of the
10 jury.

11 MR. LEE: Could I publish it?

12 THE COURT: You may.

13 BY MR. LEE:

14 Q If you would hold it up. Where is that casing that
15 you described, Mr. Lowe?

16 A Right here.

17 Q And a casing, what is that is that?

18 A Expended round.

19 Q There is no bullet in it anymore?

20 A No. No.

21 Q Is that what ejects from a gun?

22 THE COURT: Okay. Do it the old fashion way. Hold
23 it up in front of you so you are not blocking it. Get a
24 little closer to the jury.

1 MR. LEE: I hardly know how do do it.

2 THE COURT: We used to do that.

3 BY MR. LEE:

4 Q Mr. Lowe, did you then take that casing, collect it
5 according to the procedures you mentioned earlier?

6 A Yes, I did.

7 Q Was it ultimately submitted to the Crime Lab for
8 further testing if necessary?

9 A Like I said, it goes through the evidence, and
10 whoever processes the item later has to sign for it before
11 they can get it out of evidence.

12 MR LEE: May I approach the witness, Your Honor?

13 THE COURT: You may.

14 BY MR. LEE:

15 Q I am going to show you what has been marked as
16 Exhibit 28. Sir, do you recognize that from the outside cover
17 there?

18 A Right.

19 Q How do you recognize it from the paperwork?

20 A It shows that I received it, my commission number
21 and when I received it.

22 Q What does that purport to be?

23 A I am sorry.

24 Q What does that purport to be? What is it?

1 A Chain of custody evidence container.

2 Q Go ahead and look inside if you could. What is it
3 that is inside?

4 A It is that casing.

5 Q Is that the casing that you found on the front seat
6 of the cab.

7 A Yes, it is based on the chain of custody that I have
8 listed here.

9 MR. YOUNG: Your Honor, move to admit Exhibit 28.

10 MS. PUSICH: No objection.

11 THE COURT: Exhibit 28 is admitted.

12 (Exhibit 28 admitted in evidence.)

13 BY MR. LEE:

14 Q Mr. Lowe, if you could look at the chain of custody
15 sheet. Does it indicate the firearm examiner has also looked
16 at that piece of evidence?

17 A Yes. Kevin Lattyak. At the time, he was the
18 firearms expert.

19 Q Mr. Lowe, in any other searching of the cab, did you
20 find any drugs like that, any paraphernalia of drugs, anything
21 like that?

22 A Not that I recall, no. I have no listing of it.

23 Q Were you present at the autopsy of Mr. Castro?

24 A Yes, I was.

1 Q Did you photograph parts of the autopsy of Mr.
2 Castro?

3 A Yes.

4 Q Were you ever given an item of evidence during the
5 autopsy?

6 A I was given some reported to be bullet fragments by
7 the Coroner's tech.

8 MR. LEE: May I approach, Your Honor?

9 THE COURT: You may.

10 BY MR. LEE:

11 Q Si, I a going to show you what has been marked as
12 Exhibit 16.

13 A Okay. Again, it shows the fragments from the brain
14 of victim Castro. And I have signed for it, and I got it from
15 the hands of technician Mike Dugan.

16 Q Was the fragment you just described you received at
17 autopsy?

18 A Yes.

19 MR. LEE: Move Exhibit 15.

20 THE COURT: Any objection?

21 MS. PUSICH: No, Your Honor.

22 THE COURT: Exhibit 16 is admitted.

23 (Exhibit 16 admitted in evidence.)

24 ///

1 BY MR. LEE:

2 Q Sir, Exhibit 16 and asking you to think back 17
3 years ago on that, do you recognize what that is?

4 A Based on the photograph, it is fragments of some
5 type of missile which relate back to this.

6 Q To this being that Exhibit 16?

7 A Yes.

8 Q Okay. Would that be the fragments that you
9 collected from the autopsy?

10 A Yes.

11 MR. LEE: Your Honor, move to admit Exhibit 16-a.

12 MS. BOND: Your Honor, could we see it? This is one
13 of the things that wasn't available Friday when it was marked.

14 THE COURT: All right. 16-a.

15 MS. PUSICH: Thank you. We have no objection.

16 THE COURT: It is admitted.

17 (Exhibit 16-a admitted in evidence.)

18 BY MR. LEE:

19 Q Again, we will do it the old fashion way somewhat.

20 MR. LEE: May I publish it, Your Honor?

21 THE COURT: You may.

22 BY MR. LEE:

23 Q Mr. Lowe, if you can describe for us from there,
24 what are we looking at?

1 A Again, fragments.

2 Q These were from?

3 A From this here, from the body of Mr. Castro.

4 Q That was pulled from his head?

5 A Yes.

6 MR. LEE: Your Honor, would it be okay for the jury
7 to just pass it around?

8 THE COURT: Certainly.

9 BY MR. LEE:

10 Q Mr. Lowe, were you also then involved in the search
11 of a vehicle at the Churchill County Sheriff's Office?

12 A Yes, I was.

13 Q Specifically --

14 MR. LEE: May I approach?

15 THE COURT: Let's wait a minute. One of the reasons
16 we use the overheads and stuff is because jurors are looking
17 at pictures and not listening to what you are saying. I will
18 let them finish looking at it.

19 BY MR. LEE:

20 Q Sir, Exhibit 4-a, is this the vehicle that you had
21 searched?

22 A Yes, it is.

23 Q Is that the vehicle from the Churchill County
24 Sheriff's Office thing?

1 A Yes. It is a building next to the Fire Department,
2 I believe.

3 Q Now inside that vehicle, did you find a firearm?

4 A I believe it was a .22 automatic down between the
5 seats.

6 Q Showing you Exhibit 4-b. Go ahead and take a look
7 at that.

8 A Yes, it is. That is the location I found it.

9 Q Okay. Does it show it between the two front seats?

10 A Yes.

11 Q Do you recall what type of gun that was?

12 A As far as the brand name, I would have to refer to
13 my notes, but was a .22 automatic.

14 Q Would seeing your notes refresh your recollection?

15 A I am sorry?

16 Q Would seeing your notes refresh your recollection?

17 A Yes. I have them here if you would like.

18 Q Let me approach if I could.

19 MR. LEE: Your Honor, may I?

20 THE COURT: Any objection?

21 MS. PUSICH: No.

22 BY MR. LEE:

23 Q Take a look at that document and look up when you
24 are done.

1 A It says .22-caliber semi-auto S & W, Smith & Wesson
2 422. It gives a serial number. Found between the bucket seats
3 of the vehicle.

4 Q Mr. Lowe, does that refresh your recollection what
5 you found in the vehicle, what model it was?

6 A Yes. Yes.

7 Q What you just described, is that indeed what you
8 found in the vehicle?

9 A I am sorry?

10 Q What you just described, is that what you found
11 between the front seats of the vehicle?

12 A Yes, sir, it is.

13 Q Okay.

14 MR. LEE: May I approach again, Your Honor?

15 THE COURT: You may.

16 BY MR. LEE:

17 Q Sir, I am going to hand you what has been marked
18 previously as 17-a through e. Go ahead and open up that box,
19 and I will ask you a couple more questions here. Let me start
20 first with Exhibit 17-a. Do you recognize what that is?

21 A This is the weapon that I found.

22 Q Is that the weapon between the two front seats?

23 A Yes.

24 Q Okay. Exhibit 17-b do you see that in there in the

1 clear plastic bag?

2 A Yes, sir. I have it here.

3 Q What is that?

4 A It is contains the missiles or cartridges that I
5 took out of it.

6 Q Out of the vehicle or out of the gun?

7 A Out of the magazine out of the weapon.

8 Q 17-c, what is that?

9 A Magazine from the Smith & Wesson.

10 Q Okay. Then 17-d?

11 A D as in Delta?

12 Q D as in Delta?

13 A Appears to be a box of ammo. A box. It says here
14 ammo box and it has the control number on it.

15 Q Let me ask you about 17-e as in Edward.

16 A Right. Again along with it are control numbers.

17 Q Does 17-e also have just a control number on it?

18 A Yes, it does. And this is from -- repackaged by
19 Kevin Lattyak which is our firearms expert. Again, it is a
20 box of Stinger .22 long rifle ammo.

21 Q Were all of these things collected from the HONda?

22 A Yes they were.

23 MR. LEE: Your Honor, move to admit 17 in its
24 entirety a through e.

1 THE COURT: Did you identify c?

2 MR. LEE: I believe he did.

3 MS. PUSICH: He didn't specifically identify d, but
4 notes it has the control number. We do not object.

5 THE COURT: 17-a through e as in Edward is admitted.

6 (Exhibit 17a-e admitted in evidence.)

7 MR. LEE: May I publish, Your Honor?

8 THE COURT: You may publish.

9 BY MR. LEE:

10 Q With regard to 17-a, Mr. Lowe, this is the forearm
11 that you pulled from the vehicle?

12 A The vehicle, yes.

13 Q Okay. That is .22-caliber?

14 A Yes. Smith and Wesson.

15 Q You mentioned one of the boxes of ammunition was a
16 Stinger brand; is that right?

17 A Yes, sir. That would be 17-e as in Edward. Again,
18 this is identified by Kevin Lattyak and it is on my sheet that
19 I collected it.

20 Q So at that point then, your job is you collect it,
21 you submit it in evidence and then it can be tested by a crime
22 lab if necessary?

23 A Yes, sir.

24 Q And then with all the tracking that you do, it can

1 be tacked that way?

2 A That's correct.

3 Q Were you aware whether this Exhibit 17, the firearm
4 in Exhibit 17-a was submitted to the Crime Lab?

5 A Yes, it was.

6 Q Were you also aware the casing found inside the cab
7 was also submitted to the Crime Lab?

8 A Yes it was.

9 MR. LEE: Thank you. That is all the questions I
10 have.

11 THE COURT: Cross-examination?

12 MS. PUSICH: Thank you, Your Honor.

13

14 CROSS-EXAMINATION

15 BY MS. PUSICH:

16 Q Investigator Lowe, you have referred to the evidence
17 sheets?

18 A Yes.

19 Q Speak up? I will try. That are listed on the front
20 of the various item you have seen. Every time something moves
21 in evidence, does someone have to sign one of those?

22 A Yes, sir. Or ma'am. I am sorry.

23 Q That's okay. It has already happened today. Do you
24 also have information, you said some of the items had been

1 repackaged by Mr. Lattyak, correct?

2 A Yes. The procedure is when I submit it, it is
3 sealed, my initials and the date it was submitted. It is given
4 a control number. Then say in Lattyak's case, he comes in to
5 process it. He has to sign on that face sheet I am referring
6 to that he tested it. If he breaks my seal, he repackages it,
7 puts it on his initials as sealing it and it still maintains a
8 chain of custody.

9 Q Are the control numbers unique?

10 A Yes, they are.

11 Q Does each item have a different number?

12 A Yes, ma'am.

13 Q Separately, is there a case number assigned from the
14 lab?

15 A As far as the lab work yes, ma'am. The case number
16 actually comes from the agency.

17 Q Then there is an extra number for the lab?

18 A The lab case number, yes, ma'am.

19 Q At one point Mr. Lee asked you if you had sent
20 something to the Crime Lab. You were part of crime lab but a
21 different section in analysis?

22 A Right. I was an investigator in the section. The
23 Division is divided into two, investigators and criminalists.
24 So I probably should have said it a little bit different.

1 Yeah, I am the Crime Lab but I represent the investigative
2 side. So I put it into evidence which is the Crime Lab's
3 evidence.

4 Q Then analysis, for example firearms analysis, is
5 done in a different section of the same Crime Lab?

6 A Yes, ma'am.

7 Q You described taking photographs, participating in
8 the execution of Search Warrants and attending the autopsy and
9 collecting evidence there, correct?

10 A That's correct.

11 Q Were you asked to do any analysis of the evidence
12 you collected?

13 A No, ma'am.

14 MS. PUSICH: Thank you. Thank you, Your Honor.

15 THE COURT: Redirect?

16 MR. LEE: Just one question.

17
18 REDIRECT EXAMINATION

19 BY MR. LEE:

20 Q Do you recall whether -- You stated before Exhibit
21 17-b which was the bullets were pulled from the magazine 17-c.
22 Do you recall if any bullets were actually in the chamber of
23 the gun?

24 A No, I do not.

1 MR. LEE: That's all I have.

2 THE COURT: Okay. Thank you, sir. May this witness
3 be excused?

4 MS. PUSICH: Yes, Your Honor.

5 MR. LEE: Please.

6 THE COURT: Thank you, sir. You may be excused.

7 THE WITNESS: Thank you, Judge.

8 (Witness excused.)

9 THE COURT: Counsel.

10 MR. LEE: The next witness would be Mr. Kevin Lattyak
11 by transcript.

12 THE COURT: Okay. Do we have enough time to read
13 it?

14 MR. LEE: I think we do. Mr. David Watts-Vial will
15 be reading it.

16 THE COURT: Okay. Go ahead and have a seat. I think
17 they ar talking about it right now.

18 THE COURT: You provided the witness with Exhibit
19 56?

20 MR. LEE: A copy of Exhibit 56. I have the 56.

21 THE COURT: He needs to read 56.

22 MR. LEE: There was one correction.

23 THE COURT: Did all of you get together and talk
24 about it.

1 Mr. LEE: We did. We did fix it on that copy.

2 THE COURT: Why don't you fix it on the copy that is
3 the original 56?

4 MR. YOUNG: While they ae doing that, it is not a
5 correction, it is simply one of the lines is tough to read.
6 Counsel, we have agreed what it actually says. We are just
7 filling in above so all parties know exactly what it says so
8 it is accurate. It is not a change to the transcript.

9 THE COURT: Okay. Thank you.

10 MS. PUSICH: Your Honor, for your information, what
11 we have done is made it at line 24 page 625.

12 THE COURT: Thank you.

13

14 KEVIN LATTYAK

15 called as a witness, having been first duly sworn,

16 took the witness stand and testified as follows:

17

18 DIRECT EXAMINATION

19 BY MR. LEE:

20 Q Good afternoon, sir. Would you please tell us your
21 name and spell your last name?

22 A Good afternoon. My name is Kevin Lattyak. Edward
23 Kevin Lattyak, last name spelled L-A-T-T-Y-A-K.

24 Q What is your occupation, sir?

1 A I am employed as a criminalist with the Washoe
2 County Sheriff's Office Forensic Science Division in Reno.

3 Q Do you have any particular assignment at the
4 Forensic Division?

5 A Yes. I am a firearms and tool mark examiner.

6 Q What does that mean, sir?

7 A Basically, we exam firearms, ammunition and
8 ammunition components.

9 Q What does that mean?

10 A The most common request for examination we get in
11 the laboratory is for us to look at a bullet or a cartridge
12 case and determine whether it was fired in or fired from a
13 particular firearm. They may ask us to look at a firearm or a
14 gun and determine whether it is working correctly. There is a
15 number of different examinations associated with guns, bullet
16 cartridges, cartridge cases, that sort of thing that we do.

17 Q Sir, are you required to have any special training
18 or do you have any special training or education in this area?

19 A Related to firearms, I am a graduate of the Colorado
20 School of Trades. It is a gunsmith school. I have been
21 trained by various gun manufacturers or their particular
22 firearms including Ruer, Remington, Smith and Wesson just to
23 name a few. I am a member of the Association of Firearms and
24 Tool Mark Examiners and attend their training seminars. And a

1 member of the Southwestern Association of Forensic Scientists.
2 So a number of associations, organizations and different
3 training.

4 Q Does your training continue on a continuing basis?

5 A Yes. Normally at least once a year we are sent
6 somewhere for some additional training.

7 Q Have you done that over the course of your
8 employment with Washoe County?

9 A Yes, that is correct.

10 Q Is Washoe County the first place you have ever
11 worked as a firearms examiner or whatever you want to be
12 called?

13 A No. Initially I was employed with the Kansas Bureau
14 of Investigation Laboratory Topeka, Kansas. I then moved to
15 the State of New Mexico where I was employed with the New
16 Mexico State Police for almost eleven years. So I have been
17 doing firearms for sixteen, seventeen years now.

18 Q Sir, have you ever testified in any district courts
19 in the State of Nevada regarding firearms identification or
20 casings or bullets or that sort of information?

21 A Yes. I have testified numerous times in state
22 courts in Nevada including here in Washoe, County, U.S.
23 Federal court, and I have also testified in state court in New
24 Mexico, California and Kansas.

1 Q Is it criminalist or investigator? What kind of
2 title may I use?

3 A Normally, it's criminalist, yes.

4 Q As a criminalist, do you have occasion to conduct an
5 examination, excuse me, did you have occasion to conduct an
6 examination concerning a homicide that happened in Washoe
7 County in October of 1997?

8 A Yes, and it bore a particular laboratory number.

9 Q The --

10 A That investigation, yes.

11 Q I see you are looking at something. Are you looking
12 at a lab number?

13 A Yes. I am looking at my report which bears the
14 laboratory number.

15 Q Let's back up a little bit. Did you write a report
16 concerning any examination you conducted in Washoe County case
17 number 247540-97?

18 A Yes, I have.

19 Q What was it that you were testing and comparing that
20 caused you to generate this report?

21 A Basically a firearm was submitted, a bullet was
22 submits and a cartridge case was submitted for examination.

23 Q I show you what's admitted as Exhibit 17-A, ask you
24 to look at that. I also have Exhibit 28. Would you look at

1 that, please?

2 A I can identify State's Exhibit No. 17-A based on my
3 own sticker that's placed on the grip of the firearm which
4 bears an item number and a case number and my initials.

5 And the cartridge case package can be identified.
6 It has my name on it. And the box I placed the cartridge case
7 in was in our file, and that can be identified. And the
8 plastic bag it is wrapped in bears a case number, item number,
9 initials. I believe that is State's Exhibit 28.

10 Q Criminalist Lattyak, how do you receive these items
11 for you to conduct an examination?

12 A Normally we go down to the evidence room and we'll
13 actually check the evidence out and then to an examination.

14 Q What information do you possess at the time you are
15 beginning your examination?

16 A Normally we have a work request which will bear
17 possibly a laboratory case number, an agency item number, that
18 sort of thing, a very brief description.

19 Q Do you have any information about from where the
20 item was seized or from what crime it is connected to, that
21 sort of thing?

22 A It may or may not be listed in the description.
23 Sometimes they are, sometimes they are not.

24 Q You know in this case you had information concerning

1 where 17-a and 28 were seized?

2 A Based on my recollection, I believe the cartridge
3 case that is here before us today was listed as from a taxi,
4 taxicab. The firearm, I don't recall. It may have been
5 listed, recovered from a particular location. I don't recall
6 right offhand.

7 Q Did you have occasion to make a comparison between
8 the cartridge or Exhibit 28 and the weapon, Exhibit 17-a?

9 A Yes. A microscopic examination was conducted
10 between the evidence cartridge case and test fired cartridge
11 cases I actually fired from this particular firearm. So an
12 examination was performed.

13 Q So briefly describe how you make the comparison,
14 what you do to make a comparison between a cartridge case
15 found at the scene and a cartridge case that you test fire.

16 A The evidence cartridge case would be put on one side
17 of a two-stage comparison microscope, would and a two-stage
18 comparison microscope would be basically two microscopes
19 connected together. So I can look at one object on one side,
20 on one stage, and put another object on the other side of the
21 stage and actually move them together or apart and look at the
22 characteristics.

23 So I had to test fire cartridges excuse me, so I had
24 test fired cartridges on one side of the microscope, and, of

1 course, my evidence cartridge case on the other, and it is a
2 microscopic examination. I'm looking for a variety of
3 different markings that we place on the cartridge or cartridge
4 case when it's fired in a gun.

5 Q Do you have to have a cartridge, a test fired
6 cartridge that is similar to or the same as the one that's the
7 evidentiary item?

8 A Sometimes it's a benefit to do that, and sometimes
9 it isn't. I believe in this particular case I discharged a
10 shot of similar ammunition. There may be times I may want to
11 use a variety of ammunitions.

12 Q Do you know from where you got the similar
13 ammunition?

14 A From our lab reference collection.

15 Q So it was not collected from or not given to you
16 under any other evidence Q number?

17 A To my recollection, no. No ammunition was used
18 other than a laboratory reference ammunition.

19 Q What is Q number for the cartridge case, Exhibit 28?

20 A The Q number that's place on the package is Q 12459.

21 Q What is the Q number for the pistol your holding in
22 your hand, Exhibit 17-A?

23 A Q 12517.

24 Q Based upon your comparison of Exhibit 28 and your

1 test fired cartridges, do you have an opinion as to whether or
2 not Exhibit 28 came from Exhibit 17-a?

3 A Yes. Based on my microscopic examination of State's
4 Exhibit 28, I was able to determine that it was discharged in
5 State's Exhibit 7-a or in other words, this particular firearm
6 here.

7 Q So Exhibit 28 came from 17-a; is that correct?

8 A Yes. It was discharged in the gun, yes, that's
9 correct.

10 MR. LEE: That's all I have at this time, Your Honor.

11 MS. PUSICH: Page 620, Your Honor.

12 THE COURT: Cross-examination.

13
14 CROSS-EXAMINATION

15 BY MS. BOND:

16 Q Mr. Lattyak, did you also compare that casing taken
17 from the cab, Q 12459 casing with any other firearm presented
18 to you in this case?

19 A Yes. There were two other firearm submitted for
20 examination.

21 Q And of those two firearms submitted for examination,
22 did you run the exact same test?

23 A Yes. It would be a microscopic examination or
24 microscopic test.

1 Q Do you know offhand what other two weapons were
2 submitted to you for examination?

3 A To my recollection, a Ruger .22 caliber
4 semi-automatic pistol was submitted as well a a Lorcin brand
5 .22 brand pistol was submitted.

6 Q Was there any match between president Lorcin
7 .22-caliber submitted to you and the casing?

8 A No, that was actually eliminated. In other words, I
9 could say the cartridge case, State's Exhibit I believe 28,
10 was not fired from that particular firearm.

11 Q I believe you said state Exhibit 28. Let me see if
12 I can refresh your recollection. It should be 18-A.

13 A The cartridge case.

14 Q Did you see that that could be eliminated entirely,
15 correct?

16 A Yes. Based on the firing pin impressions and other
17 characteristics, that Lorcin pistol that was submitted was
18 eliminated as having discharged State's Exhibit 28.

19 Q Because it has a different firing pin characteristic
20 when it strikes the bullet, or strikes the cartridge?

21 A The cartridge, yes, that is correct.

22 Q Do you recall writing a report in this matter?

23 A Yes. I believe the actual report number was
24 2752-97, I believe 20.

1 Q How many pages?

2 A I believe that is a one-page report on the Lorcin
3 pistol.

4 Q You actually examined a Ruger pistol, a different
5 pistol at a different time, correct?

6 A Ruger .22-caliber pistol was also submitted for
7 comparison and examination, that is correct.

8 Q That was at the same time that you had examined the
9 Smith and Wesson?

10 A I believe it was generally around the same time. It
11 may have actually been later.

12 Q Do you have the Smith & Wesson pistol in front of
13 you?

14 A No, I do not.

15 Q Or did counsel take that back? Let me provide you
16 again with 17-A, that was the pistol you had examined; is that
17 correct?

18 A This Smith and Wesson pistol was examined by me. It
19 does bear my initials and item numbers, yes.

20 Q When you compared that or when you did your testing,
21 you had tes fired other cartridges out of that weapon.

22 A Yes. To my recollection, I believe I shot this gun
23 approximately twelve times.

24 Q Did you sae those cartridges?

1 A Yes. They are in the Crime Laboratory.

2 Q Now the cartridge that you examined for comparison
3 was the one found in Exhibit 28, correct?

4 A That is correct.

5 Q Is that a .22-caliber cartridge?

6 A It is a .22-caliber rim fire long rifle cartridge
7 case.

8 Q That is a long rifle cartridge?

9 A Yes, that is correct.

10 Q You knew that looking at it?

11 A Yes.

12 Q That's a very common round, isn't it?

13 A The .22-caliber rim fire cartridge is, yes, are very
14 popular.

15 Q Could arguably say that is the most popular
16 cartridge around?

17 A I would say probably the most popular, that's
18 correct.

19 Q Would it be fair to say more than hundreds or even
20 thousands of rounds of that fired every day?

21 A That wouldn't surprise me in the least.

22 Q Now when this weapon is fired, the cartridge is
23 extracted in some way, right?

24 A Yes. There is actually an extractor built on to

1 this particular firearm. In other words, when you depress the
2 trigger and shoot this gun, the cartridge case is going to be
3 withdrawn by the mechanism of the firearm and actually thrown
4 out.

5 Q When you perform your microscope analysis looking at
6 the cartridges and comparing them, were you looking for firing
7 pin marks or extraction marks?

8 Q Basically everything. One of the things I noticed
9 were similar firing pin impressions, as well detailed chamber
10 marks that would actually be in the barrel firearm.

11 Q These weapons, they are not handmade, are they.

12 A Not at all.

13 Q They are machine made?

14 A That is correct.

15 Q And if I wanted to repair one of those, if I needed
16 say a new extractor, I could probably get a part for that
17 extractor, couldn't I?

18 A You certainly could.

19 Q Brand new one from Smith & Wesson would actually fit
20 in that weapon?

21 A Yes.

22 Q Or a new firing pin?

23 A When you say fit right in, you might need to do a
24 little hand fitting to it depending on the part.

1 Q And I probably couldn't do that. I would probably
2 want to get a gunsmith for that?

3 A That is probably correct.

4 Q That is the benefit of mass production, all the
5 parts are the same?

6 A They the same in general specifications.
7 Microscopically they would all be indistinguishable to one
8 another.

9 Q And those are all the sorts of things that you
10 looked at?

11 A Yes. It was a complete microscopic exam.

12 Q Counsel didn't ask you about something else you did,
13 though. You also examined the bullet, didn't you?

14 A Yes. There was a bullet submitted for comparison.

15 Q And you looked at, I assume the rounds you fired out
16 of the weapon, correct?

17 A I actually compared the bullet that was submitted to
18 test fired bullets that I fired from this gun.

19 Q And the bullet, the evidence bullet you tested came
20 from where?

21 A The evidence bullet.

22 Q Yes.

23 A My recollection is on the package it was listed as
24 from the victim.

1 Q You were not able to say as a matter of opinion the
2 bullet that came from the victim was fired from gun, were you?

3 A Based on my microscopic examination, I was not able
4 to identify or eliminate this gun as having fired that bullet.

5 Q But put another way, you couldn't say one way or
6 another?

7 A That is correct.

8 MS. PUSICH: Thank you. Nothing further.

9 THE COURT: Redirect examination.

10

11 REDIRECT EXAMINATION

12 BY MR. LEE:

13 Q Describe for the jury the condition of the bullet
14 that came from the victim when you received it?

15 A Based on my recollection, the bullet was in very
16 poor condition. There was only a limited amount of rifling
17 characteristics or markings from the barrel I was able to look
18 at and view.

19 Q Is the bullet in one piece?

20 A To my recollection, the bullet was in a number of --
21 one medium size piece, and I believe some fragments.

22 Q So you didn't have a complete bullet to compare to a
23 test fired bullet ?

24 A Based on its physical condition, I could say not,

1 no.

2 Q And tell me what it takes for you to say this came
3 from that weapon? What do you have to have?

4 A In regards to a bullet, we would be looking first at
5 all the class rifling characteristics, and that's a series of
6 rifling marks that's cut into the barrel or channels that are
7 cut into the barrel, and we'd be looking at those and seeing
8 if they are similar. Then we would be looking for smaller
9 individualistic characteristics. In other words, when they
10 are making the barrels, they use cutters or a number of
11 different techniques, and small chips are coming off at
12 different rates or maybe tool chattering a little bit. That
13 makes every gun barrel unique and individual; makes almost
14 like a fingerprint. You can tell them apart. So that's what
15 we would be looking for when we try to identify a bullet to a
16 specific firearm. We're looking for individual
17 characteristics.

18 Q Did you have to have a certain number of
19 characteristics to make you comfortable in saying this bullet
20 came from this weapon?

21 A It's not a number. It's the uniqueness and the
22 relationship of one another that makes it very specific to a
23 gun.

24 Q Were there any similar characteristics between the

1 bullet you examined and Exhibit 17-A?

2 A Yes. Based on my microscopic examination, the class
3 rifling characteristics were similar.

4 Q What does that mean, class?

5 A In other words, the general overall characteristics.
6 The width of the lanes and grooves, that sort of thing.

7 Q Can you tell by widths of lanes and grooves and the
8 twists and the number who manufactured the barrel that the
9 bullet came from?

10 A Well, you can get a list of manufacturers. It's
11 very uncommon to narrow it down to one particular brand. But
12 sometimes you can, sometimes you can't.

13 Q Do you recall if you got a list in this case in the
14 comparisons you attempted?

15 A I believe I reviewed through our general rifling
16 characteristics file, and there were quite a large number of
17 different firearms manufacturers that produce rifle barrels
18 similar in general class to State's Exhibit No. 28.

19 Q You mean 17, the gun?

20 A Excuse me 17-A.

21 MR. LEE: That's all I have. Thank you.

22 THE COURT: Further questions?

23 MS. PUSICH: Just a couple follow-up.

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Q Following up on the State's examination, you said your microscopic examination was inconclusive, correct?

Q Of the bullet?

Q It was not positively identified by you as having fired from that weapon, correct?

MS. PUSICH: Thank you. Nothing further.

BY MR. LEE:

A Microscopically compared and identified, yes, that is correct.

THE COURT: Anything further?

///

///

///

1 FURTHER CROSS-EXAMINATION

2 BY MS. PUSICH:

3 Q Investigator, can you tell when that casing came
4 from that gun Exhibit 28?

5 A No. There is no way to age date a cartridge case as
6 far as when it was discharged.

7 Q But, sir, you are absolutely certain that the casing
8 found in Exhibit 28 did not or excuse me was not fired from
9 the Lorcin; is that correct?

10 A The Lorcin pistol, yes, that is correct.

11 Q With respect to -- strike that.

12 MS. PUSCH: I have no other questions, Your Honor.

13 THE COURT: Anyone have anything more? You may step
14 down. You are excused.

15 (Witness Excused.)

16 THE COURT: Counsel I want to look at the calendar.
17 9:00 o'clock ladies and gentleman of the jury. That concludes
18 the evidence you are going to hear tonight. We are going to
19 continue with evidence tomorrow, and we will begin at 9:00
20 a.m. So I would ask that you have a good night's sleep and
21 you come back tomorrow ready to go and come into the courtroom
22 at 9:00.

23 Now during this recess, remember until the trial is
24 over, do not discuss the case with anyone including your

1 fellow jurors, your family members or anyone involved in the
2 trial or anyone else. And do not allow anyone to discuss the
3 case with you.

4 This includes discussing the case on the internet or
5 internet chat rooms or through internet blogs, bulletin boards
6 such as Facebook or twitter, e-mails or text messages. If
7 anyone tries to communicate with you about the case, let me
8 know immediately.

9 Do not read, watch, listen to or view any news media
10 account or other account about the trial or anyone associated
11 with it including any online Information.

12 Do not to any research such as consulting
13 dictionaries, searching the internet or using other reference
14 materials and do not make any investigation into or about the
15 case on your own.

16 Have a nice evening. You may step out of the
17 courtroom. Counsel, please be seated. I would like to, I know
18 it s 5:00 o'clock, the time to go, but I do want to go over
19 just very briefly and make sure we ae clear what was admitted
20 when we had the power outage. The clerk and I were trying to
21 get the real time up on the computer. We want to make sure we
22 didn't miss anything. We show 17-a through e was admitted, and
23 28 was previously admitted.

24 THE CLERK: During Charles Lowe's testimony I show

1 Exhibit 2-c, 28, 16, 16-a and 17-a through he.

2 MR. LEE: You said 28 as well?

3 THE CLERK: I did.

4 MR. LEE: That's all we sought, Your Honor.

5 THE CLERK: I just wanted to make sure nothing was
6 admitted during the testimony that was presented by transcript
7 that needed to be put on the record.

8 MS. PUSICH: It was already in.

9 THE CLERK: All of it was in.

10 THE COURT: With that being said, anything further
11 for the Court?

12 MR YOUNG: No thank you, Your Honor.

13 THE COURT: You all kind of talked. Ms. Bod, you
14 sort of said something about lunch tomorrow, then I think you
15 were thinking you are going to start after lunch. But because
16 we said Thursday, they maybe going kind of quickly, we may be
17 looking at Jury Instructions tomorrow during the lunch hour,
18 just kind of tentatively looking at them, and/or we could do
19 it a little bit tomorrow evening. But I know everyone has
20 places to be. So I just want you to be kind of thinking about
21 that.

22 The law clerk and I have come up with some rewrites
23 I don't think you have yet; is that correct?

24 MS. PUSICH: That's correct.

1 THE COURT: So we should have these rewrites, though
2 anything you want me to look at by tomorrow, but in the
3 morning we can do the ones we worked on and see if you like
4 those. And then, Ms. Bond, maybe you can give us the rewrite
5 of the other act evidence Instruction/.

6 MS. BOND: Yes, I can do that. I don't recall
7 saying anything about lunch. I think I was talking about
8 after lunch when we would start our case if it is 3:00 or 4:00
9 or 4:30 or start Thursday. I think that is where my lunch
10 came in.

11 THE COURT: I think tomorrow, based on what you told
12 me, we only have a few witnesses.

13 MR YOUNG: I anticipate we'll be done by 2:00, 2:30,
14 again with the one caveat the family will speak at a later
15 time.

16 THE COURT: Right.

17 MS. PUSICH: Your Honor, one thing I need to put on
18 the record just because it is an important case. I don't want
19 it to be something somebody finds out later. During the
20 information that came in through investigator Lowe, he said at
21 the time of the autopsy he received the projectile from the
22 decedent, put it into evidence by detective Mike Dugan.
23 Shortly after, detective Dugan became a public investigator,
24 however, he was never assigned to Mr. Harte's case at the time

1 Mr. Dugan was working for us.

2 THE COURT: Thank you for putting that on the
3 record, but since it is not really a part of this
4 determination for this jury I don't think there would be any
5 issue there. Does anyone have any concern?

6 MR YOUNG: No, thank you.

7 THE COURT: Okay. Then we'll see you back tomorrow
8 morning at 9:00 o'clock. Thank you. Court's in recess. |.

9 (Whereupon, the proceedings were concluded.)

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1 STATE OF NEVADA,)
2 COUNTY OF WASHOE.) ss.

3 I, Judith Ann Schonlau, Official Reporter of the
4 Second Judicial District Court of the State of Nevada, in and
5 for the County of Washoe, DO HEREBY CERTIFY:

6 That as such reporter I was present in Department
7 No. 4 of the above-entitled court on Tuesday,
8 January 27, 2015, at the hour of 9:00 am. Of said day and that
9 I then and there took verbatim stenotype notes of the
10 proceedings had in the matter of THE STATE OF NEVADA vs. SHAWN
11 RUSSELL HARTE, Case Number CR98-0074.

12 That the foregoing transcript, consisting of pages
13 numbered 1-269 inclusive, is a full, true and correct
14 transcription of my said stenotypy notes, so taken as
15 aforesaid, and is a full, true and correct statement of the
16 proceedings had and testimony given upon the trial of the
17 above-entitled action to the best of my knowledge, skill and
18 ability.

19 DATED: At Reno, Nevada this 1th day of March, 2015.

20
21
22 /s/ Judith Ann Schonlau
23 JUDITH ANN SCHONLAU CSR #18
24

CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 28th day of August 2015. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

Terrence P. McCarthy, Chief Appellate Deputy,
Washoe County District Attorney

I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage pre-paid, addressed to:

Shawn Russell Harte (#61390)
Northern Nevada Correctional Center
P.O. Box 7000
Carson City, Nevada 89702

John Reese Petty
Washoe County Public Defender's Office

IN THE SUPREME COURT OF THE STATE OF NEVADA

SHAWN RUSSELL HARTE,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

Electronically Filed
Aug 28 2015 02:31 p.m.
No. 67519 Tracie K. Lindeman
Clerk of Supreme Court

Appeal from a Judgment of Conviction

Case Number CR98-0074A

The Second Judicial District Court of the State of Nevada

Honorable Connie J. Steinheimer, District Judge

JOINT APPENDIX VOLUME THREE

JEREMY T. BOSLER
Washoe County Public Defender

CHRISTOPHER J. HICKS
Washoe County District Attorney

JOHN REESE PETTY
Chief Deputy
350 South Center Street, 5th Floor
P.O. Box 11130
Reno, Nevada 89520-0027

TERRENCE P. McCARTHY
Chief Appellate Deputy
One South Sierra, 7th Floor
P.O. Box 11130
Reno, Nevada 89520

Attorneys for Appellant

Attorneys for Respondent

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1 4185

2 JUDITH ANN SCHONLAU

3 CCR #18

4 75 COURT STREET

5 RENO, NEVADA

COPY

7 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

8 IN AND FOR THE COUNTY OF WASHOE

9 BEFORE THE HONORABLE CONNIE J. STEINHEIMER, DISTRICT JUDGE

10 -oOo-

11 THE STATE OF NEVADA,)

12 Plaintiff,)

13 vs.)

14 SHAWN RUSSELL HARTE,)

15 Defendant.)

CASE NO. CR98-0074A
DEPARTMENT NO. 4

17 TRANSCRIPT OF PROCEEDINGS

18 TRIAL (PENALTY PHASE)

19 TUESDAY, JANUARY 27, 2015, 8:15 A.M.

20 Reno, Nevada

22 Reported By: JUDITH ANN SCHONLAU, CCR #18
23 NEVADA-CALIFORNIA CERTIFIED; REGISTERED PROFESSIONAL REPORTER
24 Computer-aided Transcription

A P P E A R A N C E S

FOR THE PLAINTIFF: OFFICE OF THE DISTRICT ATTORNEY

BY: ZACH YOUNG, ESQ.

MATTHEW LEE, ESQ.

DEPUTY DISTRICT ATTORNEYS

WASHOE COUNTY COURTHOUSE

RENO, NEVADA

FOR THE DEFENDANT: OFFICE OF THE PUBLIC DEFENDER

BY: MAIZIE PUSICH, ESQ.

CHERYL BOND, ESQ.

DEPUTY PUBLIC DEFENDER

350 S. CENTER STREET

RENO, NEVADA

I N D E X

WITNESSES:

DIRECT CROSS REDIRECT RECROSS

KANDI PAYNE-DAVIS

50 65 66

RONALD HOLST

67 73 74

JEROME VAUGHN

76 85 96

ABRAHAM LEE

99 121 124

JAMES STEUART

128 156 158

BILLY COLEMAN

161 193

MARK JOSEPH

200 226

CHARLES HOWARD LOWE

228 243 245

KEVIN LATTYAK

247 254 260 263

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1 RENO, NEVADA; TUESDAY, JANUARY 27, 2015; 8:15 A.M.

2 -oOo-

3 THE COURT: Thank you. Please be seated. Counsel,
4 as I indicated to you in chambers, we received a phone call
5 over the evening hours or early this morning from juror number
6 three who is asking to be excused. She's here. I would like
7 to bring her in and we'll make a record of her concerns if that
8 is all right.

9 MS. PUSICH: Yes, Your Honor.

10 MR. YOUNG: Yes.

11 THE COURT: Please ask juror three to come in.

12 Hi. We just need to make a record kind of what is
13 happening. And I understand, I received your message this
14 morning, but can you just tell us what your circumstances are
15 right now?

16 JUROR 3: My principal called me this morning and
17 told me that one of the students at the school died last
18 night, and she was hoping I would be able to come in and help
19 support the staff and the students at my school. I am
20 concerned about the teachers, especially, and I knew the
21 student, so I am having a little bit of a difficult time
22 myself.

23 THE COURT: This is a student you knew was active at
24 school?

1 JUROR 3: He's a seven year old with autism in a
2 special program at my school.

3 THE COURT: Counsel, do you have any questions?

4 MR. YOUNG: Would the circumstances you have going on
5 now affect how you sit as a juror in this case?

6 JUROR 3: I don't think so. Concentration wise it is
7 a little bit of a hard time with my thoughts.

8 MR. YOUNG: Your thoughts would be distracted based
9 on the circumstances?

10 JUROR 3: I think so. But I just found out. It
11 could get better.

12 MR. YOUNG: That's all I have. Thank you.

13 MS. BOND: The only question I have, so we can put
14 it on the record, what school?

15 JUROR 3: Elmcrest Elementary.

16 THE COURT: All right.

17 MR. YOUNG: I have no objection, Your Honor.

18 MS. BOND: And we have no objection.

19 THE COURT: Ma'am, I can see that you are emotionally
20 distraught, and we feel very, very badly about this, and we
21 are very sorry you won't be able to sit on the jury. I do
22 understand. I am going to excuse you from service. I am
23 going to let you go ahead, gather your things up and maybe
24 another time you will get to serve on the jury we hope.

1 JUROR 3: Thank you.

2 THE COURT: Thank you, ma'am: Okay, counsel, our
3 first alternate juror is Mr. Osaki. I propose to move
4 Mr. Osaki into the third slot if you have no objection.

5 MS. BOND: No objection, Your Honor.

6 MR. YOUNG: None from the State.

7 THE COURT: While the bailiff is dealing with what
8 is happening in the jury room and assisting with Ms. Conners
9 gathering her personal things up and moving the jurors around,
10 I think we can deal with those housekeeping matters we had
11 this morning. Ms. Bond.

12 MS. BOND: Your Honor, I proposed an alternate
13 Instruction to the one we had regarding the evidence to be
14 heard from Churchill County and the other act evidence. I
15 know Your Honor has a copy of that. I made a couple of
16 changes. Our request would be you give this proposed
17 Instruction before the taking of any evidence one time and it
18 not be given again during the course of the trial, but I
19 appropriately altered the Instruction similar given in the
20 final packet instead of saying "during the course of trial,"
21 it will say, "you heard evidence." I changed it again to say,
22 "during the course of this trial you will hear evidence
23 regarding circumstances which occurred in Churchill County
24 before the offense of this case." I continue with what had

1 been in the original proposed Instruction with just a couple
2 of changes midway through the sentence in the original
3 starting at line six. And mine starts at the end of line 4
4 with the words, "however you may consider." I changed it to
5 "all of the evidence you hear in this trial," rather than
6 Churchill County, they can consider all of it they hear, not
7 just the Churchill County. For those purposes, those were the
8 changes I made.

9 THE COURT: You all have discussed this with your
10 client, the strategic decision to offer it just once at the
11 end when the jury, I give the Instructions after the close of
12 evidence?

13 MS. BOND: Yes. It is strategic on our part.
14 Rather than emphasizing over and over, this is something else
15 you are hearing about, we want it given once so they have a
16 frame work of how they are going be instructed to use it and
17 place it in their thoughts during the trial. We didn't want
18 to emphasize it over and over again there are other acts.

19 THE COURT: Mr. Young.

20 MR. YOUNG: Could I have one moment, Your Honor?

21 THE COURT: Certainly.

22 MR. YOUNG: Your Honor, I have reviewed the
23 Instruction. I have no objection with one caveat. If you look
24 at line 6 which starts "related to," reading that as and the

1 defendant's involvement in the events that are related to", it
2 makes more sense to me, I just confirmed with Ms. Bond, we
3 change the word "related" to "presented." Related almost
4 seems it is tied in with the jurors as opposed to the
5 presentment of the jurors.

6 THE COURT: It would read: However, you may
7 consider all of the evidence you hear in this trial and the
8 defendant's involvement in the events that are presented to
9 you?

10 MS. BOND: Yes. That is acceptable to us as well.

11 THE COURT: Okay. You all would like me to say that
12 before opening statements or as soon as the Information is
13 read?

14 MS. BOND: I prefer after opening statements just
15 before the first witness.

16 MR. YOUNG: Again, it is for the defense's benefit
17 in part. I will defer. It is separate, obviously, from the
18 48.045 Instruction. That case law says it should be given
19 immediately before the PBA evidence is given. We are not going
20 to get into the Churchill County incident until Abraham Lee
21 testifies today. So, again, I will defer to the defense. If
22 you want to give it prior to that evidence, it would be, it
23 again is to the defense's benefit. I will defer how they want
24 to proceed.

1 MS. BOND: Our only concern, we don't want it before
2 opening. I understand they may prefer it. We will leave it
3 to your discretion if you prefer to do it at the beginning of
4 any evidence or before the first Churchill County evidence.

5 THE COURT: I don't think we'll get to the other
6 issues before Mr. Lee.

7 MR. YOUNG: The first witness, except only a
8 handful, all relate to the Washoe County case.

9 THE COURT: Why don't we just read it right before
10 Mr. Lee, and I won't read it before any of the other
11 witnesses?

12 MS. BOND: That is acceptable, Your Honor.

13 THE COURT: Okay. That done, you all have some
14 redacted transcripts I think you are going to be using?

15 MR. YOUNG: Yes. They have been marked as exhibits.
16 55 is the transcript of Jerome Vaughn. 56 is the transcript
17 of Kevin Lattyak, L-A-T-T-Y-A-K. 57 is the transcript of
18 Linda Solomon. There have been redactions to all those in
19 large part to assist with the ease of reading. The first time
20 around, there were three defense attorneys, a couple other
21 issues that were presented. So counsel and I sat down and
22 made the redaction. It is my understanding both parties are
23 stipulating and agreeing to all the redactions that would be
24 presented in the transcript.

1 MS. BOND: The State also removed certain objections
2 where the objection had been sustained. So that evidence
3 wasn't heard by the last jury either in reference to the
4 earlier penalty.

5 THE COURT: Exhibits 55, 56, 57 are admitted for the
6 purpose of reading only and will not be presented to the jury
7 other than in an oral format. That is based on the
8 stipulation of counsel, correct?

9 MS. BOND: Yes, Your Honor.

10 MR. YOUNG: I don't intend on admitting them. They
11 will just be used for reading, obviously part of the Court
12 record.

13 THE COURT: Right. Do you have a copy for the
14 Court?

15 MR. YOUNG: Yes. I apologize. I just made copies for
16 the State's witnesses, that being Mr. Lattyak and Mr. Vaughn.
17 I can do Ms. Solomon later. We won't get to her until later.
18 We do have one for Ms. Solomon.

19 THE COURT: Counsel, you have copies of all of
20 these, right?

21 MS. BOND: We do.

22 THE COURT: Thank you.

23 (Exhibits 55, 56, 57 admitted in evidence for reading.)

24 THE COURT: Now we had a discussion earlier on

1 Exhibits 11-a and b. I see from the exhibit list you did not
2 mark those. I think there was some discussion about wanting
3 to use the same information that had been on the VHS tapes in
4 a digital format, did those get marked a different number.

5 THE CLERK: I did not mark 11-a and b as part of
6 this trial because those were the old type tapes. We did mark
7 11-c and 11-d as the CD's for this trial.

8 THE COURT: Those were dropped, essentially off your
9 list, so you want to add them to your list? The clerk does
10 have those exhibits, so 11-c and 11-d, it is my understanding
11 they are a duplication of 11-a and b used previously in VHS
12 format. These are discs.

13 MR. YOUNG: 11-c, as I understand. 11-a and B from
14 1997 or '99 of the trial were the two separate VHS discs which
15 contain Mr. Harte's interview. They ran over one to the
16 other. 11-c, as I understand it, is that entire two VHS discs
17 goes on to one disc for ease purposes. 11-d is effectively a
18 redacted copy of the full interview. The only redactions are
19 made is it cuts out the empty space, about 15 minutes, before
20 the interview starts where it just shows Mr. Harte sitting
21 there. I didn't think that was necessary to show. It would
22 be a waste of time. It cut out the last maybe ten minutes,
23 again after Mr. Harte leaves the interview room. Again, there
24 is no significance to that. It cut out end time. The only

1 redaction, if you will, I did do, Mr. Evans, our IT personnel,
2 at one point in the interview Mr. Harte is asked for his
3 Social Security number. With the prohibition of introducing
4 the Social Security number, it is video, it is still playing
5 but it mutes the volume for the eight to ten second period
6 where Mr. Harte provides his Social Security. The full
7 unredacted copy was provided to defense counsel. The redacted
8 11-d was provided to defense counsel to make sure they were
9 satisfied with what I did, it is 11-d. I intend on presenting
10 to the jury the full interview minus the Social Security.

11 THE COURT: Counsel.

12 MS. BOND: Your Honor, the Court made rulings many
13 years ago regarding the admissibility of the interview. It is
14 not being readdressed. We would not object to the jury being
15 able to hear or view 11-d.

16 THE COURT: Okay. So while we are here with that,
17 are you asking to admit 11-d now or stipulating to that and
18 wait during the course of the trial?

19 MR. YOUNG: I prefer to wait, Your Honor.

20 THE COURT: Are there any stipulations on any of the
21 evidence that you want to stipulate to?

22 MR. YOUNG: Your Honor, we haven't talked about any
23 stipulation. I frankly don't anticipate too many problems
24 with them. I am okay stipulating at this point. If counsel

1 would like us to lay a brief foundation, I am certainly okay
2 doing that as well.

3 MS. BOND: I understand they are going to offer it
4 as they go through. I think in most cases there won't be much
5 issue, there might be one or two. I informed them of one
6 photograph I have a problem with. Frankly, I don't really
7 think it detracts much from the case if they don't use it. As
8 we go, we can go through that.

9 THE COURT: The only problem I have any difficulty
10 is with exhibits while doing the trial, I have to send the
11 jury out to have the discussion on the record because
12 Mr. Harte needs to hear the discussion. It is fine with jury
13 selection in the sidebar record. It is more difficult to do
14 that. So since I think I know from the clerk what the exhibit
15 is, maybe we can deal with that, that photograph now and then
16 we don't have to. The other thing counsel, I would like to
17 limit as much as we can.

18 MR. BOND: If I could grab the exhibit. Mr. Lee was
19 fine. Mr. Young was not. Exhibit 37 is the one we are
20 talking about.

21 THE COURT: You can make your record.

22 MS. BOND: Thank you. On Exhibit 37, it is a
23 bookshelf containing a number of books that appear to have
24 been from Mr. Harte's room. One of the books at the right-

1 hand end of the row of books in fact it looks like it is the
2 last actual book on that shelf is the Anarchist Cookbook.
3 This Court said it was not admissible at the trial at the
4 pretrial hearings. We object to 37 being admitted because of
5 that book that is in there. It has already has been ruled it
6 cannot be admitted.

7 MR. YOUNG: Based on the Court's ruling of the
8 Anarchist Cookbook not being admitted, it was tough for me to
9 say. Based on that, the State will not seek to admit 37.

10 THE COURT: Okay. Thank you. You all have gone over
11 the Indictment, the reading of the Indictment by the clerk. It
12 is my understanding you have agreed to the redaction of the
13 other defendants' names in the title and in the first line but
14 in the body, that the other defendants' names will remain. It
15 is my understanding that you agreed and stipulated both the
16 murder and the robbery charges would be read, and at the end
17 the clerk would say which charges the defendant was previously
18 found guilty of; is that your request? Do you want to look at
19 this?

20 MS. BOND: I just had a stylistic question. When
21 she showed it to us, it had the two. It is almost always
22 included. That's fine.

23 THE COURT: Did you want it to read of which?

24 MS. BOND: Grammatically it would be of which he's

1 been convicted.

2 THE COURT: It is you, Ms. Bond. No problem. It is
3 whatever you want it to read. I just want to make sure you
4 all agree to what she's saying and that it makes sense.

5 MS. BOND: Whatever is easiest for Marci to read.
6 "Of which."

7 THE CLERK: I can read it either way it is written.

8 THE COURT: Of which charges the defendant was found
9 guilty.

10 THE CLERK: I was saying of which charges the
11 defendant was previously found guilty.

12 MS. BOND: Fine, Your Honor.

13 MR. YOUNG: Fine with the State.

14 THE COURT: I have no other issues that need to be
15 resolved before opening statements. Counsel do you have
16 anything else?

17 MR. YOUNG: No. I think the State is ready, Your
18 Honor.

19 MS. BOND: No. Thank you, Your Honor.

20 THE COURT: Is the jury all here?

21 THE BAILIFF: Yes, they are, Your Honor.

22 THE COURT: Would you please bring them in?
23 Counsel, will you stipulate to the presence of the Jury?

24 MR. YOUNG: State would.

1 MS. BOND: Yes, Your Honor.

2 THE COURT: Thank you. Please be seated. Good
3 morning ladies and gentlemen of the jury. We had a little
4 business that we took care of, an issue. You lost one of your
5 jurors. We are now ready to proceed with the trial as I
6 indicated to you before. We still think we'll be on the same
7 schedule. We will be taking our lunch recess, with a break
8 sometime this morning, about 12:00 or 12:15.

9 At this stage in the proceedings we are at, this is
10 the time the clerk will read the Indictment that brought these
11 charges to you, initially.

12 THE CLERK: In the Second Judicial District Court of
13 the State of Nevada in and for the County of Washoe, the State
14 of Nevada, Plaintiff versus Shawn Russell Harte, Defendant.
15 Indictment. The defendant, Shawn Russell Harte, is accused by
16 the Grand Jury of Washoe County, State of Nevada of the
17 following: Count I, murder with the use of a deadly weapon, a
18 violation of NRS 200.010, NRS 200.301, and NRS 193.165 a
19 felony committed as follows: That the said defendants, Latish
20 Louise Babb, Weston Edward Sirex and Shawn Russell Harte
21 individually and/or in joint participation on the 26th day of
22 October A.D., 1997 or thereabout at the County of Washoe,
23 State of Nevada did willfully, unlawfully and with malice
24 aforethought, deliberation and premeditation kill and murder

1 John Castro, a human being by means of shooting John Castro in
2 the head with a .22-caliber handgun thereby inflicting mortal
3 injuries upon the said John Castro from which he died October
4 26, 1997; or, that the said defendants, Latisha Marie Babb,
5 Weston Edward Sirex and Shawn Russell Harte individually
6 and/or in joint participation on or about the 26th day of
7 October A.D., 1997 or thereabout at the County of Washoe,
8 State of Nevada did unlawfully kill and murder John Castro a
9 human being during the perpetration of a robbery with the use
10 of a deadly weapon by means of shooting John Castro in the
11 head with the use of at .22 caliber handgun thereby inflicting
12 mortal injuries upon John Castro from which he died on October
13 26, 1997; or, that the said defendants, Latisha Marie Babb and
14 Weston Edward Sirex individually or in joint participation on
15 or about the 26th day of October A.D. 1997 or thereabout at
16 the County of Washoe, State of Nevada did aid, abet and or
17 encourage Shawn Russell Harte who did willfully, unlawfully
18 and with malice aforethought, deliberation and premeditation
19 kill and murder John Castro a human being by means of shooting
20 John Castro in the head with a .22 caliber handgun from which
21 he died on October 26, 1997 in that the defendant, Latisha
22 Marie Babb followed the taxi cab which John Castro was driving
23 in Shawn Russell Harte's vehicle to provide a means of escape
24 after the murder; and/or the said defendant, Latisha Marie

1 Babb did assist in the preparation and design of the robbery
2 and murder of John Castro; and/or that the said defendant,
3 Latisha Marie Babb did directly or indirectly encourage Sean
4 Russell Harte to shoot John Castro, in that the said
5 defendant, Weston Edward Sirex did assist in the preparation
6 and at the scene of the robbery and murder of John Castro;
7 and/or that the said defendant, Weston Edward Sirex did
8 directly or indirectly encourage Shawn Russell Harte to shoot
9 John Castro.

10 Count II, a violation of NRS 200.380, NRS 193.1675,
11 a felony committed as follows: That the said defendants,
12 Latisha Marie Babb, Weston Edward Sirex and Sean Russell Harte
13 on the 26th day of October A.D. 1997 or thereabout at the
14 County of Washoe, State of Nevada, did willfully and
15 unlawfully take personal property, to wit, \$89 United States
16 currency and coin from the person of John Castro at 17865 Cold
17 Springs Drive, Reno, Washoe County, Nevada, against his will
18 and by means of force or violence to his person and with the
19 use of a .22-caliber handgun with which defendant Harte shot
20 the victim after defendants Sirex and Harte entered the
21 victim's taxicab for the purpose of robbing the driver.
22 Defendant Babb followed the taxi in Harte's vehicle to provide
23 a means of escape after the robbery was completed.

24 Dated this 25th day of March, 1998, Richard A.

1 Gammick, District Attorney, by Tom Barb, Deputy District
2 Attorney, of which charges the defendant was previously found
3 guilty.

4 THE COURT: Ladies and gentlemen of the jury, the
5 next stage of the proceedings are for the State and defense to
6 present their opening statements to you. Mr. Lee.

7 MR. LEE: Thank you, Your Honor. Ladies and
8 gentlemen, good morning. From the words of a convicted
9 killer, Shawn Harte, "I chambered a round and point blank an
10 inch above the ear to behind, boom. That simple. That easy.
11 No remorse."

12 You will hear more about this letter later. The
13 words of Shawn, Harte, himself. Ladies and gentlemen you have
14 been told already Mr. Harte's guilt has been established and
15 that you have some options for sentencing. At the conclusion
16 of this trial, the State will be asking you to return a
17 verdict of life without the possibility of parole for the
18 killing of John Castro, Jr.

19 On the late night of October 25, 1997 at
20 approximately the 11:00 o'clock hour, Mr. Castro was at work
21 driving his cab for the Reno-Sparks Cab Company. He received
22 a call at the Speedway Market at Neil and Peckham and picked
23 up two individuals. His cab wasn't heard from again. Jerome
24 Vaughn who you will hear from his transcript, Mr. Vaughn is no

1 longer with us, he passed away, you will hear his transcript
2 from previous testimony. He testified he came on duty in the
3 middle of the night and began looking for the cab and Mr.
4 Castro. Having no luck, he checked different businesses in
5 the area, went to the Speedway Market, didn't find Mr.
6 Castro. At the time, Reno-Sparks Cab Company did not,
7 remember this is 1997, did not have GPS locators in their
8 cabs. At 12:00 a.m. shortly after, this is now October 26,
9 1997, at John Lagamma's residence, 17865 Cold Springs Drive,
10 he's staying there actually with a friend and he hears a car
11 pull up in front of the residence. He looks out the window
12 expecting or out the door expecting his son to return. He
13 sees a car, couldn't identify exactly what kind of car. He
14 turned the light on and went back inside. At 12:30 in the
15 morning he looks out again. The car is there, moved forward a
16 little and that's it. Mr. Lagamma goes to bed, and that is the
17 last he thinks of that at that moment. Again, still can't
18 tell what kind of vehicle it is. At 2:00 a.m. you will hear
19 from Mr. Ronald Holst. Mr. Holst was a volunteer at the time
20 with the Cold Springs Volunteer Fire Department. Mr. Holst is
21 returning home from a personal engagement at 2:00 a.m. in the
22 morning, drives past the location on Cold Springs Drive and
23 sees the cab stopped in front of this residence. He thinks
24 nothing of it. A cab parked there 2:00 a.m. Mr. Holst, again,

1 had no reason to think about it until he returned a few hours
2 later in his duties with the Volunteer Fire Department. A
3 resident at that same home with John Lagamma at 17865 leaves
4 for work early in the morning, and the cab is there and he
5 sees an individual inside and reports that. Police are
6 notified at the time. Deputy Kandi Payne-Davis, now sergeant
7 Kandi Payne Davis responded. She was the first one on the
8 scene. She arrived at 6:50 and now approximately seven hours
9 after the cab picked up the individuals at the Speedway
10 Market. Deputy Payne sees the cab parked in the travel lane of
11 Cold Springs Drive. Again, not knowing what to expect, she
12 approaches the cab. She sees through the window which were
13 fogged at the time, this is October, late October, windows
14 were fogged, she sees an individual sitting in the front
15 driver's seat sitting up. He had slumped down. She could
16 hear something. She could hear loud raspy breathing from this
17 individual. On closer inspection looking inside, she sees
18 blood coming from this individual's nose and mouth area. She
19 tries gaining the individual's attention. He's unresponsive.
20 She and another deputy open the door, try to shake the
21 individual. Unresponsive. She sees a name tag, also noticed
22 this man matches the description from dispatch as the cab
23 driver, John Castro, Jr. Again, still breathing, blood coming
24 out of his mouth and nose but unresponsive. Medical is called.

1 They respond. In the meantime, deputy Payne, realizing he's
2 still breathing, doesn't want to move him, doesn't want to
3 change the status quo since he's still breathing. She takes
4 some Polaroids, pulls off the scene while medics respond.
5 Medics do respond including Ronald Holst who you will hear
6 from today. They assist Mr. Castro. He's Care Flighted to
7 Washoe Medical. By this time, several law enforcement
8 officials arrive at the scene. One of them is Chuck Lowe.
9 Charles Lowe who you will hear from. At the time, he was a
10 forensic investigator for the Washoe County Sheriff's Office.
11 He searched the cab and found on the front passenger seat a
12 single casing of a .22-caliber. He collects that as evidence
13 to submit to the Washoe County Crime Lab. Missing was
14 Mr. Castro's trip sheet which you will hear from the
15 transcript of Mr. Vaughn was kept by all cab drivers. It
16 records their doings, essentially. That was missing. At that
17 point, investigators, detectives, deputies, they search. They
18 canvass the area. They go door to door. They search ditches,
19 search a roadway for the weapon, for the trip sheet. They
20 find nothing. They look for a possible suspect in the area.
21 They find nothing. The case goes cold. There is no leads. That
22 is where it was left for some time.

23 I am going to take you backwards now two weeks
24 before that, approximately. October 14, 1997, eleven, twelve

1 days previous. In Churchill County, unbeknownst to the
2 detectives in Washoe County, in Churchill County, Abe Lee is
3 coming from Las Vegas driving to Fallon for business. In his
4 car is a single passenger, David Burnett. Their car is
5 completely full of personal belongings, a blue Jeep Cherokee,
6 back seat folded down crammed full of personal belonging.
7 They have got luggage, golf clubs, things of that nature. As
8 he comes down a hill approximately 23, 24 miles south of
9 Fallon, a flurry of bullets come in. He's under attack. At
10 first he thinks it is merely rocks from a dust storm. He
11 quickly realizes when he sees sparks out the window he's being
12 shot at. Holes are found in his Jeep back window, side window
13 shattered. There is a hole above the vizor right above his
14 head. He heard the whizzing sound of those bullets.
15 Transmission fluid under the passenger seat was hit. It went
16 all over. Literally where David Burnett was sitting.

17 Fearing for their lives, Abe Lee races down the
18 highway north towards Fallon and stops only when he finds the
19 police station. That is when he gets out and sees the extent
20 of the damage. He will tell you looking later he found even
21 his clothing, all things in the back of his vehicle had holes
22 in them, damaged. He's grateful that clothing was back there.
23 His vehicle was chalk full of property. He will testify it was
24 a miracle he was not struck. The Churchill County

1 investigation of that shooting again two weeks before the
2 murder of John Mr. Castro ensues with Abe Lee's information
3 where they were. Investigators find the scene where they
4 believe the shooting came from October 16th now approximately
5 a day later. They find the scene five hundred feet south of
6 Mile Marker 2 on US 95 between Fallon and Schurz. At the scene
7 they notice several things that are interesting. You will
8 hear from then detective sergeant Jim Steuart who led the
9 investigation. You will hear from investigator Billy Coleman
10 who worked under Jim Steuart. Both arrive at the scene where
11 casings are found, nine shell casings from a 7.62 millimeter
12 bullet. They find a scanner as well, and as they looked
13 further, they find shoe prints in the dirt and dust. The shoe
14 prints have a pattern they are going to mark and diagram.
15 They are able to backtrack the shoe print from the east side
16 of the highway leading back to a dirt road. From this dirt
17 road, they follow the shoe print a little further and they
18 stop. They stop. They find four tire tracks. What is
19 interesting about these tire tracks, three of the four are
20 distinct. Again, the investigators are able to diagram what
21 these tire tracks were like, the pattern. Again, three of the
22 four were different. With those diagrams and having these
23 distinct tread patterns, investigators, that is what they had
24 at the time, some old fashion investigating, at that point a

1 Hail Mary, if you will. They go parking lot to parking lot,
2 business to business searching cars all throughout the town of
3 Fallon, apartment complexes anywhere they could find the car
4 simply parked to compare. This went on for approximately a
5 month. Again, these two investigations going on
6 simultaneously unbeknownst to one another. Again, two weeks
7 after that scene is diagrammed, the murder happened.

8 Two weeks later, now mid November, Churchill County
9 gets a break. They find a car with these distinct tread
10 patterns. They find it at the Frontier Plaza right in front of
11 a Radio Shack. Detectives go there, exam the cars as quickly
12 and best they could without giving themselves away with what
13 they are doing. And sergeant Jim Steuart will testify he
14 believes they found it. They surveil the car. They sat and
15 watched it. They ran the car for registration. It was
16 registered to Shawn Harte. 1985 black Honda Accord. As they
17 watched the vehicle, they watched Mr. Harte exit the Radio
18 Shack, get into the car and drive. They watched for sometime.
19 He eventually goes to an address on Laverne Street in Fallon.
20 247 Laverne Street. They see Mr. Harte go there a few times.
21 Eventually the car parks there. The night, in the cover of
22 darkness, this location isn't far from the Sheriff's Office in
23 Fallon, in the cover of darkness sergeant Steuart,
24 investigator Coleman and investigator Mark Joseph who you will

1 hear from as well, go to the residence. It is an apartment
2 complex, if you will. They will testify dogs were barking.
3 They were trying to be quiet. They took photographs. They
4 took measurements of this vehicle, the tire pattern, the wheel
5 base width, the width of each tire and guess what? It
6 matches. It matches the scene. Detective or investigator
7 Coleman will testify the 7.62 millimeter round casing found at
8 the scene is shot by a few weapons one being an SKS.
9 Investigators also had information Mr. Harte at that time
10 owned an SKS. With that information, investigators obtained a
11 Search Warrant for the house and for the car. They planned
12 this carefully. On November 12, 1997, with sergeant Jim
13 Steuart leading the investigation, they decided to make a stop
14 of Mr. Harte in his vehicle. That stop happens in front of the
15 old Cock and Bull restaurant in Fallon which is no longer
16 there, with Mr. Harte, in the front passenger seat, Latisha
17 Babb and in the back seat is her infant child. Jim Steuart has
18 the stop made in a marked patrol unit. Jim Steuart races to
19 the front to make contact with Mr. Harte. He wanted that eye
20 to eye contact knowing he will be interviewing Mr. Harte and
21 talking to him. He showed Mr. Harte the Search Warrant. He
22 had Mr. Harte read the Search Warrant. He explained it to
23 Mr. Harte, told him he was going to be searching his vehicle.
24 Listen to what Mr. Steuart explains about Mr. Harte's

1 reaction, his demeanor at the time. Nonetheless Mr. Harte
2 complies, exits the vehicle. Mr. Harte willingly goes to the
3 Churchill County Sheriff's Office for an interview with
4 sergeant Steuart. Latisha Babb is driven by another deputy
5 back to the residence at North Laverne Street where officers
6 were there to execute the Search Warrant at that address. The
7 vehicle, Mr. Harte's vehicle, was searched. I mentioned an
8 individual, Charles Lowe from the Washoe County Crime Lab. He
9 is a forensic investigator. He came out to Churchill County.
10 At one point, after other officers saw a gun in between the
11 front two seats of Mr. Harte's car, it was a Smith & Wesson
12 22-caliber pistol. Charles Lowe responds to Churchill County
13 and does what he does to collect the evidence. He collects
14 the firearm which you will see. He collects ammunition with
15 the firearm which you will see. Part of the ammunition found
16 in the vehicle are .22-caliber CCI Stinger rounds. You will
17 hear more about those. Inside the vehicle as well is numerous
18 scanning communication equipment, CB radios.

19 Again, now at the Laverne address where officers are
20 executing the Search Warrant there, investigator Coleman, now
21 sergeant Coleman, goes to the Laverne address where Mr. Harte
22 is residing where they watch him go and stay the night. Ms.
23 Babb is there. Latisha Babb is there with her infant son or
24 infant child. A search is executed of Mr. Harte's room. They

1 found brown shoes that have a tread pattern matching the
2 description from the scene. They find a Lahoton Valley
3 newspaper which is the newspaper in Churchill County with the
4 front page article talking about the shooting on US 95 that
5 happened now approximately a month before. They find two
6 rifles, a .22 rifle. They find an SKS rifle, same kind of
7 rifle that shoots 7.62 millimeter rounds. They find documents
8 that were of interest to them. Documents dealing with,
9 Elimination it is called, with content regarding
10 assassination, firearms, and explosives. In the residence they
11 find a map of the Churchill County area. They find highlighted
12 on that map stores and other places with money. You will hear
13 from Mr. Harte, himself, about plans, plans to rob other
14 places to get some money. Then they find something peculiar.
15 Still, at this point, two investigations are going on unknown
16 to each other. They find a single Reno-Gazette Journal
17 article dated October 27th with a front page article about a
18 cab driver who was murdered in Reno, John Castro, Jr., at the
19 residence and then shortly thereafter at the Churchill County
20 Sheriff's office Latisha Babb is interviewed by sergeant Bill
21 Coleman. Based on that, he learns the name of Weston Sirex who
22 worked at a cab company. Mr. Harte is being interviewed at
23 the same time by sergeant Jim Steuart. Mr. Harte is asked to
24 voluntarily go down. He's not under arrest, however, he's

1 Mirandized. His rights are given to him, explained to him. He
2 signs a waiver form. Mr. Harte denies, denies, denies, doesn't
3 know anything about the shooting. He wasn't being asked about
4 the murder at this point. They didn't know about it. But
5 deny, deny, deny about the shooting on US 95. He states he
6 never goes south of town. He had no reason to be south of
7 town. He wasn't with Weston Sirex that day. The only thing he
8 gives them is he owns an SKS rifle. He doesn't let other
9 people borrow it, and he owns a .22 caliber pistol found in
10 his vehicle between the two front seats. Mr. Harte also
11 references Weston Sirex. He worked for a cab company in Reno.
12 He states, again, this is now November 12th, two weeks earlier
13 Mr. Castro was murdered, he stated the last time he saw Sirex
14 was about two weeks ago. We went to the Circus Circus. You
15 will hear about Circus Circus from the letter written by
16 Mr. Shawn Harte. Throughout the interview, however, Mr. Harte
17 denied, denied, denied. Hence a link is established.

18 Churchill County investigators contact Mr. Sirex at
19 the cab company he worked for in Reno, the Whittlesea Cab
20 Company. Based on that, a lead is discovered for the murder
21 of John Castro.

22 An autopsy was performed on Mr. Castro, and you will
23 hear from Dr. Palosaari who was the individual who performed
24 the autopsy. He will explain to you that he determined the

1 cause of death was a single gunshot wound to the back of
2 Mr. Castro's head. Inside Mr. Castro's skull, within the skull
3 he found a bullet fragment. Now with the link established, a
4 bullet casing found in the front seat of the cab, and now
5 .22-caliber pistol found between the two front seats of
6 Mr. Harte's car, forensic investigators examine those. You
7 will hear the transcript testimony from the transcript of
8 Kevin Lattyak who was a forensic investigator at the time.
9 Kevin Lattyak's examined the shell casing found in the front
10 seat. He examined the firearm found in Mr. Harte's vehicle.
11 He compared the two. He made the determination that the casing
12 found in the cab was discharged from Mr. Harte's .22 pistol.
13 Now with that information, Mr. Harte is interviewed again.
14 Detective Jim Beltron leading the investigation in Washoe
15 County for the murder of John Castro, Jr., responded to
16 Churchill County. Mr. Harte is now in custody already under
17 arrest for the Churchill County shooting. Again, he's given
18 his rights, the Miranda waiver form. Mr. Harte agrees to talk.
19 What does he do again? Deny, Deny, Deny. You will hear the
20 interview. Mr. Harte essentially won't say anything until
21 investigators, detective Beltron, can prove to him he already
22 knows what went on, that he knows what happened, that he knows
23 about the plan to rob Mr. Castro, that he knows about the
24 microphone, a body microphone Mr. Harte was wearing so Latisha

1 Babb could hear everything going on in the cab as she followed
2 closely behind as the get-way driver in Mr. Harte's car.

3 Detective Beltron explains to Mr. Harte we already know about
4 the fact Reno-Sparks cabs don't have GPS at the time. Harder
5 to track. Only then when Mr. Harte knows he's been caught,
6 knows he's in trouble, does he start to talk. What does he
7 say? Again, ladies and gentlemen, you will hear the entirety
8 of that interview. He admits to the scheme whereby he and
9 Weston Sirex robbed John Castro even using language whether
10 they were going to actually do it, regarding a party, do you
11 still want to party tonight. With the affirmative, the gun was
12 placed to Mr. Castro's head and the trigger pulled. He admits
13 pulling the trigger. He did it to John Castro to rob John
14 Castro. He got approximately \$89 split three ways from Mr.
15 Castro. They go to Circus Circus and spend it that morning.

16 You will hear evidence Latisha Babb and Weston Sirex
17 received sentences. You will hear what their sentences are.
18 They received a sentence of life without the possibility of
19 parole.

20 At the conclusion of the State's case, you will also
21 have an opportunity to hear from Mr. Castro's family. They
22 will discuss with you who John Castro was. He was a family
23 man. He was a man who served his country in the United States
24 Army, tours in Vietnam, seen combat time. He worked as a cab

1 driver to support his family including his two month old son,
2 newborn, Keoni. You will hear about Keoni, what he's doing
3 now years later. Keoni grew up not knowing his father,
4 without his father. You will hear of the huge impact the
5 senseless crime had on Mr. Castro's family. I mentioned in my
6 very first statement about a letter Mr. Harte wrote to his
7 former girl friend, Lanette Bagby. You will hear this letter.
8 You will hear the details of the offense and other plans
9 Mr. Harte had undertaken. It will give you powerful insight
10 into the mind and plans of Mr. Harte. While I won't share with
11 you all the detail, it is approximately a five and a half page
12 letter written about a year after the murder happened to a
13 former girlfriend. He stated this, I will close with these
14 remarks from the words of a convicted killer, Shawn Harte, in
15 referencing the murder of John Castro: "Nothing to it. Just
16 another chore like taking out the trash except easier and
17 funner." Thank you.

18 THE COURT: Ms. Pusich, you may make your opening
19 statement.

20 MS. BOND: Good morning, ladies and gentlemen. What
21 you just heard is tragic and it is troubling and it is true.
22 It should never have happened, but you cannot undo it. Before
23 you decide what should happen next in Mr. Harte's life, we
24 think you should know him, who he was and who he is today.

1 During this trial, you will see that this isn't going to be
2 much like TV or movies. There will be very few interruptions
3 as the evidence comes in. You have already been told
4 Mr. Harte has been convicted. That's not going to be
5 contested. The evidence, the State just explained to you,
6 many of those witnesses testified previously. We know what
7 they are going to say but need more information to make the
8 decision we are asking you to make this week.

9 You are going to learn that in about 2002 after
10 Mr. Harte had been in custody for a few years, a psychiatric
11 evaluation was performed. The reason that is important is
12 because it was the first time Mr. Harte actually started to
13 come face-to-face with the person he had been. That may be a
14 little hard to believe. At that point, he was about
15 twenty-four, twenty-five years old. You will get information
16 from him about that process and what an eye opening experience
17 that began. Up until that point, Mr. Harte had been in a very
18 violent traumatic existence long before he came across Mr.
19 Castro, long before he met Weston Sirex or Latisha Babb. And
20 he didn't really understand that what life had taught him to
21 do to cope in the world were all the wrong things.

22 In 1997 and 1998, Mr. Harte would rather be viewed
23 as a sociopath, someone who was mean and violent and
24 unremorseful than admit to himself or anyone else any type of

1 weakness, any type of vulnerability. There were some reasons
2 for that but what has happened in the last seventeen or
3 eighteen years is that Mr. Harte has come to realize the
4 damage that was done to him and the horrific damage he did to
5 others in the world before he realized there were appropriate
6 ways to cope with what he had been through. As a child,
7 Mr. Harte was not given any of what we might view as the tools
8 to deal with the world. He was trained he should make his
9 life look normal no matter what happened. That was the most
10 important goal of value of his upbringing. From the age of
11 six, Mr. Harte was taken to hospitals and doctors over and
12 over and often for horrible stomach aches and other things.
13 They were sticking him with needles, trying to find out what
14 was wrong and nobody was finding a condition or disease they
15 could treat because what was wrong was how he was being
16 treated. That was the information never given to the doctors
17 or the hospitals.

18 Interestingly, because they were trying to find out
19 what was wrong, Mr. Harte had the opportunity to meet with
20 many doctors and therapists, but nobody was telling them the
21 truth about what was happening to him and his older brother,
22 five years older. Mr. Harte actually attended eleven different
23 public schools between kindergarten and eleventh grade when he
24 dropped out. He moved repeatedly. Part of it was his father

1 being in the Navy, but part of it was the instability of the
2 home, itself. He will explain to you the environment he was
3 raised in and his understanding of how that led him to the
4 horrible crime you just heard described, actually the crime,
5 because the shooting in Fallon didn't specifically harm
6 anyone, it was horrible as well. It was very dangerous.

7 So how do children become killers? There are some
8 things that happen in life and many people are able to survive
9 the traumas of their background without turning to violence as
10 an adult but some do not, and he is one of the ones that did
11 not.

12 First, you will find out one of his earlier
13 memories, his family just moved to Hawaii. He was six years
14 old. His brother was eleven. They were in a hotel waiting for
15 housing. His brother did something, Shawn doesn't even know
16 what it was, that made his dad unhappy, and his dad punched
17 his brother in the nose. He wasn't badly injured, but it
18 looked terrible. His mother was furious. Instead of saying
19 leave him alone or taking his brother and say let me take care
20 of this, she tells the family he would be better off if he
21 just killed himself. His father tries to dangle, actually did
22 dangle himself over the fifteenth floor balcony of a hotel
23 call the Halakia Hotel. Shawn is distraught. His six year old
24 brother is bleeding. His mother is screaming. His dad is

1 dangling off the balcony. Mom convinces the dad to come in.
2 They take care of his brother. All Shawn finds from this is
3 if something bad happens, you fix it by making it worse, do
4 something worse. Several years later at fourteen his dad is
5 away. There is a family argument involving his mother and her
6 boyfriend which raised different issues later. We'll talk
7 about that. They are having a discussion, Shawn and the
8 boyfriend, whether Hulk Hogan had been the actor who played
9 Crocodile Dundee. This is not an argument typically important
10 in the world. Kind of a silly argument. Sean had been on the
11 phone talking with his girl friend, made some reference to the
12 boyfriend who was about 250 pounds at the time. He grabs him
13 from behind, behind the neck, yanks him out of the chair,
14 throws him on the floor. You might think that was a traumatic
15 incident. He was used to violence. His girl friend was on
16 the other line. She heard this. Now the family was in a
17 position where there was an outsider who understood what had
18 been going on. He couldn't conceal the fact of this
19 dysfunction in his family, but really, the interesting thing
20 from that incident is how his mother responded. She sent him
21 away to a group home, throws him out of the family altogether.
22 He was the person who caused the problem. In the group home
23 he was surrounded by people who had been cheating. He didn't do
24 that. Cutting school. He didn't do that. Attacking the

1 others in his family, he didn't do. All he did was embarrass
2 his mother's boyfriend while his dad was out of town. So what
3 he finds out is embarrassing your family, the number one
4 thing, if do you that, you are out. They will just cut you
5 lose.

6 He learned that the world is unsafe, that you can't
7 trust anybody. That the things that you think are constant
8 and the people you think will protect you, those things aren't
9 there and those people won't.

10 As you probably know, it is very sad, but some
11 people in the world suffer abuse, children, and obviously the
12 vast majority of them never grow up to kill somebody else
13 thank God, but a huge number of people who do kill other
14 people have suffered violence themselves. It is one of the
15 lessons you learn from a chaotic childhood how to do.

16 Sean learned early on how to take unfair advantage
17 of others. In the early teen years, he and his mother were in
18 the grocery store in line behind a lady who to him looked to
19 him about 80 years old. She dropped a hundred-dollar bill on
20 the ground. His mother picked it up, didn't say a word. The
21 lady starts to go through check out, and she can't buy all the
22 things. He explained to his mother what she did was unlawful.
23 Later she split it with him. That was a moment of mother-son
24 bonding in his family. You take something that doesn't belong

1 to you and it is funny, not this is wrong or we need to give
2 this back. Now she realizes she's missing it. At no point in
3 that circumstance did his mother ever say we should give this
4 back or she needs this. At about age 12 or 13 Shawn's dad was
5 actually sent with the Navy to serve in the first Gulf War.
6 While he was gone, that is when his mother started dating
7 someone else. Shawn didn't know all the specifics at the
8 time, but he knew his dad wasn't there. This guy was there
9 all the time and he slept in his mother's room and he was
10 devastated by that, because he thought, that showed him that
11 he couldn't trust anybody. His dad is doing something
12 honorable. I think there were many times it was actually
13 easier for Shawn and mom and brother not to have his dad in
14 the home. He was serving the country, supporting his family.
15 While he was gone, Shawn's mom was entertaining other men in
16 their home. So that was very difficult as well, because he
17 viewed his parents as good people. He wanted to believe in
18 them. At that point, he didn't feel that he could. By about
19 1990 his dad has learned some of what has been going on with
20 his mom while he's been away, and his dad was depressed,
21 suicidal, purchased a .38 caliber revolver thinking that might
22 be the end. The Navy gets wind of some of his problems and
23 tells him he should go to AA, doesn't put him in any kind of
24 psychological counseling. It was Shawn's mother abusing

1 alcohol at that point. Guns were also a constant in Shawn's
2 life. Nothing quite as bad in any circumstances as blending
3 abuse and neglect and psychological problems with firearms,
4 but that is what happened. His first gun was purchased for
5 him by his mother when he was sixteen. He kept it in his
6 room. When he turned seventeen, he was living with a thirty
7 year old girl friend or his surrogate mother. She bought him
8 more guns. The gun used to kill John Castro was one of the
9 gifts he got when he was seventeen. Shortly after that, Shawn
10 decided he needs to get away from the situation. He joined
11 the Army. He was deployed to Korea, served in the DMZ,
12 eventually he gets an honorable discharge. I will give you a
13 little more information about that.

14 He also ended up meeting Lanette Anderson when he
15 was sixteen. He didn't view his relationship with her
16 seriously committed. At that point in life I am not sure by
17 age or experience that was something he could do, but they had
18 periodic encounters. And while he was serving, Lanette
19 contacted him and told him she was pregnant. Shawn didn't want
20 to be the absent military father his father had been. He
21 decided he needed to separate from the service. That kind of
22 was the beginning of the end. He didn't go in and say I have
23 a pregnant girl friend, I need to go home and take care of
24 her. He decided to lie to his supervisor at that point in Ft.

1 Campbell Kentucky and said he was suffering hallucinations.
2 They did allow him a separation. They sent him back and he
3 came home. When he returned from his Korean deployment, he
4 learned Lanette had been involved in drugs, and he was very
5 unhappy. He was not someone who had turned to drugs, himself.
6 A lot of abuse and neglected kids do. Shawn avoided that. It
7 was something he was very unhappy about. Lanette miscarried,
8 and he blamed that on drugs. And all things drug related
9 became his enemy. You will also learn he lost his best friend
10 at age fourteen, Joe Molinar, who was shot in the back by drug
11 dealers up in Bremerton, Washington and died as a result. By
12 late 1997, Shawn was basically suicidal. He was living
13 lawlessly. He was lying. He was cheating. He was stealing.
14 He expected to be caught and he expected to die in a
15 confrontation with the police, and he didn't care. John
16 Castro's murder was partially the result of Shawn's anger and
17 misery. Every minute of Shawn's anger was focussed on that
18 cab and that firearm that night.

19 We know John Castro didn't deserve to die. He's out
20 there doing his job. It is a difficult job. It is a
21 vulnerable job. We know the person who knew all those things
22 was Weston Sirex, a fellow cab driver who came up with this
23 idea.

24 John Castro should be here. He should be here with

1 his family and loved ones, and there is no one in this
2 courtroom who is going to tell you that that should not
3 happen, but it can't.

4 In 1997 and 1998 Shawn Harte didn't have any
5 understanding of how his life and upbringing were affecting
6 him. But you are going to find out that today in 2015 he
7 does. In 1997 and 1998 if Shawn looked in a mirror, he didn't
8 recognize the damaged kid looking back. In 2015, he can look
9 in a mirror and he can see a person with respect, to him
10 things he's done in the last 15 years he can be proud of. He
11 certainly never looks in the mirror and feels proud of what he
12 did that night despite the outrageous letter he wrote in 1998.

13 You are going to learn in 1997 Shawn was arrested
14 and put in jail and he hadn't been in custody before. He was
15 sentence to the group home after he got into the disagreement
16 with his mother's boyfriend. He found a whole new group of
17 people with very different ideas. He met people who had
18 swastikas tattooed on their face. They didn't have anybody
19 like that in the military in 1997. Shawn had a messed up
20 childhood, but the level of disfunction he came across when he
21 went to jail was a whole new level. Some of the other inmates
22 told Shawn he should be proud of what he had done because the
23 victim wasn't a woman or a child. He only knew about jail and
24 prison from TV before he was arrested. And he learned that

1 letting other inmates know your crime was violent was a way to
2 protect yourself in custody. He wanted to be taken seriously
3 and wanted to be left alone. And he wrote the letter that you
4 have heard described by the District Attorney to Lanette
5 Bagby. A short time later, about probably two or three years
6 after he was first arrested, Shawn was moved to the Nevada
7 Department of Corrections. That is, actually, in Nevada
8 prisons, are the facilities people convicted of violent
9 crimes. Jails are for people waiting for trial or less
10 serious crime. When Shawn got moved, at first he was concerned
11 what am I going to find here. What he found were some people
12 were actually kind and helpful. They weren't that way because
13 Shawn was tough, just because that is who they were.

14 He started to think of his life and decided to
15 study. He didn't have a high school diploma. The first thing
16 he did was got his diploma. He found he really enjoyed
17 learning. You are going to find he studied calculus, physics
18 some really difficult things. But, honestly, he will explain
19 to you first he was doing those things because it made people
20 think he was smart. He was still focussed on how other people
21 thought of him. Over time, he decided he needed to look at
22 himself and started studying things like philosophy,
23 psychology, religion. He learned those things really well.
24 He's been a published author, wrote some very interesting

1 articles regarding philosophy and religion. Whether you agree
2 or disagree, you will see some of those and realize these are
3 things he's put a great deal of thought and study into. Those
4 are good things and they help Shawn. But he also learned that
5 he wouldn't be looking at himself well if he didn't contribute
6 to others. So that is not an easy thing to deal with from a
7 prison but he has.

8 Shawn let himself realize all the things that were
9 wrong with himself and decided he wanted to try and help some
10 other people not go through the same thing. He began
11 counseling other inmates. That is who he lives with now, so
12 that is who he has access to. William Castillo is one of the
13 people, an inmate receiving a sentence for an extraordinarily
14 violent crime. But you will hear in their circumstances
15 Mr. Harte gave a great deal of helpful advice to Mr. Castillo.
16 He actually writes a letter on his behalf explaining how that
17 helped him. Shawn realized many people in custody had
18 traumatic life experiences that contributed to their ending up
19 in prison, again to focus them as a way to have peace in their
20 lives today and be productive.

21 You will find he wanted to share his emotional
22 growth and understanding with his mother as well. He
23 realized, looking at his mom and dad, they had things in their
24 background that created the environment they raised him in and

1 he wanted to try and help. When he called his mother to
2 explain what he felt, what he learned in his progress and
3 asked to share it with her, she wasn't interested in it. His
4 mom retreated even further in alcoholism to deal with her life
5 and his conviction. She told him if he wanted to talk about
6 those things, he didn't need to call her back. He didn't.
7 She died December 26, 2010.

8 Shawn killed John Castro in 1997, and started
9 behaving like an idiot. In custody he said stupid alarming
10 offensive things. But while he was at the Washoe County Jail,
11 about eighteen months, he was released from his cell in a
12 group of about 112 inmates at one time. If he wanted to hurt
13 someone else or cause trouble, you are going to learn had he
14 wanted to do things like that back in 1997, he had lots of
15 opportunity, and that never happened. He's been at the Ely
16 State Prison now a little over fifteen years. You are going
17 to learn that is a maximum security facility. It is designed
18 to be safe and keep people in and outside safe also. It has
19 very strict rules. They have a list of things that are called
20 infractions that in the general public, people wouldn't even
21 notice you doing, but they are problems in a prison. They
22 keep very tight reigns on everyone. But while there, Shawn
23 has been released in groups with other inmates. He's
24 interacting with staff members, and he's caused no trouble.

1 His unit, which includes only inmates who have not caused
2 trouble in custody, he has full contact visits. They have
3 access to other people in the world. He's released with 15
4 other inmates. At a time, once again you are going to learn
5 that he said a really outrageously stupid thing in 1997, 1998
6 shortly after his arrest, but his actual behavior over the
7 last decade and a half shows you that he has not been causing
8 trouble in prison. You will find he's been doing just the
9 opposite, helping other inmates to take care of themselves and
10 staying out of trouble.

11 You are going to meet Mr. Harte's fiancée, Janine
12 Marshall. She met him after he was convicted living in Ely
13 State Prison, and she knows where he is. She knows what he did
14 seventeen years ago, but tells you who he is today is far more
15 important to her. She will tell you about the man that she
16 knows. You will learn she's educated, she's independent and
17 she's committed to Mr. Harte. He knows he's lucky to have her
18 love and support. She will tell you that she's lucky to have
19 him. Shawn Harte today is not the out of control young man he
20 was in 1997 and 1998. Today he has sponsored three children
21 overseas. You will see their pictures and hear their stories.
22 He used some of the money he inherited when his mom died to
23 send along to a small group of women in India trying to make
24 their lives better for themselves and their families. And he

1 did those things before he knew that he would be facing you
2 here today. He did them to help other people, not himself.

3 We ask you to consider all the information that you
4 will see and hear this week in deciding Mr. Harte's sentence,
5 because you will learn that he is not the man today that he
6 was this 1997. Thank you.

7 THE COURT: Ladies and gentlemen of the jury, we are
8 going to begin hearing testimony. Before we start that, I
9 think it is a good time to take a short recess. I ask you
10 keep this recess as short as possible. We'll be back on the
11 record in about ten or fifteen minutes at the most, and you
12 will begin hearing testimony.

13 During this recess, you are admonished you are not
14 to discuss the case until the trial is over amongst yourselves
15 or with any other person, members of your family, people
16 involved in the trial or anyone else. This includes
17 discussing the case on the internet or in internet chat rooms
18 or through internet blogs, bulletin boards such as Facebook,
19 internet e-mail, text messaging. If anyone tries to
20 communicate with you about the case, you must let me know
21 immediately.

22 Do not read, watch, listen to any news media
23 accounts or any other accounts about the trial or anyone
24 associated with it including any online information.

1 Do not do any research such as consulting
2 dictionaries, searching the internet, using other reference
3 materials.

4 Do not make any investigation into or about the
5 case. We'll see you in a few minutes. Please go into the
6 jury room for your break. Court's in recess.

7 (Short recess taken.)

8 THE COURT: Let the record reflect we are convening
9 outside the presence of the jury.

10 Counsel, did you have something for me?

11 MR. YOUNG: I don't believe so.

12 MS. BOND: There was an additional redaction made of
13 Jerome Vaughn by stipulation of the parties, page 13. We just
14 wanted to put on the record that has been done. It actually
15 changed the exhibit you have.

16 THE COURT: Okay. James Vaughn redacted transcript
17 was marked as exhibit?

18 THE CLERK: 55, I believe.

19 THE COURT: Okay. 55. And it is changed now where?

20 MS. PUSICH: Starting on the first page 312 we have
21 removed from line 19 through line 25, then 313 beginning at
22 line 1 through line 20. That removes a discussion on an
23 objection that isn't really relevant for what we are doing
24 today.

1 THE COURT: 19 through 25 on 312 and 313 through
2 what line?
3 MS. PUSICH: Through 20 on 313.
4 THE COURT: You are stipulating to the substitution
5 of the new redacted version?
6 MS. PUSICH: Yes.
7 MR. YOUNG: Yes.
8 THE COURT: Okay. Thank you. Are we ready to bring
9 the jury in?
10 MS. PUSICH: Yes, Your Honor.
11 THE COURT: Please bring the jury in. Counsel, will
12 you stipulate to the presence of the jury?
13 MR. YOUNG: Stipulate, Your Honor.
14 MS. PUSICH: Yes, Your Honor.
15 THE COURT: Thank you. Please me seated. The State
16 may call their first witness.
17 MR. LEE: Sergeant Kandi Payne, Your Honor.
18 THE COURT: You may proceed.
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KANDI PAYNE-DAVIS

called as a witness, having been first duly sworn,
took the witness stand and testified as follows:

DIRECT EXAMINATION

BY MR. LEE:

Q Sergeant, could you please state you full name and
spell it for us?

A Sergeant Kandi Payne-Davis. First name, K-A-N-D-I.
Last name P-A-Y-N-E hyphen D-A-V-I-S.

Q How are you employed?

A Sergeant with the Washoe County Sheriff's Office.

Q How long have you been with the Sheriff's Office?

A Twenty-seven years.

Q How long have you been a sergeant?

A Thirteen.

Q What position were you in before that?

A I was a deputy sheriff.

Q Then bringing it to 1997, were you a deputy sheriff
at that point?

A Deputy sheriff for about nine years at that point.

Q Were you on duty in the early morning of October 26,
1997 about approximately 6:30 a.m.?

A Yes, I was.

1 Q Were you dispatched to 17865 Cold Springs Drive on
2 the report of a missing cab from the Reno-Sparks Cab Company?

3 A Yes, I was.

4 Q On your responding to that call, did you think of
5 anything special about the call, anything out of the ordinary?

6 A Just that it was a missing cab which isn't unusual.

7 Q Okay. When you arrived, do you recall about how long
8 it took to get there?

9 A I was dispatched at 6:38. I arrived at 6:52 which
10 is approximately 12 minutes.

11 Q Was it your understanding from the dispatch the cab
12 had been missing for some time?

13 A Yeah. Dispatch mentioned that the cab had been
14 missing since sometime around midnight.

15 Q When you arrived there, describe the scene for us.

16 A When I pulled up, it was, it was, dawn was just
17 breaking, so it was still pretty dark. But there was a cab in
18 the travel lane on Cold Springs Drive. No lights on on the
19 cab, and the cab was not running and the windows were like
20 fogged over because it was early morning in October. They were
21 fogged over, not quite frosted.

22 Q In the travel lane, explain how far in the travel
23 lane?

24 A Basically blocking the majority of the travel lane.

1 Maybe the front two tires were on the front, or the side tires
2 were on the front on the dirt portion.

3 Q What did you do then? What did you do first?

4 A I pulled up behind it, turned on my lights. Of
5 course, since it was blocking the travel lane, people could,
6 you know, there was an obstruction in the roadway. I
7 approached the vehicle to look at the cab.

8 Q Outside you said dawn was breaking. Was it a busy
9 road? How would you describe it?

10 A No. Cold Springs Drive is not a very busy road. It
11 is a residential street in the Cold Springs area. Being that
12 early in the morning, there wasn't a lot of commuting traffic
13 yet.

14 Q When you approached the vehicle, what did you see?

15 A I looked in the driver's side window and I saw the
16 cab driver or a person sitting behind the driver's seat
17 slumped over.

18 Q What did you think at that point?

19 A I wasn't sure. I thought maybe he was just sleeping
20 since he worked the graveyard shift. So then I kind of wiped
21 the foggy mist off the window so I could see him clearer,
22 tapped on the glass. Since he wasn't answering me, that is
23 when I noticed there was an excessive amount of blood coming
24 from his nose and mouth area.

1 Q Did you hear anything?

2 A It sounded like snoring when I first walked up.
3 Like I said, I thought he was sleeping in the passenger seat.
4 It sounded like a more gasping snoring sound. It turned out
5 to be his breathing.

6 Q At this point, were you still outside the cab?

7 A Yes.

8 Q Were you able to open it up?

9 A Yes. The doors were unlocked.

10 Q Then at that point, did you still hear the sound?

11 A Yes. Of course louder. I could tell it was him
12 breathing raspedly.

13 Q Where was the blood?

14 A The blood was coming out of his nose and his mouth.
15 His head was kind of leaned over his chest, and it was, there
16 was blood on the steering wheel and on the dashboard.

17 Q Maybe this goes without saying, the raspy sound or
18 snoring as you described, was it coming from the individual?

19 A Yes. They were coming from Mr. Castro.

20 Q You said his name. Was there an I.D. on him?

21 A There was. Mr. Castro had an I.D. badge for
22 Reno-Sparks Cab hanging on his shirt on the right side with
23 his picture and his name on it.

24 Q Was it the name of John Castro Jr.?

1 A Yes.

2 Q Did it also match the description of the missing cab
3 driver?

4 A Yes, saying he was in a tan jacket and red baseball
5 hat, and that was the subject.

6 Q Did you try to arouse him now that you opened the
7 door?

8 A I did. I tapped him on the shoulder, lightly shook
9 him to see if I could get his attention, but he never
10 responded.

11 Q Let me show you a series of photographs, sergeant.

12 MR. LEE: May I approach?

13 THE COURT: You may.

14 BY MR. LEE:

15 Q Showing you first what is marked Exhibit 2-a as well
16 as 2-b. Look at 2-b first. What do you see in Exhibit 2-b?

17 A 2-b I see the cab parked as I described it in the
18 travel lane with the two passenger side tires.

19 Q 2-a, what do you see?

20 A 2-a is from the opposite viewpoint from the other
21 side looking at it from the side of the cab on the side of the
22 road and all of the emergency personnel working on Mr. Castro.

23 Q Do those fairly and accurately depict the scene as
24 you saw it in 1997 on that date?

1 A Yes.

2 MR. YOUNG: Move to admit 2-a and b.

3 MS. PUSICH: No objection, Your Honor.

4 THE COURT: 2-a and 2-b are admitted.

5 (Exhibits 2-a and 2-b admitted in evidence.)

6 MR. YOUNG: May I publish?

7 THE COURT: You may.

8 BY MR. LEE:

9 Q Showing you here what has been marked as 2-a, now
10 that we all can see it, if you can just describe what we are
11 all looking at?

12 THE COURT: Would you dim the lights please, deputy.

13 THE WITNESS: The mail box belongs to 17865 Cold
14 Springs Drive. This is a residential street out in the Cold
15 Springs area. That is the Reno-Sparks cab parked in the
16 travel lane or stopped in the travel lane.

17 Q Still on the paved section of the road?

18 A Correct.

19 Q Showing you now what has been marked as 2-b, same
20 thing, explain to us what we are seeing now?

21 A That is the cab. That would be the viewpoint I had
22 when I first approached. I was parked probably almost where
23 this picture was taken. Behind the cab, that is emergency
24 personnel working on Mr. Castro. That would be his feet

1 visible in the photo beside the cab.

2 Q There is a mailbox just to the right we see on the
3 picture of the cab. Is that the same residence you described?

4 A Yes.

5 Q Was it your understanding the resident there was the
6 reporting party?

7 A Yes.

8 Q Eventually we'll talk about that. Did you make
9 contact with that resident?

10 A Yes, I did.

11 Q Let me show you series 7-a, b, c and d. Go ahead
12 and take a look at those for a brief moment. Look up when you
13 have had enough time.

14 Do you recognize what is depicted in that series of
15 exhibits?

16 A I do.

17 Q Does that fairly and accurately depict what you had
18 seen that day?

19 A Yes, it does.

20 Q Did you actually take these photographs, yourself?

21 A Yes, I did.

22 MR. LEE: Move to admit the entire 7 series a
23 through e.

24 MS. PUSICH: A through e?

1 MR. LEE: E.

2 MS. PUSICH: No objection.

3 THE COURT: Exhibits 7-a through e admitted.

4 (Exhibits 7-a, b, c, d, e admitted in evidence.)

5 MR. LEE: As well with all these once they are
6 admitted, if I may have permission to publish?

7 THE COURT: You may.

8 BY MR. LEE:

9 Q Showing you first Exhibit 7-a, deputy, in 1997, was
10 it standard for officers to have Polaroids with them?

11 A Yes. Yes, it was.

12 Q Is that still the practice?

13 A No. No. We have moved on to digital cameras.

14 Q Does 7-a look like the same thing seen in the
15 previous exhibits?

16 A Minus the personnel. Basically what I saw when I
17 originally walked up on the scene. This is from my patrol car.

18 Q Exhibit 7-b?

19 A That would be Mr. Castro as I found him undisturbed
20 behind the driver's seat of the vehicle.

21 Q Is this while you are awaiting emergency medical?

22 A Yeah, because the area is in Cold Springs, it took
23 about 12 minutes, the same response time as me, to respond.

24 So before the scene was disturbed and since Mr. Castro was

1 breathing on his own at that point, I took a few photos to
2 preserve the evidence.

3 Q Because he's breathing on his own, did you seek to
4 do anything medically or want to leave him there?

5 A No. I didn't want to disturb him at that point.
6 Although it was very labored breathing, he was still breathing
7 on his own.

8 Q Exhibit 7-c, what are we looking at here?

9 A This is Mr. Castro's lap. I felt that, he had papers
10 on his lap and the mic right near him kind of depicted
11 whatever happened to him he wasn't aware of.

12 Q Do you recall what those papers were on his lap?

13 A A bunch of numbers. I'm not sure what they
14 depicted. One was like the codes for his operation and stuff
15 like that. Radio codes he used with dispatch. The other one
16 had a butch of numbers written on it.

17 Q Did you at some point have those in your possession
18 and hand them to other investigators?

19 A Yes, I did. The Volunteer Fire Department was the
20 first to respond to the scene, and one of their firemen named
21 Ron Holst removed them from Mr. Castro's lap and handed them
22 directly to me before they removed Mr. Castro from the
23 vehicle.

24 Q Looking at Exhibit 7-d, what do we see there?

1 A A close up of Mr. Castro's face showing the
2 excessive amount of blood coming from his nose and mouth.

3 Q Again, were these taken all while you were awaiting
4 medical response?

5 A Yes.

6 Q What else did you do while you were waiting for
7 that?

8 A I cordoned off the scene as you saw in the prior
9 photos, the crime scene tape, and I also searched the area for
10 any possible suspects. I wasn't sure if there were any other
11 victims in the area.

12 Q Did you see anybody?

13 A No victims, no suspects.

14 Q Did you have an opportunity to look inside the cab
15 during this time?

16 A Yes. Yes, I did.

17 Q Just in your brief look, did you see anything of a
18 narcotic nature, drugs, anything like that?

19 A No, sir

20 Q When emergency medical arrived, I am assuming you
21 were still there, right?

22 A Yes.

23 Q Was Mr. Castro still breathing?

24 A Yes, he was.

1 Q What did you see the emergency medical do?

2 A The medical personnel, like I said, Mr. Holst took
3 the papers out of his lap for me, took his hat off he had and
4 set it on the seat. One of them went through the passenger
5 side, the other at the driver's to try to gently remove him
6 from the vehicle.

7 Q Did they remove him and lay him on the ground as we
8 saw in the one exhibit?

9 A Correct.

10 Q When he was removed from the cab and laying on the
11 ground, could you tell there was something seriously wrong at
12 that point?

13 A When the cap was on the head, you couldn't see it.
14 Once he was laying on the ground, there was a major injury to
15 the right side rear of his head.

16 Q What did you see of that?

17 A Basically a hole in his head. When they laid him
18 down, part of his brain matter had come out.

19 Q Was Mr. Castro flown sometime shortly thereafter?

20 A Care Flight was called and yes. He was taken to the
21 hospital.

22 Q You mentioned the name Ron Holst; is that right?

23 A Yes.

24 Q He was known to you as a volunteer firefighter with

1 Cold Springs?

2 A Correct.

3 Q Did he inform you he had seen the cab before?

4 A Yes. Mr. Holst, when he arrived on scene, said that
5 when he was going home about 2:00 a.m. he had seen the cab
6 parked there.

7 Q Was an individual named Charles Lowe perhaps known
8 as Chuck Lowe, did he arrive on scene?

9 A Chuck Lowe was our forensic deputy. He showed up to
10 process the scene.

11 Q Thank you. So did he have control kind of over the
12 car and collecting evidence?

13 A Correct.

14 Q At some point after Mr. Castro is Care Flighted away
15 to the hospital, did you do any investigation?

16 A Yes. I responded up to 17865 Cold Springs Drive to
17 meet with the reporting party that reported the cab in front
18 of their house.

19 Q Who did you meet with there?

20 A I actually met with a subject named John Lagamma,
21 and he was a friend of the reporting party who was staying at
22 the residence.

23 Q Did he inform you he had seen the vehicle sometime
24 the night before?

1 A Yes, he did. He was staying at his friend's house.
2 He was up from California. He was sleeping on the couch. He
3 said he was awoken sometime around midnight by a vehicle
4 pulling in front of the house.

5 Q Did he inform you he could see what this vehicle was
6 identified as?

7 A No. He said it was dark outside, but his 21 year
8 old son had come up from California with him. He thought it
9 was just his son coming home from a night out. So he turned
10 on the motion sensor at the front door and then came back.

11 Q Did he inform you he saw it, shortly thereafter,
12 again before going to be?

13 A Yeah. He said he smoked a cigarette. When he went
14 to lay back down, he looked out the window, noticed the cab
15 had rolled out of the driveway. Originally, he said it was in
16 the driveway blocking the driveway. It rolled up, further up.
17 That is the last he remembers.

18 Q Who reported this? Did Mr. Lagamma make the report
19 to the dispatcher or the cab company of the missing cab?

20 A No, he did not. He went back to sleep on the couch.
21 The reporting party was a person named Joey Machado. He got
22 up to go to work and mentioned this vehicle was out in front
23 of the house. And that is when John Lagamma told him, you
24 know, that was there last night. It has been there all night.

1 I guess Machado said it looks like it is a cab. He said you
2 should probably call the cab company and let them know.

3 Q Machado is the one who notified everyone?

4 A Yes.

5 Q Did an individual employee supervisor from
6 Reno-Sparks Cab named Gerald Vaughn also appear on scene?

7 A Yes, he did.

8 Q Was he known to you as Mr. Castro's supervisor at
9 the cab company?

10 A Yes.

11 Q What did he state with regard to the last time the
12 cab was seen?

13 A Mr. Vaughn told me that Mr. Castro had picked up two
14 male subjects at the Speedway Market on Neil Road sometime
15 around midnight. And that was the last they had heard from Mr.
16 Castro.

17 Q Did Mr. Vaughn explain to you anything about blue
18 trip sheets?

19 A Mr. Vaughn asked me if the blue trip sheet was in
20 the cab. And having taken those pictures of what was in Mr.
21 Castro's lap, I told him, no, there was no blue trip sheet in
22 the cab, itself.

23 Q And did you end up looking for those trip sheets at
24 all?

1 A Yes, I did. I searched in the ditches around the
2 vehicle and all the way up and down Cold Springs Drive and did
3 not find them.

4 Q At some point, sergeant, was it made known to you
5 the wound on Mr. Castro appeared to be a gunshot inflicted
6 wound?

7 A Yes.

8 Q So as part of your investigation, did you make any
9 search for a weapon at the scene there?

10 A Yes, I did.

11 Q Where did you look for the trip sheets and for the
12 weapon?

13 A Cold Springs Drive as you saw in the pictures kind
14 of had indented ditches along the side of the roadway. We
15 searched the entire roadway and the ditches looking for it.

16 Q Was anything found?

17 A No.

18 Q Did officers go door to door knocking on doors
19 canvassing the area?

20 A Yes, we did.

21 Q Anything found from that? Any leads, any suspects?

22 A No.

23 Q At that point in your involvement with the
24 investigation, were there any arrests made at that point?

1 A No. There was no suspects on scene.

2 MR. LEE: Thank you. That is all the questions for
3 this witness.

4 THE COURT: Cross-examination.

5 MS. PUSICH: Thank you, Your Honor.

6

7 CROSS-EXAMINATION

8 BY MS. PUSICH:

9 Q Sergeant, in 1997 in that area of Cold Springs,
10 there were no street lights in the main part of the road,
11 correct, just at the intersection?

12 A Correct.

13 Q When the homeowner or visitor said that he had tried
14 to trigger the motion light, that is light attached to his
15 home, correct?

16 A Yes.

17 Q During the time that you were around Mr. Castro, he
18 never responded, correct?

19 A No.

20 Q The seven photos which were your Polaroid's appear
21 to be much darker than the 2 series you were taking much
22 earlier, correct?

23 A Yes.

24 Q Are the 7 series a better representation of the

1 light available when you got there?

2 A Yes.

3 Q As far as you know, the first dispatch to that scene
4 was 6:30 in the morning, correct?

5 A 6:30, yes.

6 Q Nothing at midnight or the two other times people
7 noticed the cab?

8 A Nobody else I guess called it in.

9 MS. PUSICH: Thank you.

10 THE COURT: Anything further?

11 MR. LEE: Just one, Your Honor.

12

13 REDIRECT EXAMINATION

14 BY MR. LEE:

15 Q Sergeant, was any U.S. currency found in the cab?

16 A No.

17 MR. YOUNG: That's all I have.

18 THE COURT: May this witness step down?

19 MS. PUSICH: Yes, Your Honor.

20 THE COURT: May she be excused?

21 MS. PUSICH: Yes, Your Honor.

22 MR. YOUNG: Please.

23 THE COURT: You may be excused, ma'am. Thank you.

24 (Witness excused.)

1 THE COURT: Call your next witness.

2 MR. YOUNG: Ronald Holst Your Honor.

3

4 RONALD HOLST

5 called as a witness, having been first duly sworn,

6 took the witness stand and testified as follows:

7

8 DIRECT EXAMINATION

9 BY MR. YOUNG:

10 Q Good morning, sir, if you could state your first and
11 last name and spell both for the court reporter?

12 A Ronald Holst. R-O-N-A-L-D. H-O-L-S-T.

13 Q Are you currently retired?

14 A Yes.

15 Q What did you do for a living?

16 A Used to be a truck driver.

17 Q How long did you drive trucks?

18 A Twenty-five plus years.

19 Q Did you also work in a volunteer capacity with a
20 Fire Department?

21 A Yes.

22 Q What department was that?

23 A Cold Springs Volunteer Fire Department.

24 Q What years did you work as a volunteer for that

1 department?

2 A Approximately 1990 to 2003.

3 Q To 2003?

4 A Yeah, January.

5 Q So we are talking fifteen, twenty plus years for
6 that as well?

7 A Yes, sir.

8 Q How do you become a volunteer firefighter?

9 A Something to do. Back then there was no paid
10 department out there, so a lot of times it took 20 minutes for
11 a fire truck to come out of Reno or the Stead area. So just
12 basically something to do, too.

13 Q Did you live, I don't need the exact address, did
14 you live in the Cold Springs area?

15 A Yes.

16 Q Did you go through training to become a volunteer
17 firefighter?

18 A Yes.

19 Q I don't need a litany, but briefly what did that
20 entail?

21 A I am State certified. I had to go through the same
22 thing paid people did, so I am a Certified Firefighter I
23 class.

24 Q Same thing with the paid people, paid firefighters?

1 A Same exact thing. Same thing they do. Training.

2 Q What were your responsibilities. Were those
3 likewise the same as a paid firefighter?

4 A Yes.

5 Q What did that include?

6 A From fire rescue to fire fighting to medical calls.

7 Q Medical calls. Did you, as a volunteer firefighter,
8 respond to medical calls or emergencies?

9 A Yes.

10 Q Of all different types, right?

11 A Yes.

12 Q Sir, I am going to direct your attention to October
13 26th of 1997. I am going to start in the very early morning
14 hours of that night.

15 A Yes, sir.

16 Q Were you driving that night and had the opportunity
17 to pass 17865 Cold Springs Drive?

18 A Yes, sir.

19 Q What time were you driving?

20 A Approximately 2:00 a.m.

21 Q Why were you driving?

22 A I was out with a friend. I was taking him home to
23 drop him off so he could go to bed.

24 Q You passed that Cold Springs residence we discussed?

1 A Yes, sir.

2 Q That is in Washoe County, Nevada?

3 A Yes, sir.

4 Q And when you passed that residence, did you see
5 anything which in part leads you here to court?

6 A I saw a Whittlesea, I think it was Whittlesea, I
7 can't remember, Reno-Sparks Cab parked on the Cold Springs
8 Drive there as I was taking this gentleman home.

9 Q So this is going on seventeen or eighteen years ago?

10 A Correct, sir.

11 Q Was it a taxicab you saw?

12 A Yes, sir.

13 Q How was it situated?

14 A It was parked along Cold Springs Drive there. I
15 think it was heading northbound. It was parked northbound.
16 Front of the car heading northbound.

17 Q When you passed the taxi cab at 2:00 o'clock in the
18 morning, anything particular that stuck out to you at that
19 time?

20 A No.

21 Q Did you stop your vehicle and do any inspection of
22 that cab?

23 A No, sir.

24 Q Just drove by?

1 A Yes, sir.

2 Q Did you end up dropping off your friend?

3 A Correct, sir.

4 Q What did you do after you dropped your friend off?

5 A Came back out and just went straight home.

6 Actually, I went to the 7-Eleven first, then I went home after
7 that.

8 Q From the point of dropping your friend off, to the
9 7-Eleven, and then your home, did you pass that residence
10 again during that time frame?

11 A No.

12 Q No?

13 A No.

14 Q Was there a time later on the morning of October
15 26th that you did go back to that cab?

16 A Correct. Yes, sir.

17 Q Why was that?

18 A We were toned out which means alerted to go to a
19 medical call on Cold Springs Drive.

20 Q When you say you were toned out, you are now back
21 with the volunteer firefighters?

22 A Yes.

23 Q That is why you responded in that capacity?

24 A Yes.

1 Q Did you go to the 17865 Cold Springs Drive
2 residence?

3 A Yes, sir.

4 Q When you got there, did you see what appeared to be
5 the same cab?

6 A Yes, sir.

7 Q Did it appear to you it moved at all from the time
8 you saw it at 2:00 a.m.?

9 A No, sir.

10 Q I may have missed it, approximately what time was it
11 you responded back to that cab?

12 A 7:00 o'clock area. In the morning area.

13 Q 7:00 o'clock in the morning?

14 A Yes.

15 Q When you were toned out, that would be as you say,
16 for a medical call?

17 A Yes, sir.

18 Q What did you do or what did you see upon your
19 arrival?

20 A The taxicab still sitting in the area that I saw it
21 earlier that morning. And then I walked up to the vehicle.
22 Our qualified medical people were there, so I did crowd
23 control. As I walked back by, they were still working on the
24 gentleman.

1 Q They being who?

2 A The EMT's and the medical. They were more qualified
3 than I was.

4 Q Did you do any hands-on medical care --

5 A No, sir.

6 Q -- with the gentleman? All right. Were you close
7 enough to the gentleman to hear anything which caught your
8 attention?

9 A Just a little bit. The whistling coming out of his,
10 you know, out of his mouth.

11 Q When you say out of his mouth, the gentleman being
12 worked on?

13 A Yes, sir, the victim.

14 Q Did you know that individual at all?

15 A No, sir.

16 MR. YOUNG: Your Honor, that is all the questions.
17 Thank you, Mr. Holst.

18 THE COURT: Cross-examination.

19

20 CROSS-EXAMINATION

21 BY MS. PUSICH:

22 Q Good morning. Do you need a drink of water?

23 A Oh, no. I have got one here. Thank you.

24 Q At 2:00 o'clock in the morning back on October 26,

1 1997, you did not notice anyone in the cab, correct?

2 A No, ma'am.

3 Q You had some training in medical response and
4 emergencies, right?

5 A Yes, ma'am.

6 Q If you had seen someone needing help, would you have
7 tried to help them?

8 A Yes, ma'am.

9 Q You never knew there was someone there at that time?

10 A No, ma'am. I didn't notice.

11 Q By the time you responded the next morning, they
12 actually have EMTs and other people with more training than
13 yours?

14 A Yes, ma'am.

15 MS. PUSICH: Thank you, sir. Thank you, Your Honor.

16 THE COURT: Anything further?

17

18 REDIRECT EXAMINATION

19 BY MR. YOUNG:

20 Q Again, 2:00 a.m. when you were driving past that cab
21 the first time, did you stop at all to inspect the cab?

22 A No, sir.

23 Q You just drove by and went on your way?

24 A Yes, sir.

1 Q Nothing unusual about the cab at that particular
2 point to you?

3 A No, sir.

4 MR. YOUNG: Thank you, Your Honor.

5 THE COURT: Anything further?

6 MS. PUSICH: No thank you.

7 THE COURT: May this witness be excused?

8 MS. PUSICH: Yes, Your Honor.

9 MR. YOUNG: Yes, Your Honor.

10 THE COURT: Thank you, sir. You may step down. You
11 are excused.

12 (Witness Excused.)

13 THE COURT: You may call your next witness.

14 MR. LEE: The next witness will be by transcript,
15 Exhibit 55. Mr. Roy Stralla will be here to read that. And I
16 guess we'll call Roy Stralla.

17 MS. PUSICH: This will be Jerome Vaughn

18 THE CLERK: I am sorry, I didn't hear who you
19 called.

20 THE COURT: Jerome Vaughn, that is what you will be
21 reading?

22 MR. STRALLA: Yes, Your Honor.

23 THE COURT: Ladies and gentleman of the jury, you
24 are about to hear testimony that was recorded on a prior

1 occasion, and there is a transcript from that. You will not
2 receive the transcript. A witness can read the transcript, but
3 you will not have it in evidence. You must listen to the
4 testimony as it is presented. If you want to take notes, you
5 are welcome to do so. You may proceed.

6 MR. LEE: Thank you, Your Honor.

7 (Whereupon the testimony of Jerome Vaughn is being
8 read by Roy Stralla.)
9

10 JEROME VAUGHN

11 called as a witness, having been first duly sworn,
12 took the witness stand and testified as follows:
13

14 DIRECT EXAMINATION

15 BY MR. LEE:

16 Q From Exhibit 55. Could you please state your full
17 name and spell your last name, sir?

18 A Jerome Vaughn, V-A-U-G-H-N.

19 Q What do you do for a living, Mr. Vaughn?

20 A I am a part time bartender and part time cab driver.

21 Q What cab company do you work for?

22 A Reno-Sparks.

23 Q Were you working for Reno-Sparks Cab Company in
24 October 1997?

1 A Yes, I was.

2 Q At that time, were you what is known as a road boss?

3 A Yes.

4 Q Describe for me what a road boss is?

5 A Kind of a supervisor that takes care of problems,
6 customer complaints, driver complaints, break down of the cab,
7 so on and so forth.

8 Q Would it be fair to say if a cab breaks down, you
9 would go out, at least help the driver, pick him up, something
10 like that?

11 A Yes. The road boss determines whether to have the
12 driver drive the cab to the lot or have it towed or whatever.

13 Q How long have you been a cab driver?

14 A About two and a half years full and part time.

15 Q What does a cab driver need to go out and do on his
16 daily business? What would you expect a cab driver to have
17 based on your personal experience?

18 A You go in and get your trip sheet which you log your
19 trips on, your keys, go out and take your cab, take certain
20 readings off the meter.

21 Q Let's take that one at a time. What is a trip
22 sheet, more specifically?

23 A It is a sheet that has certain Information about the
24 meter. You log each trip, each call that you take, each fare

1 that you take that you have.

2 Q Each time that you have a fare, what would you write
3 down on the trip sheet? Let's say somebody is going to the
4 location. When they get there, what does the cab driver write
5 down?

6 A Say for example I was sent to a home address and I
7 am going downtown to Harrahs. You write down the address of
8 where you made the pickup, and the discontinuation would be
9 Harrahs.

10 Q Does the cab driver need money?

11 A Well, you have some for change.

12 Q Were you working on October 26, 1997, Mr. Vaughn?

13 A Yes, I was.

14 Q Do you recall what shift you were working on that
15 day?

16 A I worked the day shift from 5:00 a.m. to 5:00 p.m.

17 Q When you work from 5:00 a.m. to 5:00 p.m., what time
18 do you get to work, usually?

19 A Well, I usually get there a little early. On that
20 particular day, around 4:30 normally I would get there.

21 Q On October 26th, you arrived at about 4:30 at the
22 cab company?

23 A Yes, sir.

24 Q Was everything normal at the cab company to the best

1 of your recollection?

2 A Well, when I arrived, it was found out some things
3 after, you know, after I got there.

4 Q Did you know John Castro?

5 A Yes, I did.

6 Q And how did you know him?

7 A Just through working with him. I took him home
8 several times, but that was all. I didn't know him outside of
9 work.

10 Q How long had you known him?

11 A Approximately, I guess, a year, year and a half or
12 something.

13 Q Based on your previous testimony, would it be fair
14 to say you were not close personal friends with him? He was
15 just somebody you worked with?

16 A Right.

17 Q On October 26, 1997, when you got to work, what was
18 it that was unusual that you found out?

19 A Well, I went to the dispatch office to check and see
20 if there was things pending. As I said, I was the road boss. I
21 found that John Castro and his cab had not been heard from
22 since around midnight.

23 Q Midnight, that would be roughly the 25th of October
24 to the 26th, around there?

1 A Right. Right.

2 Q With that information now at approximately 4:30 to
3 5:00 o'clock, he had been missing for almost five hours, what
4 did you do?

5 A Well, I asked them if they had done anything. They
6 said no. So I told the dispatcher to notify all the law
7 enforcement agencies in the area, Reno, Sparks, Washoe County,
8 Highway Patrol, check the hospitals.

9 Q Did you ask dispatch where his last call was?

10 A Yes, I did.

11 Q With that information, where did you go?

12 A I went to the location they ave me which was the
13 Speedy Mart convenience store at the corner of Neil and
14 Peckham.

15 Q Is that here in Washoe County, State of Nevada?

16 A Yes.

17 Q Was Mr. Castro there?

18 A No.

19 Q After you found out that Mr. Castro was not there at
20 the Speedway Market, the Speedy Mart as you refer to it, what
21 steps did you take next?

22 A Well, I talked to the clerk at the market, also a
23 security guard that was on duty there.

24 Q Okay. Don't tell me what those people said to you,

1 but Mr. Mr. Castro, did you know where he was after talking to
2 them?

3 A No.

4 Q What did you do next?

5 A I called on my radio, told the dispatcher to ask for
6 volunteers, start a search, restaurants, casinos, places he
7 might have gone to eat, whatever. I also started to searching
8 myself.

9 Q Where did you go to search for Mr. Mr. Castro?

10 A First place I went was the Atlantis casino.

11 Q That is pretty close in proximity to the Speedway
12 Market, correct?

13 A Yes, sir.

14 Q Why did you go there?

15 A Just a place to start. He might have gone there to
16 eat or whatever. We had no idea where he was.

17 Q And you had told other cab drivers to be on the
18 lookout for this cab as well?

19 A Yes.

20 Q Did you tell them what cab number he was driving,
21 give a physical description of Mr. Castro?

22 A Well, no. We basically were looking for the cab.

23 Q Okay. So people knew what to look for; is that
24 correct?

1 A Yes, sir.

2 Q Approximately what time did you start this search
3 for Mr. Castro?

4 A Right at 5:00 o'clock give or take a few minutes.

5 Q Did there come a time on October 26, 1997 when you
6 saw Mr. Castro?

7 A Yes.

8 Q Excuse me. When you saw John Castro?

9 A Yes.

10 Q Where was that?

11 A In Cold Springs. I don't recall the address.

12 Q Is Cold Springs here in Washoe County?

13 A Yes, sir.

14 Q Okay. Do you recall approximately what time you
15 went to Cold Springs?

16 A Just about 7:00 o'clock, 7:00 a.m.

17 Q Why did you go there?

18 A I was told by the dispatcher the cab had been
19 located.

20 Q So you went out to Cold Springs?

21 A Yes.

22 Q What did you see when you first got there?

23 A When I arrived, there was an area that was taped
24 with police tape, a cab sitting approximately twenty,

1 twenty-five yards inside the police tape. Some deputies there,
2 deputy sheriffs.

3 Q Were you familiar with the cab?

4 A Yes, I was.

5 Q Was it a Reno-Sparks cab?

6 A Yes.

7 Q Was it the cab that John Castro was driving when
8 last heard from on October 25th, 26th in those early morning
9 hours, 1997?

10 A Yes, it was.

11 Q Did you actually see Mr. Castro?

12 A I saw the back of him. I didn't see him.

13 Q Could you tell it was him?

14 A I thought it was.

15 Q Where was he when you saw him?

16 A He was in the cab sitting propped up or whatever.
17 They were working on him. The sheriff, deputy sheriff and the
18 Truckee Meadows Fire Department.

19 Q The Cold Springs area where he's found, how far away
20 is that just based on your knowledge from here and downtown
21 Reno?

22 A Twenty miles.

23 Q Is it in a valley or hilly area?

24 A Well, it's flat. There are some hills.

1 Q Have you ever driven out there, taken a fare out to
2 Cold Springs?

3 A No, I don't believe I have.

4 Q What type of cars were you driving or was
5 Reno-Sparks Cab Company driving back in 1997?

6 A Mostly LTDs, Ford LTDs or Crown Victorias, excuse
7 me.

8 Q Crown Victorias?

9 A Yes.

10 Q Were they equipped with any type of location
11 devices?

12 A No.

13 Q Based on your knowledge, did that type of equipment
14 exist in 1997?

15 A I believe it did. I think one cab company here in
16 Reno had that existing.

17 Q Is that known as GPS, the global positioning system
18 as far as you know?

19 A I believe so.

20 Q But Reno-Sparks Cab Company didn't have that?

21 A No.

22 Q Based on your experience, would it be unusual for a
23 cab driver to pick up two people and have them ask him to
24 drive them out to Cold Springs?

1 A Yeah, I think it would be normal.

2 Q If a cab driver had been working his normal shift as
3 Mr. Castro was, would it be unusual for him to have money on
4 his person?

5 A Yes, he should have.

6 Q Would there be any reason for Mr. Castro to go back
7 into the Reno-Sparks Cab Company and leave his money there
8 while he --

9 MS. PUSICH: Your Honor, he's been leading the
10 witness a long time. We object to leading questions.

11 THE COURT: Okay. Objection sustained.

12 BY MR. LEE:

13 Q Would there be a reason that somebody would have to
14 go drop their own money at the cab company?

15 A No.

16 MR. LEE: Court's indulgence. Nothing further, Your
17 Honor.

18 THE COURT: Cross-examination?

19 MS. PUSICH: Yes, Your Honor.

20

21 CROSS-EXAMINATION

22 BY MS. PUSICH:

23 Q Sir, you indicated that you were the road boss
24 beginning what, 5:00 in the morning; is that what you said?

1 A Yes, sir.

2 Q Who was the road boss before that between say
3 midnight to 4:00?

4 A I don't know who was on duty that night. I didn't
5 check.

6 Q But in any event, the road boss didn't do anything
7 to look for that cab, correct?

8 A I had no idea. As far as I know, there was nothing
9 done. I don't know why.

10 Q Sir, when you started to look for the cab, you
11 indicated you spoke to a security guard, correct?

12 A Yes, sir.

13 Q And after that conversation, you had gotten a
14 description of two people; is that correct?

15 A I don't know about description. They said there was
16 two people he picked up there.

17 Q Sir, did you later give a statement to the Washoe
18 County Sheriff's Department?

19 A I talked to I believe a lieutenant that was at the
20 scene where the cab was found.

21 Q Sir, do you recall a description of the gentleman
22 who entered the cab?

23 A I was told.

24 Q And from that, did you give that statement to the

1 police?

2 A Yes.

3 Q Sir, you also indicated earlier you knew Mr. Castro;
4 is that correct?

5 A I am sorry, I didn't hear that question.

6 Q That you had known Mr. Castro?

7 A Just through work, yes.

8 Q You didn't know him personally, though?

9 A No.

10 Q Sir, with respect to the trip sheets that you
11 indicated that each cab driver picks up, is that correct, when
12 they start work?

13 A Yes.

14 Q Did you recover that trip sheet, yourself?

15 A No.

16 Q Sir, when you arrived at the Cold Springs address at
17 7:00 a.m., do you recall whether or not the vehicle that you
18 said was the Reno-Sparks cab that you recognized was running
19 or not?

20 A I don't believe it was. I was never allowed, you
21 know, close to the cab.

22 Q Mr. Vaughn, when a cab picks up a call or dispatch,
23 you indicated they write it down on their log as to who they
24 picked up and where they are going to?

1 A Yes, sir.

2 Q Do they write down both, how many passengers?

3 A Yes, sir.

4 Q Do you write down the nationality of the passenger?

5 A I am sorry, what is that?

6 Q Do they write down the nationality of the passenger?

7 A No.

8 Q Indicate whether they are female or male?

9 A No.

10 Q If they receive a fare, do they call into dispatch
11 and advise where they are going?

12 A No.

13 Q Never?

14 A Not that I know of unless maybe -- We are required
15 now to call in any out of town trips, but not anything out of
16 Washoe County.

17 Q The dispatcher I thought would kind of keep an idea
18 as to where the taxis are going so they might get a fare for a
19 return trip from that area?

20 A No.

21 Q Do they call in after they reach a destination?

22 A Well, now we use computers. When you reach the
23 destination, terminate the trip, you punch in your computer
24 what location you are in.

1 Q In October 1997, they didn't have that computer
2 system in effect?

3 A Yes, we did, yeah.

4 Q Would the computer system have known where Mr.
5 Castro was going?

6 A No.

7 Q Do the cab drivers own their own taxis?

8 A No. No. They have lease agreements.

9 Q So the cab company actually owns the Ford LTDs.
10 They owned it?

11 A Yes, sir.

12 Q Mr. Castro leased it?

13 A They have lease and company employee's. I don't
14 know which one Mr. Castro worked under.

15 Q Does more than one cabby operate the same taxi?

16 A Yes. They usually have two shifts.

17 Q The cabs are on the road basically twelve hours a
18 day with two shifts?

19 A Well 24 hours a day with two shifts. Two twelve-
20 hour shifts.

21 Q One cab has two twelve-hour shifts?

22 A Right.

23 Q Mr. Castro would have been, in theory, on shift for
24 twelve hours?

1 A I guess so.

2 Q Do you know when he came on shift that day?

3 A No, I don't. He was working the night shift. I
4 don't know.

5 Q You don't know. Do they vary? Do they have a
6 standard break like midnight to 12:00?

7 A Well, they have shifts. One might start at 4:00 or
8 5:00, and then 6:00. That way you always have cabs out on the
9 road. You don't have everybody coming in, you know, ending
10 their shift.

11 Q And you went down to the Atlantis as the first place
12 to look for Mr. Castro?

13 A Yes.

14 Q Is that a hangout for cab drivers? Do they eat
15 there, gamble there?

16 A No. I was looking any place he might have stopped
17 to eat, take a break or whatever.

18 Q Did you go inside or drive around looking for the
19 cab?

20 A I drove around through the parking lot.

21 Q Are the cabs marked distinctly?

22 A Yes.

23 Q What are the markings on them?

24 A Of course Reno-Sparks and the number.

1 Q What color are they?

2 A White with red lettering most of them. They do have
3 some different coloring.

4 Q Where are the numbers at?

5 A Usually on the side front fender. A lot of them
6 right front fender and on the back.

7 Q When you were at the Atlantis, you drove around
8 looking for a taxicab that color with the number on it?

9 A That's correct.

10 Q Otherwise, they all look alike, correct?

11 A Basically, yes.

12 Q Do you recall making a police report?

13 A Yes, sir.

14 Q Do you recall what you put in it?

15 A Basically.

16 Q Did you review anything before coming to court?

17 A No, I didn't.

18 Q Did I understand you earlier that it is normal to go
19 to Cold Springs?

20 A The normal what?

21 Q Is it normal for one of the cabs to go to Cold
22 Springs?

23 A I don't know about normal. I mean they can go
24 anywhere.

1 Q Would that be exceptional? You wouldn't have too
2 many trips out there?

3 A I don't know how many, but it wouldn't be a regular
4 thing.

5 Q Okay. But it is certainly not the first time it has
6 happened, was it?

7 A Oh, no.

8 Q You were asked some questions about those drivers.
9 Mr. Castro could either have been an employee or he could have
10 been leasing the cab and you don't know?

11 A I don't know what he worked under.

12 Q The cab company doesn't have cameras or anything
13 inside the cab does it?

14 A No.

15 Q Basically, what you know or the company knows what a
16 driver is doing relates to what the driver has called in,
17 right?

18 A Basically. They don't really call in. They
19 basically work on the computer.

20 Q Okay. You know what the computer then tells you
21 about where the cabbie is reporting?

22 A Yes, sir.

23 Q You don't know what he's doing in between then?

24 A No.

1 Q He's free to take breaks, eat, do anything he wants
2 at any time?

3 A Yes.

4 Q Basically they are pretty free to run their shift
5 any way they want; is that fair?

6 A Yes, sir.

7 Q Now when you came on at 5:00 o'clock, you were
8 concerned about this cab and why it was missing, right?

9 A Yes.

10 Q And you did some investigation of your own?

11 A Right.

12 Q You did go to the Speed Way Market?

13 A Yes.

14 Q Why did you go there? The dispatcher told me that
15 was the last known location for John.

16 Q Would that have come from the computer?

17 A No. The dispatcher knew he was sent there to pick
18 up a fare.

19 Q From one reason or another the dispatcher knew?

20 A Yes.

21 Q When you got to the Speed Way, were you walking
22 around and talking to people?

23 A I went in and talked to the clerk on duty and the
24 security guard.

1 Q Okay. Did you talk to anybody else as far as you
2 know?

3 A No.

4 Q Okay. What were you trying to find out when you
5 were speaking to them?

6 A Just find out, check and see if there is anything I
7 find out where John might be.

8 Q Okay. Any information that you could get to follow
9 up from there? I am sorry?

10 A Right.

11 Q Eventually, you ended up out at Cold Springs,
12 correct?

13 A Yes, sir.

14 Q At some point, of course, as counsel took you
15 through, you found the cab and ended up speaking to the police
16 in this matter?

17 A Yes.

18 Q Did you tell the police the result of your
19 investigation?

20 A Yes, I did.

21 Q And what did you tell the investigating officers
22 your investigation had revealed?

23 A I told him I had gone out to the Speedy Market,
24 Speed Way Market, and talked to a couple of people there, the

1 clerk and security guard.

2 Q Okay. Did you tell the police what had been told to
3 you?

4 A Yes.

5 Q Okay. About the last passengers seen?

6 A Yes, sir.

7 Q In the cab?

8 A Yes.

9 Q Was that the cab that you found, was that the cab at
10 the Speed Way, was that identified as Mr. Castro's cab?

11 A No, not really. They just said a cab, Reno-Sparks
12 cab had picked up.

13 Q At approximately the same time?

14 A 12:00 o'clock.

15 Q That would be midnight?

16 A Pardon me?

17 Q Midnight?

18 A Yes.

19 Q Did you give the police any information about any
20 identifying characteristics on the last two passengers?

21 A I told them what the security guard had told me.

22 MS. PUSICH: I have nothing further. Thank you, sir

23 THE COURT: Redirect?

24 MR. LEE: If I could, Your Honor. Could I have the

1 Court's indulgence, Your Honor?

2 THE COURT: Yes. Would the witness please spell his
3 last name for the Court Reporter?

4 THE WITNESS: V-A-U-G-H-A-N.

5 MR. YOUNG: May I approach the witness, Your Honor?

6 THE COURT: You may.

7

8 REDIRECT EXAMINATION

9 BY MR. LEE:

10 Q I hand you what has been marked as State's Exhibit 2
11 and I ask that you look at it. Don't show it to the jury but
12 look at it. Are you familiar with that, sir?

13 A Yes, sir.

14 Q How are you familiar with it?

15 A I was there.

16 Q Does that fairly and accurately show the scene at
17 17865 Cold Springs Road where you found the Reno-Sparks cab on
18 October 26, 1997?

19 A Yes, sir.

20 Q Is that the cab that you saw that was last checked
21 out to John Castro?

22 A I really can't say for sure, because I can't see the
23 number from this picture.

24 Q Does that represent the scene, though, that you saw?

1 A Yes.

2 MR. LEE: State moves admission of Exhibit 2-a?

3 THE COURT: Any objection?

4 MS. PUSICH: No objection.

5 THE COURT: Did you say 2-a?

6 MR. YOUNG: 2-a. Can I publish it to the jury?

7 THE COURT: Yes. Exhibit 2-a is admitted.

8 (Exhibit 2-a admitted in evidence.)

9 BY MR. LEE:

10 Q Now I ask you to look at Exhibit 2-b, Mr. Vaughn.

11 Are you familiar with that?

12 A Yes, I am.

13 Q How are you familiar with it?

14 A I was there.

15 Q Does that fairly and accurately represent what you
16 saw at that address on October 26, 1997?

17 A Yes, sir.

18 Q Is that the cab?

19 A Yes, it is.

20 Q Does it have the cab identification number on the
21 back of it?

22 A Yes, it does.

23 MR. YOUNG: State moves admission of 2-b.

24 THE COURT: Any objection?

1 MS. PUSICH: No objection.

2 THE COURT: Exhibit 2-b is admitted.

3 (Exhibit 2-b admitted in evidence.)

4 MR. YOUNG: May I publish it to the jury?

5 THE COURT: You may.

6 BY MR. LEE:

7 Q Is the cab 221, is that John Castro's cab?

8 A That particular shift, yes.

9 MR. YOUNG: I have no further questions, Your
10 Honor.

11 THE COURT: Anything further from counsel?

12 MS. PUSICH: No, Your Honor.

13 THE COURT: May this witness bee excused?

14 MR. LEE: From the State, yes.

15 THE COURT: Anyone? Sir, you can step down.

16 Mr. Vaughn, you are excused.

17 (Witness excused.)

18 THE COURT: Call your next witness.

19 MR. LEE: The next which the State calls is Abraham
20 Lee.

21 THE COURT: Counsel, I will read the Instruction
22 now. Ladies and gentleman of the jury, during the course of
23 this trial, you will hear evidence regarding circumstances
24 which occurred in Churchill County before the offense in this

1 case. You must refrain from punishing the defendant for that
2 crime or any crime other than the murder. The penalty imposed
3 is for the murder conviction as it relates to the death of
4 John Castro, Jr. However, you may consider all of the evidence
5 you hear in this trial and the defendant's involvement in the
6 events that are presented to you when imposing sentence for
7 the murder conviction for the purpose of gaining a fuller
8 assessment of the defendant's life, health, habit, conduct and
9 mental qualities. Counsel, you may proceed

10
11 ABRAHAM LEE

12 called as a witness, having been first duly sworn,
13 took the witness stand and testified as follows:
14

15 DIRECT EXAMINATION

16 BY MR. LEE:

17 Q Sir, could you please state your name and spell it
18 for us?

19 A Abraham Lee. A-B-R-A-H-A-M. L-E-E.

20 Q Sir, where do you currently reside? I don't need
21 your address.

22 A Costa Mesa, California.

23 Q How long have you lived there?

24 A Five years now.

1 Q At some point early in your life, did you live in
2 Chicago?

3 A Yes.

4 Q Do you recall when you left Chicago?

5 A Yes.

6 Q When was that?

7 A That was back towards the end of '96, '97.

8 Q Where did you move to?

9 A My friend and I were traveling around the country,
10 but we ended up in Las Vegas.

11 Q Who was your friend?

12 A David Burnett.

13 Q You ended up in Las Vegas. Why did you leave
14 Chicago?

15 A Just tired of the weather. Just get a new change,
16 new perspective.

17 Q What did you do when you lived in Chicago for a
18 living?

19 A I was a commodities broker.

20 Q When you went to Las Vegas, did you continue that
21 trade?

22 A No.

23 Q What did you do then?

24 A Just bummed, bummed around for a while. Took odd

1 jobs here and there.

2 Q Then at that point, did you drive from Chicago to
3 Las Vegas?

4 A Yes.

5 Q What kind of car did you drive?

6 A Jeep Cherokee.

7 Q What color was that?

8 A It was a teal.

9 Q Was it you two, you and Mr. David Burnett?

10 A Yes.

11 Q When you drove -- I guess -- Did you both move out
12 to the West?

13 A Yes.

14 Q Did you have a moving company move your stuff? How
15 did you get your belongings out?

16 A Whatever we could fit in my truck.

17 Q So that Cherokee, how full, was it?

18 A It was full enough where everything was full in the
19 back from the passenger side to the rear.

20 Q Was there a back seat in that Cherokee?

21 A Yes.

22 Q Was it up?

23 A Folded over, folded down making a bed or all filled
24 with luggage and a couple of boxes and suitcases.

1 Q Was that just your personal belongings?

2 A Yes.

3 Q Then after, did you eventually leave Las Vegas?

4 A Yes.

5 Q What did you do after that point for work?

6 A I worked for a company that did promotional items
7 there, and we were driving around Las Vegas to sell different
8 promotional coupons for savings to individuals.

9 Q After that point, did you go into the mortgage
10 business at some point?

11 A After, when I -- After I went to Reno, I went back
12 down to my sister's in Los Angeles. That is when I started
13 the mortgage.

14 Q That's when you started what?

15 A Getting in mortgage, mortgage business.

16 Q When you say after what happened in Reno, what was
17 that?

18 A It was after I got shot at while driving.

19 Q Sir, do you recall the events on the late night of
20 October 14th, early morning of October 15th when you were
21 driving from Las Vegas to go to Fernley, Nevada?

22 A Yes.

23 Q Do you recall what road you were taking?

24 A 95. Highway 95.

1 Q Was that a business trip, essentially?

2 A Business and pleasure.

3 Q Okay. Again on this trip who were you with?

4 A My friend, David Burnett.

5 Q And you discussed before when you moved out from
6 Chicago, you had a lot of belongings. Were those with you?

7 A Yes.

8 Q In the same manner you described earlier?

9 A Yes.

10 Q Was your Cherokee full?

11 A It was packed. Back was packed.

12 Q So bringing you now to that date, October 14th
13 approximately 11:30 p.m. on 95, do you recall heading into
14 Fallon?

15 A Yes. We were only a few miles from Fallon.

16 Q Describe the scene there. Was it busy? Was it
17 trafficky?

18 A Just me and a few semi trucks. We were right next
19 to a naval bombing range or some kind of naval base.

20 Q Was there any town around you?

21 A No. The next town coming approaching was Fallon.

22 Q Were there any lights, artificial lights, street
23 lights, anything?

24 A No. It was pitch black.

1 Q Just you and your headlights?

2 A Yes.

3 Q Do you recall about how fast you were driving?

4 A About 65, 70.

5 Q Roughly the speed limit for that area?

6 A Yes.

7 Q If you recall, you came down a hill, what happened?

8 A As I was driving, I thought I saw a flash to my
9 right, my peripheral to my right. I didn't think nothing of
10 it. And then I'm like, it was a sandstorm until we started
11 seeing sparks coming out the front windshield, and then my
12 vizor clip. I mean we heard, what we heard, whizzing sounds
13 going past our heads. I guess that's when we realized we were
14 being shot at.

15 Q You mentioned, originally you said sandstorm?

16 A Yeah, because driving up and down Nevada we run into
17 a couple of sandstorms before. It sounds like little
18 firecrackers hitting the windshield.

19 Q How fast did it take you to realize you were being
20 shot at?

21 A Just seconds. What really determined it was the
22 whizzing sound coming past my head.

23 Q Was it a specific side of your head?

24 A Mostly to the right side of my head.

1 Q And then you said you saw sparks?

2 A Yeah. I guess the sparks are from the bullet
3 shrapnel exiting the front windshield.

4 Q From in front of you as you are driving, on the
5 windshield?

6 A Yes.

7 Q You also said you saw a flash. Was that before this
8 started happening?

9 A Yeah. Right before it happened. I didn't think
10 nothing of it.

11 Q Do you recall what side of the road it was on?

12 A Right side of the road.

13 Q If you could explain the flash for us.

14 A Well, at first it was just a light. But then after
15 everything happened, thinking about it, I come to realize it
16 was a muzzle flash.

17 Q When you say flash, something that goes on and off?

18 A Yeah. You can see like a burst of light.

19 Q And you said -- When you said you heard the whizzing
20 sound, did one indeed go past your head?

21 A Several.

22 Q How do you know that?

23 A Just trying to duck and not being hit from all the
24 whizzing sounds that was going by.

1 Q So you ducked as well?

2 A Yeah.

3 Q What is going on in your mind?

4 A At first, like I said, I was trying to process what
5 was actually happening, was it a weather event or something.
6 Until the vizor clip got hit and it came down on my knee, that
7 is the realization I am being shot at and just having to get
8 out of there.

9 Q You said whizzing sound. Were there just one shot
10 you understood or multiple?

11 A No, there were multiple.

12 Q As you are ducking, what do you do?

13 A I just, well, I am checking my leg to see if I was
14 shot, because I couldn't really tell, and asking my friend to
15 my right if he was okay, if he was shot all at the same time.
16 I just ducked and gunned it. I gunned my truck, you know,
17 speeding up to get out of there.

18 Q Was that to get out of there?

19 A Yes.

20 Q Where were you looking to go?

21 A Anywhere from there. Just get out. I didn't want
22 to stick around.

23 Q 1997, did you have a cellphone with you?

24 A No.

1 Q Did you notice any side of the road emergency
2 phones, anything like that?

3 A No.

4 Q Were you all on your own out there?

5 A Yes.

6 Q Mr. Lee, what kind of fear did that incite with this
7 going on?

8 A Well, it just doesn't feel good when you know you
9 are being shot at. I mean it is like, it is kind of surreal,
10 shocking in a way.

11 Q Have you ever been shot at before?

12 A No.

13 Q Do you recall how fast you started going north on
14 95?

15 A I got it up to about over 90 for sure.

16 Q This Jeep Cherokee, was it lifted?

17 A Four and a half inches, 36 inch tires. Big balloon
18 tires.

19 Q You mentioned something that you wondered about your
20 knee whether you had gotten shot in your knee. Had you?

21 A No. It was the vizor clip that ricocheted down and
22 hit me right on the kneecap, but it came pretty hard where I
23 felt, was checking to see if there was any blood.

24 Q Was there?

1 A No.

2 Q How about Mr. Burnett, was he shot?

3 A No. He wasn't shot either.

4 Q So while you were driving and now going 90 miles an
5 hour north on US 95, were you able to see any damage to your
6 jeep just while you were driving?

7 A No. We didn't stop.

8 Q I guess I am not asking you for the outside,
9 necessarily what you saw outside. From inside, could you see
10 any damage?

11 A Yeah. There were a bunch of holes in the front
12 windshield. I couldn't really see out of my back. My Jeep
13 was full of luggage and stuff, so I couldn't see if the back
14 windows were shot out.

15 Q When is the next time you stopped?

16 A When I got to Fallon.

17 Q What did you find there in Fallon?

18 A We stopped in there. It was pretty much a one horse
19 town at the time. Wasn't much business there. Stopped in the
20 middle, got out right in the middle of the road and walked out
21 to the passenger side and saw the shattered windows and all
22 the holes. It is, like I said, it is very surreal. Kind of
23 shocking.

24 Q Where did you go after that?

1 A To the Sheriff's Office.

2 Q At this point, how was your adrenaline? How was
3 your heart beating?

4 A Adrenaline was high. Heart beat was going. Like I
5 said, we were in shock that we managed to live through it.

6 MR. YOUNG: Your Honor, may I approach the witness?

7 THE COURT: You may.

8 BY MR. LEE:

9 Q Sir, I am going to show you what has been marked
10 34-a all the way in sequential order to 34-1. Go ahead and
11 take a look at those. Take a moment and look up when you have
12 had enough time to examine those. Have you had sufficient
13 time?

14 A Yeah. You don't forget these.

15 Q You have seen those before, too, right?

16 A I still remember the truck exactly.

17 Q Just generally, what do those pictures show, the
18 entire series?

19 A Just a lot of fragments, holes, shattered windows,
20 bullet holes. Actually shows how full my truck was.

21 Q Did your truck have any of holes before this day,
22 October 14th, 15th?

23 A No. It was a brand new truck I bought the previous
24 evening.

1 Q Do those photos in the Exhibit 34 series fairly and
2 accurately depict how your Jeep looked that day after this
3 incident you described?

4 A Yes.

5 MR. YOUNG: Move to admit the entire 34 series.

6 THE COURT: Any objection?

7 MS. BOND: No objection.

8 THE COURT: 34-a through 1 are admitted.

9 (Exhibits 34-a through 34-1 admitted in evidence.)

10 MR. LEE: Thank you.

11 BY MR. LEE:

12 Q Sir, when you got to the police station or Sheriff's
13 Office, did you have a chance to more closely inspect your
14 Jeep?

15 A Not really. You know, the Sheriff came out and took
16 us in for questioning pretty much.

17 Q Ok. How about when you stopped in the middle of the
18 road there and first inspected it?

19 A We were just amazed at the damage that was done.

20 Q Generally describe that damage.

21 A Well, looking at each of these photographs then,
22 just the shattered glass, the rear and the passenger quarter
23 panel. The holes on the side of the truck, and then just
24 inside the front windshield. Just all the shrapnel.

1 Q Was there damage to the underside of the vehicle?

2 A Yes.

3 Q Where at?

4 A One hit the passenger, I guess it was the car
5 chassis and ricocheted up through the floor panel and it hit
6 where David was sitting. The only reason he didn't get hit,
7 there was a couple of bottles of transmission fluid that took
8 the brunt of all the shrapnel.

9 Q Those bottles, they leaked all the fluid out?

10 A Yes.

11 Q Were they literally right underneath David?

12 A Yes.

13 Q Mr. Lee, I am going to show you each of those in
14 order here?

15 THE COURT: I have no objection to you publishing.

16 THE PLAINTIFF: Thank you, Your Honor.

17 BY MR. LEE:

18 Q First, Exhibit 34-a, what are we looking at here in
19 34-a?

20 A That is the driver's side roof line and the vizor.

21 Q You described earlier the vizor clip. Is that where
22 that would have been?

23 A Yes.

24 Q We see here Mr. Burnett -- Is this a cloth roof?

1 A Yes.

2 Q You see marks throughout the picture. Were those
3 marks there?

4 A No. No.

5 Q Before you were being shot at? Where is that in
6 relation to your head?

7 A Pretty close.

8 Q How tall are you?

9 A I am 6'1".

10 Q When you sat in that Jeep, was there much space
11 between your head and the roof?

12 A There was a little bit of space.

13 Q Was your head right there, though, pretty close to
14 the vizor?

15 A Yeah, not too far off.

16 Q 34-b, what are we looking at?

17 A That is still, that is more of an angle looking at
18 more of the roof liner. You can see the mirror and all the
19 front window, the cracking. Those are the shrapnels.

20 Q I can't help but notice black dots on the ceiling
21 there of the vehicle. Do you know what those are?

22 A Those are all shrapnels.

23 Q Exhibit 34-c. I will zoom in a little here. Is
24 this the same thing, perhaps a more outside view?

1 A It is more of a bigger view of the roof lining.

2 Q Are you able to see more of the black marks
3 throughout ceiling?

4 A Yeah. You can see the angle it came in which
5 coincides with all the holes in the window.

6 Q Which angle?

7 A The rear window and right quarter panel window.

8 Q And toward where?

9 A Towards me.

10 Q You being in the front driver's seat?

11 A Front driver's seat. You can see the windshield too
12 where it is cracked and stuff. That is where it exited.

13 Q Again, all those black spots you see all the way
14 down, were those there before this happened?

15 A No.

16 Q Exhibit 34-d, what do we see here?

17 A That is my front windshield.

18 Q What does it show?

19 A It is cracked. That is actually a hole where the
20 white mark is. The window didn't shatter out. Like I said,
21 just shrapnel going through it. Then you can see my mirror has
22 a break down in the corner right.

23 Q Exhibit 34-e, what is that?

24 A That is the front view of my windshield.

1 Q What do you see there?

2 A That is the exit points.

3 Q Is there a hole in the windshield there?

4 A Yes.

5 Q Besides the holes, what other damage to that front
6 windshield did it cause? Was there any cracking, let's say?

7 A There is some cracking. Then after I got my Jeep
8 back it spidered out. It cracked all the way out.

9 Q You bring up a good point. Did your Jeep get
10 returned to you?

11 A Yes.

12 Q In what condition?

13 A As it was.

14 Q Holes and all?

15 A Holes and all. I ended up having to go to Wal-Mart
16 and get packing tape to tape up my windows.

17 Q Looking at Exhibit 34-f, is this your Jeep?

18 A Yes.

19 Q Overview of it?

20 A Yes.

21 Q Exhibit 34-g, describe for us what we see here?

22 A This is the rear. You could see where in the rear,
23 the trunk, there is a hole in the window there. There is a
24 hole being shot in the right quarter panel and a hole right

1 where "Calvin" is.

2 Q The right rear quarter panel in where "Calvin" is?

3 A Yes. You can see it is all shattered out. The only
4 thing keeping it up is the tape.

5 Q Was the -- both those two windows we see completely
6 shattered?

7 A Yes.

8 Q Could you see out of them?

9 A No.

10 Q 34-h, what do we see here?

11 A This is the under panel where it ricocheted off.
12 The bullet came in through the passenger side. It is on the
13 side, actually, but that is --

14 Q Is that the right way?

15 A Turn it the other way around. That is how the Jeep
16 would sit. That is where the bottom rocker panel is.

17 Q Right under Mr. Burnett?

18 A David, yeah.

19 Q Exhibit 34-i, which portion of the vehicle is this?

20 A Right rear quarter panel.

21 Q Is that the "Calvin" sticker you mentioned?

22 A Yeah. The hole speaks for itself.

23 Q 34-j.

24 A The rear trunk window.

1 Q All the white, what is that?

2 A That is the shattered glass, shattering.

3 Q 34-k?

4 A That is the right rear quarter panel window.

5 Q Again all the white?

6 A Just the shattering.

7 Q Did the bullet -- Is that a clean hole through that

8 window?

9 A Yeah.

10 Q Lastly, Mr. Lee, 24-1. What do we see here?

11 A That is what saved my life. All the stuff in the

12 back pretty much stopped, you know, all the bullets from

13 hitting us, actually.

14 Q Are you glad you had all that stuff in the vehicle

15 that day?

16 A Oh, yeah.

17 Q Probably didn't help your gas mileage I am guessing?

18 A Gas, that wasn't a problem.

19 Q I am seeing in that Exhibit 34-1, do all your

20 personal belongings with Mr. Burnett's, it does cover the

21 entire opening there of the Jeep?

22 A Yes.

23 Q Floor to ceiling?

24 A Yes.

1 Q Side to side?

2 A Yes.

3 Q After you got your property back from the police,
4 did you have an opportunity to look at your property?

5 A Yes.

6 Q What did you find?

7 A Majority of my clothing all had holes in it from the
8 bullet shrapnel coming inside going through the materials. In
9 fact, this suitcase up from here, I don't even know how the
10 bullets got back there, that suitcase had my suits in it.
11 When I was a commodities broker, I had to wear suits every
12 day. I had five suits in there. They were all shredded. The
13 black suitcase, right there.

14 Q Pointing to the left side of the vehicle?

15 A Yes.

16 Q That was shot at you say?

17 A Yes.

18 Q Were your suits wearable?

19 A No.

20 Q Mr. Lee, did you ever finish your trip?

21 A Yes.

22 Q What happened after this? You are car less for a
23 little bit, right?

24 A Yeah, while I was being questioned in Fallon for a

1 few days. I went into Reno. That is when we finished our
2 business. We were supposed to meet some friends to go skiing
3 at Tahoe.

4 Q Then do you still have the Jeep?

5 A No, I do not.

6 Q What did you do with it?

7 A I sold it like in 2005 I believe.

8 Q Did you ever fix the holes in the side?

9 A No. The holes are there. I mean I drove around the
10 truck with a shattered window with the tape on there a couple
11 years, actually, and it never fell apart.

12 Q When you sold it, you say the holes on the "Calvin"
13 sticker on the right with the quarter panel were still there?

14 A Yeah.

15 Q Sir, after this happened, then did you have
16 occasion -- Let me back up. You said before after what
17 happened in Reno you went to California?

18 A Yeah. My sister lived in L.A., and I went to stay
19 with her.

20 Q Was this the reason?

21 A Yeah.

22 Q Did you have any occasion throughout business or
23 pleasure or any other activities to go through Fallon and US
24 95 again?

1 A 2010 I was finally able to muster up enough courage
2 to go down small highways and stuff like that.

3 Q Explain. What do you mean by small highways?

4 A Just lonely roads, you know, close to nowhere. I
5 have a hesitation of going down streets where I see bullet
6 holes in signs, stuff like that. It still gives me a
7 nervousness.

8 Q Is that something you see in Nevada frequently?

9 A Yeah.

10 Q Did you have a reason to go down US 95 before that
11 but avoided it?

12 A Oh, yeah. I mean my business, we had offices up
13 here in Reno, Sacramento and Las Vegas. Sometimes, when we
14 didn't fly, taking the car and driving down was the only way
15 to do it. It took me from when we started the business four
16 years by the time I finally decided to take a ride, take a
17 drive back down 95.

18 Q That was 2010?

19 A Yeah.

20 Q What was it that kept you away from it?

21 A Just the fear of being shot again, really.

22 Q You mentioned back roads, the small roads. Do you
23 get pleasure out of driving?

24 A Yeah. I mean we used to. When we left Chicago, we

1 drove around the country and driving down small roads, you get
2 to small towns, meet people. That is what it is all about,
3 not having to take the major interstate. Going down small
4 roads is much more fun. I haven't done that since 2010 going
5 back down you know, to Las Vegas.

6 Q Before 2010 or say after this happened, did you
7 think about this incident?

8 A Yeah. It never goes away.

9 Q I am sorry?

10 A It never goes away. Especially driving, if I have
11 to drive somewhere remote places,, it is in the back of my
12 mind.

13 Q Mr. Lee, a couple more questions here. Without
14 telling us what you had heard, just simply this question: Did
15 you hear about the -- Did you subsequently hear about the
16 shooters' intention as to why they were shooting at you?

17 A The police --

18 Q I am not going to ask you what they told you, just
19 the fact did you hear?

20 A I didn't hear anything.

21 Q Were you ever told by the police what the shooters'
22 intentions were?

23 A I believe so.

24 Q What did that make you feel?

1 A Very unlucky. Just being at the wrong place and
2 just why me, you know. Why does someone have to do that?

3 Q You mentioned unlucky. At the same time, do you
4 feel lucky?

5 A Oh, yeah.

6 Q And why?

7 A Because I am alive today. I went on with my life
8 somewhat.

9 Q Mr. Lee, do you know Shawn Harte who is sitting
10 here?

11 A No.

12 Q Every seen him before?

13 A No.

14 Q Ever had any contact with him outside of this court
15 proceedings?

16 A No.

17 MR. LEE: Thank you. That is all the questions I
18 have.

19 THE COURT: Cross.

20

21 CROSS-EXAMINATION

22 BY MS. BOND:

23 Q Mr. Lee, did your case of the shooting that occurred
24 near Fallon go to trial?

1 A No.

2 Q When you were driving down that road, could you see
3 where the shots were coming from?

4 A Initially I saw, like I say, I saw a light in the
5 right rear side when I drove past the hill coming down. Until
6 you, like everything I processed at the moment, you are just
7 reacting. So, no, I did not see a shooter.

8 Q Maybe a general idea where it might be coming from?

9 A Yes.

10 Q Not anything specific?

11 A Right.

12 Q I am going to show you Exhibit 34-j. That is the
13 rear windshield; is that right?

14 A Correct.

15 Q So that would be actually -- Let me show you, that
16 is 34-g. The one we looked at was a close up of this area; is
17 that right?

18 A Yes.

19 Q And we also see a shot going through the right rear
20 or passenger side rear window?

21 A Yes.

22 Q And both of those go into the area where all the
23 luggage was?

24 A Yes.

1 Q 34-e, that would be your front windshield; is that
2 correct?

3 A Correct.

4 Q That would be one of the bullets you heard whizzing
5 through past your head?

6 A Yes.

7 Q You said you heard several bullets whizzing past the
8 right side of your head?

9 A Yeah. I imagine there were fragments after impact
10 where a bullet would go. That is why we heard multiple.

11 Q The only bullet hole you saw in the front windshield
12 was this one, but you heard several whizzes?

13 A Yes.

14 Q You think those might be pieces of things that were
15 the shattered windshield or the vizor clip?

16 A No. They were actually fragments of the bullets.
17 The police told me -- They showed me my car afterwards. You
18 could see it took them hours to pick off all the steel
19 shrapnel from the bullets.

20 Q So pieces, fragments of the same bullet?

21 A Yeah. I don't know if it was one or two bullets,
22 whatever got through.

23 Q I missed something at the end of your direct
24 examination. You said that about 2010 you drove back down

1 that road?

2 A Yeah, finally.

3 Q That was four years -- not four years after this
4 event?

5 A No. This happened back in '97, so 13 years.

6 Q And you have had no communications with Mr. Harte?

7 A No.

8 Q At all?

9 A No.

10 Q You didn't know him before?

11 A No.

12 Q You have had no contact or communication since?

13 A No.

14 MS. BOND: I have no further questions, Your Honor.

15 'Thank you.

16 THE COURT: Redirect?

17 MR. LEE: Thank you.

18

19 REDIRECT EXAMINATION

20 BY MR. LEE:

21 Q Mr. Lee, you stated one hole in that windshield,
22 right front windshield?

23 A Yeah. That was just -- there were multiple little
24 smaller fragment holes you can't see from the picture.

1 Q In the windshield?

2 A Yeah.

3 Q Do you know how many?

4 A I don't know exactly how many. There were several.
5 Every nick you see there are actually, you know, fragments
6 going through the windshield.

7 Q Was that the only damage besides the holes in the
8 back that we saw?

9 A No. The whole dashboard all the way going down to
10 the front where the vent is is all riddled with holes. My
11 whole front dashboard by my steering, everything had fragments
12 going through there.

13 Q I will zoom right in here. Looking from the top
14 left of this photograph paging down to the bottom right of
15 photograph, all those black dots, what did you understand that
16 to be?

17 A Fragments.

18 Q Of the bullet?

19 A Of the bullet.

20 Q Was that damage then consistent throughout your
21 vehicle?

22 A Yes.

23 Q Thank you.

24 MR. LEE: That's all the questions I have.

1 THE COURT: Anything further,, Ms. Bond?

2 MS. BOND: Nothing further, Your Honor.

3 THE COURT: May this witness me excused?

4 MS. BOND: Yes, your Honor.

5 MR. LEE: Please.

6 THE COURT: Sir, you may step down. You are
7 excused.

8 (Witness excused.)

9 THE COURT: Call your next witness?

10 MR. YOUNG: Your Honor, it is approaching the lunch
11 hour. The next witness is coming from out of town. If we
12 could perhaps break at this point.

13 THE COURT: They are not here?

14 MR. YOUNG: Not here yet. Coming from Fallon.

15 THE COURT: Okay. Ladies and gentleman of the jury,
16 we are going to take our recess now. I am going to let you
17 take a lunch recess until 1:30. During this break, remember
18 until the trial is over do not discuss this case with anyone
19 including your fellow jurors, members of your family, persons
20 involved in the trial or anyone else, and do not allow anyone
21 to discuss it with you. This includes the case, discussing
22 the case on the internet or in internet chat rooms, through
23 internet blogs, bulletin boards, Facebook or twitter, e-mail
24 or text messaging. If anyone tries to communicate with you

1 about the trial, notify me. Do not read, watch, listen to any
2 news media accounts or any other account regarding the trial
3 or any of the persons involved in the trial.

4 Do not get any online information. Do not do any
5 research such as consulting dictionaries, searching the
6 internet or using reference material, and do not make any
7 investigation into or about the case on your own. I will see
8 you at 1:30. We'll let you step out. I have a little bit of
9 work to do with the lawyers.

10 Please be seated. I just wanted to make a record
11 while we were altogether. I think we sort of bandied around
12 Exhibit 55, what we were doing with it. What I did with it,
13 just so you know, my intention is to admit it for
14 demonstrative purposes only. I will do the same on 56 and 57
15 when they are utilized. They will remain part of the record.
16 I will also remind the jury they will not have a copy of this
17 transcript, otherwise, invariably we get a request for the
18 transcript which we cannot do. That being said, just
19 explaining to you what I was doing, is there anything else
20 before we start -- before we all break for the lunch hour?

21 MS. PUSICH: No thank you, Your Honor.

22 MR. YOUNG: No. Thank you.

23 MS. BOND: I'm sorry, what time were we coming back?

24 THE COURT: 1:30. We'll all be here before that.