

1 A Not really, no.

2 Q Had Mr. Thomas said anything to you that
3 made you pretty sure that there was going to be a
4 robbery?

5 A No.

6 Q So you say that you waited at the back
7 door?

8 A Yes.

9 Q Did someone come out?

10 A Yes.

11 Q Tell us what happened.

12 A While we was sitting there, a guy walked
13 out and Marlo and him started talking.

14 Q Do you know how long they talked?

15 A No.

16 Q Did you learn why this person had come
17 out of the restaurant?

18 A Yes.

19 Q Why?

20 A He had slippers on. He didn't have work
21 shoes on.

22 Q So he had to go change shoes?

23 A Yes.

24 Q Did the man say that he was coming back?

25 A Yes.

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8JDC00198

1 Q Did he say how long he was going to be?

2 A About 20 minutes.

3 Q Did this man then leave?

4 A Yes.

5 Q What did you and Marlo Thomas do?

6 A Just waited there, and I think the guy
7 left. We went inside the Lone Star.

8 Q How did you get inside?

9 A Marlo knocked on the door and a guy
10 opened it for us.

11 Q Someone opened it who was inside the Lone
12 Star?

13 A Yes.

14 Q Did that guy let you and Marlo come
15 inside?

16 A Yes.

17 Q What happened after you got inside?

18 A We walked past two guys cutting up meat
19 and went back to the manager's office.

20 Q What happened when you got back to the
21 manager's office?

22 A Marlo looked around the dining area and
23 then came back, knocked on the manager's office door
24 and the manager let us in.

25 Q Did you know the manager?

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8JDC00199

AA5133

1 A No.

2 Q Had you ever seen him before?

3 A No.

4 Q What happened after the manager let you
5 and Marlo come into the office?

6 A Marlo took the phone from him, hung it up
7 and pulled out a gun.

8 Q He pulled out which gun?

9 A The .32.

10 Q What did he do with the gun when he
11 pulled it out?

12 A He just he kept it in his hand.

13 Q Did he point the barrel of the gun in any
14 particular direction?

15 A He just pulled it out, just like he was
16 careless with it, I mean.

17 Q Did Marlo Thomas say anything to the
18 manager?

19 A He told him to open the safe.

20 Q Did he have the gun out when he said
21 that?

22 A Yes.

23 Q What did the manager do?

24 A Opened the safe.

25 Q You saw him do that?

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8JDC00200

AA5134

1 A Yes.

2 Q After the manager began to open the safe,
3 what happened?

4 A Marlo gave me the gun. Said I'll be
5 back.

6 Q Did you take the gun?

7 A Yes.

8 Q Is this still the .32 caliber handgun?

9 A Yes.

10 Q Did Marlo Thomas tell you what to do with
11 the gun?

12 A No, not that I remember.

13 Q He didn't give you any instructions?

14 A He told me to get the money.

15 Q Did you get the money?

16 A Yes.

17 Q Who did you get the money from?

18 A The manager.

19 Q Were you holding the gun at the time that
20 you got the money?

21 A Yes.

22 Q Was the gun placed into any type of
23 containers -- what was the money -- I'm sorry.

24 A What was the money in?

25 Q Was the money placed by the manager into

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8JDC00201

AA5135

1 any type of containers?

2 A Bank of America bags.

3 Q How many bags?

4 A Three.

5 Q Did you know how much money it was?

6 A No.

7 Q Are we talking about coins or bills or
8 both?

9 A Bills.

10 Q Did you see the bills were being taken by
11 the manager from a safe and placed into the bags?

12 A Yes.

13 Q What happened after he had put all the
14 money into the three bank bags?

15 A Told him to sit in the chair.

16 Q You told him to sit in the chair?

17 A Yes.

18 Q What was the color of the bank bags?

19 A The bank bags?

20 Q Yes.

21 A Three -- I mean, blue.

22 Q Blue?

23 A Yes.

24 Q When you told the manager to sit in the
25 chair, did he?

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8JDC00202

AA5136

1 A I don't know.

2 Q Why don't you know?

3 A Because I left.

4 Q When you left, you mean you left the
5 office?

6 A Yes.

7 Q Did you have the three bank bags and the
8 money with you at that time?

9 A Yes.

10 Q Did you still have the gun?

11 A Yes.

12 Q Did you pay attention to what the manager
13 did after you left?

14 A No.

15 Q Did you try to harm the manager in any
16 way?

17 A No.

18 Q You knew the gun was loaded; is that
19 correct?

20 A Yes.

21 Q You had seen Mario Thomas load the gun
22 out of the car?

23 A Yes.

24 Q Did you try to use the gun?

25 A No.

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8JDC00203

AA5137

1 Q Besides holding it, did you attempt to
2 pull the trigger and shoot anyone inside the Lone
3 Star?

4 A No.

5 Q So when you left the office, where did
6 you go?

7 A I walked out the door, and I went towards
8 the back door.

9 Q Towards the same door that you had come
10 in?

11 A Yes.

12 Q As you walked in that direction, did you
13 see or hear anyone?

14 A Seen Marlo.

15 Q Where was Marlo?

16 A He was fighting with a guy.

17 Q You said fighting with a guy?

18 A Yes.

19 Q Describe what you saw Marlo doing?

20 A Punching him.

21 Q He what?

22 A He was punching him.

23 Q Where was the guy who was being punched
24 by Marlo?

25 A On the floor.

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1 Q On his stomach or on his back?

2 A On his back.

3 Q And when you say punching him, will you
4 demonstrate what you saw Marlo doing?

5 A Swinging at him.

6 Q Demonstrate to the Court what you saw him
7 do.

8 THE COURT: I think that his hands are
9 handcuffed.

10 MR. HARMON: That's a good point, your
11 Honor. I am sorry.

12 BY MR. HARMON:

13 Q That was an unreasonable request. I
14 won't ask you to demonstrate.

15 Did he raise his arms in the air?

16 A No, he just swinging at him. That's --

17 Q Was he lying on top of this person or
18 just over him?

19 A They was fighting, I mean.

20 Q Could you see the other person who was on
21 his back on the floor struggling, too?

22 A Yes.

23 Q Could you tell if Marlo Thomas had
24 anything in his hand?

25 A No.

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1 Q How close were you?
2 A I don't know.
3 Q What did you do when you saw this
4 happening?
5 A Called Marlo.
6 Q What do you mean you called Marlo?
7 A Called him. Said his name.
8 Q You called out his name?
9 A Yes.
10 Q When you did that, did he seem to hear
11 you?
12 A Huh?
13 Q When you called out his name, did he seem
14 to hear?
15 A Yes.
16 Q What did he do?
17 A He got up. The guy let him go. He got
18 up.
19 Q He got off the guy?
20 A He wasn't really on him.
21 Q What do you mean that he got up? Where
22 was he?
23 A On the ground with the guy.
24 Q So he got up. Did he come to where you
25 were?

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1 A Yes.

2 Q Did you notice what the guy who was on
3 the floor did?

4 A He kicked him and got up.

5 Q Who kicked who?

6 A The guy kicked Marlo.

7 Q And then he got up?

8 A Yes.

9 Q Where did the guy go?

10 A He ran through a hall.

11 Q After he ran through the hall, did you
12 see where he went?

13 A No.

14 Q Could you tell if he was injured?

15 A No.

16 Q Did Marlo then walk over to where you
17 were?

18 A Yes.

19 Q Did you have a conversation with him?

20 A Sort of.

21 Q What was this sort of conversation that
22 you had?

23 A It was he asked me where was the manager
24 at.

25 Q What did you say?

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1 A I don't know.

2 Q Was that the truth?

3 A Yes.

4 Q Did you still have three bank bags and
5 the gun?

6 A Yes.

7 Q What did you do with the money and the
8 gun?

9 A I took the money out to the car, and I
10 handed the gun to Marlo.

11 Q When Marlo asked you where the manager
12 was and you said I don't know, what did he say or do?

13 A He stuttered. I mean like he didn't know
14 which way to go.

15 Q So what way did he go?

16 A Towards the front.

17 Q He walked towards the front?

18 A Yes.

19 Q Did you go on out?

20 A Yes.

21 Q Did you know at that point that any
22 persons had been seriously hurt?

23 A No.

24 Q Had you heard anyone while you were
25 inside the Lone Star Restaurant?

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8JDC00208

AA5142

1 Q What did Marlo tell her?

2 A He said -- he said he killed a guy.

3 Q He said that he killed a guy?

4 A Yes, and I let -- I let the manager get
5 away.

6 Q Who said that you let the manager get
7 away?

8 A Marlo.

9 Q You explained what he meant by that?

10 A That -- I don't really know. He just
11 said I let him get away.

12 Q Was Marlo Thomas angry at that time?

13 A Not at me.

14 Q Had he ever told you what he expected you
15 to do to the manager?

16 A He just -- he thought -- he thought I was
17 going to do something.

18 Q You said that he thought that you were
19 going to do what?

20 A Shoot the manager.

21 Q Did you have a chance to see the clothing
22 of Marlo Thomas when he came out to the car?

23 A Excuse me?

24 Q Did you see the clothing of Marlo Thomas
25 when he came out to the car?

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8JDC00209

AA5143

1 A I wasn't paying attention.
2 Q You didn't notice any blood?
3 A When we got back to his aunt's.
4 Q Did you notice blood then?
5 A Yes.
6 Q What did you notice?
7 A There was blood on his clothes.
8 Q Where on his clothes?
9 A On his shorts.
10 Q You said that he told your sister he
11 killed a guy?
12 A Yes.
13 Q Did he say that he got in a fight with a
14 second guy?
15 A Yes.
16 Q Did he tell you what he used to kill the
17 guy and in the fight with the other guy?
18 A Yes.
19 Q What did he say that he used?
20 A A knife.
21 Q Did he tell you, you and your sister
22 where he got the knife?
23 A No.
24 Q Did he describe the knife?
25 A No.

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8JDC00210

AA5144

1 Q Did you ever see the knife?
2 A Yes.
3 Q Where were you when you saw the knife?
4 A In the car.
5 Q In the car going back to his aunt's
6 place?
7 A Yes.
8 Q Who had the knife when you saw it?
9 A Marlo.
10 Q Was there blood on the knife?
11 A Yes.
12 Q On what part of the knife?
13 A The blade.
14 Q Describe the knife.
15 A I only seen the blade.
16 Q About how long was the blade?
17 A I can't remember.
18 Q Were you ever given a knife?
19 A Yes.
20 Q When?
21 A At his aunt's.
22 Q After you got back there?
23 A Yes.
24 Q Were you told what to do with the knife?
25 A Yes.

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8JDC00211

AA5145

1 Q By whom?

2 A Marlo.

3 Q What did Marlo tell you to do with the

4 knife?

5 A To throw it as far as I can out in the

6 desert.

7 Q Did you do that?

8 A Yes.

9 Q Do you know what happened to Marlo's

10 clothes, the shorts that had blood on them?

11 A I didn't then.

12 Q You say that you didn't then?

13 A Yes.

14 Q Did he ever tell you what happened to

15 them?

16 A Yes.

17 Q What did he tell you?

18 A They were thrown out in the desert.

19 Q You testified that while you were still

20 inside the Lone Star you gave the gun back to Marlo?

21 A Yes.

22 Q Do you know what happened to the gun?

23 A Yes.

24 Q What did happen to the gun?

25 A It was thrown out in the desert with the

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8JDC00212

AA5146

1 rest of the stuff.

2 Q You said that you carried --

3 A Wait. It was given to his aunt.

4 Q Do you know what she did with it?

5 A No.

6 Q You said that you carried the three bank
7 bags out to the car?

8 A Yes.

9 Q What happened to the bags and the money?

10 A I don't know what happened to the bags.

11 The money was put in a pillowcase.

12 Q Who put the money in a pillowcase?

13 A I don't know.

14 Q How do you know that the money was placed
15 in the pillowcase?

16 A Because I seen it in the pillowcase in
17 the living room.

18 Q In whose living room?

19 A His aunt's, Marlo's aunt's.

20 Q Did there come a time when you and your
21 sister and Marlo left Las Vegas?

22 A Yes.

23 Q About when was that?

24 A I don't know.

25 Q How long after you had been to the Lone

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8JDC00213

AA5147

1 Star was it?

2 A I don't know. Probably about 9:00.

3 Q Probably about 9:00 you say?

4 A Yes.

5 Q Was there any conversation as you left
6 Las Vegas about the police or being spotted by
7 someone?

8 A Excuse me?

9 Q Was there any conversation about the
10 police as you left Las Vegas?

11 A Said if -- not about the police. We
12 would probably be caught like within a week or
13 something.

14 Q Did anyone attempt to drop down out of
15 sight as the car was leaving town?

16 A Yes.

17 Q Who?

18 A Me.

19 Q Who was driving the car?

20 A Angela Thomas.

21 Q Do you know where the money was at at
22 that time?

23 A Yes.

24 Q Where?

25 A In the trunk.

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8JDC00214

AA5148

1 Q Still in the pillowcase?
2 A I believe so.
3 Q Who put the money in the trunk?
4 A Angela.
5 Q Did Marlo ever explain why he killed
6 someone?
7 A Excuse me?
8 Q You told us earlier that Marlo said that
9 he killed a guy and he got in a fight with a second
10 guy. Did he explain why that happened?
11 A Why it happened?
12 Q Yes.
13 A I don't know why it happened.
14 Q Did he explain to you why it happened?
15 A Why he killed the two guys?
16 Q Yes.
17 A No, he didn't.
18 Q Did he ever say anything about being
19 concerned that there wouldn't be any witnesses?
20 A Yes.
21 Q When did he say that?
22 A In the car he said if you commit a crime
23 you're not supposed to leave no witnesses.
24 MR. HARMON: Thank you. I'll pass the
25 witness, your Honor.

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8JDC00215

AA5149

1 THE COURT: Cross.

2 MR. LaPORTA: Thank you, your Honor.

3
4 CROSS-EXAMINATION

5 BY MR. LaPORTA:

6 Q Kenya, when you were with Marlo, from the
7 time that you drove from Hawthorne to the next morning
8 just outside the Lone Star, is that not correct, were
9 you with him the whole time pretty much?

10 A Yes.

11 Q During that time there was no discussion
12 about robbing anyplace or anyone, was there?

13 A No.

14 Q Let me take you to the moments when you
15 were just outside the Lone Star that morning. There
16 was no conversation about robbing the place or anyone
17 inside, was there?

18 A No.

19 Q As you were just about to walk into the
20 Lone Star, there was no conversation that you were
21 going to go in and rob the place or anyone in there,
22 was there?

23 A No.

24 Q After you had approached the manager's
25 office, who knocked on the door?

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1 A Marlo.

2 Q The manager opens the door?

3 A Yes.

4 Q And you characterized the weapon, the
5 production of the weapon, as you used the words, I
6 believe I'm quoting you correctly, it fell out?

7 A What fell out?

8 Q The gun. That's what I heard you say.
9 Am I right or am I wrong?

10 A The gun fell out.

11 Q The gun sort of fell out?

12 A I didn't see him. I didn't see the gun
13 come out at all. I just seen it when it was outside.

14 Q So you didn't see who had the gun?

15 A Marlo.

16 Q And you never saw him pull the gun out?

17 A No.

18 Q You just at some point it was in his
19 hand?

20 A Yes.

21 Q How long were you in there before he
22 handed you the weapon?

23 A I don't know.

24 Q Can you estimate? Was it a few seconds,
25 five minutes.

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8JDC00217

AA5151

1 A Two, three minutes.

2 Q He did tell you, though, if I heard you
3 correctly, that he wanted to go there that morning to
4 get his job back; is that not right?

5 A Yes.

6 Q As far as you knew, that's why he went
7 there?

8 A Yes.

9 Q You know, I noticed this morning that you
10 signed a plea agreement, is that not correct?

11 A Yes.

12 Q And you also signed a second document; is
13 that not correct?

14 A Yes.

15 Q And that document was an agreement to
16 testify; is that not correct?

17 A Yes.

18 Q You talked to your attorney about that?

19 A Yes.

20 Q Did you talk to anybody else?

21 A About signing the agreement?

22 Q Uh-huh.

23 A No.

24 Q Did you talk to your mother?

25 A She gave me advice.

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8JDC00218

AA5152

1 Q This morning?

2 A No.

3 Q Your mother didn't meet with you just a
4 little while ago this afternoon?

5 A Yes. That had nothing to do with me
6 signing.

7 Q Did you meet with the detectives who
8 investigated this case regarding your testimony here
9 today?

10 A About two-and-a-half months ago.

11 Q Did you talk to them after that?

12 A No. Yes. When they was taking my blood,
13 but it had nothing to do with this.

14 Q Did you talk to anybody from the district
15 attorney's office about this agreement and your
16 testimony today?

17 A No.

18 Q Have you ever talked to Mr. Harmon?

19 A Yes.

20 Q How many times have you talked to Mr.
21 Harmon?

22 A Once.

23 Q And when was that time?

24 A Couple weeks ago.

25 Q Can you tell us where it took place?

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8JDC00219

AA5153

1 A In his office.

2 Q And what did you talk about?

3 A The case.

4 Q Who else was there with you other than
5 Mr. Harmon?

6 A My attorney.

7 Q Was there anybody else there?

8 A No.

9 Q Watching you -- personally watching you
10 this morning, your attorney and prior to this
11 afternoon session, it appeared to me that you were
12 having some difficulties this morning and this
13 afternoon. Do you feel like your arm has been twisted
14 to give this testimony today? I want an honest
15 answer.

16 A Not really. Didn't no one make me do it.
17 Not really. I mean, I had advice but didn't no one
18 force me to.

19 Q Outside of this plea bargain that you
20 entered into where the State's agreed to dismiss all
21 charges, including the murder charges, with the
22 exception of the robbery, were you made any other
23 promises?

24 A No.

25 Q The police make you any promises?

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1 A No.

2 Q District attorney's office make you any
3 promises?

4 A No.

5 Q You testified that you saw Marlo fighting
6 with one of the two victims on the floor. Do you
7 remember what that victim looked like?

8 A No.

9 Q Is it not your testimony also that while
10 they were fighting you didn't see any weapons,
11 specifically a knife?

12 A No.

13 Q That victim, when Marlo pulled away, got
14 up?

15 A Yes.

16 Q And what did he do?

17 A He ran through a hall.

18 Q And disappeared from your sight?

19 A Yes.

20 Q Did you ever see him again?

21 A No.

22 Q About how much time between when Marlo
23 left the manager's office and gave you the money until
24 you next saw Marlo?

25 A Couple seconds. Thirty seconds.

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8JDC00221

AA5155

1 Q About 30 seconds?

2 A Yes.

3 Q So it's your testimony that about 30
4 seconds went by from the time Marlo handed you the
5 gun, told you to get the money, and when you next saw
6 him, which was when he was fighting on the floor?

7 A Yes.

8 Q That's correct? That's correct?

9 A Yes.

10 Q Excuse me?

11 A Excuse me. I didn't mean that was 30
12 seconds. I don't know how long that was.

13 Q You don't know how long that was?

14 A Between when he left the office and I
15 came out the office. I don't know how long that was.

16 Q Well, could you -- was it a minute, was
17 it five minutes?

18 A I don't remember at all.

19 Q Well, let's talk about what happened
20 during the time you had the gun.

21 A Yes.

22 Q You held the gun on the manager. You
23 pointed the gun at the manager, correct?

24 A I don't remember.

25 Q You had the gun, correct?

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8JDC00222

AA5156

1 A Yes, I had the gun.

2 Q What was the manager doing while you had

3 the gun on you?

4 A Getting the money.

5 Q Was the safe already opened when Marlo

6 left?

7 A No.

8 Q Had the manager started to open the safe

9 before Marlo left?

10 A Yes.

11 Q What kind of safe was it? Was it a key,

12 a combination?

13 A Combination.

14 Q When Marlo left, what was the manager

15 doing right at that moment, do you recall?

16 A Getting the money. Right when he left?

17 Q Right when he left.

18 A He was still twisting the thing.

19 Q Okay. Now, it took him about how long

20 after Marlo left to take the top off the safe?

21 A The top?

22 Q The lid. To open the safe?

23 A I don't know.

24 Q A few seconds?

25 A Yes.

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8JDC00223

AA5157

1 Q Couple minutes?

2 A Few seconds.

3 Q Few seconds. And once the manager opened
4 it up, what did he do?

5 A Started putting the money in bank bags.

6 Q About how long did it take him to put all
7 the money in the bank bags?

8 A About a minute, two minutes.

9 Q The money was all -- the money was
10 located in the safe?

11 A Yes.

12 Q Did he have to go anywhere else? Did he
13 go searching anywhere else for any money?

14 A No.

15 Q So his concentration was on the money in
16 that safe?

17 A Yes.

18 Q He never opened any drawers to any desks
19 or looked anywhere else for money?

20 A No.

21 Q So now he's put all the money in the safe
22 in the bank bag; is that correct?

23 A Yes.

24 Q Does he hand it to you?

25 A Yes.

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8JDC00224

AA5158

1 Q After he hands it to you, what happens?

2 A Well, I told him to sit in the chair.

3 Q What do you do?

4 A Leave.

5 Q So it doesn't sound like there was a
6 whole lot of wasted effort here, a whole lot of time
7 searching for things. He pretty much got into the
8 safe, got the money out, put it in the bank bags,
9 handed it to you and out the door he went?

10 A Yes.

11 Q Did he have to search inside the safe for
12 the money or was it right there?

13 A It was right there.

14 Q How much time do you think that it took?

15 MR. STEFFEN: Objection, your Honor.

16 That's been asked and answered.

17 THE COURT: Sustained.

18 BY MR. LaPORTA:

19 Q You went outside through the door that
20 you originally entered through; is that not correct?

21 A That's correct.

22 Q Was Marlo outside waiting for you when
23 you walked out there?

24 A No.

25 Q When did you next see Marlo after you

1 exited that door?

2 A When I turned around.

3 Q Turned around?

4 A Yes.

5 Q After exiting the door?

6 A Yes.

7 Q How many feet -- approximately how far
8 did you go from that door to -- outside before you
9 turned around?

10 A Twenty, thirty feet maybe.

11 Q And you turned around?

12 A Yes.

13 Q And where was Marlo when you turned
14 around?

15 A Walking out the door.

16 MR. LaPORTA: Court's indulgence.

17 BY MR. LaPORTA:

18 Q Did Marlo go straight to the car after
19 you saw him walking out the back door?

20 A Yes.

21 Q Did you go straight to the car?

22 A Yes.

23 Q Did you get into the car?

24 A Yes.

25 Q Front, back?

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8JDC00226

AA5160

1 A Back.

2 Q Where did Marlo go -- did he get in the
3 car?

4 A Front.

5 Q Who was driving the car again?

6 A Angela Thomas.

7 Q The individual that you saw fighting on
8 on the floor with Marlo, had you seen him before that
9 morning?

10 A No.

11 MR. LaPORTA: Your Honor, I have no
12 further questions.

13 THE COURT: Mr. Harmon.

14 MR. HARMON: Thank you, your Honor.

15

16 REDIRECT EXAMINATION

17 BY MR. HARMON:

18 Q Mr. Hall, when you were inside the
19 restaurant, were you ever told by Marlo Thomas to
20 shoot the manager of the restaurant?

21 A Not that I remember.

22 Q Do you remember what it was that you told
23 the police when you talked to them?

24 A Yes.

25 Q Did you give a recorded statement to the

MARCIA J. LEONARD, CCR NO. 204, RPR

1 police?

2 A Yes.

3 MR. HARMON: May I approach the witness,
4 your Honor.

5 THE COURT: Yes.

6 BY MR. HARMON:

7 Q I'm showing you quite a lengthy
8 statement, Mr. Hall. Have you had a chance to read
9 this before?

10 A Not all of it.

11 Q Does it appear to be a copy of the
12 statement you gave to a Highway Patrolman named David
13 Bailey?

14 A Yes.

15 Q Were you interviewed by Trooper Bailey in
16 Hawthorne, Nevada?

17 A Yes.

18 Q Was this after your arrest?

19 A Yes.

20 Q I want to direct your attention to an
21 answer at the bottom of the page.

22 THE COURT: What page are you on?

23 MR. HARMON: Unfortunately, they are not
24 numbered. It looks like, counsel and your Honor, the
25 fifth page.

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8JDC00228

AA5162

1 BY MR. HARMON:

2 Q Would you read that, Mr. Hall, to
3 yourself over to the top of what is probably the sixth
4 page.

5 A Start right here?

6 Q To yourself.

7 A To myself?

8 Q Yes. Just as quickly as you can.

9 Is that an answer that you gave to
10 Trooper David Bailey --

11 A Yes.

12 Q -- when he interviewed you?

13 A Yes.

14 Q Was it a truthful answer?

15 A Truthful, yes. Could be.

16 Q You say yes, it could be?

17 A Yes. I don't remember right now.

18 Q Was this the answer -- and let's go right
19 up to the previous answer. We walked over to the
20 restaurant I guess. Is that what you said?

21 A Yes.

22 Q Question by Trooper Bailey, and did what?
23 And did you answer we went -- at first he knocked on
24 the back door. Well, and this guy came out. Right.
25 And he was all talking to him and stuff. And he told

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8JDC00229

AA5163

1 the guy that he's supposed to be talking to some guy
2 about his job.

3 And then the guy left and he said he was
4 coming back, and Marlo went in there. And 'cause the
5 guy said let him in. He went in there. He asked
6 where some guy was at. He went back there into an
7 office and he knocked on the door, and the guy let him
8 in.

9 And Marlo started shoving him up against
10 the desk. And I thought he was like choking him with
11 the phone. But I think that the guy was on the phone
12 and he was hanging it up. And then he told the guy to
13 open up the safe.

14 He put the gun in my hand, and he told me
15 to get the money and shoot the guy in the back of the
16 head when I leave like that.

17 A Yes.

18 Q Is that what you said?

19 A It might have been. But I meant for him,
20 when I said that, that's what he was telling me what I
21 was supposed to do in the car. He didn't tell me to
22 do that when I was in the office.

23 Q So you're saying that when Marlo Thomas
24 told you that you were supposed to shoot the guy in
25 the back of the head, that that wasn't inside the

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8JDC00230

AA5164

1 restaurant?

2 A It was in the car.

3 Q That happened out in the car after it
4 happened?

5 A Yes.

6 Q And that's what he told you then that you
7 were supposed to have shot the guy in the back of the
8 head?

9 A Yes.

10 Q Now, previously you were asked if there
11 was any conversation on the way to Hawthorne from Las
12 Vegas. Did Mr. Thomas ever tell you what you were to
13 say or how you were to act if you were arrested?

14 A No. He just said the cops were going to
15 interrogate me.

16 Q Did he ever suggest in any way that you
17 ought to take the blame for what had happened?

18 A No. He just said if I did then I would
19 probably get out in 20 years.

20 Q Because why, because you were younger?

21 A Yes. I'm a juvenile.

22 Q Did Mr. Thomas in the car after this
23 happened ever say how it occurred that one of the
24 victims was in the restroom?

25 A In the restroom?

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8JDC00231

AA5165

1 Q Yes.

2 A He said he told him he had to talk to
3 him.

4 Q When did he tell you that?

5 A In the car.

6 Q And so after it happened, he explained
7 how one of the persons got back into the men's
8 restroom.

9 A Excuse me?

10 Q After this happened in the car, is that
11 when Mr. Thomas explained to you and your sister how
12 one of the victims got back into the men's restroom?

13 A Yes.

14 Q What did he say that he did to get the
15 person to come back to the restroom?

16 A He told him that he had to talk to him.

17 Q Is that what you told Trooper Bailey?

18 A I believe so.

19 Q Do you see the answer, and I am really
20 sorry, counsel, the pages aren't numbered.

21 MR. LaPORTA: Well, your Honor, just for
22 some housekeeping purposes, I have many things from
23 Mineral County and law enforcement agencies in that
24 area, but I do not have a copy of this. If I could
25 review this for a moment before I recross, and then if

MARCIA J. LEONARD, CCR NO. 204, RPR

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8JDC00232

AA5166

1 the D.A.'s office will provide me with a copy.

2 MR. HARMON: We certainly will, your
3 Honor. I thought that he had it.

4 MR. LaPORTA: I've gone through
5 everything, and I have everything else, but I just
6 don't have this.

7 THE COURT: That's fine.

8 BY MR. HARMON:

9 Q Do you see the answer right here, Mr.
10 Hall, near the bottom of this page, which has been
11 paper clipped. Does that appear to be an answer that
12 you gave to the Highway Patrolman?

13 A Yes.

14 Q Now, you mention up above that about how
15 long Marlo was gone when he gave you the gun and he
16 left?

17 A Yes.

18 Q Do you see this answer, question, how
19 long was Marlo gone? And did you answer for about --
20 about two to five minutes. I don't know. I don't
21 know for exact. I don't know.

22 A Yes.

23 Q Now, do you say that after you got in the
24 car there was a conversation?

25 A Sort of. Not between me and Marlo.

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8JDC00233

AA5167

1 Q Was there this question by Patrolman
2 Bailey, where did he say that he had went? And did
3 you give this answer, he said he went in the back and
4 he told -- he told one of the guys to come in the
5 bathroom. He got to talk to him. He said he started
6 stabbing him. And then he started stabbing that guy,
7 and he said the guy dropped. And then he tried to
8 call the other guy back there. And the guy said the
9 guy didn't come back there. The guy came around the
10 corner, and Marlo said he stabbed him in his heart and
11 that was it. And when I walked out, he was hitting
12 him.

13 Is that what you said?

14 A Yes.

15 Q Was that the truth?

16 A I believe so, yes.

17 Q Is everything that you have told us this
18 afternoon in court the truth to the best of your
19 recollection?

20 A Yes.

21 Q You understand the importance of this
22 hearing?

23 A Yes.

24 Q You understand it's important to you, to
25 family members, to the State and to the defendant, Mr.

MARCIA J. LEONARD, CCR NO. 204, RPR

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8JDC00234

AA5168

1 Thomas?

2 A Yes.

3 MR. HARMON: Thank you. That's all, your
4 Honor. Do you want --

5 MR. LaPORTA: Just a couple of minutes
6 just to review this. It won't take long.

7 THE COURT: And before you leave, Mr.
8 Harmon, if it's all right, we'll have a copy of that
9 made.

10 MR. HARMON: That particular copy is
11 marked, but I may even have additional copies here
12 with me.

13 THE COURT: That's fine. Okay.

14 MR. LaPORTA: May I use this?

15 MR. HARMON: Sure.

16 MR. LaPORTA: Thank you.

17

18 RECROSS-EXAMINATION

19 BY MR. LaPORTA:

20 Q Kenya, you made this statement to a
21 Trooper Bailey for the Nevada Highway Patrol; is that
22 not correct?

23 A Which statement?

24 Q This statement that Mr. Harmon just went
25 through with you?

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8JDC00235

AA5169

1 A Yes.

2 Q Okay. Do you remember who was there at

3 the time?

4 A No.

5 Q Was there just Trooper Bailey?

6 A No, there was -- I remember some of the

7 people, but I don't remember all of them.

8 Q Okay. Well, about how many people were

9 there?

10 A Ten.

11 Q About ten people?

12 A Yes.

13 Q A little scary, wasn't it?

14 A At first.

15 Q All ten of them have uniforms on?

16 A One of them was a probation officer.

17 Couple of them had uniforms. The other ones were

18 wearing street clothes, badges.

19 Q Did they have badges?

20 A Yes.

21 Q Guns?

22 A I can't remember.

23 Q During this interview, Kenya, didn't

24 anybody suggest to you that any of these answers that

25 you gave, in particular about shooting the manager in

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8JDC00236

AA5170

1 the back of the head?

2 A Did anyone suggest that I give them to
3 them? No, they said --

4 Q Anybody force you to give these answers?

5 A No. Just back in Hawthorne if I said
6 that, and if I had said different, the guys would
7 think that I would be lying so --

8 Q Why did you say it?

9 A Huh?

10 Q Why did you say --

11 A Back in Hawthorne. Because I was trying
12 to tell them what was said in Hawthorne. I was
13 getting mixed up.

14 Q Was it the truth?

15 A That's what was said in the car. It
16 wasn't said in the office.

17 Q You didn't get mixed up?

18 A What?

19 Q You didn't get mixed up while they were
20 asking you all these questions?

21 A Maybe.

22 Q Do you feel like they confused you a
23 little bit?

24 A Sometimes.

25 Q Did you feel like there were certain

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8JDC00237

AA5171

1 answers that they wanted you to give so you gave those
2 to them?

3 A I don't know. Never thought of it.

4 Q Well, I'm asking you now. In your mind,
5 do you think at the time that they were looking for
6 certain answers and pushing you to give them and you
7 just gave them to them at that time?

8 MR. HARMON: I object to the form of the
9 question. Now it's irrelevant.

10 THE COURT: Sustained.

11 MR. HARMON: He said that he never
12 thought of it up until now.

13 THE COURT: Sustained.

14 MR. LaPORTA: No further questions, your
15 Honor.

16 MR. HARMON: Nothing further.

17 THE COURT: All right. Mr. Moskowitz and
18 Mr. Harmon and Mr. Steffen, if you would approach the
19 bench, and Mr. LaPorta, you can come, too.

20

21 (At the bench discussion,
22 off the record.)

23 THE COURT: Go ahead and take him.

24 MR. HARMON: Your Honor, that will
25 conclude the State's case for the preliminary hearing.

1 Before I rest, I would only want to address the
2 Criminal Complaint.

3 THE COURT: Okay.

4 MR. HARMON: The Court had alerted us at
5 the time that we broke for lunch and indeed Count VII
6 is duplicitous of Count VI. I actually had earlier
7 noticed that and I will point out to the Court and
8 counsel that because there is no evidence that Mr.
9 Gianakes was enticed or lured to come back into the
10 restroom. In fact, that isn't where he was killed.
11 We are abandoning Count VII. It should have
12 identified Gianakes as the victim. It didn't.
13 Instead it listed again Mr. Dixon. However, we're not
14 pursuing that count in any event.

15 THE COURT: Okay.

16 MR. HARMON: The State does rest, your
17 Honor.

18 THE COURT: It's your opportunity now,
19 Mr. LaPorta, to present any evidence and discuss the
20 constitutional nature of the defendant taking the
21 stand if he so desires.

22 MR. LaPORTA: Your Honor, I have talked
23 to my client about his right to testify at this
24 preliminary hearing. He will follow my advice and not
25 do so. The defense has no other witnesses. We will

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1 rest.

2 THE COURT: Argument?

3 MR. HARMON: State waives opening
4 argument.

5 MR. LaPORTA: Your Honor, I have some
6 argument on Count VI. I will submit it on the rest.

7 But I ask this Court to take note as to
8 victim, Carl Dixon, that I don't believe that there
9 was any evidence that shows that Mr. Dixon was
10 feloniously held against his will, was seized,
11 confined, or kidnaped with the intent to hold him
12 against his will for the purpose of committing a
13 robbery.

14 Judge, I don't see where there was any
15 evidence in any of the testimony that would support
16 that charge. Therefore, I would ask the Court to
17 dismiss Count No. VI. And I will submit it on the
18 other counts, your Honor.

19 THE COURT: Argument.

20 MR. HARMON: Your Honor, as the Court
21 knows, NRS 200.310 defines kidnaping, and it doesn't
22 always just limit it to a forcible seizure. As the
23 Court knows, the language reads every person who shall
24 willfully seize, confine, inveigle, entice, decoyed,
25 abduct, conceal, kidnap or carry away any person by

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8JDC00240

AA5174

1 any means whatever.

2 Your Honor, it's our position, and the
3 photographs show exactly the series, 1 through 4 show
4 exactly where Mr. Dixon was found. He's on his back.
5 He was killed in the men's restroom. The manager said
6 that his duties were in the prep area. The manager,
7 Mr. Oddo, explained what the duties were.

8 The last witness has testified that one
9 of the victims went to the restroom and, in fact, the
10 defendant tried to get the other one back there but he
11 didn't come. And he got him back there. But there is
12 no description at that point in the testimony given by
13 Mr. Hall of any type of argument or struggle. His
14 testimony is that when the man came back he was
15 stabbed.

16 Your Honor, we feel for the purpose of
17 this hearing that that fits the definition of kidnap.
18 They were in there to commit a robbery. They had
19 already held up the manager in the office. The
20 younger accomplice had been left with the gun.

21 And what seems quite obvious, it may not
22 be the only inference, but the most reasonable
23 inference is Mr. Thomas left young Mr. Hall with the
24 gun because he was going to go out and eliminate the
25 witnesses. And the way he tried to do it was to

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1 entice or decoy or lure both of them into the men's
2 restroom.

3 It worked in the case of Carl Dixon. And
4 that's where Dixon was killed. It certainly enhanced
5 the danger to Carl Dixon that he was enticed to go
6 into the men's restroom. It didn't work with Mr.
7 Gianakes. So we urge the Court to hold the defendant
8 to answer on the first six counts.

9 MR. LaPORTA: Briefly, your Honor, in
10 answer to Mr. Harmon's arguments, unless it slipped by
11 me, I didn't hear any evidence as to how Mr. Dixon
12 ended up in that bathroom. In particular, any
13 evidence that Mr. Thomas somehow inveigled, enticed or
14 decoyed him back into that bathroom, and in
15 particular, for the purpose of holding or detaining
16 him for the purpose of committing the robbery. I
17 mean, the record is void in that area from what I
18 heard coming from that witness stand. Therefore, I'll
19 renew our motion to dismiss Count VI.

20 THE COURT: It's troublesome to the
21 Court, as well. But the charge to this Court is
22 slight, even marginal evidence. I think that there is
23 enough evidence for a bind over in that.

24 The other charges, there is not even
25 slight or marginal, but overwhelming evidence, in the

1 Court's opinion, that this crime was committed.

2 Mr. Thomas, you'll stand.

3 Mr. Thomas, the State has shown that the
4 crime of conspiracy to commit murder and/or robbery,
5 robbery, murder with use of deadly weapon, two counts,
6 robbery with use of deadly weapon, burglary while in
7 possession of firearm, and first degree kidnaping were
8 committed, and you committed said crimes, you are
9 bound over to the Eighth Judicial District Court,
10 State of Nevada, in and for the County of Clark.

11 The next appearance date is --

12 THE CLERK: July 16th, 9:00 o'clock,
13 Department IX.

14 MR. LaPORTA: Your Honor, I will be out
15 of the jurisdiction on that date. I will be gone from
16 the 11th through the 22nd.

17 THE CLERK: July 8th, 9:00 o'clock,
18 Department VI. Excuse me, District Court VI.

19 THE COURT: What is the bail status of
20 this defendant? Do you know what bail is set at?
21 I show that bail hasn't been set, and I set it at no
22 bail. Perhaps we should set bail.

23 MR. HARMON: Well, I don't concur that we
24 need to set bail. I understand that the Court is
25 going to exercise its sound discretion, but my

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1 position is that the bail chapter of 178.484 makes it
2 very clear that where the charge is murder of the
3 first degree, and if the proof is evident or the
4 presumption great, then the accused is not entitled
5 for bail.

6 THE COURT: Well, my concern, Mr. Harmon,
7 is this. I don't want a judge to look at this and say
8 you messed up, we're going to reset bail or we're
9 going to set a low bail because I agree with you.

10 By far, Mr. Thomas is the most dangerous
11 criminal I have ever faced as a defense counsel.

12 You think it's funny if you like, Mr.
13 Thomas, but as a former public defender and former
14 prosecutor, I can tell you that this is the most
15 gruesome murder that I have seen.

16 THE DEFENDANT: Well, I would like to
17 object to that because it wasn't murder.

18 THE COURT: I have seen -- It's not your
19 opportunity to speak now, Mr. Thomas. It's now my
20 turn to speak in this courtroom.

21 This is probably the most brutal and
22 cold-hearted heartless murder that I've seen in 13
23 years. I think that, Mr. Thomas, you represent the
24 greatest threat to our citizens than I have ever seen.
25 And now that I have heard all of the evidence and the

1 preliminary hearing, perhaps I should set a bail
2 amount.

3 MR. LaPORTA: Judge, may I make a
4 suggestion here.

5 THE COURT: No. No, I have made my mind
6 up.

7 Mr. Thomas by his actions has affected
8 the lives of the Dixons, the Gianakes and even his
9 nephew, Mr. Hall, and their family. No one's lives
10 are ever going to be able to be put back in order
11 because of your actions. I am going to set cash bail
12 of one million dollars cash only each count.

13 MR. HARMON: One million as to each
14 count?

15 THE COURT: One million each count, cash
16 only. But I want communicated to the judges that
17 having heard all of this evidence, that I am setting
18 that bail, not just after sliding by with no bail
19 situation.

20 MR. HARMON: Thank you, Judge.

21

22

23

24

25

* * * * *

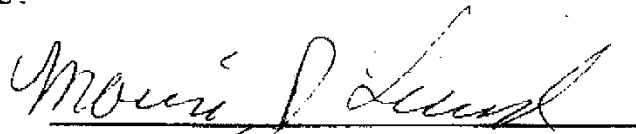
MARCIA J. LEONARD, CCR NO. 204, RPR

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8JDC00245

AA5179

1 ATTEST: Full, true and accurate transcript of
2 proceedings.

3 
4

5 Marcia J. Leonard, RPR, CCR No. 204
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MARCIA J. LEONARD, CCR NO. 204, RPR

EXHIBIT 126

EXHIBIT 126

ORIGINAL

FILED

JUL 2 3 09 PM '96

Debra L. Lamm

CLERK

1 **INFO**
2 **STEWART L. BELL**
3 **DISTRICT ATTORNEY**
4 **Nevada Bar #000477**
5 **200 S. Third Street**
6 **Las Vegas, Nevada 89155**
7 **(702) 455-4711**
8 **Attorney for Plaintiff**

9 **I.A. 7-8-96**
10 **9:00 A.M.**
11 **ST PD**

DISTRICT COURT
CLARK COUNTY, NEVADA

12 **THE STATE OF NEVADA,**

13 **Plaintiff,**

14 **-vs-**

15 **MARLO THOMAS,**
16 **aka Marlow Demitrius Thomas,**
17 **#1060797**

18 **Defendant.**

Case No. **C136862**
Dept. No. **VI**
Docket **B**

INFORMATION

19 **STATE OF NEVADA**

20 **COUNTY OF CLARK**

) ss:

21 **STEWART L. BELL, District Attorney within and for the County of Clark, State of Nevada, in**
22 **the name and by the authority of the State of Nevada, informs the Court:**

23 **That MARLO THOMAS aka Marlow Demitrius Thomas, the Defendant above named, having**
24 **committed the crimes of CONSPIRACY TO COMMIT MURDER AND/OR ROBBERY (Felony -**
25 **NRS 200.010, 200.030, 200.380, 193.480); MURDER WITH USE OF A DEADLY WEAPON**
26 **(OPEN) (Felony - NRS 200.010, 200.030, 193.165); ROBBERY WITH USE OF A DEADLY**
27 **WEAPON (Felony - NRS 200.380, 193.165); BURGLARY WHILE IN POSSESSION OF A**
28 **FIREARM (Felony - NRS 205.060); FIRST DEGREE KIDNAPPING WITH USE OF A DEADLY**
WEAPON (Felony - NRS 200.310, 200.320, 193.165), on or between April 14, 1996, and April 15,
1996, within the County of Clark, State of Nevada, contrary to the form, force and effect of statutes in
such cases made and provided, and against the peace and dignity of the State of Nevada,

///

CE46

CE31

CE31

CE31

1 COUNT I - CONSPIRACY TO COMMIT MURDER AND/OR ROBBERY

2 Defendants did, on or between April 14, 1996, and April 15, 1996, then and there meet with each
3 other and between themselves, and each of them with the other, wilfully, unlawfully, and feloniously
4 conspire to commit a crime, to-wit: murder and/or robbery, and in furtherance of said conspiracy,
5 Defendants did commit the acts as set forth in Counts II, III, and IV, said acts being incorporated by this
6 reference as though fully set forth herein.

7 COUNT II - MURDER WITH USE OF A DEADLY WEAPON (OPEN MURDER)

8 Defendants did, on or about April 15, 1996, then and there wilfully, feloniously, without authority
9 of law, and with premeditation and deliberation, and with malice aforethought, kill CARL DIXON, a
10 human being, by stabbing said CARL DIXON about the body with use of a deadly weapon, to-wit: a
11 knife, the defendants being responsible under the following theories of criminal liability, to-wit: 1)
12 premeditation: 2) felony murder during the perpetration or the attempted perpetration of the crime of
13 robbery as set forth in Count IV; 3) by the defendants either directly committing the offense of murder
14 and/or robbery, or aiding or abetting the commission of murder and/or robbery in the following manner,
15 to-wit: both defendants confronting restaurant manger, VINCENT ODDO, with a firearm or with
16 firearms and Defendant KENYA KEITA HALL, aka Kenya Love, taking money from VINCENT ODDO
17 while Defendant MARLO THOMAS, aka Marlow Demitrius Thomas, confronted restaurant employees
18 CARL DIXON and MATTHEW GIANAKES to facilitate the taking of the money and thereafter
19 Defendant MARLO THOMAS, aka Marlow Demitrius Thomas, stabbing CARL DIXON and
20 MATTHEW GIANAKES with a knife resulting in their deaths; each defendant being vicariously liable
21 as members of a conspiracy to commit murder and/or robbery.

22 COUNT III - MURDER WITH USE OF A DEADLY WEAPON (OPEN MURDER)

23 Defendants did, on or about April 15, 1996, then and there wilfully, feloniously, without authority
24 of law, and with premeditation and deliberation, and with malice aforethought, kill, MATTHEW
25 GIANAKIS, a human being, by stabbing said MATTHEW GIANAKIS about the body with use of a
26 deadly weapon, to-wit: a knife, the defendants being responsible under the following theories of criminal
27 liability, to-wit: 1) premeditation: 2) felony murder during the perpetration or the attempted
28 perpetration of the crime of robbery as set forth in Count IV; 3) by the defendants either directly

1 committing the offense of murder and/or robbery, or aiding or abetting the commission of murder and/or
2 robbery in the following manner, to-wit: both defendants confronting restaurant manger, VINCENT
3 ODDO, with a firearm or with firearms and Defendant KENYA KEITA HALL, aka Kenya Love, taking
4 money from VINCENT ODDO while Defendant MARLO THOMAS, aka Marlow Demitrius Thomas,
5 confronted restaurant employees CARL DIXON and MATTHEW GIANAKES to facilitate the taking
6 of the money and thereafter Defendant MARLO THOMAS, aka Marlow Demitrius Thomas, stabbing
7 CARL DIXON and MATTHEW GIANAKES with a knife resulting in their deaths; each defendant being
8 vicariously liable as members of a conspiracy to commit murder and/or robbery.

9 COUNT IV - ROBBERY WITH USE OF A DEADLY WEAPON

10 Defendants did, on or about April 15, 1996, then and there wilfully, unlawfully, and feloniously
11 take personal property, to-wit: lawful money of the United States, from the person of VINCENT
12 ODDO, or in his presence, by means of force or violence, or fear of injury to, and without the consent
13 and against the will of the said VINCENT ODDO, said Defendants using a deadly weapon, to-wit: a
14 firearm, during the commission of said crime; the defendants acting in concert with one another and the
15 defendants directly committing the acts constituting the offense and/or the defendants aiding or abetting
16 each other and/or the defendants directly or indirectly counseling, encouraging, hiring, commanding,
17 inducing, or otherwise procuring each other to commit the acts constituting the offense, as evidenced by
18 the conduct of the defendants before, during, and after the offense, wherein both defendants confronted
19 restaurant manger VINCENT ODDO with a firearm or with firearms and Defendant KENYA KEITA
20 HALL, aka Kenya Love, taking money from VINCENT ODDO while Defendant MARLO THOMAS,
21 aka Marlow Demitrius Thomas, disabled two restaurant employees, thereby facilitating the taking of, and
22 absconding with, the money; each Defendant being vicariously liable as members of a conspiracy to
23 commit robbery.

24 COUNT V - BURGLARY WHILE IN POSSESSION OF A FIREARM

25 Defendants did, on or about April 15, 1996, then and there wilfully, unlawfully, and feloniously
26 enter, while in possession of a firearm, with intent to commit larceny and/or robbery and/or murder and
27 or some other felony, that certain building occupied by LONE STAR STEAKHOUSE, located at 3131
28 North Rainbow, Las Vegas, Clark County, Nevada.

1 COUNT VI - FIRST DEGREE KIDNAPPING WITH USE OF A DEADLY WEAPON

2 Defendants did, on or about April 15, 1996, wilfully, unlawfully, feloniously, and without
3 authority of law, seize, confine, inveigle, entice, decoy, abduct, conceal, kidnap, or carry away CARL
4 DIXON, a human being, with the intent to hold or detain the said CARL DIXON, against his will, and
5 without his consent, for the purpose of committing robbery and/or murder and/or for the purpose of
6 inflicting substantial bodily harm, said Defendants using a deadly weapon, to-wit: a firearm and/or a knife,
7 during the commission of said crime; the defendants acting in concert with one another and the
8 defendants directly committing the acts constituting the offense and/or the defendants aiding or abetting
9 each other and/or the defendants directly or indirectly counseling, encouraging, hiring, commanding,
10 inducing, or otherwise procuring each other to commit the acts constituting the offense, as evidenced by
11 the conduct of the defendants before, during, and after the offense, wherein Defendant MARLO
12 THOMAS, aka Marlow Demetrius Thomas, confined, or held, or detained CARL DIXON in the restroom
13 of the Lone Star Steakhouse, 3131 North Rainbow, Las Vegas, Clark County, Nevada, while Defendant
14 KENYA KEITA HALL, aka Kenya Love, was in the manager's office forcefully taking money from the
15 restaurant manager, VINCENT ODDO; each defendant being vicariously liable as members of a
16 conspiracy to commit murder and/or robbery and/or kidnapping.

17 STEWART L. BELL
18 DISTRICT ATTORNEY
Nevada Bar #000477

19
20 BY 
21 MELVYN T. HARMON
22 Chief Deputy District Attorney
23 Nevada Bar #000862
24
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1	The names of witnesses known to the District Attorney's Office at the time of filing this	
2	Information are as follows:	
3	ALVA, E.	ERRICHETTO, LINDA
4	CORONER'S OFFICE	LVMPD #1471
5	LAS VEGAS, NV	CRIME LAB
6	BAILEY, DAVE	EULOW,
7	NHP #	MERCY AMBULANCE
8	HAWTHORNE, NV	LAS VEGAS, NV
9	BAKER, SHERRY	FITZ, DANISE
10	ADDRESS UNKNOWN	1900 W. SAHARA
11	LAS VEGAS, NV	LAS VEGAS, NV
12	BAKER, SUSAN R.N.	FORTE, JOE
13	UNIVERSITY MEDICAL CENTER	NLVPD #
14	LAS VEGAS, NV	DETECTIVE
15	BOUCHER, MARY	GARNESS, D.
16	9428 TALL WOOD LANE	LVMPD #
17	LAS VEGAS, NV	K-9
18	BRYANT, M.	GIANAKIS, ALEXANDER
19	LVMPD #1339	9448 MAST DR.
20	HOMICIDE	LAS VEGAS, NV
21	BUTCHER, BRIAN	GOLBART, G.
22	ADDRESS UNKNOWN	RABBI
23	LAS VEGAS, NV	LAS VEGAS, NV
24	CABRALES, AL	GREEN, SHELDON
25	LVMPD #2045	CORONER'S OFFICE
26	CRIME LAB	LAS VEGAS, NV
27	COOK, TERRY	HALL, DENISE
28	LVMPD #2545	432 F STREET #A
29	CRIME LAB	HAWTHORNE, NV
30	CUSTODIAN OF RECORDS	HALL, KENYA
31	REBEL STATION	DETENTION CENTER
32	LAS VEGAS, NV	LAS VEGAS, NV
33	CUSTODIAN OF RECORDS	HANSELL, R.
34	LONE STAR STEAKHOUSE	LVMPD #5054
35	WICHITA, KANSAS	CRIME LAB
36	DAUGENBAUGH, A.	HAWK, M.
37	CORONER'S OFFICE	LVMPD #4130
38	LAS VEGAS, NV	FSD
39	DIXON, FRED	HEMMES, STEPHEN
40	4709 TENNESSEE WALKER	5040 EL CAPITAN AVE.
41	NORTH LAS VEGAS, NV	LAS VEGAS, NV

-5-

1	HOFFERER, ROBERT MINERAL COUNTY S.O. HAWTHORNE, NV	MANNING, K. LVMPD #2434 HOMICIDE
3	HUDSON, DAVID DUANE ADDRESS UNKNOWN LAS VEGAS, NV	MATTHEWS, M. LVMPD #3607 FSD
5	JORDAN, ROBERT CORONER'S OFFICE LAS VEGAS, NV	MAYO, T. LVMPD #593 CRIME LAB
7	JUNGE, S. LVMPD # K-9	MCCLARY, Y. LVMPD #2923 CRIME LAB
9	KALANI, TRAUMA INTERVENTION PROGRAM REPRESENTATIVE	MCCRACKEN, DEBBIE LVMPD #2542 CRIME LAB
11	KINGSLEY, VERNON 9426 TALL WOOD LANE LAS VEGAS, NV	MESINAR, D. LVMPD #842 HOMICIDE
13	LEFEVER, PHYLLIS 7134 PLEASANT VIEW AVE. LAS VEGAS, NV	MILBRANT, L. CORONER'S OFFICE LAS VEGAS, NV
15	LEWIS, DAVE MINERAL COUNTY S.O. HAWTHORNE, NV	MYERS, M. ENGINE 9 FIRE DEPT.
17	LEWIS, JOHN - TROOPER MINERAL COUNTY S.O. HAWTHORNE, NV	NASH, CHARLES 2701 N. RAINBOW #14-2068 LAS VEGAS, NV
19	LEWIS, JOHN - SGT. MINERAL COUNTY S.O. HAWTHORNE, NV	NASH, EMMA 2505 CARTIER ST. NORTH LAS VEGAS, NV
21	LIGHT, D. CORONER'S OFFICE LAS VEGAS, NV	OBERHANSLI, SANDY MINERAL COUNTY JPO HAWTHORNE, NV
23	LONG, MERCY AMBULANCE LAS VEGAS, NV	ODDO, VINCENT 8057 REVOLVER AVE. LAS VEGAS, NV
25	LOVE-THOMAS, ANGELA 432 F STREET #A HAWTHORNE, NV	PETERSON, D. LVMPD #4034 CRIME LAB
27	LUNA, MARY RUTH LVMPD #175 CRIME LAB	POND, D. LVMPD #3791 FSD

AMENDED BY ORDER OF THE COURT

LORETTA BOWMAN, CLERK

BY *J. J. J. J.* Deputy

1976

AMENDED BY ORDER OF THE COURT

LORETTA BOWMAN, CLERK

BY *J. J. J. J.* Deputy

1977

AMENDED BY ORDER OF THE COURT

LORETTA BOWMAN, CLERK

BY *J. J. J. J.* Deputy

1977

1 RUFFINO, D.
2 LVMPD #1502
3 CRIME LAB
4
5 SEXTON, MICHAEL
6 MINERAL COUNTY S.O.
7 HAWTHORNE, NV
8
9 SMITH, SHARON #432045
10 2619 SHERWOOD #13
11 LAS VEGAS, NV
12
13 SMITH, EDWARD
14 MINERAL COUNTY S.O.
15 HAWTHORNE, NV
16
17 SMITH, BARBARA
18 2505 CARTIER ST.
19 NORTH LAS VEGAS, NV
20
21 SNARR, CARL
22 MINERAL COUNTY S.O.
23 HAWTHORNE, NV
24
25 SONTAG, SIDNEY
26 7100 PIRATES COVE #2046
27 LAS VEGAS, NV
28
29 SPINOSA, L.
30 LVMPD #2186
31 HOMICIDE
32
33 SPOOR, M.
34 LVMPD #3856
35 CRIME LAB
36
37 STUBBS, S.
38 LVMPD #2064
39 FSD
40
41 TATE, M.D.
42 UNIVERSITY MEDICAL CENTER
43 LAS VEGAS, NV
44
45 THACKER, JAMES
46 3605 ARGINIS
47 LAS VEGAS, NV
48
49 DA#96F07190A/B/kjh
50 LVMPD DR#9604150488
51 CONSP MURDER/ROBB;MURDER
52 W/WPN;ROBB W/WPN;BURG W/WPN;
53 1° KIDNAP W/WPN - F
54 (TK2)

THOMAS, S.
DAVIS MORTUARY
LAS VEGAS, NV

TONEY, D.
LVMPD #4502
FSD

TRUE, CAROLYN (R.N.)
DETENTION CENTER
LAS VEGAS, NV

VAN VALKENBURG, GLENN
3651 N. RANCHO #11-134
LAS VEGAS, NV

VAN VALKENBURG, CAROL
3651 N. RANCHO #11-134
LAS VEGAS, NV

WHITSON, J.
DAVIS MORTUARY
LAS VEGAS, NV

WECIL WENDY
4650 W OAKLEY #1191
LAS VEGAS, NV 89102

HANSELL, RICHARD
LVMPD #5054 (LAB)

HOWE, WILLIAM
2240 STATZ #C
NORTH LAS VEGAS, NV

DUBRUTZ, NLVPD #341

STALEY, RICHARD
LVMPD #1686

CHENEYWORTH, DONALD
4361 HELAMAN AVE
LAS VEGAS, NV

BARFUSS, CATHY
BROADWAY SECURITY
4300 MEADOWS LANE
LAS VEGAS, NV

JOHN T. STEFFEN, ESQ.
OR DESIGNEE
530 S. FOURTH STREET
LAS VEGAS, NEVADA

EXHIBIT 127

EXHIBIT 127

8
ORIGINAL

1 NISD
2 STEWART L. BELL
3 DISTRICT ATTORNEY
4 Nevada Bar #000477
5 200 S. Third Street
6 Las Vegas, Nevada 89155
7 (702) 455-4711
8 Attorney for Plaintiff

FILED

JUL 3 10 08 AM '96

Luella Harmon
CLERK

DISTRICT COURT
CLARK COUNTY, NEVADA

8 THE STATE OF NEVADA,

9 Plaintiff,

10 -vs-

11 MARLO THOMAS,
12 aka Marlow Demitrius Thomas,
13 #1060797

14 Defendant.

Case No.
Dept. No.
Docket

C136862
VI
B

16 **NOTICE OF INTENT TO SEEK DEATH PENALTY**

17 COMES NOW, the State of Nevada, through STEWART L. BELL, Clark County District
18 Attorney, by and through MELVYN T. HARMON, Chief Deputy District Attorney, pursuant to NRS
19 175.552 and NRS 200.033 and declares its intention to seek the death penalty at a penalty hearing.
20 Furthermore, the State of Nevada discloses that it will present evidence of the following aggravating
21 circumstances:

22 1. The murder was committed by a person who was previously convicted of a felony involving
23 the use or threat of violence to the person of another, to-wit: Attempt Robbery, Case No. C96794,
24 Eighth Judicial District Court of the State of Nevada in and for the County of Clark. [See NRS
25 200.033(2)] The evidence of this aggravating circumstance will consist of documentary proof and/or
26 testimony concerning prior convictions.

27 2. The murder was committed by a person who was previously convicted of a felony involving
28 the use or threat of violence to the person of another, to-wit: Battery With Substantial Bodily Harm, Case

CE31

1 No. C134709, Eighth Judicial District Court of the State of Nevada in and for the County of Clark. [See
2 NRS 200.033(2)] The evidence of this aggravating circumstance will consist of documentary proof
3 and/or testimony concerning prior convictions.

4 3. The murder was committed while the person was engaged in the commission of or an attempt
5 to commit any Burglary. [NRS 200.033(4)] The evidence of this aggravating circumstance will consist
6 of testimony and physical evidence arising out of the aggravated nature of the offense itself.

7 4. The murder was committed while the person was engaged in the commission of or an attempt
8 to commit any Robbery. [NRS 200.033(4)] The evidence of this aggravating circumstance will consist
9 of testimony and physical evidence arising out of the aggravated nature of the offense itself.


10 5. The murder was committed to avoid or prevent a lawful arrest. [NRS 200.033(5)] The
11 evidence of this aggravating circumstance will consist of testimony and physical evidence arising out of
12 the aggravated nature of the offense itself.

13 6. The Defendant has, in the immediate proceeding, been convicted of more than one offense of
14 murder in the first or second degree. [NRS 200.033(10)] The evidence of this aggravating circumstance
15 will consist of testimony and physical evidence arising out of the aggravated nature of the offense itself.

16 DATED this 2nd day of July, 1996.

17 Respectfully submitted,

18 STEWART L. BELL
19 District Attorney
20 Nevada Bar #000477

21 BY 
22 MELVYN T. HARMON
23 Chief Deputy District Attorney
24 Nevada Bar #000862
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RECEIPT OF COPY

RECEIPT OF COPY of the above and foregoing NOTICE OF INTENT TO SEEK DEATH
PENALTY is hereby acknowledged this 20th day of July, 1996.

STATE PUBLIC DEFENDER'S OFFICE
ATTORNEY FOR DEFENDANT

BY Rebecca H. Clemens
309 S. Third Street #401
Las Vegas, Nevada 89155

EXHIBIT 128

EXHIBIT 128

8JDC02936

FORM 204 6 PENGAD - 1-800-631-4348

ORIGINAL

FILED

DISTRICT COURT

CLARK COUNTY, NEVADA

1997 OCT -9 P 2:37

THE STATE OF NEVADA,

Plaintiff,

vs.

MARLO THOMAS,

Defendant.

Loretta L. L...
CLERK

Case No. C136862

Dept. No. III

Docket No. "E"

BEFORE THE HONORABLE JOSEPH PAVLIKOWSKI, DISTRICT JUDGE
JULY 10, 1996, 9:00 A.M.

REPORTER'S TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

For the Plaintiff:

M. HARMON, ESQ.
DEPUTY DISTRICT ATTORNEY

For the Defendant:

P. LAPORTA, ESQ.
DEPUTY PUBLIC DEFENDER

REPORTED BY: JAMES A. HELLESO, C.C.R. NO. 15

CE44

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8JDC02936

AA5194

LAS VEGAS, NEVADA, JULY 10, 1996, 9:00 A.M.

* * * * *

THE COURT: State of Nevada v. Marlo Thomas,
case number C136862.

Mr. Harmon representing the State --
where did LaPorta go? Mr. LaPorta appearing with the
defendant. Is your name Marlo Thomas?

THE DEFENDANT: Yes, sir.

THE COURT: What is happening?

MR. LAPORTA: Your Honor, this is on for a trial
setting. I have discussed today --

THE COURT: Just a second, please.

Do you have a copy of the informa-
tion, Mr. LaPorta?

MR. LAPORTA: Yes, your Honor, I do.

THE COURT: Mr. Thomas, is that your true name
on the information?

THE DEFENDANT: Yes, sir.

THE COURT: Do you waive the reading of the
information and the filing of a list of witnesses, Mr.
LaPorta?

MR. LAPORTA: Yes, sir, your Honor.

THE COURT: Mr. Thomas, do you waive those
rights?

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THE DEFENDANT: Say that again.

THE COURT: Do you waive the reading of this information and list of witnesses?

THE DEFENDANT: I ain't seen no witnesses on here.

MR. LAPORTA: Judge, this morning I gave him a copy.

THE COURT: Well, two pages, 5, 6 and 7 contains a list of witnesses.

THE DEFENDANT: I ain't never seen it.

THE COURT: Well, you will get a copy. But you don't want this read to you at this time?

THE DEFENDANT: Say that again?

THE COURT: You don't want this read to you?

THE DEFENDANT: No. No.

THE COURT: And you attended a preliminary hearing? Is that correct?

THE DEFENDANT: Yes.

THE COURT: Tell me what are your pleas to the counts contained in this information, Counts I, II, III, IV and V?

THE DEFENDANT: Not guilty.

THE COURT: You are entitled to a trial within sixty days, Mr. Thomas. Do you waive or invoke that

1 right?

2 THE DEFENDANT: I waive it.

3 THE COURT: Do you want a speedy trial or don't
4 you?

5 THE DEFENDANT: I don't want a speedy trial.

6 THE COURT: December 30th trial date, 10:00 a.m.
7 December 27, 9:00 a.m. for calendar call.

8 And for the record, Mr. Thomas, you
9 are in custody. Is that correct?

10 THE DEFENDANT: I think so.

11 THE COURT: You are remanded to the custody of
12 the Metropolitan Police Department.

13 MR. HARMON: Your Honor, for the record, the
14 State on July the 3rd, 1996 filed a notice of intent to
15 seek the death penalty. This is a capital case.

16 MR. LAPORTA: We have received that, your Honor,
17 and I have delivered a copy of that to Mr. Thomas.

18 MR. HARMON: Thank you.

19 * * * * *

20 ATTEST: Full, true and accurate transcript of proceed-
21 ings.


22 
23 JAMES A. HELLESO, C.C.R. NO. 15
24 OFFICIAL COURT REPORTER
25

EXHIBIT 129

EXHIBIT 129

74

ORIGINAL

DISTRICT COURT
CLARK COUNTY, NEVADA
JUN 20 4 03 PM '97

FILED

THE STATE OF NEVADA
Plaintiff
vs.
MARLO DEMETRIUS THOMAS
Defendant
.....

CASE NO. C136862
DEPT. NO. VI
DOCKET NO. "B"
Transcript of
Proceedings

BEFORE THE HONORABLE JOSEPH T. BONAVENTURE, DISTRICT JUDGE

JURY TRIAL - DAY 1
MONDAY, JUNE 16, 1997
VOLUME I

APPEARANCES:

For the State: DAVID P. SCHWARTZ, ESQ.
Chief Deputy District Attorney
DAVID J. J. ROGER, ESQ.
Chief Deputy District Attorney
For Defendant Thomas LEE ELIZABETH McMAHON, Esq.
PETER R. LaPORTA
Deputy Public Defender

COURT REPORTER:

ROBERT MINTUN
District Court

TRANSCRIPTION BY:

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

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

CE09

1 LAS VEGAS, NEVADA, MONDAY, JUNE 16, 1997
2 (Court is called to order)
3 (Prospective jurors present)
4 THE COURT: All right, this is the time set for
5 trial in Criminal Case Number C136862, State of Nevada versus
6 Marlo Thomas. Let the record show the presence of the
7 defendant, Marlo Thomas. Where is Mr. Thomas?
8 THE DEFENDANT: Right here, sir.
9 THE COURT: All right. Represented by his
10 attorneys, Mr. -- Ms. Lee McMahon and Mr. Pete LaPorta. And
11 also let the record show the presence of the State of Nevada
12 represented by attorneys David Roger and David Schwartz.
13 Is the State ready to proceed?
14 MR. ROGER: The State's ready, Your Honor.
15 THE COURT: Is the defense ready to proceed?
16 MR. LaPORTA: Yes, Your Honor.
17 THE COURT: All right, the clerk will call the role
18 of the jury panel members. When you hear your name just say
19 here or present so we know you're here.
20 THE CLERK: Constance Erickson?
21 PROSPECTIVE JUROR ERICKSON: Present.
22 THE CLERK: Gerald Liske.
23 PROSPECTIVE JUROR LISKE: Here.
24 THE CLERK: Holly Bell.
25 PROSPECTIVE JUROR BELL: Here.

1 THE CLERK: Writa Foster.
2 PROSPECTIVE JUROR FOSTER: Here.
3 THE CLERK: Danny Wood.
4 PROSPECTIVE JUROR WOOD: Here.
5 THE CLERK: Roderick MacKenzie.
6 PROSPECTIVE JUROR MACKENZIE: Here.
7 THE CLERK: Melissa Jaime.
8 PROSPECTIVE JUROR JAIME: Here.
9 THE CLERK: Norman Lizotte.
10 PROSPECTIVE JUROR LIZOTTE: Here.
11 THE CLERK: David DeLacy.
12 PROSPECTIVE JUROR DELACY: Here.
13 THE CLERK: Cindy Miller.
14 PROSPECTIVE JUROR MILLER: Here.
15 THE CLERK: Angela McCall.
16 PROSPECTIVE JUROR MCCALL: Here.
17 THE CLERK: Leslie Koran.
18 PROSPECTIVE JUROR KORAN: Here.
19 THE CLERK: Joseph Hannigan.
20 PROSPECTIVE JUROR HANNIGAN: Here.
21 THE CLERK: Frederick Schneiter.
22 PROSPECTIVE JUROR SCHNEITER: Here.
23 THE CLERK: Marie Desiderio.
24 PROSPECTIVE JUROR DESIDERIO: Here.
25 THE CLERK: Sharyn Brown.

1 PROSPECTIVE JUROR BROWN: Here.
2 THE CLERK: Fellton Cross.
3 PROSPECTIVE JUROR CROSS: Here.
4 THE CLERK: Patsy Grannan.
5 PROSPECTIVE JUROR GRANNAN: Here.
6 THE CLERK: Chin Farrell.
7 PROSPECTIVE JUROR FARRELL: Here.
8 THE CLERK: Craig Watral.
9 PROSPECTIVE JUROR WATRAL: Here.
10 THE CLERK: John Cortez.
11 PROSPECTIVE JUROR CORTEZ: Here.
12 THE CLERK: Paige Evans. Paige Evans.
13 Linda Piiparinen.
14 PROSPECTIVE JUROR PIIPARINEN: Here.
15 THE CLERK: Willie Luster.
16 PROSPECTIVE JUROR LUSTER: Here.
17 THE CLERK: Deborah Smith.
18 PROSPECTIVE JUROR SMITH: Here.
19 THE CLERK: Esther Cordova.
20 PROSPECTIVE JUROR CORDOVA: Here.
21 THE CLERK: Bradley Parker.
22 PROSPECTIVE JUROR PARKER: Here
23 THE CLERK: Charles Nelson.
24 PROSPECTIVE JUROR NELSON: Here.
25 THE CLERK: Raymond Thayer.

1 PROSPECTIVE JUROR THAYER: Here.
2 THE CLERK: Rosalinda Ortiz.
3 PROSPECTIVE JUROR ORTIZ: Here.
4 THE CLERK: Lavina Lovitt. Lavina Lovitt.
5 William Layton.
6 PROSPECTIVE JUROR LAYTON: Here.
7 THE CLERK: Charles Evarts. Charles Evarts.
8 Maryann Rees.
9 PROSPECTIVE JUROR REES: Here.
10 THE CLERK: Vincent Benoit.
11 PROSPECTIVE JUROR BENOIT: Here.
12 THE CLERK: Michael Boeckle.
13 PROSPECTIVE JUROR BOECKLE: Here.
14 THE CLERK: Jason Champoli. Jason Champoli.
15 Donna Hunter. Donna Hunter.
16 Marilyn Worob.
17 PROSPECTIVE JUROR WOROB: Here.
18 THE CLERK: Clara Hoover.
19 PROSPECTIVE JUROR HOOVER: Here.
20 THE CLERK: Frankie Sheppard.
21 PROSPECTIVE JUROR SHEPPARD: Here.
22 THE CLERK: Sandra Lane.
23 PROSPECTIVE JUROR LANE: Here.
24 THE CLERK: Charles Casper.
25 PROSPECTIVE JUROR CASPER: Here.

1 THE CLERK: Sylvia Weber.
2 PROSPECTIVE JUROR WEBER: Here.
3 THE CLERK: Gladys Howard.
4 PROSPECTIVE JUROR HOWARD: Here.
5 THE CLERK: William Tiu.
6 PROSPECTIVE JUROR TIU: Here.
7 THE CLERK: Kevin Evans.
8 PROSPECTIVE JUROR EVANS: Here.
9 THE CLERK: Doris Stuart.
10 PROSPECTIVE JUROR STUART: Here.
11 THE CLERK: David Kelker.
12 PROSPECTIVE JUROR KELKER: Here.
13 THE CLERK: Jacqueline Bell.
14 PROSPECTIVE JUROR BELL: Here.
15 THE CLERK: Jan Spivey. Jan Spivey.
16 Valerie Patronelli.
17 PROSPECTIVE JUROR PATRONELLI: Here.
18 THE CLERK: Carl Blackmore. Carl Blackmore.
19 Eugene Steffek.
20 PROSPECTIVE JUROR STEFFEK: Here.
21 THE CLERK: Sharon Teichman.
22 PROSPECTIVE JUROR TEICHMAN: Here.
23 THE CLERK: James Lewis.
24 PROSPECTIVE JUROR LEWIS: Here.
25 THE CLERK: Roger Pankewicz.

1 PROSPECTIVE JUROR PANKEWICZ: Here.
2 THE CLERK: Paul Natale. Paul Natale.
3 Louis Mizzoni.
4 PROSPECTIVE JUROR MIZZONI: Here.
5 THE CLERK: Mercedes Cerice-Ortiz.
6 PROSPECTIVE JUROR CBRICE-ORTIZ: Here.
7 THE CLERK: Barbara Wilson.
8 PROSPECTIVE JUROR WILSON: Here.
9 THE CLERK: Mary Ann Eagleton. Mary Eagleton.
10 Sofia Fox.
11 PROSPECTIVE JUROR FOX: Here.
12 THE CLERK: Florence McIntyre. Florence McIntyre.
13 David Coleman.
14 PROSPECTIVE JUROR COLEMAN: Here.
15 THE CLERK: Fred Cook.
16 PROSPECTIVE JUROR COOK: Here.
17 THE CLERK: Michelle O'Hala.
18 PROSPECTIVE JUROR O'HALA: Here.
19 THE CLERK: Fay Butler.
20 PROSPECTIVE JUROR BUTLER: Here.
21 THE CLERK: Cindy Read.
22 PROSPECTIVE JUROR READ: Here.
23 THE CLERK: Rhonda Woodard.
24 PROSPECTIVE JUROR WOODARD: Here.
25 THE CLERK: Joy Farris.

1 PROSPECTIVE JUROR FARRIS: Here.
2 THE CLERK: Ralph Puckett.
3 PROSPECTIVE JUROR PUCKETT: Here.
4 THE CLERK: Linda Smith.
5 PROSPECTIVE JUROR SMITH: Here.
6 THE CLERK: Gary Beeler.
7 PROSPECTIVE JUROR BEELER: Here.
8 THE CLERK: Ricky Watson.
9 PROSPECTIVE JUROR WATSON: Here.
10 THE CLERK: George Gomez.
11 PROSPECTIVE JUROR GOMEZ: Here.
12 THE CLERK: George Miner.
13 PROSPECTIVE JUROR MINER: Here.
14 THE CLERK: Tina Mayers.
15 PROSPECTIVE JUROR MAYERS: Here.
16 THE CLERK: Edward Hoover.
17 PROSPECTIVE JUROR HOOVER: Here.
18 THE CLERK: Stephen Conway.
19 PROSPECTIVE JUROR CONWAY: Here.
20 THE CLERK: Eli Perich.
21 PROSPECTIVE JUROR PERICH: Here.
22 THE CLERK: Aaron Lawrence.
23 PROSPECTIVE JUROR LAWRENCE: Here.
24 THE CLERK: Sharon Jones.
25 PROSPECTIVE JUROR JONES: Here.

1 THE CLERK: Krista Melton. Krista Melton.
2 Robert Moore.
3 PROSPECTIVE JUROR MOORE: Here.
4 THE CLERK: Thomas Kramer.
5 PROSPECTIVE JUROR KRAMER: Here.
6 THE CLERK: Dwayne Garrett.
7 PROSPECTIVE JUROR GARRETT: Present.
8 THE CLERK: Betty Teh.
9 PROSPECTIVE JUROR TEH: Here.
10 THE CLERK: Dianna Curtis.
11 PROSPECTIVE JUROR CUTIS: Here.
12 THE CLERK: Mark Larson.
13 PROSPECTIVE JUROR LARSON: Here.
14 THE CLERK: Marchelle Levin, Levin.
15 PROSPECTIVE JUROR LEVIN: Here.
16 THE CLERK: Robert Tedrow.
17 PROSPECTIVE JUROR TEDROW: Here.
18 THE CLERK: F. J. Lennox.
19 PROSPECTIVE JUROR LENNOX: Here.
20 THE CLERK: Eileen Buza.
21 PROSPECTIVE JUROR BUZA: Here.
22 THE CLERK: Terry Bunnell.
23 PROSPECTIVE JUROR BUNNELL: Here.
24 THE CLERK: Pamela Wilson.
25 PROSPECTIVE JUROR WILSON: Here.

1 THE CLERK: William Harrison. William Harrison.
2 Tamer Zaki. Tamer Zaki.
3 Thomas Mozingo.
4 PROSPECTIVE JUROR MOZINGO: Here.
5 THE CLERK: Donald Dixon.
6 PROSPECTIVE JUROR DIXON: Here.
7 THE CLERK: Richard Popham.
8 PROSPECTIVE JUROR POPHAM: Here.
9 THE CLERK: Linda Linden.
10 PROSPECTIVE JUROR LINDEN: Here.
11 THE CLERK: Sharon Gehrke. Sharon Gehrke.
12 Michael Foulke.
13 PROSPECTIVE JUROR FOULKE: Here.
14 THE CLERK: Misako McKibben.
15 PROSPECTIVE JUROR MCKIBBEN: Here.
16 THE CLERK: James Miller.
17 PROSPECTIVE JUROR MILLER: Here.
18 THE CLERK: Angie Campbell. Angie Campbell.
19 Marrio Harper.
20 PROSPECTIVE JUROR HARPER: Here.
21 THE CLERK: Val Klemm.
22 PROSPECTIVE JUROR KLEMM: Here.
23 THE CLERK: Mohammad Zamanian.
24 PROSPECTIVE JUROR ZAMANIAN: Here.
25 THE CLERK: Chandra Morris.

1 PROSPECTIVE JUROR MORRIS: Here.
2 THE CLERK: Eleanor Leavitt-Moore. Eleanor Leavitt-
3 Moore.
4 Johnnie Jones.
5 PROSPECTIVE JUROR JONES: Here.
6 THE CLERK: Samuel Branum.
7 PROSPECTIVE JUROR BRANUM: Here.
8 THE CLERK: Shirley McNeillis.
9 PROSPECTIVE JUROR MCNEILIS: Here.
10 THE CLERK: Richard Chaniliere.
11 PROSPECTIVE JUROR CHANILIERE: Here.
12 THE CLERK: Gwendolyn Baron.
13 PROSPECTIVE JUROR BARON: Here.
14 THE CLERK: Victoria Elford.
15 PROSPECTIVE JUROR ELFORD: Here.
16 THE CLERK: Norman Rowland.
17 PROSPECTIVE JUROR ROWLAND: Here.
18 THE CLERK: Pilar Steelsmith. Pilar Steelsmith.
19 Roger Goodsell.
20 PROSPECTIVE JUROR GOODSELL: Here.
21 THE CLERK: Carl Cole. Carl Cole.
22 Jeffrey Sandersfeld.
23 PROSPECTIVE JUROR SANDERSFELD: Here.
24 THE CLERK: Kenneth Konops.
25 PROSPECTIVE JUROR KONOPS: Here.

1 THE CLERK: John Diaz.
2 PROSPECTIVE JUROR DIAZ: Here.
3 THE CLERK: Jason Tollefson. Jason Tollefson.
4 PROSPECTIVE JUROR TOLLEFSON: Here.
5 THE CLERK: Debra Kleppetsch. Debra Kleppetsch.
6 Connie Medina.
7 PROSPECTIVE JUROR MEDINA: Here.
8 THE CLERK: Carolyn Smith.
9 PROSPECTIVE JUROR SMITH: Here.
10 THE CLERK: Paul Bolen.
11 PROSPECTIVE JUROR BOLEN: Here.
12 THE CLERK: Valinda Waber.
13 PROSPECTIVE JUROR WABER: Here.
14 THE CLERK: Anna Lien. Anna Lien.
15 Roger Sims.
16 PROSPECTIVE JUROR SIMS: Here.
17 THE CLERK: Shelley Gremmels.
18 PROSPECTIVE JUROR GREMMELS: Here.
19 THE CLERK: Edward Paetsch.
20 PROSPECTIVE JUROR PAETSCH: Here.
21 THE CLERK: Samantha Jones.
22 PROSPECTIVE JUROR JONES: Here.
23 THE COURT: All right. Will counsel stipulate we
24 may proceed the absence of those who have failed to appear in
25 state?

1 MR. ROGER: Yes, Your Honor.
2 MR. LaPORTA: Yes, Your Honor.
3 MS. McMAHON: Yes, Your Honor.
4 THE COURT: All right, thank you. The clerk has
5 drawn twelve names from the panel and put them on -- in the
6 jury box and I'd like the clerk now to swear in everybody, all
7 the prospective jurors. Everybody please stand up, raise your
8 right hand and be sworn.
9 PROSPECTIVE JURORS ARE SWORN
10 THE COURT: All right, on behalf of the State I
11 would like the State briefly to state the nature of this case
12 to the prospective jurors and indicate the names of the
13 witnesses that you might call. Ladies and gentlemen, please
14 be cognizant of the possible witnesses that the State might
15 call. They're going to name a whole bunch of people. They
16 might not call everybody, but they're going to name a whole
17 bunch of people, and I'm going to ask you if you know any of
18 these witnesses.
19 Mr. Roger on behalf of the State?
20 MR. ROGER: Thank you. Good morning ladies and
21 gentlemen, my name is David Roger; I'm a prosecutor with the
22 Clark County District Attorney's Office, and Mr. David
23 Schwartz will be presenting this case to you as well.
24 This is the case of State of Nevada versus Marlo
25 Thomas. This involves a number of different charges that

1 arose out of the -- an incident that occurred on April 15th,
2 1996 at the Lone Star Steakhouse located at Cheyenne and
3 Rainbow.

4 The charges are conspiracy to commit murder and/or
5 robbery; two counts of murder with use of a deadly weapon.
6 Matthew Gianakis is one victim, Carl Dixon is another.
7 Robbery with the use of a deadly weapon, and the manager of
8 the steakhouse is Vincent Oddo, O-D-D-O. Burglary while in
9 possession of a firearm; a first degree kidnapping with use of
10 a deadly weapon.

11 The witnesses who may be called in this case are as
12 follows: E. Alva of the Coroner's Office; Dave Bailey, Nevada
13 Highway Patrol; Shirley Baker; Susan Baker, a nurse at UMC;
14 Mary Boucher; Mike Bryant, Detective, homicide; Brian Butcher;
15 Al Cabrales, a criminalist; Terry Cook, a serologist;
16 Custodian of Records, Rebel Station; Custodian of Records,
17 Lone Star Steakhouse; A. Daugenbaugh, Coroner's Office; Fred
18 Dixon, the victim's father; Linda Errichetto; Paramedic Eulow
19 from Mercy; Danise Fitz; Joe Forte, Detective, North Las Vegas
20 Police Department; D. Garness, an officer; Alexander Gianakis;
21 G. Golbart; Sheldon Green, Chief Medical Examiner; Denise
22 Hall; Kenya Hall; Richard Hansell, a fingerprint examiner; M.
23 Hawk, officer; Stephen Hemmes; Robert Hoferer, Mineral County
24 Sheriff's Office; David Hudson; Robert Jordan, Deputy Medical
25 Examiner; S. Junge, K-9 Officer; Kalani, trauma room

1 intervention UMC; Vernon Kingsley; Phyllis LeFever; Dave
2 Lewis; a John Lewis; John -- Sergeant John Lewis; D. Light, of
3 Coroner's Office; Mercy Medic, Long; Angela Love-Thomas; Mary
4 Ruth Luna; Kevin Manning, Sergeant of Homicide; Milt Matthews
5 of Metro Police; Terry Mayo, crime lab; Yolanda McClary,
6 criminalist; Debbie McCracken, crime lab; Detective David
7 Mesinar, Homicide; Lori Milbrant, Coroner's Office; M. Myers,
8 Fire Department; Charles Nash; Emma Nash; Sandy Oberhansli;
9 Vincent Oddo; D. Peterson, crime lab; D. Pond, Metro; Dave
10 Ruffino, criminalist; Michael Sexton, Mineral County Sheriff's
11 Office; Sharon Smith; Edward Smith; Barbara Smith; Carl
12 Snarr;, Sidney Sontag; Larry Spinosa, Lieutenant Homicide;
13 Monte Spoor, criminalist; S. Stubbs, Police Department; Dr.
14 Tate, UMC; James Thacker; S. Thomas; D. Toney, Metropolitan
15 Police Department; Carolyn True, nurse; Glenn Van Valkenburg;
16 Carol Van Valkenburg; J. Whitson; Wendy Cecil; Richard
17 Hansell; William Howe; Officer Dubrutz; Richard Staley; Donald
18 Cheneyworth; Kathy Barfuss; Doug Halbeck; Stanley Hyt; Raymond
19 Martinez; A-L-K-A-R-E-E-M Alkareem Hanifa H-A-N-I-F-A; Officer
20 Cooper; Officer Koehler; Officer Schultz; Charles Hank, Metro;
21 Norm Jahn, formerly of Metro; Kevin Johnson, Metro; Precilia
22 Beltran; Officer Holly; Ed Burgess; Alyse Hill; Norma Price;
23 Michael Compton; Loletha Jackson; Pamela Davis; Michael
24 Rodriguez; Robin Cotton [phonetic], Cellmark; Glenn Stockton
25 or John Stefan, and that's the end of it.

1 Thank you.

2 THE COURT: All right, thank you. Mr. LaPorta or
3 Ms. McMahon, you want to add anything, introduce yourselves
4 again and your client?

5 MR. LaPORTA: Thank you, Judge. Good morning
6 everybody. My name is Peter LaPorta. I'm a deputy in the
7 Nevada State Public Defender's Office. This is my co-counsel
8 right here, Lee McMahon. She's also a deputy in the State
9 Public Defender's Office. And this is our client Mr. Marlo
10 Thomas.

11 Our list of potential witnesses at this state are in
12 a state of flux, so I really -- rather than tell you who they
13 are, who -- people we may never call, I'll refrain from doing
14 so at this time.

15 Thank you very much.

16 MS. McMAHON: Thank you.

17 THE COURT: Thank you, Mr. LaPorta.

18 Ladies and gentlemen, I'm going to ask a few
19 questions of the jury panel as a whole. When -- if any of you
20 have any affirmative answer just please raise your hand, state
21 your Jury ID number and name and briefly -- any of you -- any
22 of you acquainted with the defendant in this case, Marlo
23 Thomas? Or the defendant's attorneys, Mr. Pete LaPorta?

24 Yes?

25 PROSPECTIVE JUROR LEVIN: No, I know Lee McMahon.

1 THE COURT: All right, or the attorneys in this case
2 for the defense, Mr. Peter LaPorta, or Mr. [sic] Lee McMahon?
3 All right, just state your name and your Jury ID Number.
4 PROSPECTIVE JUROR LEVIN: Juror #396, Marchelle
5 Penny Levin.
6 THE COURT: And do you -- who are you acquainted
7 with?
8 PROSPECTIVE JUROR LEVIN: I'm acquainted with
9 several of them. I know Ms. McMahon. I haven't seen her in
10 many years, but I know her.
11 THE COURT: All right.
12 PROSPECTIVE JUROR LEVIN: I'm a reporter, I know a
13 lot of people on the witness list.
14 THE COURT: Oh, a reporter for who?
15 PROSPECTIVE JUROR LEVIN: I was covering crime for
16 the Sun newspaper and I'm with Showbiz Magazine for the --
17 THE COURT: Okay. Thank you. Anybody else? Any of
18 you acquainted with the Deputy District Attorneys assigned to
19 handle this case, Mr. David Roger or Mr. David Schwartz, or
20 any of the potential witnesses that Mr. Roger mentioned that
21 he might call, again there's a full list, he's not going to
22 call everybody, but let's start -- anybody in the back? No.
23 All right, over here, just -- where -- anybody in the back?
24 Stand up, state your name and your Jury ID Number
25 and indicate to us who you know and the attorneys will jot

1 that down, please.

2 PROSPECTIVE JUROR FOX: Sofia Fox, Number 367. My
3 husband's a police officer. A lot of the police officers that
4 you mentioned, I've been at several functions with them.

5 THE COURT: Okay.

6 PROSPECTIVE JUROR FOX: I don't know if that's good
7 enough.

8 THE COURT: Well, we're just trying to get
9 information now. Thank you very much.

10 Anybody else in the back? Yes, state your name your
11 Jury ID Number.

12 PROSPECTIVE JUROR HOWARD: Gladys Howard, 348. I
13 think I heard him say Emma Nash. I have an Emma Nash that's a
14 neighbor of mine. Who's one house between us. I don't know
15 if that the same one.

16 THE COURT: All right, thank you. Anybody else in
17 the back? No? Hear your name, sir?

18 PROSPECTIVE JUROR MACKENZIE: 306, Roderick
19 Mackenzie. I work for Metro. I've been employed with them
20 for thirteen years and I know most of the officers on this
21 case.

22 THE COURT: Are you a civil employee?

23 PROSPECTIVE JUROR MACKENZIE: Civil employee at the
24 911 building.

25 THE COURT: All right. Anybody else?

1 PROSPECTIVE JUROR WILSON: I work there too.
2 THE COURT: State your name and your Jury ID Number.
3 PROSPECTIVE JUROR WILSON: It' s Number 603 and I'm
4 Pamela Wilson and I'm a 911 operator.
5 THE COURT: All right.
6 PROSPECTIVE JUROR WILSON: So I've probably talked
7 to some of the officers on the phone or radio, but I don't
8 know them personally.
9 THE COURT: All right. Anybody else? No. Anybody
10 think you might have read or heard about this in the newspaper
11 or television, radio? All right, there's quite a few. All
12 right. Okay.
13 The case, ladies and gentlemen, it's not going to be
14 a month long trial or two months; this should be, and I'm
15 going to give you an estimate, the way I work and the way the
16 attorneys, who are all professional attorneys work, we work
17 hard, take a few breaks and start -- try to start early, we
18 should be done in one week and a half. I figure about seven
19 or eight working days, so it's not going to be a real lengthy
20 trial, ladies and gentlemen, that's what I'm estimating, give
21 or take a day or two. So that's the length of trial.
22 What we're going to do now is, we're going to
23 proceed to pick a completely fair and impartial jury, both to
24 the State of Nevada and to the defendant, and it's called Voir
25 Dire. We do that by asking a series of questions.

1 I get sick of myself repeating these questions
2 myself, but you're going to hear it a lot and we'll do the
3 best we can, and as quickly as possible to get a jury that's
4 completely fair and impartial, both to the State of Nevada and
5 to the defendant. And I'm going to ask each jury -- each
6 juror separately some questions. The attorneys have a right
7 to ask questions to follow up, and we'll proceed from there.

8 I don't want to pry into your personal affairs, and
9 I'm sure the attorneys don't want to pry into your personal
10 affairs, but we have to do that to convince ourselves that we
11 have a completely fair and impartial jury.

12 Saying that, ladies and gentlemen, I'd like our
13 bailiff, Hank, will take the -- I don't want to keep you
14 standing up, I think it's proper for you to go in the other
15 courtroom; it's empty, and relax, and Hank will show you where
16 to go and you'll have breaks and we'll call you when we need
17 to. So we'll be at ease until the jury that is standing are
18 escorted to the other courtroom.

19 (Pause in proceedings)

20 THE COURT: All right, ladies and gentlemen, my name
21 is Judge Joe Bonaventure. This is Department Number VI. We
22 have, of course, you've met Hank, our bailiff. This is
23 Robert, he's the Court Recorder. Now everything you say and
24 anything anybody says is recorded, so we can't have some hmm-
25 hmm, uh-huh, uh-huh, we have to say yes or no, keep our voices

1 up, and -- 'cause everything has to be taken down. We have
2 our -- Jean, who's our Court Clerk, who will read the
3 information to you when we're done. She's our clerk, she
4 handles all the paperwork.
5 Now, saying that, let's get right to it. Your name
6 is Constance Erickson?
7 PROSPECTIVE JUROR ERICKSON: Yes, sir.
8 THE COURT: And how long have you been in Las Vegas?
9 PROSPECTIVE JUROR ERICKSON: I live in Mesquite,
10 about a year and a half now.
11 THE COURT: All right.
12 PROSPECTIVE JUROR ERICKSON: I used to live in Las
13 Vegas quite some time ago though.
14 THE COURT: All right. And then so you moved from
15 Las Vegas, is that correct?
16 PROSPECTIVE JUROR ERICKSON: No, I moved --
17 THE COURT: Well, what's some time ago? You said
18 you lived in Las Vegas.
19 PROSPECTIVE JUROR ERICKSON: Right.
20 THE COURT: And you decided to move away.
21 PROSPECTIVE JUROR ERICKSON: Right.
22 THE COURT: Where did you move to?
23 PROSPECTIVE JUROR ERICKSON: Montana.
24 THE COURT: Well, what did you do in Montana as far
25 as work is concerned?

1 PROSPECTIVE JUROR ERICKSON: We bought a business.
2 THE COURT: What type of business?
3 PROSPECTIVE JUROR ERICKSON: Garbage business.
4 THE COURT: All right. Then you decided to move
5 back to Clark County here or whatever?
6 PROSPECTIVE JUROR ERICKSON: Right. And then we did
7 some traveling, worked out of the country and moved back to
8 Montana.
9 THE COURT: All right.
10 PROSPECTIVE JUROR ERICKSON: Bought another
11 business.
12 THE COURT: What type of business did you buy then?
13 PROSPECTIVE JUROR ERICKSON: We owned a bar and
14 grill and a little mini mall.
15 THE COURT: All right, then you sold that?
16 PROSPECTIVE JUROR ERICKSON: Yes.
17 THE COURT: And you decided to come back to Clark
18 County?
19 PROSPECTIVE JUROR ERICKSON: Yes.
20 THE COURT: No more traveling, that's it.
21 PROSPECTIVE JUROR ERICKSON: Nope, that's it.
22 THE COURT: All right. Are you retired now, sort
23 of?
24 PROSPECTIVE JUROR ERICKSON: I'm not, my husband is
25 retired, medically retired.

1 THE COURT: All right, and you still work here?
2 PROSPECTIVE JUROR ERICKSON: I still work, yes.
3 THE COURT: What do you do for a living now?
4 PROSPECTIVE JUROR ERICKSON: I manage the Watchman
5 Store up in Mesquite, in the Rancho Mesquite Casino.
6 THE COURT: Okay. And of course you're married and
7 your husband worked in all these businesses with you --
8 PROSPECTIVE JUROR ERICKSON: Right.
9 THE COURT: -- but now he's retired, he doesn't work
10 -- he's not medically fit to work, is that correct?
11 PROSPECTIVE JUROR ERICKSON: Right, mm-hmm.
12 THE COURT: Any children?
13 PROSPECTIVE JUROR ERICKSON: I have three children,
14 two boys and a girl.
15 THE COURT: And then when I ask children, I just
16 immediately say -- any old enough to work, just tell me what
17 they do for a living. Three children?
18 PROSPECTIVE JUROR ERICKSON: Yes.
19 THE COURT: What do they do for a living?
20 PROSPECTIVE JUROR ERICKSON: My -- both sons are
21 self-employed, my daughter, right now, is unemployed.
22 THE COURT: Okay, well, how are they self-employed?
23 What do they do?
24 PROSPECTIVE JUROR ERICKSON: My one son is a
25 mechanic.

1 THE COURT: All right.
2 PROSPECTIVE JUROR ERICKSON: My other son, he just
3 got out of the bar and grill with us; we just sold it.
4 THE COURT: Okay.
5 PROSPECTIVE JUROR ERICKSON: And he's kind of an
6 artist. He's making bows.
7 THE COURT: Okay. Have you ever been in the
8 military?
9 PROSPECTIVE JUROR ERICKSON: No, sir.
10 THE COURT: Are you acquainted with anybody in law
11 enforcement?
12 PROSPECTIVE JUROR ERICKSON: Not here in Clark
13 County, no.
14 THE COURT: In Montana?
15 PROSPECTIVE JUROR ERICKSON: No, I have a nephew by
16 marriage that's a police officer.
17 THE COURT: Where?
18 PROSPECTIVE JUROR ERICKSON: In Salt Lake City.
19 THE COURT: All right, anybody else in law
20 enforcement?
21 PROSPECTIVE JUROR ERICKSON: No.
22 THE COURT: I always follow up the question with
23 regarding, are you acquainted with anybody in law enforcement,
24 with the important question, and you have to take this as law,
25 that you're not to give greater weight or lesser weight to a

1 police officer's testimony simply because they are a police
2 officer. You understand that?

3 PROSPECTIVE JUROR ERICKSON: Mm-hmm.

4 THE COURT: You're to judge each witness, give it
5 the evidence -- give it the weight you deem you ought to give
6 any witness. You understand that? But just because they're a
7 police officer, you're not to give greater weight or lesser
8 weight --

9 PROSPECTIVE JUROR ERICKSON: Right.

10 THE COURT: -- simply because they're a police
11 officer. All right?

12 Would you abide by my rule of law in that case?

13 PROSPECTIVE JUROR ERICKSON: I think so.

14 THE COURT: All right. Have you ever been a victim
15 of a crime?

16 PROSPECTIVE JUROR ERICKSON: What kind of crime?

17 THE COURT: Well, again, people say, yeah, my house
18 was broken into, I got my car stolen, that type of thing, or
19 any other crime. I was mugged, or whatever it is. Yeah, not
20 a big -- I just want to know, have you ever been the victim of
21 a crime? I guess that's no. I mean, don't you know if you've
22 been the victim of a crime? You don't remember?

23 PROSPECTIVE JUROR ERICKSON: Not personally, no.

24 THE COURT: Okay. Have any of -- you or your family
25 or close family ever been a victim of a crime? No, all right,

1 thank you, ma'am.
2 Have you or any members of your family or close
3 friends ever been arrested for a crime?
4 PROSPECTIVE JUROR ERICKSON: No.
5 THE COURT: Okay. Have you ever served on a jury
6 before?
7 PROSPECTIVE JUROR ERICKSON: My son, I'm sorry.
8 THE COURT: Okay.
9 PROSPECTIVE JUROR ERICKSON: My middle son.
10 THE COURT: Your middle son. What was he arrested
11 for?
12 PROSPECTIVE JUROR ERICKSON: For drugs.
13 THE COURT: All right. How old was he? Was he a
14 teenager or was he an adult?
15 PROSPECTIVE JUROR ERICKSON: He was twenty.
16 THE COURT: And where was that? What state was he
17 arrested in?
18 PROSPECTIVE JUROR ERICKSON: In Montana.
19 THE COURT: All right. And what happened; what were
20 the results of that charge?
21 PROSPECTIVE JUROR ERICKSON: They put him in a
22 rehab.
23 THE COURT: Oh, is he okay now, I mean, everything's
24 fine?
25 PROSPECTIVE JUROR ERICKSON: Yes.

1 THE COURT: All right, that's good. I'm glad to
2 hear that. The fact that you had a son that had that problem,
3 now, you know, knock on wood, he's getting better, that's not
4 going to affect your deliberation in this case, is it?
5 PROSPECTIVE JUROR ERICKSON: No, sir.
6 THE COURT: All right. Have you ever served on a
7 jury before?
8 PROSPECTIVE JUROR ERICKSON: No, sir.
9 THE COURT: All right. You know at the conclusion
10 of this case I'm going to instruct you as what the law is on
11 this particular case. You understand that?
12 PROSPECTIVE JUROR ERICKSON: Mm-hmm.
13 THE COURT: All right. And it would be a violation
14 of your oath as a juror not to follow my instructions of law.
15 Okay? So could you promise me that you're going to follow my
16 instructions of law?
17 PROSPECTIVE JUROR ERICKSON: I believe so.
18 THE COURT: All right. Thank you.
19 Mr. Marlo Thomas is here by what we call an
20 information. The clerk, if you're picked as a juror, will
21 read to you that information. It's a mere charging document
22 and it's not evidence. You understand this?
23 PROSPECTIVE JUROR ERICKSON: Yes, sir.
24 THE COURT: All right. And Mr. Thomas sits here,
25 under the law, presumed to be innocent. Do you understand

1 that?

2 PROSPECTIVE JUROR ERICKSON: Yes, sir.

3 THE COURT: If you had to take a vote right now,
4 whether he was guilty or innocent, you'd have to vote not
5 guilty because you didn't hear any evidence. You understand
6 that? He's presumed to be innocent, okay?

7 PROSPECTIVE JUROR ERICKSON: Yes.

8 THE COURT: That State of Nevada has the burden of
9 proving Mr. Marlo Thomas guilty beyond a reasonable doubt.
10 Okay?

11 PROSPECTIVE JUROR ERICKSON: Yes, sir.

12 THE COURT: Okay. Is there any reason then as far
13 as the questions I've asked you so far that you couldn't be a
14 completely fair and impartial juror?

15 PROSPECTIVE JUROR ERICKSON: I believe I could be
16 fair and impartial, but I don't believe that mentally I'm
17 capable of sitting through this jury and handling the stress
18 of the -- I don't --

19 THE COURT: Do you have any problem? I mean, or is
20 that -- you just feel that --

21 PROSPECTIVE JUROR ERICKSON: No, sir, I -- I've had
22 a -- I've been hospitalized twice in the mental facility.
23 I've put myself in twice. And I just don't feel that I would
24 be a good person to be sitting here. I don't know -- I have a
25 lot of my own demons I have to take care of.

1 THE COURT: State want to say anything or?
2 MR. SCHWARTZ: No, Your Honor.
3 MR. LaPORTA: No, Your Honor, we have no problem.
4 THE COURT: Any objection we excuse her? If she has
5 those problems we -- 'cause I could tell she's a little
6 nervous now and I thought it was my raising my voice, but I
7 guess that -- why don't you report back to Room 1013, all
8 right? And tell the Commissioner I excuse you.
9 Clerk, will call another prospective juror?
10 THE CLERK: Joseph Hannigan?
11 THE COURT: Please take that same seat, sir.
12 Sir, how long have you been in Las Vegas?
13 PROSPECTIVE JUROR HANNIGAN: About four years.
14 THE COURT: Where did you come from?
15 PROSPECTIVE JUROR HANNIGAN: Boston.
16 THE COURT: And what did you do in Boston as far as
17 employment is concerned?
18 PROSPECTIVE JUROR HANNIGAN: I was a florist.
19 THE COURT: All right. What do you do here now?
20 You moved here four years ago, what type of work do you do?
21 PROSPECTIVE JUROR HANNIGAN: Right now I'm working
22 for a wholesale florist.
23 THE COURT: Okay, are you married?
24 PROSPECTIVE JUROR HANNIGAN: Yes, sir.
25 THE COURT: Does your wife work?

1 PROSPECTIVE JUROR HANNIGAN: Yes, sir.
2 THE COURT: What does she do?
3 PROSPECTIVE JUROR HANNIGAN: She works as a
4 telemarketer for Bonanza Beverage.
5 THE COURT: Okay. Children?
6 PROSPECTIVE JUROR HANNIGAN: Yes, both married.
7 THE COURT: What do they do for a living?
8 PROSPECTIVE JUROR HANNIGAN: One is a computer
9 salesperson and the other is a salesperson at the Dog Imports
10 [phonetic].
11 THE COURT: All right. Have you ever been in the
12 military?
13 PROSPECTIVE JUROR HANNIGAN: No, sir.
14 THE COURT: Are you acquainted with anybody in law
15 enforcement?
16 PROSPECTIVE JUROR HANNIGAN: Not here; in Boston,
17 yes.
18 THE COURT: Okay, friends or just --
19 PROSPECTIVE JUROR HANNIGAN: Just friends.
20 THE COURT: Okay.
21 PROSPECTIVE JUROR HANNIGAN: A casual acquaintance.
22 THE COURT: Casual acquaintances. Is the fact that
23 you have casual acquaintances in law enforcement in Boston,
24 it's not going to affect your jury deliberation in this case?
25 PROSPECTIVE JUROR HANNIGAN: No, sir.

1 THE COURT: You're not to give greater weight or
2 lesser weight to a police officer's testimony simply because
3 they're police officers, do you understand that?
4 PROSPECTIVE JUROR HANNIGAN: I understand.
5 THE COURT: All right. Have you ever been the
6 victim of a crime?
7 PROSPECTIVE JUROR HANNIGAN: Yes.
8 THE COURT: What was that?
9 PROSPECTIVE JUROR HANNIGAN: I had a business in
10 Boston back in 1960 and we were held up.
11 THE COURT: All right, so some person or persons
12 came in?
13 PROSPECTIVE JUROR HANNIGAN: Persons, yeah.
14 THE COURT: Did they have any weapons?
15 PROSPECTIVE JUROR HANNIGAN: No, they didn't show
16 any.
17 THE COURT: All right, they just said, give me your
18 money and you gave them your money and that was -- did you
19 ever have to testify in court?
20 PROSPECTIVE JUROR HANNIGAN: No, they never caught
21 'em.
22 THE COURT: All right. The fact that that incident
23 happened, that's not going to affect your deliberation in this
24 case, is it? You're not going to hold that against the State
25 of Nevada because the authorities didn't catch them, are you?

1 PROSPECTIVE JUROR HANNIGAN: Oh, no.
2 THE COURT: And you're not going to hold that
3 against the defendant because of that you -- in 1960 that you
4 had that incident, are you?
5 PROSPECTIVE JUROR HANNIGAN: No, sir.
6 THE COURT: All right. Have you or anyone closely
7 associated with you ever been arrested for a crime?
8 PROSPECTIVE JUROR HANNIGAN: Yes, sir.
9 THE COURT: Who was that?
10 PROSPECTIVE JUROR HANNIGAN: I was arrested for
11 setting up and promoting a lottery.
12 THE COURT: In a --
13 PROSPECTIVE JUROR HANNIGAN: In Massachusetts.
14 THE COURT: In Massachusetts. Was that a
15 misdemeanor, felony?
16 PROSPECTIVE JUROR HANNIGAN: No, it was a felony.
17 THE COURT: Well, what happened? What were the
18 results?
19 PROSPECTIVE JUROR HANNIGAN: Found innocent of all
20 charges.
21 THE COURT: You went through a trial?
22 PROSPECTIVE JUROR HANNIGAN: Yes, sir.
23 THE COURT: All right. The fact that you had that
24 unfortunate incident, that's not going to affect your
25 deliberations in this case, is it?

1 PROSPECTIVE JUROR HANNIGAN: No.
2 THE COURT: Okay. Did you ever serve on a jury
3 before?
4 PROSPECTIVE JUROR HANNIGAN: No, sir.
5 THE COURT: Are you going to be able to follow my
6 instructions?
7 PROSPECTIVE JUROR HANNIGAN: Oh, yes, sir.
8 THE COURT: All right. That's the sort of the
9 personal background I'll go into everyone with. But the
10 second thing I'd like to talk to you about, and I'm sure
11 you've all answered these questionnaires regarding your -- the
12 death penalty aspect of this case. As you know the State has
13 filed a notice of intent to the death penalty. That basically
14 means this case, then, could be two phases. One would be the
15 trial phase, and if needed, one will be the penalty phase.
16 At the trial phase you're to determine whether or
17 not the defendant is guilty and if you find him guilty of
18 first degree murder, then we go into the penalty phase. You
19 understand that?
20 PROSPECTIVE JUROR HANNIGAN: Yes, sir.
21 THE COURT: At the penalty phase you'll have three
22 options; life with the possibility of parole; life without the
23 possibility of the parole, or the death penalty. That's the
24 options that the jury would have if, and only if, it goes into
25 the penalty phase. You understand that?

1 PROSPECTIVE JUROR HANNIGAN: Yes, sir.
2 THE COURT: This case doesn't have to go into the
3 penalty phase, it's up to the jury. If, and only if, the jury
4 finds the defendant guilty of first degree murder, then it
5 goes into the penalty phase. You understand that?
6 PROSPECTIVE JUROR HANNIGAN: Yes, sir.
7 THE COURT: All right. Do you have any problems
8 with at least considering all three options in this particular
9 case?
10 PROSPECTIVE JUROR HANNIGAN: I don't think so, sir.
11 THE COURT: All right. Any reason then you couldn't
12 be a fair and impartial juror in this case?
13 PROSPECTIVE JUROR HANNIGAN: I think I could be.
14 THE COURT: Thank you very much.
15 The State pass for cause or questions?
16 MR. SCHWARTZ: We pass for cause, Your Honor.
17 THE COURT: Thank you very much.
18 Defense, pass for cause or questions?
19 MR. LaPORTA: I have some questions.
20 THE COURT: Sure.
21 MR. LaPORTA: Good morning, Mr. Hannigan. How are
22 you?
23 PROSPECTIVE JUROR HANNIGAN: Good morning. Fine,
24 thank you.
25 MR. LaPORTA: Good. Mr. Hannigan, in your

1 questionnaire in the section on your attitudes towards the
2 death penalty, you answered some questions and I want to make
3 sure that we're absolutely clear on this, because this is
4 important to all the parties that are involved here in this
5 matter.

6 You stated that you felt you were unsure -- this is
7 in question 91. It's asking you to consider background
8 information as to death -- death without, as to life in prison
9 without, and life in prison with the possibility of parole.
10 You answered all three as you were unsure as to whether you
11 would consider background information. Can you explain that?

12 PROSPECTIVE JUROR HANNIGAN: I don't think I was
13 really sure about what you meant by background information.

14 MR. LaPORTA: Well, let me just spell that out to
15 you --

16 PROSPECTIVE JUROR HANNIGAN: Okay.

17 MR. LaPORTA: -- just to clear that up. Considering
18 things like the defendant's background, his academic
19 background, his mental and physical health background, his
20 family background, and in addition to that, you know, his
21 criminal background and things of that nature.

22 PROSPECTIVE JUROR HANNIGAN: Right. I would
23 probably have to say that I would -- I would -- have -- would
24 consider it.

25 MR. LaPORTA: You would consider, and you would

1 consider all those areas?

2 PROSPECTIVE JUROR HANNIGAN: Have to, I guess, yes.

3 MR. LaPORTA: All right. Now, you recognize that we
4 won't get to a penalty phase unless Mr. Thomas is convicted of
5 first degree murder?

6 PROSPECTIVE JUROR HANNIGAN: I understand that.

7 MR. LaPORTA: And by definition, first degree
8 murder, the jury has to find that Mr. Thomas intended to do
9 exactly what he did, or that the State says he did, which is
10 two homicides. You understand that?

11 PROSPECTIVE JUROR HANNIGAN: Yes, sir.

12 MR. LaPORTA: Or that he was -- committed a felony
13 while the two homicides occurred. You understand that?

14 PROSPECTIVE JUROR HANNIGAN: Yes, sir.

15 MR. LaPORTA: Now, considering that, okay, that you
16 would have to have found that he intended to do exactly what
17 the State alleges he did. Murder. Do you believe in your
18 mind that you could consider all three possible sentences
19 here, or punishments, death, life without, and life with, in
20 that -- after having come to that conclusion?

21 PROSPECTIVE JUROR HANNIGAN: Yes, I think I could.

22 MR. LaPORTA: So you believe that in your mind there
23 are situations where somebody could be convicted of having
24 committed two homicides intentionally and you would consider
25 equally life with the possibility of parole?

1 PROSPECTIVE JUROR HANNIGAN: Yes, sir.

2 MR. LaPORTA: Okay. You also stated in your
3 questionnaire that, Question 99, Section B., a defendant --
4 and I don't mean to embarrass you or anyone else in this
5 situation, but there are just -- these are questions that we
6 need to inquire into. A defendant in a criminal trial should
7 be required to prove his or her innocence.

8 PROSPECTIVE JUROR HANNIGAN: Yeah, you know, I --

9 MR. LaPORTA: Now you say you strongly agreed with
10 that.

11 PROSPECTIVE JUROR HANNIGAN: I think when I was
12 reading that I misunderstood the question because everyone
13 really is innocent until proven guilty. And I was -- my mind
14 was wandering, I think.

15 MR. LaPORTA: Okay. You understand that that's the
16 State's burden here?

17 PROSPECTIVE JUROR HANNIGAN: Yes.

18 MR. LaPORTA: That the defense has absolutely no
19 burden?

20 PROSPECTIVE JUROR HANNIGAN: Yes, sir.

21 MR. LaPORTA: All right, and you will not hold it
22 against Mr. Thomas if he does not take the witness stand? You
23 understand that's his right?

24 PROSPECTIVE JUROR HANNIGAN: Yes.

25 MR. LaPORTA: I have no further questions, Your

1 Honor. Pass for cause.
2 THE COURT: Thank you. Mr. LaPorta.
3 Mr. Liske.
4 PROSPECTIVE JUROR LISKE: Mm-hmm. Liske.
5 THE COURT: How long you been in Las Vegas?
6 PROSPECTIVE JUROR LISKE: Six years.
7 THE COURT: Where did you come from?
8 PROSPECTIVE JUROR LISKE: I grew up in Reno.
9 THE COURT: All right, what did you do in Reno
10 before you left as far as employment?
11 PROSPECTIVE JUROR LISKE: I worked in beer
12 wholesale, Moore Distributing.
13 THE COURT: All right. What do you do here now?
14 PROSPECTIVE JUROR LISKE: I work in beer and liquor
15 wholesale.
16 THE COURT: What is it?
17 PROSPECTIVE JUROR LISKE: Beer and liquor wholesale.
18 THE COURT: Okay. Are you married?
19 PROSPECTIVE JUROR LISKE: Uh-huh.
20 THE COURT: Does your wife work?
21 PROSPECTIVE JUROR LISKE: No, she does not.
22 THE COURT: Children?
23 PROSPECTIVE JUROR LISKE: Uh-huh, ages one and
24 three.
25 THE COURT: Have you ever been in the military?

1 PROSPECTIVE JUROR LISKE: No.
2 THE COURT: Are you acquainted with anybody in law
3 enforcement?
4 PROSPECTIVE JUROR LISKE: Uh-huh, just friends.
5 THE COURT: Here in town?
6 PROSPECTIVE JUROR LISKE: Mm-hmm.
7 THE COURT: Did you say yes or no, sir? You can't
8 say -- remember I said you can't mm-hmm, uh-huh, ah-ah, hey-
9 hey, you know, you got to say yes or no. All right?
10 PROSPECTIVE JUROR LISKE: Yes.
11 THE COURT: All right. The fact that you're
12 acquainted with some people in law enforcement, that's not
13 going to affect your deliberation in this case, is that
14 correct?
15 PROSPECTIVE JUROR LISKE: No.
16 THE COURT: And you know you're not to give greater
17 weight or lesser weight to a police officer's testimony simply
18 because they're a police officers. Do you understand that?
19 PROSPECTIVE JUROR LISKE: Yes, I do.
20 THE COURT: Okay. Have you ever been a victim of a
21 crime?
22 PROSPECTIVE JUROR LISKE: Yes.
23 THE COURT: What type of crime?
24 PROSPECTIVE JUROR LISKE: Car burglary, breaking in
25 to stereos.

1 THE COURT: How long ago was that?
2 PROSPECTIVE JUROR LISKE: Eight, nine years ago.
3 THE COURT: In Reno?
4 PROSPECTIVE JUROR LISKE: No, in California.
5 THE COURT: In California. All right, did they ever
6 catch the individuals?
7 PROSPECTIVE JUROR LISKE: No.
8 THE COURT: You never had to testify in court or
9 anything?
10 PROSPECTIVE JUROR LISKE: No.
11 THE COURT: And that's not going to affect your
12 deliberation, is it?
13 PROSPECTIVE JUROR LISKE: No.
14 THE COURT: Okay. Have you or anyone closely
15 associated with you ever been arrested for a crime?
16 PROSPECTIVE JUROR LISKE: No.
17 THE COURT: You ever serve on a jury before?
18 PROSPECTIVE JUROR LISKE: Uh-uh, no.
19 THE COURT: Will you be able to follow my
20 instructions?
21 PROSPECTIVE JUROR LISKE: Yes.
22 THE COURT: All right. The -- as I indicated, and
23 I'll say that a few times throughout, not to everybody, but
24 you know the information Mr. Marlo Thomas is brought here on
25 -- it's a charging document, it's called an information. You

1 understand that?

2 PROSPECTIVE JUROR LISKE: Yes.

3 THE COURT: And the information is a mere accusation
4 and not evidence. Do you understand that?

5 PROSPECTIVE JUROR LISKE: Yes.

6 THE COURT: A defendant in any criminal case in the
7 whole United States, any defendant is presumed to be innocent
8 until proven guilty. You understand that?

9 PROSPECTIVE JUROR LISKE: Yes.

10 THE COURT: And the State has the burden of proving
11 the defendant guilty beyond a reasonable doubt. Do you
12 understand that?

13 PROSPECTIVE JUROR LISKE: Yes.

14 THE COURT: Did you ever serve on a jury before?

15 PROSPECTIVE JUROR LISKE: No.

16 THE COURT: All right. In this case, it could
17 possibly, because this is a -- the State has seen fit to a
18 notice of intent to file a death penalty, if you are selected
19 as a juror the case might be divided into two phases. You
20 understand that?

21 PROSPECTIVE JUROR LISKE: Yes.

22 THE COURT: Phase one, first the jury will determine
23 if the defendant is guilty and punishment will not be
24 considered that time. You understand that?

25 PROSPECTIVE JUROR LISKE: Yes.

1 THE COURT: Second, if the -- if the jury finds the
2 defendant guilty of first degree murder, then the law of this
3 State requires that the jury set the punishment. Do you
4 understand that?
5 PROSPECTIVE JUROR LISKE: Yes.
6 THE COURT: At the time the Court will set a penalty
7 phase, only if the jury finds the defendant guilty of first
8 degree murder. You understand that?
9 PROSPECTIVE JUROR LISKE: Yes.
10 THE COURT: If the jury finds a lesser charge or if
11 the jury finds not guilty, we don't go into the penalty phase.
12 You understand that?
13 PROSPECTIVE JUROR LISKE: Yes.
14 THE COURT: At the penalty phase there's three
15 possible forms of punishment that the jury may consider. The
16 three possible punishments are the imposition of the death
17 penalty, life in prison without the possibility of parole and
18 life in prison with the possibility of parole. You understand
19 that?
20 PROSPECTIVE JUROR LISKE: Yes.
21 THE COURT: And in your present state of mind, can
22 you vote -- could you, in other words, keep an open mind and
23 could you consider each option? Each of those three options?
24 PROSPECTIVE JUROR LISKE: I think so.
25 THE COURT: Okay. Is there any reason you couldn't

1 be a completely fair and impartial juror in this case?

2 PROSPECTIVE JUROR LISKE: No.

3 THE COURT: Thank you very much, sir.

4 Questions or pass for cause?

5 MR. ROGER: Pass for cause, Your Honor.

6 THE COURT: Thank you. Questions or pass for cause,

7 Ms. McMahon?

8 MS. McMAHON: Thank you, Your Honor. I have a few
9 questions.

10 Good morning.

11 PROSPECTIVE JUROR LISKE: Morning.

12 MS. McMAHON: I've reviewed your questionnaire and
13 apparently because of the nature of your management position
14 your employees make deliveries there.

15 PROSPECTIVE JUROR LISKE: That's correct.

16 MS. McMAHON: So you obviously heard about an event
17 and the consequences. Is that correct?

18 PROSPECTIVE JUROR LISKE: That's correct.

19 MS. McMAHON: What -- I'm specifically going to ask
20 you about that. The question asked, whether because of the
21 information or exposure you had formed an opinion and the
22 options available to you were either a yes or a no, and you
23 wrote in not sure. Having sat here this morning and listened
24 to the Judge, do you feel that you can make a determination as
25 to guilt or innocence based on the testimony and evidence

1 that's presented to you here in Court, or in fact are you
2 going to be influenced by the statements or opinions or
3 expressions of the employees you supervise?

4 PROSPECTIVE JUROR LISKE: I'm still not sure. I
5 mean I think I could say I wouldn't be influenced, but I do
6 know some of the people that work there. I do have employees
7 that have gone in there, and we set the grand opening party
8 when the account opened. It's not a big customer, but we did
9 get to know a few people there. I don't know any of the
10 people in the individual case, but I know other employees
11 there.

12 MS. McMAHON: Let me phrase it to you this way then.
13 If you were sitting where my client Marlo Thomas is sitting
14 today, would you want someone with your exposure and the
15 things that you've heard or discussed, sitting in judgment on
16 you? Do you feel that it would be fair?

17 PROSPECTIVE JUROR LISKE: No.

18 MS. McMAHON: Your Honor, on that basis I'd request
19 the Court recuse the juror for cause.

20 THE COURT: Mr. Roger?

21 MR. ROGER: May I ask a few questions?

22 THE COURT: Yes.

23 MR. ROGER: Good morning.

24 PROSPECTIVE JUROR LISKE: Morning.

25 MR. ROGER: You understand that jury duty is a very

1 important obligation?

2 PROSPECTIVE JUROR LISKE: Mm-hmm, yes, I do.

3 MR. ROGER: Do you feel that you're up to that
4 obligation?

5 PROSPECTIVE JUROR LISKE: Yes.

6 MR. ROGER: You understand that the Court will
7 instruct you on what the law is?

8 PROSPECTIVE JUROR LISKE: Yes, sir.

9 MR. ROGER: Are you willing to follow the Court's
10 instructions?

11 PROSPECTIVE JUROR LISKE: Yes.

12 MR. ROGER: Now, each of us bring into this
13 courtroom our own everyday experience, and perhaps we know the
14 Lone Star Restaurant, maybe we've eaten there before, but your
15 calling is a higher one. You have to listen to the witnesses
16 and determine their credibility. Are you willing to do that?

17 PROSPECTIVE JUROR LISKE: I think so.

18 MR. ROGER: Are you willing to set aside any of the
19 personal experiences that you may have and judge this case,
20 based upon the evidence that you hear in court and the
21 instructions that the Court gives you?

22 PROSPECTIVE JUROR LISKE: I'm still not sure.

23 MR. ROGER: If the Court were to tell you that that
24 is in fact your obligation and you are to take an oath, are
25 you willing to abide by that oath?

1 PROSPECTIVE JUROR LISKE: Yeah, I would try my best.
2 MR. ROGER: Okay. You did not know either one of
3 the victims?
4 PROSPECTIVE JUROR LISKE: No, I don't think I knew
5 them.
6 MR. ROGER: Do you have any personal contact with
7 people at the Lone Star?
8 PROSPECTIVE JUROR LISKE: Only when I'm working with
9 my sales staff. If I'm working with my sales staff we deal
10 with the bar manager or the general manager.
11 MR. ROGER: How often do you personally have
12 experience, not your sales staff, but you personally.
13 PROSPECTIVE JUROR LISKE: Personally, myself,
14 probably four or five times a year.
15 MR. ROGER: Now the fact that you may go there four
16 or five times a year, could you set that aside, and listen to
17 the evidence and abide by your oath as a juror?
18 PROSPECTIVE JUROR LISKE: I'm still not sure.
19 MR. ROGER: Why aren't you sure?
20 PROSPECTIVE JUROR LISKE: I'm just not sure because
21 I know some of the people that were there and worked there. I
22 don't know, just because we opened that account. We had a lot
23 of talk in the office when this thing happened. I heard a lot
24 of stuff, so for me to totally put it out of mind that would
25 be very difficult.

1 MR. ROGER: But we're not telling you to put it out
2 of your mind, we're telling you to set it -- set it aside.
3 PROSPECTIVE JUROR LISKE: Right. I understand that.
4 MR. ROGER: You're saying that you're not sure that
5 you can do that?
6 PROSPECTIVE JUROR LISKE: No, I'm not.
7 MR. ROGER: No further questions, Judge.
8 MS. McMAHON: Your Honor, I renew my motion then to
9 recuse Mr. Liske for cause.
10 THE COURT: All right, report back to Room 1013,
11 sir. The clerk can call another prospective juror.
12 THE CLERK: Frederick Schneider.
13 THE COURT: Take that same seat Mr. Schneider.
14 How long you been in Las Vegas, sir?
15 PROSPECTIVE JUROR SCHNEITER: About five years.
16 THE COURT: Where did you come from?
17 PROSPECTIVE JUROR SCHNEITER: From California.
18 THE COURT: Well, what did you do in California as
19 far as work?
20 PROSPECTIVE JUROR SCHNEITER: I worked for a
21 computer micrographics company.
22 THE COURT: Now what do you do here now?
23 PROSPECTIVE JUROR SCHNEITER: I'm an electrician for
24 a company called Mass Technology.
25 THE COURT: All right. Are you married?

1 PROSPECTIVE JUROR SCHNEITER: Yes, I am.
2 THE COURT: Does your wife work?
3 PROSPECTIVE JUROR SCHNEITER: Yes.
4 THE COURT: Where does she work?
5 PROSPECTIVE JUROR SCHNEITER: She works at Wells
6 Fargo Bank.
7 THE COURT: Children?
8 PROSPECTIVE JUROR SCHNEITER: Yes, I have seven
9 daughters.
10 THE COURT: God bless.
11 PROSPECTIVE JUROR SCHNEITER: Yeah, thank you.
12 THE COURT: Happy father's day.
13 PROSPECTIVE JUROR SCHNEITER: Thank you.
14 THE COURT: Any of them that are old enough to work
15 or --
16 PROSPECTIVE JUROR SCHNEITER: Yes, my oldest one is
17 twenty-five, and she works at Valley Hospital. The next one
18 down is twenty-four, a student. The next one down is -- let's
19 see what is it -- she's twenty-one, she's a student and a
20 retail clerk. The next one down, retail clerk and student.
21 Next one down a student in high school, next one down a
22 student in high school, next one down a student --
23 THE COURT: That's good enough. Seven daughters?
24 PROSPECTIVE JUROR SCHNEITER: Yes.
25 THE COURT: No man children?

1 PROSPECTIVE JUROR SCHNEITER: Nope. Just me. I've
2 got two grand kids --
3 THE COURT: Keep trying.
4 PROSPECTIVE JUROR SCHNEITER: -- ones a male.
5 THE COURT: My father had four daughters and then he
6 had four sons right after that, so keep -- I don't to keep
7 trying, but it happens, you know.
8 PROSPECTIVE JUROR SCHNEITER: No, no.
9 THE COURT: All right. Have you ever been in the
10 military?
11 PROSPECTIVE JUROR SCHNEITER: No.
12 THE COURT: Are you acquainted with anybody in law
13 enforcement?
14 PROSPECTIVE JUROR SCHNEITER: Yes.
15 THE COURT: Who is that?
16 PROSPECTIVE JUROR SCHNEITER: My cousin works for
17 the D.E.A., prosecuting side here in Las Vegas.
18 THE COURT: Is that federal?
19 PROSPECTIVE JUROR SCHNEITER: Yes.
20 THE COURT: All right. What's his name?
21 PROSPECTIVE JUROR SCHNEITER: Tom Green.
22 THE COURT: Oh, is he a lawyer?
23 PROSPECTIVE JUROR SCHNEITER: Yes.
24 THE COURT: All right. The fact that Tom Green is
25 your cousin, it's not going to affect your deliberations in

1 this case is it?
2 PROSPECTIVE JUROR SCHNEITER: No.
3 THE COURT: You're not to give greater weight or
4 lesser weight and I know, he's probably a police officer,
5 peace officer, I guess, but anybody in law enforcement, you're
6 not to give greater weight to a police officer's testimony or
7 lesser weight, just so the same fact that just because they're
8 a police officer. You understand that?
9 PROSPECTIVE JUROR SCHNEITER: Mm-hmm.
10 THE COURT: All right. Have you ever been the
11 victim of a crime?
12 PROSPECTIVE JUROR SCHNEITER: Yes.
13 THE COURT: What was that?
14 PROSPECTIVE JUROR SCHNEITER: Household burglary and
15 auto theft.
16 THE COURT: When did that occur, the household
17 burglary?
18 PROSPECTIVE JUROR SCHNEITER: Both of them were back
19 in about '86 --
20 THE COURT: They ever catch anybody?
21 PROSPECTIVE JUROR SCHNEITER: -- and the car was in
22 '90. No.
23 THE COURT: Never had to appear in court?
24 PROSPECTIVE JUROR SCHNEITER: No.
25 THE COURT: That's going to affect your

1 deliberations in this case?
2 PROSPECTIVE JUROR SCHNEITER: No.
3 THE COURT: All right. Have you or anyone closely
4 associated with you ever been arrested for a crime?
5 PROSPECTIVE JUROR SCHNEITER: My brother for a DUI.
6 THE COURT: Here in town?
7 PROSPECTIVE JUROR SCHNEITER: No, in Oregon.
8 THE COURT: A misdemeanor?
9 PROSPECTIVE JUROR SCHNEITER: I think so.
10 THE COURT: What are the results of it?
11 PROSPECTIVE JUROR SCHNEITER: Probation plus rehab.
12 THE COURT: All right. And that's not going to
13 affect your deliberation, is it?
14 PROSPECTIVE JUROR SCHNEITER: No.
15 THE COURT: You don't hold that against the State of
16 Nevada because they prosecuted him?
17 PROSPECTIVE JUROR SCHNEITER: No.
18 THE COURT: All right. Have you ever served on a
19 jury before?
20 PROSPECTIVE JUROR SCHNEITER: Yes, I have.
21 THE COURT: How many times?
22 PROSPECTIVE JUROR SCHNEITER: Once in California.
23 It was a civil case.
24 THE COURT: All right, it was a civil case, you were
25 picked as a juror?

1 PROSPECTIVE JUROR SCHNEITER: Yes.
2 THE COURT: Were you picked as foreman?
3 PROSPECTIVE JUROR SCHNEITER: Yes.
4 THE COURT: Without telling me what the verdict was,
5 did your jury reach a verdict?
6 PROSPECTIVE JUROR SCHNEITER: Yes.
7 THE COURT: All right. So you know a little about
8 -- I'm going to instruct you as to what the law is on this
9 particular case at the conclusion?
10 PROSPECTIVE JUROR SCHNEITER: Yes.
11 THE COURT: You're going to follow my instructions?
12 PROSPECTIVE JUROR SCHNEITER: Yes.
13 THE COURT: And again the two phase thing, if it
14 goes into two phases, the first phase you're to determine
15 whether or not the defendant is guilty. You understand that?
16 PROSPECTIVE JUROR SCHNEITER: Yes.
17 THE COURT: If you determine, and only if you find
18 him guilty of first degree murder, then the second phase kicks
19 in, which is the penalty phase. You understand that?
20 PROSPECTIVE JUROR SCHNEITER: Yes.
21 THE COURT: And at that time the jury hears further
22 evidence and instructions and you're to choose the punishment
23 on this case, life with the possibility of parole, life
24 without the possibility of parole, or imposition of the death
25 penalty. Do you understand that?

IN THE SUPREME COURT OF THE STATE OF NEVADA

* * * * *

MARLO THOMAS,

Appellant,

v.

WILLIAM GITTERE, et al.,

Respondents.

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Jun 14 2019 03:05 p.m.
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District Court Case No.
96C136862-1

(Death Penalty Case)

APPELLANT'S APPENDIX

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Appeal from Order Dismissing Petition for Writ of Habeas
Corpus (Post-Conviction)
Eighth Judicial District Court, Clark County
The Honorable Stefany Miley, District Judge

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CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Nevada Supreme Court on June 14, 2019. Electronic Service of the foregoing APPELLANT'S APPENDIX shall be made in accordance with the Master Service List as follows:

Steven S. Owens
Chief Deputy District Attorney

/s/ Jeremy Kip

An Employee of the
Federal Public Defender,
District of Nevada

genetic history, patterns and effects of familial medical conditions,²⁸ and vulnerability to mental illness as well as exposure to substance abuse, poverty,²⁹ environmental toxins³⁰ and other factors that may have negatively influenced the health of the defendant and his family.³¹

Mitigation specialists must be familiar with the signs and symptoms of various mental illnesses, they must be vigilant in identifying specific signs and symptoms of mental illness(es) in a particular client, and they must bring this information to the attention of counsel in order to identify problems that need further exploration by a mental health expert.

Compiling a life history includes understanding the broader environment that affects the client and this requires gathering records and asking questions regarding culture,³² class, race and ethnicity, national origin, gender identity, sexuality, spirituality, and other factors that affect the client's individual identity and group allegiances. This is not a tangential inquiry. Rather, how a person perceives himself and his place in the world affects his motivation and understanding of his own conduct, status, interpersonal relationships, safety, honor, and obligations.³³ Identity profoundly affects how medical and mental illnesses are described and experienced by an individual and his community.³⁴ It is necessary to understand what the client, his family,

28. Daniel J. Wattendorf & Donald W. Hadley, *Family History: The Three-Generation Pedigree*, 72 AM. FAM. PHYSICIAN 441, 447 (2005).

29. See J. Lawrence Aber, Neil G. Bennett, Dalton C. Conley & Jiali Li, *The Effects of Poverty on Child Health and Development*, 18 ANN. REV. PUB. HEALTH 463, 478 (1997).

30. For information about toxic substances and their effects, see the website for the U.S. Department of Health and Human Services, Agency for Toxic Substances and Disease Registry, at <http://www.atsdr.cdc.gov>.

31. For articles on the topic of conducting comprehensive life history investigations in capital cases, see Leonard, *supra* note 14, at 1145-50; Leonard & Blume, *supra* note 20, at 64-65, and Stetler, *supra* note 14, at 1-4.

32. See Scharlette Holdman & Christopher Seeds, *Cultural Competence in Capital Mitigation*, 36 HOFSTRA L. REV. 883 *passim* (2008); see also Sean D. O'Brien, *When Life Depends On It: Supplementary Guidelines for the Mitigation Function of Defense Teams in Death Penalty Cases*, 36 HOFSTRA L. REV. 693, 753-55 (2008). Too often, "culture" is simplified and mistakenly "located in patterns of action and customs" rather than appreciated as a complex and ever-changing force. Elizabeth A. Carpenter-Song, Megan Nordquest Schwallie & Jeffrey Longhofer, *Cultural Competence Reexamined: Critique and Directions for the Future*, 58 PSYCHIATRIC SERVS. 1362, 1364 (2007). Rather, culture is "a dynamic process of shared meanings, located in and emerging from interactions between individuals." *Id.*

33. For a helpful theoretical discussion about the significance and components of identity, see VERN NEUFELD REDEKOP, *FROM VIOLENCE TO BLESSING* 31-60 (2002).

34. For a thorough explanation of how medical conditions are perceived in the Hmong culture and insight into misunderstanding of non-mainstream belief systems by American institutions, see ANNE FADIMAN, *THE SPIRIT CATCHES YOU AND YOU FALL DOWN: A HMONG CHILD, HER AMERICAN DOCTORS, AND THE COLLISION OF TWO CULTURES* (1997).

and his community considers behavioral norms in order to accurately interpret data that is gathered through observation, records, and interviews.³⁵ How others perceive an individual and his place in the world adds an additional layer of complexity to understanding the nature and magnitude of psychosocial stressors he encounters. The failure of mental health systems to accommodate cultural needs and responses helps explain why many capital clients have medical and mental conditions that were not identified prior to their arrest. As Dr. David Satcher, the Surgeon General of the United States, said in 2001: "Cultural misunderstandings between patient and clinician, clinician bias, and the fragmentation of mental health services deter minorities from accessing and utilizing care and prevent them from receiving appropriate care."³⁶

1. Conducting Life History Interviews

The purposes of life history interviews are to collect data, establish a relationship, and develop an understanding of the client and his milieu.³⁷ Preparation is the most important factor that determines whether a life history interview is productive. Reviewing relevant documents, communicating with the defense team, and determining the purpose of an interview are critical steps in preparing for an interview. During an interview, it is important to be fully attentive—to put aside your personal worries, assumptions, and biases—and to listen deeply to the person being interviewed.³⁸ Judging and placating are also barriers to deep listening and establishing a relationship with life history witnesses. Most often, general, clearly worded and open-ended questions render the most valuable information in a life history investigation, but narrow

35. The importance of culture in diagnosing and treating mental health issues is widely recognized among healthcare providers. For a discussion of cultural competence in mental health care, see Carpenter-Song et al., *supra* note 32, at 1362-64.

36. U.S. DEP'T OF HEALTH & HUM. SERVS., MENTAL HEALTH: CULTURE, RACE, AND ETHNICITY—A SUPPLEMENT TO MENTAL HEALTH: A REPORT OF THE SURGEON GENERAL 25 (2001), available at <http://www.surgeongeneral.gov/library/mentalhealth/cre/sma-01-3613.pdf>.

37. The growing study of life histories uses research methods that overlap with the basic skills needed for life history interviews in the context of mitigation. See, e.g., Foley Center for the Study of Lives at Northwestern University, <http://www.sesp.northwestern.edu/foley> (last visited Mar. 27, 2008); Center for the Study of Lives at the University of Southern Maine, <http://www.usm.maine.edu/cehd/csl/index.htm> (last visited Mar. 27, 2008); Henry A. Murray Archive: A Center for the Study of Lives, <http://www.murray.harvard.edu/frontpage> (last visited Mar. 27, 2008).

38. For a discussion of deep listening, see Listening Generously, The Medicine of Rachel Naomi Remen, <http://speakingoffaith.publicradio.org/programs/listeninggenerously/index.shtml> (last visited Mar. 27, 2008).

questions are sometimes needed to pinpoint life history information (for example, place of birth, names of schools, contact information for relatives). Often, follow-up questions are needed to clarify the content and meaning of information derived from interviews and records.

A mitigation specialist conducts a series of in-depth interviews with the defendant. This allows the mitigation specialist to observe, over time, the defendant's gait, mental state, affect regulation, memory, comprehension of writing and speech, adaptation to incarceration, capacity to form interpersonal relationships, and remorse.³⁹ Such insight is invaluable to the defense team, and it provides data that is significant to the assessments of the mental health experts. Further, if a defendant's mental illness presents difficulties between the defense team and the client, observations, data, and insight acquired by the mitigation specialist will inform mental health experts, who are then able to provide practical advice that allows the defense team to work constructively with the defendant, while understanding the limitations the mental health issue places on his ability to assist them.⁴⁰

It is common for family members to emphasize positive information about the defendant. Often, they do not understand why it is necessary to delve into painful aspects of their lives or look at their family's history three generations back. They need the time and respect of the mitigation specialist if they are to comprehend the process of a capital trial and the critical nature of life history information. It is common for physical, emotional, and/or sexual trauma in the lives of the client and his family members to come to light during life history investigations. Revealing trauma can be re-traumatizing and this process must not be rushed or minimized.⁴¹

Mitigation specialists typically conduct multiple interviews of the defendants' immediate family members, both in individual and group settings, and establish trusting relationships with them. These

39. Ethnographic techniques of observation are useful to the mitigation specialists. For a description of these techniques, see JAMES P. SPRADLEY, *PARTICIPANT OBSERVATION* (1980), and JAMES P. SPRADLEY, *THE ETHNOGRAPHIC INTERVIEW* (1979).

40. For additional guidance in working with persons suffering from serious mental illness, see XAVIER AMADOR, *I AM NOT SICK I DON'T NEED HELP!* (2000). For advice on working with persons with intellectual and developmental disabilities, see AM. ASS'N ON MENTAL RETARDATION, *MENTAL RETARDATION: DEFINITION, CLASSIFICATION, AND SYSTEMS OF SUPPORTS* 145-68 (10th ed. 2002). For guidance regarding interviewing persons with mental illness, see SHAWN CHRISTOPHER SHEA, *PSYCHIATRIC INTERVIEWING: THE ART OF UNDERSTANDING* (2d ed. 1998).

41. For a more thorough understanding of the nature and course of trauma, see JUDITH LEWIS HERMAN, *TRAUMA AND RECOVERY* (2d ed. 1997). For information and resources regarding trauma, see International Society for Traumatic Stress Studies, <http://www.istss.org/index.cfm> (last visited Mar. 27, 2008).

relationships provide a deeper understanding of a client's family milieu, as well as facilitate access to vital family history information.⁴² Special care should be taken to identify family members whose mental illness is or was similar to that of the defendant and alert the mental health expert, who will likely want to talk to these family members and carefully review their mental health records himself.

It takes time for family members to understand the nature of a sentencing phase in a capital trial and the important role they may have in developing mitigating evidence, including meeting with mental health experts.⁴³ Due to their close association to an accused murderer, numerous family members of capital clients report psychological and social consequences such as shame, shunning by co-workers, alienation from their support systems and religious community, debilitating depression, and Post-Traumatic Stress Disorder ("PTSD") -like symptoms.⁴⁴ This tumult can cause family members to miss work or perhaps even become unable to work and spiral into financial distress. As a result, the mental, emotional, cognitive, and financial abilities of family members to work with the defense team may be hampered. This is especially true in cases of intra-family murder, when family members are grieving the loss of loved ones to sudden, traumatic death and at the same time dealing with their profoundly conflicted feelings toward the accused.⁴⁵

Important knowledge and insight into the defendant, his family members, and their setting can come from neighbors, teachers, spiritual leaders, medical and counseling service providers, social workers, former attorneys, probation officers, and employers. It is necessary to locate and interview all people who have interacted with the defendant over time or at a critical time in the course of his life.⁴⁶ They hold

42. The work of oral historians can be instructive for mitigation specialists. They combine interview techniques with analysis and storytelling. For an excellent example of oral history techniques used to tell the story of a Southern black family, see DIANNE SWANN-WRIGHT, *A WAY OUT OF NO WAY: CLAIMING FAMILY AND FREEDOM IN THE NEW SOUTH* 107-26 (2002).

43. Sarah Elizabeth Richards, *How to Humanize a Killer*, SALON, June 7, 2006, http://www.salon.com/mw/feature/2006/06/07/mitigation_specialists/.

44. Elizabeth Beck, Brenda Sims Blackwell, Pamela Blume Leonard & Michael Mears, *Seeking Sanctuary: Interviews with Family Members of Capital Defendants*, 88 CORNELL L. REV. 382, 405-13 (2003); see ELIZABETH BECK, SARAH BRITTO & ARLENE ANDREWS, *IN THE SHADOW OF DEATH: RESTORATIVE JUSTICE AND DEATH ROW FAMILIES* 114-35 (2007).

45. For an understanding of the many challenges to persons faced with sudden, multiple, or traumatic death, see THERESE A. RANDO, *TREATMENT OF COMPLICATED MOURNING* 553-610 (1993).

46. For an example of how non-family witnesses provide mitigating evidence, see Alex Kotlowitz, *In the Face of Death*, N.Y. TIMES MAG., July 6, 2003, at 32, 37, 38, 46 (describing

firsthand information about the defendant as well as knowledge of adverse environmental conditions such as lead poisoning, toxic farm or industrial substances, or other serious health risks; for example, sub-standard housing that resulted in respiratory problems, insects or vermin that created medical problems, or major safety hazards that resulted in physical injuries.

It is necessary to find people who are aware of harmful psychosocial stressors in the community such as violence, drugs, specific crises such as riots or other traumatic events in the community, sub-standard schools and inadequate health services, migration and immigration issues, and how these stressors affected the well-being of the neighborhood.⁴⁷

Life history interviews provide first hand accounts of the client's life and anecdotal insight into the people and circumstances that influenced him, both negatively and positively. Interviews make it possible for the defense team, defense experts, and, ultimately, the fact-finder, to see the defendant through the lens of people who know him as a person rather than solely as a criminal.⁴⁸

2. Acquiring Life History Records

The mitigation specialist is required to seek and analyze copies of every record related to mitigating circumstances and rebutting the prosecution's case in aggravation. This means gathering all documents, including photographs, videos, and memorabilia, related to the defendant. While there is no checklist, this includes records related to births and deaths in the family, school (particularly special education), religious training, participation in sports and recreation, medical and mental health history and treatment, substance abuse history and treatment, psychological evaluations and treatment, social services, juvenile and adult criminal charges, military service, incarceration, immigration, and toxic environmental factors. Collection and analysis of life history records often confirm the recollections of witnesses as well as point to additional witnesses to interview.

mitigation efforts by defense attorneys who, in addition to family members, called teachers and foster parents of the defendant, and the high school coach of the defendant's stepbrother, to testify).

47. For an understanding of how community well-being affects individuals, see NAT'L RES. COUNCIL & INST. OF MED., FROM NEURONS TO NEIGHBORHOODS: THE SCIENCE OF EARLY CHILDHOOD DEVELOPMENT 328-36 (Jack P. Shonkoff & Deborah A. Phillips eds., 2000).

48. John H. Blume, Sheri Lynn Johnson & Scott E. Sundby, *Competent Capital Representation: The Necessity of Knowing and Heeding What Jurors Tell Us About Mitigation*, 36 HOFSTRA L. REV. 1035, 1040 (2008); William J. Bowers, *The Capital Jury Project: Rationale, Design and Preview of Early Findings*, 70 IND. L.J. 1043 (1995).

In cases where medical or mental health or substance abuse issues are present or suspected, it is necessary to review records related to the defendant's siblings, parents, and grandparents, and even farther back until no additional records can be located or no useful information is found. As the net is deepened, it must also be widened to include cousins, aunts, and uncles with substance abuse or medical or mental health problems.⁴⁹

Numerous medical conditions affect behavior and there is a wide range of general medical conditions with mental symptoms that are the direct physiological consequence of the general medical condition. These are described and summarized in the current *Diagnostic and Statistical Manual of Mental Disorders* in the section titled "Mental Disorders Due to a General Medical Condition."⁵⁰ This is yet another reason why it is imperative to gather records about the physical health history of the client and his biologically related family members. In many cases, it will be necessary to have a physician examine the client as well as engage an additional evaluator who is trained to identify mental symptoms that arise due to a general medical condition.

B. Organizing and Interpreting Life History Information for Use by Mental Health Experts

Just as observation, gathering records, and conducting interviews are ongoing activities, organizing and interpreting this data are continuous processes. A strong caution is needed regarding documentation. Mitigation specialists are expected to have a good understanding of the law regarding attorney-client privilege prior to producing any document. However, it is the duty of counsel to have a keen awareness of the relevant law. With one eye on preserving the attorney-client privilege and the other on insuring that any work product material created within the defense camp retains its confidentiality unless deliberately waived, counsel is responsible for determining what analytical tools should be utilized by the defense team.

49. For discussions about the importance and process of gathering life history records, see Blume & Leonard, *supra* note 20, at 64-65, John H. Blume & Pamela Blume Leonard, *Part I: Principles of Developing and Presenting Evidence of Mental Retardation*, CHAMPION, May 2002, at 58, 60-61 (May 2002), and ANDREWS, *supra* note 26, at 73-94.

50. AM. PSYCHIATRIC ASS'N, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS 181-90 (4th rev. ed. 2000) [hereinafter DSM-IV-TR]. This section of the DSM-IV is not exhaustive and there are many more medical conditions and medications that affect behavior. See *id.* at 13-26.

Often the most basic organizing tool is a life history chronology, which contains brief references to all significant documented events in the life of the client and his family, going back at least three generations.⁵¹ During the construction of a life history chronology, trends, patterns of behavior, causal factors, behavior that lies outside the developmental, social, and cultural norms for his age, and onset of mental, medical, and developmental vulnerabilities will emerge. For example, records indicating that the client's mother drank alcohol during her early teenage years would lead the mitigation specialist to question the mother, her family, and friends regarding her history of alcohol use, particularly whether she drank during pregnancy. To test and corroborate the responses, the mitigation specialist would gather the mother's school records, medical records, especially pre-natal and post-natal health care records, all mental health and substance abuse treatment records, the client's birth records, pediatric records (which may reflect slow growth and development of the client during childhood), school records (which may indicate social and academic problems as well as psychological evaluations), and social service or child protection agency records (which may contain references to the mother's drinking). Additional interviews would follow, focusing on family members, neighbors, co-workers, caregivers of the mother and the client who might have information about the mother's use of alcohol during pregnancy and the effects this had on the client. All of this information might give rise to a theory that the client suffers from Fetal Alcohol Syndrome,⁵² which, in turn, would lead to further evaluation by an appropriate mental health expert. All these steps are absolutely necessary for an accurate and reliable diagnosis by the expert evaluator.

Mitigation specialists compile various lists and charts summarizing the data they collect. Typical tabulations related to the clients and his family might include medications and hospitalizations, references to mother's pre-natal consumption of alcohol or other toxins, family disruptions and re-locations, periods of client stability and productivity, employment, significant anniversaries of loss, results of psychological evaluations, positive friends and influences, triggers for extreme emotional reactions, and disciplinary reports while incarcerated.

51. Wattendorf & Hadley, *supra* note 28, at 441.

52. See FETAL ALCOHOL SYNDROME: DIAGNOSIS, EPIDEMIOLOGY, PREVENTION, AND TREATMENT 63-81 (Kathleen Stratton, Cynthia Howe & Frederick Battaglia eds., 1996); cf. *Schiro v. Landrigan*, 127 S. Ct. 1933, 1943-44 (2007).

Useful graphic tools are genograms (often called "family trees") and ecological charts ("ecomaps").⁵³ Genograms are especially useful in introducing clients' intergenerational family history to mental health experts. Ecological charts map forces in the broader environment, such as neighborhood, institutions, and societal conditions that affected the client's relationships and social resources.⁵⁴ While genograms and ecomaps have long been used by social workers, they are gaining traction in medical care and medical care research. When used together, these tools enhance researchers' understanding of personal, family, and social relationships.⁵⁵

Mitigation specialists remain in frequent contact with defense counsel, use good judgment and initiative in independently following investigative leads, and work closely with other members of the defense team in thoroughly exploring the client's life history. The defense team—particularly the mitigation specialist—anticipates that mental health experts, once they have begun the assessment process, will identify further records and interviews for mitigation specialists to pursue and suggest additional methods of organizing the accumulating life history data.

III. THE ROLE OF MENTAL HEALTH EXPERTS IN CAPITAL LITIGATION

As in all criminal proceedings, decisions about whether and when to engage a mental health expert are in the hands of counsel, who must consider the client's mental state at every stage of the criminal proceedings.⁵⁶ As a general rule, it is never appropriate to expect a mental health expert to deliver a comprehensive mental health

53. ANDREWS, *supra* note 26, at 160-67; RITA DEMARIA, GERALD WEEKS & LARRY HOF, *FOCUSED GENOGRAMS: INTERGENERATIONAL ASSESSMENT OF INDIVIDUALS, COUPLES, AND FAMILIES* 3-23 (1999); MONICA MCGOLDRICK, RANDY GERSON & SYLVIA SHELLINGER, *GENOGRAMS: ASSESSMENT AND INTERVENTION* 13-61 (2d ed. 1999). Numerous websites offer free trials for computer-generated programs to make genograms. For assistance in creating ecological charts illustrating the broader setting of the client in family, neighborhood, small groups, organization, community, and society, see ANDREWS, *supra* note 26, at 179-81.

54. ANDREWS, *supra* note 26, at 102-03.

55. Gwen R. Rempel, Anne Neufeld & Kaysi Eastlick Kushner, *Interactive Use of Genograms and Ecomaps in Family Caregiving Research*, 13 J. FAM. NURSING 403, 408 (2007). See generally *Wiggins v. Smith*, 539 U.S. 510, 516, 524 (2003) (finding trial counsel performed inadequately at mitigation phase on consideration of the "elaborate social history report" presented in post-conviction proceedings by an expert social worker who "chronicled petitioner's bleak life history" through the integrated use of "state social services, medical, and school records, as well as interviews with petitioner and numerous family members").

56. ABA GUIDELINES, *supra* note 11, at Guideline 10.1, commentary; see also *id.* at Guideline 4.1, commentary.

assessment of the client until the life history investigation is complete. However, questions about competency to stand trial or to waive any rights, criminal responsibility, and insanity depend upon the mental state of the client at a specific time and the input of mental health experts may be needed to resolve these issues. Further, it is often valuable for a mental health expert to assess a client who is clearly exhibiting signs and symptoms of psychosis. Psychotic episodes are just that—episodic—and the severity of symptoms therefore wax and wane. The mental health expert's direct observation of a client in the throes of a florid psychotic episode or other acute deteriorated mental state can be invaluable in establishing mental health conditions.⁵⁷ But such an assessment would only represent a part of the data to be gathered for mitigation. Addressing an acute circumstance and formulating a mitigation narrative are different endeavors. For example, if, when he is arrested, the client suffers from mental illness so serious that it interferes with the ability of counsel to defend him, it would be prudent to engage a mental health expert to make preliminary observations and assist counsel to understand the condition. Then, after the life history investigation is complete, the expert would return to conclude a comprehensive assessment of the client. Proceeding in this fashion allows the mitigation specialist to help counsel frame the referral questions for the expert.

All too often, defense teams permit premature and inappropriate mental health evaluations to take place. Sometimes this includes needless and potentially harmful psychological testing. For example, unless the client has, or may have, a mental condition that relies on intelligence test scores, it is unnecessary to engage an expert to conduct such testing. Counsel should never allow a mental health assessment to take the place of a comprehensive life history investigation. Like brain imaging, psychological testing of any kind must always be approached with caution—never unless needed, always with full knowledge of its limitations, and in any event only after the mental health professional who has been carefully selected by counsel to do the testing has been thoroughly prepared with the background information necessary to make the testing meaningful.

In capital litigation, an accurate and reliable life history investigation is the foundation for developing and presenting pivotal mental health issues. Research has shown repeatedly that well-documented and effectively presented mental health evidence has a

57. Some examples of acute deteriorated mental states are an acute toxin-related organic brain syndrome, an acute episode of amnesia, and a post-traumatic almost catatonic state.

positive impact on capital jurors.⁵⁸ Therefore, the qualifications, experience, and credibility of mental health experts are critically important when selecting an expert. Competent mitigation specialists are versed in various specialties of mental health, and they assist attorneys in identifying the area(s) of mental health expertise needed in a particular case as well as advise counsel regarding the suitability of a specific mental health expert.

It is up to counsel to define the purpose of a mental health evaluation, discuss the purpose and scope of the assessment with the expert, explore biases and vulnerabilities of the expert, and conclude that the expert is suited to the case before engaging him.⁵⁹ Given the potentially infinite breadth of evidence admissible in mitigation, counsel must define the purpose of the evaluation. In addition to areas of inquiry such as competency, insanity, mental retardation, and statutory mitigating factors, counsel may ask the expert to address what impact a particular trauma had on the client's everyday functioning, what mental disabilities run in the family, or what forces shaped the client in his developmental years. Issues of fees, terms of payment, and expert availability should also be raised by counsel before hiring an expert of any sort.

Testifying mental health experts, counsel, and the mitigation specialist work together to ensure that the expert's findings are supported by credible evidence, the testimony is comprehensible to the fact finder, everything the expert writes and says is integrated with other evidence presented by the defense, and all of their opinions and testimony relate to the comprehensive mitigation themes put forward by the defense.⁶⁰ This way, the development of mitigation themes is substantiated by a variety of evidence, including the findings of the mental health experts, rather than counsel seeking an expert to support the theories and themes of defense. Further, a social history which uncovers compelling first-hand or documentary evidence of the client's symptoms which predates the offense can enable the defense team to persuasively counter charges of malingering or recent fabrication of mental illness.

58. Blume et al., *supra* note 48, at 1038; Stephen P. Garvey, *Aggravation and Mitigation in Capital Cases: What Do Jurors Think?*, 98 COLUM. L. REV. 1538, 1561-66 (1998).

59. It is critical for counsel and the mitigation specialist to investigate current standards of practice in any specialty or sub-specialty relevant to developing and presenting mitigating evidence.

60. For advice on how to accomplish these goals, see Blume & Leonard, *supra* note 20, at 69-70.

The mitigation specialist monitors and correlates life history data and keeps the defense team and mental health experts aware of information that supports, conflicts, or appears to conflict with emerging mitigation themes. For example, it is not unusual for persons with mental retardation to have a GED, hold a job, or marry. Therefore, a defense mental health expert in the assessment of adaptive skills of persons with mental retardation needs to be prepared to show that these ordinary acts do not rule out a diagnosis of mental retardation.⁶¹

Expert witnesses for the defense face an uphill battle in gaining the trust of jurors,⁶² so counsel, with assistance from the mitigation specialist, must make certain that mental health experts engage jurors by using language that is understood by everyday people. Every document relied upon by the expert must be scrutinized by counsel. Most importantly, when mental health issues are raised in mitigation, the expert must be able to credibly explain to jurors and fact-finders how mental health issues relate to their difficult task of determining an appropriate punishment in the wake of a terrible crime. Further, if the defense has a copy of a report prepared by a prosecution mental health expert, it should be provided to the mental health expert for the defense, along with any underlying data and documents on which the prosecution expert relied. In addition, counsel must consult with mental health experts regarding likely attacks the prosecution will make on the defense mental health expert through cross-examination or testimony of opposing experts.⁶³ No expert witness for the defense wants to be surprised on the stand by information defense counsel withheld or failed to provide. Such an omission wrecks the credibility of the defense as well as that of the witness.

A. *Qualifications of Mental Health Experts*

Most often, capital defense teams seek mental health experts who have experience in courtroom settings where, unlike in clinical practice, the prosecutor, jurors, judge, and media will scrutinize their findings and opinions. However, counsel must not rely solely on an expert's prior forensic experience when selecting a mental health expert. Experts who work solely in the forensic setting may keep their composure during

61. For an excellent documentary film that illuminates the strengths as well as vulnerabilities of Larry Selman, an adult man with mental retardation, see *THE COLLECTOR OF BEDFORD STREET* (Welcome Change Productions 2002). Information about Larry Selman and the film is available online at <http://thecollectorofbedfordstreet.com>. See also *infra* note 73 and accompanying text.

62. See Blume et al., *supra* note 48, at 1042.

63. ABA GUIDELINES, *supra* note 11, at Guideline 1.1, commentary.

testimony but they may risk losing clinical sharpness in their field. Forensic specialists tend to focus on narrow legal questions, such as competency and insanity, and are trained to be suspicious of malingering inmates or civil litigants who stand to gain financially from demonstrating disability. Clinicians, on the other hand, are healers who embrace empathy in order to build therapeutic alliances with their patients. As a result, many of the most appropriate experts in capital cases are experts who have the empathy and understanding of clinicians plus the communication skills of teachers. Defense teams need to look at an expert's clinical training, current experience, and earned expertise in his field.⁶⁴

An important qualification of mental health experts in capital trials is ethno-cultural competence. Institutions in general, and the field of mental health in particular, have been slow to recognize the needs and perspectives of non-white, non-mainstream patients.⁶⁵ Research shows that race and culture come into play when jurors decide a capital defendant's sentence,⁶⁶ so capital defense teams cannot afford to make this mistake. The defense team needs to consider the following factors when determining whether the expert is ethno-culturally competent to evaluate the defendant:

- Does he understand the ethno-cultural context of the information gathered?
- Can the expert effectively engage, communicate with, and form a working-relationship with a person of the defendant's ethno-cultural group and sub-groups to which the client may relate such as religious denomination, sexual orientation, gang, or drug culture?
- Does he have the capacity to integrate what we know about the impact of ethnicity and culture on human behavior into what we know about the behavioral sciences?
- Does the expert employ ethno-culturally appropriate theories and empirical data when rendering opinions?

64. Holdman & Seeds, *supra* note 32, at 902-03.

65. U.S. DEP'T OF HEALTH & HUM. SERVS., *supra* note 36, at 9.

66. Blume et al., *supra* note 48, at 1056-57.

Sometimes the fruits of a comprehensive life history investigation are best understood and conveyed by two or more experts. The nature and causes of the defendant's mental health difficulties might require the use of multiple or non-traditional experts. Anyone who has been hospitalized or has experienced a major illness in the last decade recognizes that assembling a team of correlated specialists is the norm in medical practice. This is also true in a number of mental health disorders.

For example, when mental retardation is at issue, the needed experts might include, among others, a neuropsychologist who specializes in administering intelligence testing to people with mental retardation, a social worker who is qualified to assess adaptive skills, a school psychologist who is an expert in special education, a pediatrician who specializes in developmental disorders, and a toxicologist who specializes in the effects of lead poisoning.⁶⁷

It is particularly important to seek out medical and mental health care providers who evaluated the defendant prior to his entry into the criminal justice system. A common tactic of the state is to attack defense mental health issues as fabricated excuses for the client's criminal behavior. Therefore, mental health conditions that pre-existed his crime are more credible than newly diagnosed conditions. Life history documents and lay witnesses provide additional depth of understanding about the pre-existing condition and add to the credibility of the claim.

It is common for defense teams to call upon pediatricians; neuropsychologists; school psychologists; social workers; psychopharmacologists; endocrinologists, who understand the effects of medical disorders on behavior; geneticists, who can assess the physical traits of Fetal Alcohol Syndrome; neurologists and neurosurgeons, who understand the effects of nerve and brain diseases; and radiologists or other experts in the interpretation of various types of scans and images,⁶⁸ experts in child neglect, child sexual abuse and other types of childhood psychological or physical trauma, the impact of environmental factors on childhood growth and development, or substance abuse.

67. AM. ASS'N ON MENTAL RETARDATION, *supra* note 40, at 51-96.

68. See Blume et al., *supra* note 48, at 1042-43 (discussing the use of neuroimaging by the defense team). As indicated in the text, *supra*, counsel should be cautious about requesting any kind of testing or imaging regarding brain function. Many mental illnesses are not apparent in brain scans, images, or tests. Counsel who are behaving in accordance with professional standards will go forward only after consulting with experts who are specifically knowledgeable about structural and functional abnormalities of the brain and who have been fully briefed with the background information necessary to make a reasoned decision.

Mitigation specialists must be familiar with all these areas of expertise, have access to resource materials on these subjects, and be prepared to assist counsel and expert witnesses in these areas. Further, they must be familiar with the potential contributions of experts such as culture brokers,⁶⁹ anthropologists, public health officials, sociologists and criminologists, and community leaders who can support the testimony of mental health experts and contribute to the strength of the mitigation case.

B. *The Mental Health Assessment Process*

The mental health assessment process involves at least four steps and often the various steps must be repeated to incorporate newly found information.

1. Gather Accurate and Reliable Data

In any mental health assessment, the expert's direct examination of the client is a primary source of information. Forensic evaluations rely upon multiple sources of information, some of which are provided to the expert by the parties, both defense and prosecution. Therefore, it is absolutely necessary for all forensic mental health experts to insure the accuracy of all the information upon which they rely. This is especially true in light of the adversarial nature of litigation and the necessary concerns about the defendant faking mental health symptoms or malingering regarding mental health matters. Another concern is the possibility that the defendant's mental health issues may distort his reporting. For example, it is well documented that persons with mental retardation often try to hide their cognitive deficits⁷⁰ and, by definition, persons with fixed delusions will have a distorted perception of events related to those delusional beliefs. Moreover, persons with serious mental health disorders often have little insight into their illness and inmates may hide their symptoms because mental illness increases the vulnerability of incarceration.⁷¹

69. A culture broker is a service provider who is able to advocate for the needs of persons from other cultures. *What Is a Culture Broker? Providing Culturally Competent Services to Foreign-Born Persons with Disabilities*, DISABILITY WORLD, Mar.-Apr. 2001, http://www.disabilityworld.org/03-04_01_news/culture.shtml.

70. Blume & Leonard, *supra* note 49, at 61; James W. Ellis & Ruth A. Luckasson, *Mentally Retarded Criminal Defendants*, 53 GEO. WASH. L. REV. 414, 430-31 (1985).

71. ROBERT B. EDGERTON, *THE CLOAK OF COMPETENCE: STIGMA IN THE LIVES OF THE MENTALLY RETARDED* 145-71 (1967).

Further, it is necessary for the mental health expert to assure the completeness of the information he relies upon. For example, the defendant often cannot remember important events from his early childhood and he may be unable to recall subsequent traumatic experiences. It is customary for the mental health expert to rely upon the mitigation specialist to provide additional sources of life history data gathered from records and interviews and it is imperative that the expert corroborate this information independently before he relies on it. For example, consider a client who has suffered the trauma of sexual abuse as a child but is unwilling or unable to recall the sexual abuse⁷² although another relative, who was sexually abused by the same person at the same time, reported that they were both sexually abused. In this example, the mitigation specialist would have conducted interviews and reviewed documents related to the sexual abuse, alerted counsel and the mental health expert, and worked to provide safety and respect for the client during these inquiries.

The expert will need to review documents related to the crime and investigation, including crime scene reports, confessions on paper and film, statements by witnesses who observed the defendant before, during, and after the crime, media reports pertaining to the demeanor of the defendant before and after arrest, and relevant investigative reports because the nature or quality or both of the person's behavior might be indicative of mental illness. For example, during the course of the crime the client might be saying things that are clearly paranoid and even consistent with other paranoid writings left by the client and paranoid beliefs shared with others long before the crime. Conversely, the nature and quality of the person's behavior might appear to be inconsistent with the findings of the mental health expert, who should be familiar with such reports and address the apparent inconsistency. For example, fact finders may erroneously assume that persons with mental retardation do not marry, have a family or meaningful relationships, or work.⁷³

72. For a more thorough understanding of the effects of trauma on a life history investigation, see Kathleen Wayland, *The Importance of Recognizing Trauma Throughout Capital Mitigation Investigations and Presentations*, 36 HOFSTRA L. REV. 923 (2008).

73. See *supra* note 61 and accompanying text. The documentary film *LIFESTYLES OF THE POOR AND UNKNOWN: INSIDE THE HEARTS AND MINDS OF A DEVELOPMENTALLY DISABLED COUPLE* (Nanson Productions 2003), offers insight into the complex lives of Marni and Kris Jamieson. Information about the film is available online at <http://www.nansonproductions.com/lifestyles.asp>. The story of Donna and Ricardo Thornton's struggle to marry and have a child was aired on *60 Minutes: The Unusual Parents* (CBS television broadcast Feb. 16, 1986). Information about *The Unusual Parents* is available at <http://www.cbsnews.com/stories/1999/09/21/60II/main63082.shtml>. Their story was the basis for a movie titled *Profoundly Normal* (CBS television broadcast Feb. 9, 2003). For insight into spiritual

2. Determine the Meaning of Data

Mental health experts determine the meaning of the data they have acquired by applying their clinical knowledge and skills combined with their ethno-cultural competency to analyze the context in which significant events occurred in the defendant's life as well as how the client's thoughts, feelings and behaviors were evidenced. Analysis would include asking and answering questions about all aspects of the defendant's life history. Here are some examples of the kinds of questions mental health clinicians frequently pose as they determine the meaning of data they have acquired:

- Were the defendant's childhood experiences normal experiences of childhood for similarly placed children?
- Did he experience more frequent or more severe stressful or traumatic events than other children growing up in similar situations?
- Were the thoughts, feelings, and behaviors of the defendant following the death of his brother evidence of a normal grieving process, complicated bereavement, or were they an episode of depression and, if so, how severe was the depression?
- Is the defendant expressing a commonly held belief of similarly placed individuals, an unusually strongly held belief, or a delusional belief?

A reliable life history investigation is an invaluable resource in addressing questions about the significance and meaning of data acquired by the mental health expert. The mitigation specialist should expect to be called on to locate additional records, witnesses, or research regarding particular ethno-cultural influences and societal conditions that influenced the defendant in order to insure the reliability of the expert's analysis of life history data.

lives of people with mental retardation, see the website for L'Arche, a worldwide network of faith-based communities where people with and without mental disabilities live, which is available at <http://www.larcheusa.org>. Audio files of *L'Arche: A Community of Brokenness and Beauty* (PBS radio broadcast Aug. 2, 2007) are available at <http://speakingoffaith.publicradio.org/programs/larche/index.shtml>.

The mental health expert must consider the defendant's behavior against an appropriate "norm" for similarly placed individuals. Therefore, part of the mitigation specialist's work is to establish the boundaries of normative behaviors, beliefs, and levels of functioning for individuals from the same background as the defendant; learn whether family members and others considered the defendant to be like other similarly placed individuals; ask how those outside of the defendant's family regarded the family's level of functioning; and gather observations from a variety of people in the defendant's sphere about the nature and causes of watershed events that may have had a significant impact on the defendant.

3. Render an Expert Opinion

The mental health expert must determine how to best describe the defendant and express his opinion using methods that are commonly accepted and terms that are commonly understood within his profession.

In clinical practice settings, mental health professionals are often required to render a diagnosis based on whether the person exhibits symptoms that correlate to listed symptoms for a mental disorder in the current Diagnostic and Statistical Manual of Mental Disorders.⁷⁴ Such a diagnosis is most useful as a means for one mental health professional to indicate to another mental health professional that a patient is exhibiting a particular cluster of symptoms. While handy as shorthand between colleagues, this method offers little insight into the cause of the diagnosed condition or the lived experience of the person who is diagnosed, including capital defendants.⁷⁵

A deeper understanding of the subject is rendered through a psychodynamic formulation, which takes into account influences in a subject's life that contributed to his mental state, considers how environmental and personality factors are relevant to analyzing the subject's symptoms, and considers how all these influences interacted with the person's genetic, temperamental, and biological makeup.⁷⁶ For example, using attachment theory, a commonly accepted theory of human behavior, a mental health expert might describe the long-term

74. See DSM-IV-TR, *supra* note 50, at 13-26.

75. A further limitation of the DSM is that few people actually receive mental health care and many people only receive primary medical care where physicians generally do not use the DSM. David A. Katemdhahl, Anne C. Larne, Raymond F. Palmer & Nancy Amodei, *Reflections on DSM Classification and Its Utility in Primary Care: Case Studies in "Mental Disorders,"* 7 PRIMARY CARE COMPANION J. CLINICAL PSYCHIATRY 91, 97-98 (2005).

76. COMPREHENSIVE TEXTBOOK OF PSYCHIATRY 9, 255 (Harold I. Kaplan & Benjamin J. Sadock eds., 5th ed. 1989).

consequences of being raised by a parent who was psychologically and emotionally unavailable to the defendant as a result of the parent's severe depression or drug addiction. A mental health expert might also employ research on the impact of various factors on human growth and development to explain how certain traumatic injuries to the defendant's brain, or exposure to certain chemical toxins, or certain chronic medical conditions resulted in cognitive deficits or behavioral difficulties. In another case, a mental health expert might use research that has clearly demonstrated the effects of a particular drug of abuse on human behavior to explain the behavior of a defendant who was addicted to the drug, or had ingested large quantities of the drug, or both. Conversely, a mental health expert might explain how a defendant's inability to comply with a prescribed medication regimen resulted in a recurrence of the hallucinations, delusions and/or other thought process difficulties that led to his criminal behavior.

The work of the mitigation specialist is a critical support to the mental health expert who must accurately diagnose and explain the defendant's behavior using accepted empirical data and/or theories of human behavior. To reach a reliable and credible opinion, it is critical to select appropriate research that is based on a cohort of people who are most like the defendant. Therefore, considerable information about the defendant is required in order to match him with the cohort of people studied; or equally important, to differentiate him from the cohort of people studied. The mental health expert should be aware of, and prepared to counter, data that is mismatched to the defendant, because an opposing expert may rely on it.

Until the life history investigation is complete, the mental health expert can render only a preliminary diagnosis or a differential diagnosis based on the incomplete information available to him. When life history information is incomplete, the mental health expert must request further life history investigation to gather the information necessary to reach a credible and firm diagnosis.

4. Render an Opinion on the Legal Question Presented to the Expert

Rendering a diagnosis or a psychodynamic formulation is virtually never a sufficient response to the legal question(s) presented to a mental health expert who testifies. Although supplemental experts might only be asked to render or confirm a specific diagnosis, at least one of the mental health experts will need to then link that diagnosis to the legal questions posed. To render an opinion on the legal question, mental

health experts apply their clinical knowledge and skills as well as research commonly accepted in their field to address a variety of legal questions. Some examples of legal questions commonly confronting mental health experts in capital proceedings are:

- How does this type of mental health difficulty explain or contribute to the behavior of this defendant, especially as it relates to the crime?
- What is the course of this type of mental health difficulty? How do we know that the defendant was affected by the difficulty at the time of the crime?
- How do the defendant's multiple mental health difficulties interact with each other to result in the type of behavior evidenced by the defendant?
- Does the defendant suffer from mental health difficulties that the decision-maker might find mitigating even though they did not directly lead to the defendant's criminal behavior?
- Why was the defendant not treated for these mental health conditions before he was charged with this crime?
- If the defendant was never successfully treated for his mental health difficulties, does he still require, and is he still likely to benefit from treatment? And if so, is appropriate treatment available in a prison setting?
- How will the defendant's mental illness impact his ability to adjust to life in prison, including whether he is at risk of harming himself or others, and will treatment improve his ability to adjust to life in prison?

IV. INTEGRATING THE MENTAL HEALTH EXPERT INTO THE WORK OF THE LEGAL TEAM

Mental health experts rely heavily on mitigation specialists to provide accurate and comprehensive research and life history data about the defendant. However, throughout the preparation of the case, a

consulting expert (who in most cases should be a different individual than the one who will eventually testify) should confer with the entire defense team, especially counsel. This interaction serves to keep the attorneys abreast of developing theories in regard to mental health issues and affords the opportunity for the mental health expert to educate the entire defense team about emerging diagnoses and theories, alert them about still-needed investigation, and advise them about effectively communicating with a mentally ill defendant.

There are two extremely important functions of the mitigation specialist during this stage. The first is to guide counsel and the expert away from infatuation with and reliance on a diagnosis. An effective case for life gives fact finders an overall narrative that takes into account the crime, the defendant's broad life history, and how his frailties and experiences are related to the crime. A diagnosis does none of these things but it does offer the state an opportunity for cross-examination that steers the fact finder away from the comprehensive defense theory of mitigation. Second, the mitigation specialist makes certain that counsel and the mental health expert are fully familiar with the life history records. It is common for defense experts to be cross examined on details of the life history, particularly how a certain record seems to conflict with the expert's conclusion. Such damage to the defense presentation can be avoided by a thorough analysis of the records by the mitigation specialist, counsel, and the expert, discussions among them about any potentially problematic records, and a strategy to account for those records on direct and cross-examination.

During this process, it is essential for all mental health experts, whether they are consulting or testifying or doing both, to build a relationship with the attorney who will conduct the direct examination of the testifying expert and, potentially, the cross-examination of an opposing expert. This relationship is vital to the testifying expert's capacity to understand the client comprehensively, persuasively convey his findings to the fact finder, effectively answer legal questions posed to him in regard to his findings, and adequately respond to challenges during cross examination.⁷⁷

It is counsel's responsibility to establish clearly the terms of the relationship between the defense team and the mental health expert(s), including fees, discovery issues, and the form in which information is conveyed between the various members of the defense team. Even

77. See SUPPLEMENTARY GUIDELINES, *supra* note 15, at Guideline 5.1(D); ABA GUIDELINES, *supra* note 11, at Guideline 1.1, commentary.

though the mental health expert will also do so, counsel must convey to the defendant that the mental health expert is not there to treat the defendant and the usual confidentiality between doctor and patient does not apply.⁷⁸ This is important because the mental health expert is ethically required to disclose this information to the client who, if he hears it first from the expert, is likely to feel inhibited in his responses.

Counsel is responsible for informing the expert(s) of all of the relevant legal issues and questions related to both phases of the trial. It is also the attorney's responsibility to develop the legal strategy in which the expert's opinions will be presented. This includes decisions about whether to present mental health evidence during the first phase of the trial, hold all testimony regarding mental health issues until the punishment phase, or begin to introduce evidence to support mental health findings during the guilt phase as an introduction to the mitigation phase.⁷⁹ It is also up to the attorneys to be certain that any evidence they have uncovered that conflicts with the opinion or intended testimony of the expert, or that might be used to impeach his findings, be revealed to the expert. After all, the ultimate responsibility for developing and presenting an effective defense always lies with counsel.⁸⁰

V. CONCLUSION

The history of mental health experts in the courtroom parallels the efforts of lay, legal, and scientific minds to comprehend human frailty. At least since 1505, courts have considered mental derangement a defense and doctors have testified on behalf of mad patients when they were charged in a criminal offense.⁸¹ Historian Nigel Walker traces the first occurrence of a medical expert witness in an English courtroom to the murder trial of Earl Ferrers in 1760.⁸² It was common to support a defendant's mental derangement defense by showing the same such

78. See GARY B. MELTON ET AL., *PSYCHOLOGICAL EVALUATIONS FOR THE COURTS: A HANDBOOK FOR MENTAL HEALTH PROFESSIONALS AND LAWYERS* 93-95 (3d ed. 2007) (although this book specifically addresses the role of psychologists, it is applicable generally to mental health experts).

79. See ABA GUIDELINES, *supra* note 11, at Guideline 10.11, commentary.

80. SUPPLEMENTARY GUIDELINES, *supra* note 15, at Introduction ("The duty to investigate, develop and pursue avenues relevant to mitigation of the offense or penalty, and to effectively communicate the fruits of those efforts to the decision-makers, rests upon defense counsel."); ABA GUIDELINES, *supra* note 11, at Guideline 10.4(B); Stetler, *supra* note 12, at 63.

81. Joel Peter Eigen, *Lesion of the Will: Medical Resolve and Criminal Responsibility in Victorian Insanity Trials*, 33 *LAW & SOC'Y REV.* 425, 427 (1999).

82. *Id.* (citing 1 NIGEL WALKER, *CRIME AND INSANITY IN ENGLAND: THE HISTORICAL PERSPECTIVE* 25 (1968)).

defect in a relative. Dr. John Monro, physician to Bethlem Hospital, was called to recount that he had seen the Earl's mad uncle, who was confined at Bethlem, twice a week for years. In an unusual departure, Dr. Monro's testimony expanded beyond his observations of the defendant's uncle to comments on the nature of lunacy and how a hypothetical lunatic might behave.⁸³ By 1843, when Dr. Edward Thomas Monro—the fourth generation Monro to serve at Bethlem Hospital⁸⁴—testified on behalf of Daniel M'Naughten, it was not unusual for a detached medical expert to opine regarding the criminal responsibility of a defendant he had not attended and had interviewed only briefly.⁸⁵ Unfortunately, cursory “drive-by” evaluations of the sort acceptable in Victorian England still occur, but never on a case where counsel is effective, the mitigation specialist is diligent, and the expert is competent.

Before and after expert medical witnesses became commonplace in courtrooms, family members and other people who associated with a defendant who had a mental defect were called to recount the aberrations they had witnessed. As historian Michael MacDonald wrote, “insanity has been defined by experts but discovered by laymen.”⁸⁶ And, we would add, suffered by defendants and their victims.

The primary duty of a mitigation specialist is to discover the lived experience of a defendant and the people who knew him, then organize the information into a life history that defense counsel, courts, expert witnesses, jurors, and, ultimately, the client's life will depend upon. Mental health experts have the responsibility of identifying and explaining the client's mental state and how that affected his behavior. When the fruits of an accurate and reliable life history investigation are married with the knowledge and skill of competent mental health experts, defense counsel is equipped to present an effective case in mitigation and defend it against attacks from the prosecution.

83. Frank R. Freeman, *The Origin of the Medical Expert Witness: The Insanity of Edward Oxford*, 22 J. LEGAL MED. 349, 355-56 (2001).

84. *Id.* at 372.

85. *Id.* at 373.

86. MICHAEL MACDONALD, MYSTICAL BEDLAM: MADNESS, ANXIETY, AND HEALING IN SEVENTEENTH-CENTURY ENGLAND 113 (1983); Eigen, *supra* note 81, at 428.

EXHIBIT 123

EXHIBIT 123

1 JUSTICE COURT, LAS VEGAS TOWNSHIP

2 CLARK COUNTY, NEVADA

3 THE STATE OF NEVADA,

4 Plaintiff,

CASE NO. 96F07190A-B

5 -vs-

6 MARLO THOMAS, aka
Marlow Demetrius Thomas, #1060797
7 KENYA KEITA HALL, #1225894, aka
Kenya Love8 Defendants.
9CRIMINAL COMPLAINT

10
11 The Defendants above named having committed the crimes of CONSPIRACY TO
12 COMMIT MURDER AND/OR ROBBERY (Felony - NRS 200.010, 200.030, 200.380
13 193.480); MURDER WITH USE OF A DEADLY WEAPON (OPEN MURDER) (Felony -
14 NRS 200.010, 200.030, 193.165); ROBBERY WITH USE OF A DEADLY WEAPON (Felony -
15 NRS 200.380, 193.165); BURGLARY WHILE IN POSSESSION OF A FIREARM (Felony -
16 NRS 205.060), and FIRST DEGREE KIDNAPPING WITH USE OF A DEADLY WEAPON
17 (Felony - NRS (Felony - NRS 200.310, 200.320, 193.165) in the manner following, to-wit: That
18 the said Defendants, on or between April 14, 1996, and April 15, 1996, at and within the County
19 of Clark, State of Nevada,

20 COUNT I - CONSPIRACY TO COMMIT MURDER AND/OR ROBBERY

21 Defendants did, on or between April 14, 1996, and April 15, 1996, then and there meet
22 with each other and between themselves, and each of them with the other, wilfully, unlawfully,
23 and feloniously conspire to commit a crime, to-wit: murder and/or robbery, and in furtherance
24 of said conspiracy, Defendants did commit the acts as set forth in Counts II, III, and IV, said acts
25 being incorporated by this reference as though fully set forth herein.

26 COUNT II - MURDER WITH USE OF A DEADLY WEAPON (OPEN MURDER)

27 Defendants did, on or about April 15, 1996, then and there wilfully, feloniously, without
28 authority of law, and with premeditation and deliberation, and with malice aforethought, kill

2A

1 CARL DIXON, a human being, by stabbing said CARL DIXON about the body with use of a
2 deadly weapon , to-wit: a knife, the defendants being responsible under the following theories
3 of criminal liability, to-wit: 1) premeditation: 2) felony murder during the perpetration or the
4 attempted perpetration of the crime of robbery as set forth in Count IV; 3) by the defendants
5 either directly committing the offense of murder and/or robbery, or aiding or abetting the
6 commission of murder and/or robbery in the following manner, to-wit: both defendants
7 confronting restaurant manger, VINCENT ODDO, with a firearm or with firearms and
8 Defendant KENYA KEITA HALL, aka Kenya Love, taking money from VINCENT ODDO
9 while Defendant MARLO THOMAS, aka Marlow Demitrius Thomas, confronted restaurant
10 employees CARL DIXON and MATTHEW GIANAKES to facilitate the taking of the money
11 and thereafter Defendant MARLO THOMAS, aka Marlow Demitrius Thomas, stabbing CARL
12 DIXON and MATTHEW GIANAKES with a knife resulting in their deaths; each defendant
13 being vicariously liable as members of a conspiracy to commit murder and/or robbery.

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

15 Defendants did, on or about April 15, 1996, then and there wilfully, feloniously, without
16 authority of law, and with premeditation and deliberation, and with malice aforethought, kill ,
17 MATTHEW GIANAKIS, a human being, by stabbing said MATTHEW GIANAKIS about the
18 body with use of a deadly weapon , to-wit: a knife, the defendants being responsible under the
19 following theories of criminal liability, to-wit: 1) premeditation: 2) felony murder during the
20 perpetration or the attempted perpetration of the crime of robbery as set forth in Count IV; 3)
21 by the defendants either directly committing the offense of murder and/or robbery, or aiding or
22 abetting the commission of murder and/or robbery in the following manner, to-wit: both
23 defendants confronting restaurant manger, VINCENT ODDO, with a firearm or with firearms
24 and Defendant KENYA KEITA HALL, aka Kenya Love, taking money from VINCENT ODDO
25 while Defendant MARLO THOMAS, aka Marlow Demitrius Thomas, confronted restaurant
26 employees CARL DIXON and MATTHEW GIANAKES to facilitate the taking of the money
27 and thereafter Defendant MARLO THOMAS, aka Marlow Demitrius Thomas, stabbing CARL
28 DIXON and MATTHEW GIANAKES with a knife resulting in their deaths; each defendant

1 being vicariously liable as members of a conspiracy to commit murder and/or robbery.

2 COUNT IV - ROBBERY WITH USE OF A DEADLY WEAPON

3 Defendants did, on or about April 15, 1996, then and there wilfully, unlawfully, and
 4 feloniously take personal property, to-wit: lawful money of the United States, from the person
 5 of VINCENT ODDO, or in his presence, by means of force or violence, or fear of injury to, and
 6 without the consent and against the will of the said VINCENT ODDO, said Defendants using
 7 a deadly weapon, to-wit: a firearm, during the commission of said crime; the defendants acting
 8 in concert with one another and the defendants directly committing the acts constituting the
 9 offense and/or the defendants aiding or abetting each other and/or the defendants directly or
 10 indirectly counseling, encouraging, hiring, commanding, inducing, or otherwise procuring each
 11 other to commit the acts constituting the offense, as evidenced by the conduct of the defendants
 12 before, during, and after the offense, wherein both defendants confronted restaurant manger
 13 VINCENT ODDO with a firearm or with firearms and Defendant KENYA KEITA HALL, aka
 14 Kenya Love, taking money from VINCENT ODDO while Defendant MARLO THOMAS, aka
 15 Marlow Demetrius Thomas, disabled two restaurant employees, thereby facilitating the taking
 16 of, and absconding with, the money; each Defendant being vicariously liable as members of a
 17 conspiracy to commit robbery.

18 COUNT V - BURGLARY WHILE IN POSSESSION OF A FIREARM

19 Defendants did, on or about April 15, 1996, then and there wilfully, unlawfully, and
 20 feloniously enter, while in possession of a firearm, with intent to commit larceny and/or robbery
 21 and/or murder and or some other felony, that certain building occupied by LONE STAR
 22 STEAKHOUSE, located at 3131 North Rainbow, Las Vegas, Clark County, Nevada.

23 COUNT VI - FIRST DEGREE KIDNAPPING WITH USE OF A DEADLY WEAPON

24 Defendants did, on or about April 15, 1996, wilfully, unlawfully, feloniously, and without
 25 authority of law, seize, confine, inveigle, entice, decoy, abduct, conceal, kidnap, or carry away
 26 CARL DIXON, a human being, with the intent to hold or detain the said CARL DIXON, against
 27 his will, and without his consent, for the purpose of committing robbery and/or murder and/or
 28 for the purpose of inflicting substantial bodily harm, said Defendants using a deadly weapon,

1 to-wit: a firearm and/or a knife, during the commission of said crime; the defendants acting in
2 concert with one another and the defendants directly committing the acts constituting the offense
3 and/or the defendants aiding or abetting each other and/or the defendants directly or indirectly
4 counseling, encouraging, hiring, commanding, inducing, or otherwise procuring each other to
5 commit the acts constituting the offense, as evidenced by the conduct of the defendants before,
6 during, and after the offense, wherein Defendant MARLO THOMAS, aka Marlow Demitrius
7 Thomas, confined, or held, or detained CARL DIXON in the restroom of the Lone Star
8 Steakhouse, 3131 North Rainbow, Las Vegas, Clark County, Nevada, while Defendant KENYA
9 KEITA HALL, aka Kenya Love, was in the manager's office forcefully taking money from the
10 restaurant manager, VINCENT ODDO; each defendant being vicariously liable as members of
11 a conspiracy to commit murder and/or robbery and/or kidnapping.

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

13 Defendants did, on or about April 15, 1996, wilfully, unlawfully, feloniously, and without
14 authority of law, seize, confine, inveigle, entice, decoy, abduct, conceal, kidnap, or carry away
15 CARL DIXON, a human being, with the intent to hold or detain the said CARL DIXON, against
16 his will, and without his consent, for the purpose of committing robbery and/or murder and/or
17 for the purpose of inflicting substantial bodily harm, said Defendants using a deadly weapon,
18 to-wit: a firearm and/or a knife, during the commission of said crime; the defendants acting in
19 concert with one another and the defendants directly committing the acts constituting the offense
20 and/or the defendants aiding or abetting each other and/or the defendants directly or indirectly
21 counseling, encouraging, hiring, commanding, inducing, or otherwise procuring each other to
22 commit the acts constituting the offense, as evidenced by the conduct of the defendants before,
23 during, and after the offense, wherein Defendant MARLO THOMAS, aka Marlow Demitrius
24 Thomas, confined, or held, or detained CARL DIXON in the restroom of the Lone Star
25 Steakhouse, 3131 North Rainbow, Las Vegas, Clark County, Nevada, while Defendant KENYA
26 KEITA HALL, aka Kenya Love, was in the manager's office forcefully taking money from the
27 restaurant manager, VINCENT ODDO; each defendant being vicariously liable as members of
28 a conspiracy to commit murder and/or robbery and/or kidnapping.

1 All of which is contrary to the form, force and effect of Statutes in such cases made and
 2 provided and against the peace and dignity of the State of Nevada. Said Complainant makes this
 3 declaration subject to the penalty of perjury.

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 6 4/22/96



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 26 96F07190A-B/jgw
 27 LVMPD EV#9604150488
 28 CONSP; MURDER W/DW;
 RWDW; BURG - F
 (TK2)

EXHIBIT 124

EXHIBIT 124

Justice Court, Las Vegas Township

CASE NO. 96F07190A

STATE VS. THOMAS, MARLO

CHARGE MURDER WITH DEADLY WEAPON - 2 COUNTS

ROBBERY WITH DEADLY WEAPON

BAIL _____

DATE, JUDGE
OFFICERS OF
COURT PRESENT

APPEARANCES -- HEARING

CONTINUED TO:

APRIL 19, 1996 D.E. SMITH R. BLOXHAM, DA M. LEONARD, CR M. KRAUS, CLK	TIME SET FOR 48 HOUR HEARING DEFENDANT PRESENT IN COURT *IN CUSTODY* DEFENDANT ADVISED OF CHARGES OF ARREST AND RIGHTS COURT FINDS PROBABLE CAUSE FOR ARREST BAIL SET: MURDER WITH DEADLY WEAPON - 2 COUNTS: NO BAIL ROBBERY WITH DEADLY WEAPON: 20,000/40,000 STATE PUBLIC DEFENDER'S OFFICE TO BE NOTIFIED TO BE PRESENT/ NOTIFIED/fp CONTINUED FOR STATUS CHECK ON FILING OF COMPLAINT	4-23-96 8:00 #2
APRIL 22, 1996	DEFENDANT REMANDED TO THE CUSTODY OF THE SHERIFF CRIMINAL COMPLAINT FILED (CONSPIRACY TO COMMIT MURDER AND/OR ROBBERY, MURDER WITH USE OF A DEADLY WEAPON (OPEN MURDER)- 2 COUNTS, ROBBERY WITH USE OF A DEADLY WEAPON, BURGLARY WHILE IN POSSESSION OF A FIREARM, FIRST DEGREE KIDNAPPING WITH USE OF A DEADLY WEAPON - 2 COUNTS)	fp MRK
APRIL 23, 1996 D. SMITH L. HAMILL, DA P. LAPORTA, SPD M. LEONARD, CR M. KRAUS, CLK	INITIAL ARRAIGNMENT DEFENDANT PRESENT IN COURT *IN CUSTODY* COUNTS 2,3,4 DEFENDANT ADVISED/WAIVES P/H SET DEFENDANT REMANDED TO THE CUSTODY OF THE SHERIFF	6/27/96 9:00 #2 MRK
4-24-96	MEDIA REQUEST AND ORDER ALLOWING CAMERAS IN THE COURTROOM FILED	meb

EXHIBIT 125

EXHIBIT 125

CASE NO. 136862

DEPT. NO. 2

FILED

AUG 2 1 00 PM '96

IN THE JUSTICE'S COURT OF LAS VEGAS TOWNSHIP
COUNTY OF CLARK, STATE OF NEVADA
CLERK

ORIGINAL

THE STATE OF NEVADA,

Plaintiff,

vs.

MARLO DEMITRIUS THOMAS,

Defendant.

Case No. 96F07190A

REPORTER'S TRANSCRIPT
OF
PRELIMINARY HEARING

BEFORE THE HONORABLE DOUGLAS E. SMITH
JUSTICE OF THE PEACE

JUNE 27, 1996
9:00 A.M.

APPEARANCES:

For the Plaintiff:

STEWART BELL
District Attorney
BY: MELVYN T. HARMON
Deputy District Attorney

For the Defendant:

PETER R. LaPORTA

REPORTED BY: Marcia Leonard, RPR, CCR No. 204

CE41

MARCIA J. LEONARD, CCR NO. 204, RPR

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5	<u>STEVEN HEMMES</u>	
6	Direct examination by Mr. Harmon:	24
6	Cross-examination by Mr. LaPorta:	37
7	<u>VINCENT ODDO</u>	
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10	<u>KENYA HALL</u>	
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19	9 (Photograph)		10
19	10 (Photograph)		10
20	11 (Photograph)		10
20	12 (Photograph)		10
21	13 (Photograph)		10
21	14 (Photograph)		10
22	15 (Photograph)		10
22	16 (Photograph)		10
23	17 (Photograph)		17
23	18 (Photograph)		17
24	19 (Photograph)		17
24	20 (Photograph)		17

MARCIA J. LEONARD, CCR NO. 204, RPR

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1 CLARK COUNTY, NEVADA, JUNE 27, 1996, 9:00 A.M.

2 * * * * *

3
4 THE COURT: 96F7190A, Marlo Thomas. Mr.
5 Thomas not present. Well, what do you want to say on
6 the record?

7 MR. LaPORTA: He doesn't need to be
8 present for this for what I'm about to say at this
9 point in time.

10 Obviously, this plea bargain comes as a
11 surprise to me this morning. This was a co-defendant,
12 still is a co-defendant. The State's going to offer
13 him -- his testimony against my client, Mr. Thomas.
14 Obviously, there is a plea bargain that has been
15 struck.

16 The only discovery that I have received
17 from any statements that he has made to the district
18 attorney or Metropolitan Police Department were the
19 original statements that he had made. I have received
20 nothing in the past two or three weeks when I suspect
21 that this deal was cut.

22 What I'm asking for, Judge, is a short
23 continuance or at least a continuance for that portion
24 of Mr. Hall's testimony until such time as I can make
25 the proper, make the proper motions for discovery,

MARCIA J. LEONARD, CCR NO. 204, RPR

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1 review some files, any possible testimony or
2 statements that he's made.

3 In addition to that, there may be some
4 potential or possible motions that I may wish to file
5 that regard his testimony.

6 THE COURT: Well, you know, if I was a
7 betting man, I suspect that there were -- there are no
8 written statements at this point.

9 MR. HARMON: You would have won that
10 wager, your Honor. The only written statement --

11 THE COURT: See, I worked with Mr. Harmon
12 for -- I worked for him actually for nine years.

13 MR. HARMON: I think with is better.

14 The only written statement is the one
15 that counsel has, which was taken by Trooper Bally in
16 the Hawthorne area. I have conducted a conference, a
17 prehearing conference with the defendant, witness, Mr.
18 Hall, but that was not recorded. We did not depart
19 from our usual practice in pretrialing witnesses.

20 Your Honor, the entire terms of the plea
21 agreement are set forth in the documents we just
22 filed. We wanted to make sure that the defense would
23 have those available before they begin their
24 cross-examination. It's not complicated.

25 So in the best scenario of the State, I

MARCIA J. LEONARD, CCR NO. 204, RPR

1 would urge that we proceed with the complete
2 preliminary hearing. If the Court is inclined,
3 however, to give counsel additional time for Mr. Hall,
4 I would certainly urge the Court to let us put on the
5 remainder of the hearing.

6 THE COURT: Well, I think that would be
7 my ruling is to start the preliminary hearing. If
8 after the State has rested their case in chief, then
9 if you feel like you need a continuance, you can make
10 a motion then and I will decide. I will continue your
11 motion, but we're going to proceed to preliminary
12 hearing.

13 MR. LaPORTA: That's fine, your Honor.

14 THE COURT: So we can transport him. It
15 will take about five minutes. I have a long distance
16 call to make. It will be five minutes to get him up
17 here, and I will be right back.

18
19 (Recess.)

20
21 THE COURT: Back in session. 96F7190B,
22 or A, State of Nevada versus Marlo Thomas.

23 State's ready?

24 MR. HARMON: Yes, your Honor.

25 THE COURT: Call your first witness.

MARCIA J. LEONARD, CCR NO. 204, RPR

1 MR. HARMON: Robert Jordan.

2 THE COURT: Remaining witnesses in this
3 matter will please wait in the hall. Do not discuss
4 your testimony amongst yourselves. You'll be called
5 in the order that Mr. Harmon will come get you.

6 MR. HARMON: Perhaps you should repeat
7 that again. Any witnesses who are subpoenaed must now
8 leave the courtroom.

9 THE COURT: All witnesses subpoenaed in
10 the Thomas and the Hall matter will please wait in the
11 hall.

12 THE CLERK: Do you solemnly swear the
13 testimony which you are about to give shall be the
14 truth, the whole truth and nothing but the truth, so
15 help you God?

16 THE WITNESS: I do.

17 THE CLERK: Please state your full name
18 and spell your full name for the record.

19 THE WITNESS: Dr. Robert Jordan,
20 J-O-R-D-A-N.

21
22 ROBERT JORDAN, M.D.,
23 having been first duly sworn, testified as follows:
24
25

MARCIA J. LEONARD, CCR NO. 204, RPR

DIRECT EXAMINATION

BY MR. HARMON:

Q Dr. Jordan, what is your business or profession?

A I'm a physician specializing in forensic pathology.

Q Are you an assistant medical examiner in Clark County, State of Nevada?

A Yes.

MR. HARMON: Your Honor and counsel, for the purpose of this hearing, will the defense stipulate that Dr. Jordan is a physician specializing in forensic pathology?

MR. LaPORTA: Yes, your Honor. The defense will stipulate to that.

THE COURT: Okay.

BY MR. HARMON:

Q Dr. Jordan, I want to direct your attention to April the 15th, 1996. On that date were you present and involved in two autopsy examinations?

A Yes.

Q Where did they occur?

A At the office of the coroner, Medical Examiner of Clark County.

Q Were the persons upon whom the

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1 examinations were performed identified to you as Carl
2 Dixon and Matthew Gianakes?

3 A Yes.

4 Q When did the examinations begin?

5 A The examination on Carl Dixon began at
6 1530, which is 3:30 in the afternoon. The examination
7 of Matthew Gianakes began at 1700, which is
8 approximately 4:00 o'clock.

9 Q Were any law enforcement personnel
10 present during the examinations performed on Carl
11 Dixon and Matthew Gianakes?

12 A Yes.

13 Q What law enforcement?

14 A Detectives Manning, Messinar, and crime
15 scene analyst Peterson.

16 Q Regarding the autopsy on Carl Dixon,
17 which began at 3:30 p.m. on April the 15th, 1996, did
18 you personally perform the autopsy?

19 A No, sir.

20 Q Who did?

21 A Dr. Sheldon Green.

22 Q Is Dr. Sheldon Green the chief medical
23 examiner in Clark County?

24 A Yes.

25 Q Were you present throughout the autopsy

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1 examination performed upon Carl Dixon?

2 A I was.

3 Q Did you witness and participate in the
4 findings in connection with that autopsy?

5 A Yes.

6 MR. HARMON: Your Honor, may we have the
7 Court's indulgence?

8 THE COURT: Yes.

9 MR. HARMON: May I approach the witness,
10 Judge?

11 THE COURT: Yes.

12 BY MR. HARMON:

13 Q Dr. Jordan, I'm showing you a series of
14 photographs. They have been marked as Proposed
15 Exhibits 5 through 16. Will you go through the
16 pictures, and after having done so, will you tell us
17 if you recognize the person depicted?

18 A State's Exhibits 5 through 16 are
19 photographs of the decedent, Carl Dixon, whose autopsy
20 I attended and participated in on July -- correction,
21 on April 15th, and assigned our session number 961627.

22 Q Dr. Jordan, are the photographs, Proposed
23 Exhibits 5 through 16, true and accurate
24 representations of the appearance and condition of
25 Carl Dixon as you witnessed on April the 15th, 1996?

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1 A They are.

2 MR. HARMON: Your Honor, the State offers
3 Proposed Exhibits 5 through 16.

4 MR. LaPORTA: No objection, your Honor.

5 THE COURT: They will be admitted.

6

7 (State's Exhibits 5 through 16
8 admitted into evidence.)

9 BY MR. HARMON:

10 Q Dr. Jordan, was an external examination
11 performed upon the victim portrayed in Exhibit 5
12 through 16?

13 A Yes.

14 Q Did that include weighing and measuring
15 the body?

16 A It did.

17 Q What was determined in that regard?

18 A Carl Dixon was 69 inches in length and he
19 weighed 210 pounds.

20 Q When you say 69 inches, does that
21 translate into five feet nine inches?

22 A Yes, sir.

23 Q Regarding the remainder of the external
24 examination, what were the significant findings?

25 A There were no signs of natural disease.

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8JDC00107

AA5041

1 The decedent had suffered numerous stab wounds to his
2 body, which appeared to be concentrated on the left
3 side of the anterior chest and abdomen. There were a
4 total of 19 stab wounds from the plane of the shoulder
5 to the hip, which ranged in size from very superficial
6 puncture or stab wounds to ones which measured three
7 inches in length. We could not tell at the time
8 whether -- how many or all of them penetrated into the
9 chest or abdomen.

10 In addition, there were three stab wounds
11 on the right side of the chest and abdomen. And a
12 total of 15 what we call defensive wounds
13 predominantly on the left arm and forearm as well as
14 the right hand. These were -- all of the wounds were
15 randomly oriented. They were both vertical or
16 horizontal or a combination and many of which
17 obviously went into the body cavities.

18 Q Dr. Jordan, was an internal examination
19 also performed on the body of Carl Dixon?

20 A Yes.

21 Q What was the nature of that phase of the
22 autopsy and the significant finding?

23 A On opening the chest and abdomen, we
24 found that six of the stab wounds to the chest
25 penetrated the thorax -- excuse me, into the lungs as

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1 well as the heart and major vessels. Two of the
2 wounds to the lower part of the body penetrated the
3 abdominal cavity and severed some of the loops of the
4 small bowel. The stab wounds to the extremities were
5 superficially dissected and did not appear to
6 traumatize any major vessels or nerves.

7 Q As a result of both the external and
8 internal examinations performed on Carl Dixon, was an
9 opinion formed regarding the cause of death of the
10 victim depicted in Exhibits 5 through 16?

11 A It was Dr. Green's opinion, as well as
12 mine, that Carl Dixon died as a result of multiple
13 stab wounds to the chest and abdomen.

14 Q In the opinion of yourself and Dr. Green,
15 was death as a result of natural cause or disease
16 process?

17 A No.

18 Q Was every vital organ of the decedent
19 examined?

20 A Yes.

21 Q Was an opinion formed regarding whether
22 this was an accidental death?

23 A Yes.

24 Q What is your opinion?

25 A That it was not accidental.

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1 Q In your opinion, was it self-inflicted?

2 A No, sir.

3 Q What is your opinion regarding the manner
4 of death?

5 A That Carl Dixon died as a result of a
6 homicide.

7 Q What is your definition of homicide?

8 A The killing of one human being by
9 another.

10 Q Do you have an opinion as to whether the
11 various stab wounds that you have described on the
12 body were inflicted contemporaneously?

13 A They were.

14 Q What do you mean they
15 contemporaneously --

16 A In the same time frame. Not separately
17 and at different time intervals. It would be
18 difficult to say how long a time, but they were
19 inflicted within the same time frame.

20 Q In your opinion, how quickly after the
21 infliction of the contemporaneous stab wounds would
22 the victim have lost consciousness?

23 A Fairly rapidly. The wounds to the aorta,
24 the great vessels, pulmonary aorta and heart would
25 produce fairly rapid insanguination.

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1 Q Do you have an opinion how quickly death
2 would have occurred?

3 A There is no scientific evidence which
4 helps us in determining how long it takes for an
5 individual traumatized in this way to die. Estimates
6 vary anywhere from 20 seconds to a minute, depending
7 on where the blood is coming from and what cavities it
8 involves.

9 Q Twenty seconds to a minute after the stab
10 wounds were inflicted?

11 A Yes, sir.

12 Q Do you have an opinion regarding what
13 type of instrument was responsible for the stab wounds
14 you observed to the body of Carl Dixon?

15 A Yes, sir.

16 Q What is your opinion?

17 A Probably a single-edged weapon, quite
18 sharp and pointed.

19 Q Consistent with a knife?

20 A Yes.

21 Q Dr. Jordan, when did the autopsy
22 examination begin upon the second victim, Matthew
23 Gianakes?

24 A At 1700 on the same date, April 15th.

25 Q That would be 5:00 o'clock p.m.?

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8JDC00111

AA5045

1 A Yes, sir.

2 Q Did you personally perform the autopsy
3 examination upon Matthew Gianakes?

4 A I did.

5 Q Was there an external examination?

6 A Yes, sir.

7 Q In connection with that phase of the
8 autopsy, was Mr. Gianakes weighed and measured?

9 A Yes, sir.

10 Q What were your findings?

11 A Measured five feet one inch in height.
12 Weighed a 192 pounds.

13 Q Was his body examined for evidence of
14 injury?

15 A Yes, sir.

16 Q What were your significant findings?

17 A Matthew Gianakes had received extensive
18 medical and surgical intervention. The surgeons had
19 performed a median stenotomy, which is an incision of
20 the chest, anterior chest, from the level of the
21 collarbone to where the ribs flare out.

22 In addition, they had done a left
23 thoracotomy, which is an incision on the left side of
24 the chest to examine the lungs and heart. And in
25 addition, he had a stab wound to the left chest, which

1 was not surgically produced. As well as a stab wound
2 to the left back.

3 MR. HARMON: May I approach the witness
4 again, your Honor?

5 THE COURT: Yes.

6 BY MR. HARMON:

7 Q Dr. Jordan, I'm showing you Proposed
8 Exhibits 17 through 20. Will you look at those
9 photographs and then tell us if these are pictures
10 taken of the decedent, Matthew Gianakes, upon whom you
11 performed an autopsy examination on April the 15th,
12 1996, commencing at about 5:00 p.m.?

13 A Exhibits 20, 17, 18, and 19 are
14 photographs of the decedent, Matthew Gianakes, upon
15 whom I performed an autopsy and assigned our session
16 number 961626.

17 Q Do the photographs in that series truly
18 and accurately portray his appearance and condition at
19 the time of your autopsy?

20 A They do.

21 MR. HARMON: Your Honor, the State offers
22 Proposed Exhibits 17 through 20.

23 MR. LaPORTA: No objection.

24 THE COURT: They will be admitted.

25 MR. HARMON: Thank you.

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(State's Exhibits 17 through 20
admitted into evidence.)

BY MR. HARMON:

Q Dr. Jordan, did you also perform an
internal examination upon victim Gianakes who was
depicted in Exhibits 17 through 20?

A Yes.

Q Describe the nature of that examination
and any significant findings?

A Examination of the chest revealed that
the stab wound to the left side penetrated into the
heart, which had been sutured by the surgeons in an
attempt to stop the hemorrhage. The stab wound to the
left back penetrated the left lung, which was also
sutured. Other than the trauma created by the stab
wound, the only significant findings was the trauma
created by the surgeons.

Q As a result of both the external and
internal examinations performed during your autopsy,
did you form an opinion regarding the cause of death
of Matthew Gianakes?

A Yes, sir.

Q What is your opinion?

A That Matthew Gianakes died of two stab
wounds to the chest and the back.

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1 Q Do you have an opinion as to whether
2 death was the result of any natural cause or disease
3 process?

4 A It was not.

5 Q Did you examine each vital organ in the
6 body of Mr. Gianakes?

7 A Yes.

8 Q In your opinion, was it an accidental
9 death?

10 A No, sir.

11 Q In your opinion, was it self-inflicted?

12 A No, sir.

13 Q What is your opinion regarding the manner
14 of death of Matthew Gianakes?

15 A My opinion is Matthew Gianakes died as a
16 result of a homicide.

17 Q Do you have an opinion about whether the
18 stab wounds to his chest and his back were
19 contemporaneous?

20 A Yes, sir, I think that they were.

21 Q Do you have any opinion as to how quickly
22 Mr. Gianakes would have lost consciousness?

23 A His survival was probably measured
24 accurately by the surgical team which operated on him.
25 Without medical intervention, a wound to the left

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8JDC00115

AA5049

1 ventricle of the heart could be fatal within 45
2 seconds.

3 Q Do you have an opinion as to how quickly
4 he would have died after the wounds were inflicted?

5 A The unusual thing about stab wounds to
6 this location, the left ventricle of the heart and the
7 lung, is that the bleeding is internal rather than
8 bleeding out through a large defect. Or the lining of
9 the lung closes off so that most of the blood is
10 inside, not outside, and many times these individuals
11 particularly with stab wounds to the left ventricle,
12 which is quite thick, are capable of fairly prolonged
13 survival and unusual activity as was the case here.

14 Without medical attention, I would say
15 that he could not have survived for more than five,
16 ten minutes.

17 Q Doctor, did you form an opinion regarding
18 the type of instrument that was used in inflicting the
19 stab wounds that you have described?

20 A Yes, sir.

21 Q What is your opinion?

22 A A single-bladed -- a single-edged blade,
23 fairly long with a sharp point, probably a knife.

24 Q Were the stab wounds that you observed to
25 the body of Mr. Gianakes consistent with multiple stab

1 wounds that you observed to the body of Carl Dixon?

2 A Yes, sir.

3 Q In your opinion, could it have been the
4 same instrument, most probably a knife?

5 A Yes, sir.

6 MR. HARMON: Thank you. That concludes
7 direct, your Honor.

8 THE COURT: Thank you. Cross.

9 MR. LaPORTA: Thank you.

10

11 CROSS-EXAMINATION

12 BY MR. LaPORTA:

13 Q Dr. Jordan, in your -- you did testify
14 that you did an external examination as to victim
15 Dixon. And during that external examination, you
16 noted a number of stab wounds, defensive and
17 otherwise. During that external examination, did you
18 notice on the victim Dixon any abrasions, contusions,
19 anything of that nature outside of the stab wounds?

20 A No, sir.

21 Q You didn't notice no abrasions or
22 contusions to the facial head area, scalp area?

23 A No, not that I recall.

24 Q To the torso area?

25 A No, sir.

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1 Q To any of the appendages?

2 A The diagnostic protocol prepared by Dr.
3 Green does not list any of that type of trauma in the
4 examination on the external.

5 Q And you didn't personally witness that?

6 A I looked at the remains, and I didn't see
7 anything obvious.

8 Q As to victim Gianakes, you did the
9 external examination on that victim?

10 A Yes, sir.

11 Q That's what you testified to. Outside of
12 the stab wounds that you observed externally, did you
13 notice as to that victim as to whether or not there
14 were any abrasions or contusions to the face or scalp
15 or head area of the victim?

16 A None that I recall, sir.

17 Q Do you recall if there were any to the
18 torso area, contusions or abrasions to the torso, the
19 chest and abdominal area?

20 A No, sir.

21 Q To the back?

22 A No.

23 Q To any of the appendages?

24 A No, sir.

25 Q As to victim Gianakes, it's your

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8JDC00118

AA5052

1 testimony during direct there were no defensive
2 wounds?

3 A That is correct.

4 Q In your external examination or internal
5 examination for that matter, was there any evidence of
6 a struggle?

7 A None that I could determine.

8 Q In your examination of victim Dixon, you
9 noted that there were numerous stab wounds, some of
10 which penetrated into the chest and abdominal area.
11 Were you able to form an opinion as to -- you were
12 able to form an opinion that this was a single-edged
13 sharp instrument consistent with a knife.

14 Do you have an opinion as to the possible
15 length of this knife in terms of the blade?

16 A In my opinion, the weapon would have to
17 have a blade at least three inches long and possibly
18 longer. I don't believe it was a penknife. It was a
19 weapon larger than that.

20 Q When you say a penknife, you mean that
21 knife that's foldable?

22 A A little pocketknife.

23 Q A little pocketknife?

24 A Yes, sir.

25 Q As to victim Gianakes, you also did the

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1 external -- well, you did the external and internal
2 examination there and observed two stab wounds stating
3 during direct testimony that the wounds were inflicted
4 by a single-edged instrument consistent with a knife.

5 Do you have an opinion as to how long the
6 blade on that knife possibly was?

7 A At least three inches and probably
8 larger.

9 Q Not a penknife once again?

10 A That is correct.

11 MR. LaPORTA: I have no further
12 questions, your Honor.

13 THE COURT: Anything further by the
14 State?

15 MR. HARMON: No redirect, your Honor.

16 THE WITNESS: Mr. Harmon, may I correct
17 the record on one measurement here I made.

18 MR. HARMON: May he, Judge?

19 THE COURT: Well, you see, Mr. Harmon.
20 Never mind. Yes, please.

21 THE WITNESS: I listed the height of
22 Matthew Gianakes was 71 inches and translated falsely
23 to five feet one inch. It is not five feet one inch.
24 It is five feet eleven inches.

25 THE COURT: Thank you, Doctor.

1 May the doctor be excused by both
2 parties?

3 MR. HARMON: Yes, your Honor.

4 THE COURT: Mr. LaPorta, may the doctor
5 be excused?

6 MR. LaPORTA: Yes, sir.

7 THE COURT: Call your next witness,
8 please.

9 MR. HARMON: Steven Hemmes.

10 THE CLERK: Do you solemnly swear the
11 testimony which you are about to give shall be the
12 truth, the whole truth and nothing but the truth, so
13 help you God?

14 THE WITNESS: I do.

15 THE CLERK: Please state your full name
16 and spell your full name for the record.

17 THE WITNESS: Steven Hemmes, H-E-M-M-E-S.

18

19 STEVEN HEMMES,

20 having been first duly sworn, testified as follows:

21

22 DIRECT EXAMINATION

23 BY MR. HARMON:

24 Q Mr. Hemmes, how old are you, sir?

25 A Twenty-two.

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1 Q Did you say 22?

2 A Yes.

3 Q Do you live in the Las Vegas area?

4 A Yes, I do.

5 Q How long have you lived in this
6 community?

7 A Twenty years.

8 Q Are you employed?

9 A Yes, I am.

10 Q With what business do you work?

11 A Walker Furniture.

12 Q Are you familiar with the Lone Star
13 Restaurant?

14 A Yes, I am.

15 Q Did you previously work with that
16 business?

17 A Yes.

18 Q How long did you work with the Lone Star?

19 A For about two, two-and-a-half months.

20 Q I want to direct your attention to a
21 Monday morning, April the 15th, 1996. On that date,
22 were you employed at the Lone Star Restaurant?

23 A Yes, I was.

24 Q What were the nature of your duties?

25 A I was dishwasher and a prep cook and the

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8JDC00122

AA5056

1 saute cook as well.

2 Q What was the location of the Lone Star
3 Restaurant or Steakhouse that you worked at on April
4 the 15th, 1996?

5 A 3131 North Rainbow.

6 Q Is that at the intersection of Cheyenne
7 Avenue and Rainbow Boulevard?

8 A Yes, it is.

9 Q Is that location in Las Vegas, Clark
10 County, Nevada?

11 A Yes, it is.

12 Q What time did you arrive at the Lone Star
13 Restaurant that Monday morning, April the 15th?

14 A 7:50 a.m.

15 Q What was your reason for arriving that
16 early?

17 A I was trying to get there so I can go
18 home. I was wearing sandals, so I just tried to get
19 the day off.

20 Q When you arrived at 7:50 a.m., did you go
21 into the restaurant?

22 A Yes, I did.

23 Q Did you contact a manager who was there?

24 A Yes, I did.

25 Q Which manager did you speak with?

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8JDC00123

AA5057

1 A Vince.

2 Q What's Vince's last name?

3 A I'm not sure. I didn't pay attention.

4 Q You know him as Vince?

5 A Yes.

6 Q As a result of the conversation with the
7 manager who was on duty, Vince, did you have occasion
8 to leave the restaurant?

9 A Yes, I did.

10 Q Why were you leaving?

11 A To go home and change shoes.

12 Q Were you going to get the day off or did
13 you have to come back?

14 A No, I had to come back.

15 Q But you did need to change into some
16 other shoes besides the sandals?

17 A Yes, I did.

18 Q About what time did you leave the Lone
19 Star?

20 A About 7:55.

21 Q So you had been there about five minutes?

22 A Yes.

23 Q What door did you take when you left?

24 A I took the north door.

25 Q Was that a rear door?

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8JDC00124

AA5058

1 A Yes, it is.

2 Q When you left by the rear door, were you
3 the only person leaving the inside of the business at
4 that time?

5 A Yes, I was.

6 Q As you left, did you encounter persons on
7 the outside?

8 A Yes, I did.

9 Q Describe what happened.

10 A I was -- Vince sent me home. I came
11 walking out of the back door, and that's when I ran
12 into Marlo and his other friend that was with him.

13 Q You said that's when you ran into Marlo
14 and his other friend who was with him. Did you know
15 Marlo prior to this?

16 A Yes, I did.

17 Q How is it that you knew Marlo?

18 A I had worked with him one time.

19 Q You had worked with him what?

20 A One time.

21 Q One time where?

22 A At Lone Star.

23 Q At this same location, 3131 Rainbow
24 Boulevard?

25 A Yes.

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8JDC00125

AA5059

1 Q To your knowledge, did Marlo work for a
2 short period of time at the Lone Star Steakhouse?

3 A Yes.

4 Q Will you point to the person you have
5 referred to as Marlo if you see that individual in the
6 courtroom?

7 A Right there.

8 Q Describe some article of clothing he's
9 wearing?

10 A He is wearing CCDC outfit right there
11 with the shackles, orange socks.

12 MR. HARMON: Your Honor, may the record
13 show that the witness has pointed to and described the
14 defendant, Marlo Thomas?

15 THE COURT: It will.

16 MR. HARMON: Thank you.

17 BY MR. HARMON:

18 Q How sure are you that one of the two
19 people you saw at about 7:55 a.m. on April the 15th,
20 1996, when you left a rear door of the Lone Star
21 Steakhouse was the defendant, Mr. Thomas?

22 A I'm very positive. A hundred percent.

23 Q Had you seen this person who was with Mr.
24 Thomas before?

25 A No, I have not.

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1 Q Are you able to describe that person?

2 A I can describe him now.

3 Q Describe him, please.

4 A He's black male, skinny. Has more like a
5 round sort of haircut and brown eyes. That's it.

6 Q I didn't catch the last thing that you
7 said.

8 A Brown eyes.

9 Q Do you have an estimate regarding his
10 height?

11 A I would say he's between five eight and
12 six foot.

13 Q What about the age? Do you have an
14 estimate of the age of the person who was with Mr.
15 Thomas?

16 A Maybe between 14 and 16.

17 Q Did you have any conversation with either
18 of these persons when you came out the back door of
19 the restaurant?

20 A Yes, I did.

21 Q Describe the conversation which occurred.

22 A I had not seen Marlo for some time. I
23 asked him what he had been up to, what's he doing now.
24 And he just said he was there -- I asked him what he
25 was doing here. He said he was there trying to get

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8JDC00127

AA5061

1 his old job back. He asked who was the manager at the
2 time. I told him Vince was. He asked if Brian still
3 worked there. I told him yes, and cut the
4 conversation short.

5 He asked me -- I told him I had to go
6 home. He asked me how long I was going to be. I said
7 about 20 minutes. He said he would be there when I
8 got back, and he wasn't.

9 Q Will you estimate about how long the
10 conversation lasted that you have just referred to?

11 A Maybe about seven minutes.

12 Q During the conversation, did you see
13 either Marlo Thomas, the defendant, or the other
14 individual to be in possession of any type of weapon?

15 A No, I did not.

16 Q Did you notice anything unusual about
17 their behavior during the perhaps seven-minute
18 conversation that you had?

19 A No, I did not.

20 Q What about the other person? Did he say
21 anything during the conversation?

22 A No.

23 Q Was your conversation limited solely to
24 what you said and what the defendant, Mr. Thomas,
25 said?

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1 A Yes.

2 Q Now, you mentioned that he asked who the
3 manager was who was on duty?

4 A Yes, he did.

5 Q When you told him it was Vince, did Mr.
6 Thomas have any reaction to this?

7 A He called Vince a dickhead.

8 Q A dickhead?

9 A Yes, he did.

10 Q What happened after your conversation was
11 over, that is what did you do?

12 A I just took off and went home to go get
13 my shoes.

14 Q When you left, where were the defendant,
15 Mr. Thomas, and this other young man that he was with?

16 A They were walking from the door that I
17 had just came out of, the north rear door, to the --
18 no, it was the west door. I'm sorry. They were
19 walking to the north door.

20 Q So you're correcting your testimony. You
21 say that you went out the west door?

22 A Yes, I went out the west door. And then
23 they came out the -- they were out the west door and
24 then they went around to the north door.

25 Q Did you see them walking in that

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1 direction as you left?

2 A Yes.

3 Q Still in the rear area of the Lone Star
4 Steakhouse?

5 A Yes.

6 Q When you left, did you know whether any
7 other employees were at the business besides Vince,
8 the manager?

9 A Yes. Me and Vince had let Matt in.

10 Q What is Matt's last name?

11 A Gianakes.

12 Q So you personally saw Matt Gianakes come
13 into the business that morning?

14 A Yes.

15 Q Do you know if anyone else was there?

16 A I didn't see anybody.

17 Q Did you know Carl Dixon?

18 A Yes, I do.

19 Q But you didn't see Carl Dixon that
20 morning?

21 A No, I didn't.

22 Q How long were you gone once you left the
23 business to change shoes?

24 A I was gone from 8:00 o'clock a.m. to 8:20
25 p.m. -- a.m.. Excuse me.

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1 Q You said from 8:00 o'clock a.m. until
2 when?

3 A 8:20 a.m.

4 Q So you're saying that you said that you
5 would be gone 20 minutes and that's about how long
6 that you were gone?

7 A (Witness nods head.)

8 Q You have to answer out loud.

9 A Yes. Sorry.

10 Q Did you have a wristwatch or some
11 timepiece that you looked at?

12 A No, I did not.

13 Q How do you know it was about 20 minutes?

14 A It takes about eight minutes to get to
15 Lone Star to my house, and then figure about the other
16 to just to run down there and grab -- other four to
17 run down there and grab my shoes.

18 Q Is 8:00 to 8:20 a.m. exact or is that
19 your best estimate?

20 A That's my best estimate.

21 Q What happened when you got back?

22 A I arrived to a police officer holding a
23 gun to my head.

24 Q Where did that occur in relation to the
25 Lone Star?

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1 A To the same door that I had came out, the
2 west door. The west rear door that I met Marlo at.

3 Q You mean you were trying to go in?

4 A Yeah.

5 Q Were the doors locked?

6 A Yes, they were.

7 Q How did you get in originally when you
8 got there --

9 A I rang the doorbell.

10 Q -- about ten minutes to eight?

11 A I rang the doorbell.

12 Q Had you rung the doorbell when you were
13 greeted by the police officer?

14 A No, I didn't have a chance.

15 Q Did you later learn that there had been
16 violent crimes committed at the Lone Star Steakhouse?

17 A Yes, I did.

18 Q I take it from your testimony you didn't
19 witness any criminal conduct which occurred that
20 morning?

21 A No, I did not.

22 Q Did you see your former co-worker, Marlo
23 Thomas, anywhere in the area outside of the restaurant
24 when you came back at about 8:20 a.m.?

25 A No, I did not.

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1 Q How long did you remain at the scene?

2 A I remained there until maybe about 12:30,
3 my best estimate.

4 Q Did you ever have a chance to go inside?

5 A No.

6 Q From perhaps 8:20 until 12:30 in the
7 afternoon, did you ever see Marlo Thomas?

8 A No, I did not.

9 Q Is it correct that he had told you that
10 he would be there when you got back?

11 A Yes.

12 Q To the best of your knowledge, was he
13 still there.

14 A No, he was not.

15 Q Did you ever see this young fellow that
16 Mr. Thomas was with during the perhaps four hours that
17 you remained outside of the Lone Star?

18 A No, I did not.

19 MR. HARMON: Thank you. That concludes
20 direct, your Honor.

21 THE COURT: Cross.

22 MR. LaPORTA: Thank you.

23

24

25

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8JDC00133

AA5067

CROSS-EXAMINATION

BY MR. LaPORTA:

Q Mr. Hemmes, you were wearing sandals that morning when you arrived to work; is that not correct?

A That is correct.

Q Can you describe the weather that morning?

A It was sunny. There was a slight breeze. That was it.

Q Temperature?

A I don't know. I was in a hurry. I didn't want to be late.

Q Well, I assume that, correct me if I'm wrong, if you were wearing sandals, then it was a pleasant day. It wasn't cold?

A Well, no, because I wear sandals no matter how it is. I just wear socks with them.

Q Were you wearing a coat?

A No, I was not.

Q What were you wearing on your upper body?

A I was wearing my Lone Star shirt.

Q Which is what, a t-shirt?

A Yes, it's a t-shirt.

Q Colored shirt?

A It's a t-shirt.

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8JDC00134

AA5068

1 Q It's a t-shirt. When you greeted -- when
2 you first saw Mr. Thomas and the second individual,
3 what were they wearing?

4 A Marlo was wearing a black shirt, white
5 shorts, white socks with black shoes.

6 Q The shirt, was it a t-shirt or colored?

7 A T-shirt.

8 Q Was the clothing tight fitting?

9 A No.

10 Q You said during your direct you didn't
11 personally see any weapons on any of the -- the two
12 individuals that you greeted, Mr. Thomas and the
13 second individual; is that not correct?

14 A That's correct.

15 Q Isn't it true that during your
16 seven-minute conversation with Mr. Thomas that he told
17 you that he was there to see if he could get his old
18 job back?

19 A Yes, that is true.

20 Q I'm sorry, what was that? Your answer to
21 that question is yes?

22 A Yes, that is true.

23 Q How long -- I'm speaking specifically
24 about the time on the job -- how long had you known
25 Mr. Thomas?

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1 A Well, like I said, I had worked with him
2 one day.

3 Q Just one day?

4 A Just one day I have worked with him. I
5 have came in on my shift. I used to work the nights
6 when he was getting off of his shift. So we would say
7 what's up to each other then. And next thing I know
8 he got fired. I still knew who he was, but I never
9 remained in contact with him.

10 Q So you didn't know Mr. Thomas before that
11 one day; is that not correct?

12 A That's correct.

13 Q And you didn't know Mr. Thomas -- and you
14 worked with him that one day, and you had very little
15 contact with him that one day?

16 A Yes, that's correct.

17 Q Okay. What was his duties?

18 A He was a dishwasher, daytime DMO,

19 Q What were your duties that day?

20 A That day I was the expo.

21 Q What is that?

22 A That's where the person sends the food
23 out of the window if it's cooked properly.

24 Q And the two job classifications, the two
25 jobs, is there much room for interaction between the

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1 two?

2 A No, not unless I'm actually running
3 dishes that we messed up on down to him to wash.

4 Q Did you do that that day that you worked
5 with him?

6 A I had went and talked to him in our slow
7 period. Whenever we were getting busy, I never went
8 and had contact with him.

9 Q Your conversation the morning that you
10 met him, the morning of the incident, lasted,
11 according to your direct testimony, seven minutes?

12 A Correct.

13 Q How long had you known the victim, Dixon,
14 in this particular case?

15 A I have known him for maybe about two
16 weeks before the incident occurred.

17 Q Can you describe the circumstances that
18 you first met Mr. Dixon?

19 A Yes. It's when I first switched over to
20 the daytime DMO.

21 Q So you had no prior relationship with Mr.
22 Dixon before that day on the job?

23 A That's correct.

24 Q And you worked with him for about two
25 weeks?

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8JDC00137

AA5071

1 A Yes.

2 Q Can you describe your relationship with
3 Mr. Dixon?

4 A We had -- me, him and Matthew had a --

5 Q I'm just asking about Mr. Dixon.

6 A Well, this is concerning all of us
7 because it was all our plans. We had planned on going
8 over to the Salsa every time --

9 Q What I'm asking you is, can you describe
10 your relationship, was it friendly?

11 A Yeah, it was fun.

12 Q Did you socialize with him?

13 A Yes, we did.

14 Q And this began after that first day that
15 you met him on the job?

16 A Yeah.

17 Q How about Mr. Gianakes, your relationship
18 with him was?

19 A Fine. Friendly. Totally fine.

20 Q Good friends?

21 A Yes.

22 Q You socialized with him?

23 A Yes.

24 Q And can you describe the circumstances
25 that you first met Mr. Gianakes?

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8JDC00138

AA5072

1 A The same way as I did Carl.
2 Q On the job?
3 A On the job.
4 Q And about how long had you known Mr.
5 Gianakes?
6 A I had known Matt for about a week longer.
7 Q That would be three weeks?
8 A Yes.
9 Q So your relationship with Mr. Gianakes
10 extended beyond the job?
11 A Yes.
12 Q And you socialized with him?
13 A Yes, we did.
14 Q During that time, had you ever witnessed
15 that individual -- did you ever witness any violent
16 tendencies on his behalf?
17 A No, none.
18 Q Was he a hothead?
19 A No.
20 Q Did you ever have words with him?
21 A No.
22 Q Was he present and working the day that
23 Mr. Thomas was working, that one day that you had
24 worked with Mr. Thomas?
25 A I don't know.

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8JDC00139

AA5073

1 Q You don't recall?

2 A I don't recall.

3 Q Had he ever expressed to you any hatred
4 or animosity towards Mr. Thomas?

5 A No.

6 Q Did you know him as socializing with Mr.
7 Thomas?

8 A No, I did not. I didn't even know that
9 he knew him.

10 Q Now, as to the second individual in this
11 case, Mr. Dixon, you had a friendly relationship with
12 him and you socialized with him?

13 A Yes.

14 Q During that relationship, had you ever
15 personally witnessed a temper?

16 A No.

17 Q No violent acts?

18 A No.

19 Q Was he a hothead in your opinion?

20 A No.

21 Q The day that you had worked, the one day
22 that you had worked with Mr. Thomas, was Mr. Dixon at
23 work that day?

24 A I can't recall that one either.

25 Q If you have any personal knowledge of

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8JDC00140

AA5074

1 this, I would ask you to answer it, and I don't want
2 you to speculate.

3 Did Mr. Thomas and Mr. Dixon have a
4 relationship outside of the restaurant?

5 A I have known that they knew each other.
6 I was aware of that.

7 Q So Mr. Dixon and Mr. Thomas did know each
8 other from somewhere other than the restaurant to the
9 best of your knowledge?

10 A Yes, to my knowledge.

11 Q Only if you know, and I ask you not to
12 speculate, do you know from where they knew each
13 other?

14 A No, I don't know.

15 Q Did you know for a fact as to whether or
16 not they socialized?

17 A Yes, I got to say yes.

18 Q So it's your testimony that Mr. Dixon and
19 Mr. Thomas did know each other from places other than
20 the work site and did have a relationship that
21 extended beyond the workplace?

22 A Yes.

23 Q And to the best of your knowledge, they
24 did socialize?

25 A To the best of my knowledge.

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8JDC00141

AA5075

1 MR. LaPORTA: Court's indulgence.

2 Your Honor, I have no further questions
3 of this witness.

4 THE COURT: Anything further by the
5 State?

6 MR. HARMON: No redirect, your Honor.

7 THE COURT: He may be excused?

8 MR. HARMON: Yes.

9 MR. LaPORTA: Yes.

10 THE COURT: Call your next witness.

11 MR. HARMON: Vincent Oddo.

12 THE CLERK: Do you solemnly swear the
13 testimony which you are about to give shall be the
14 truth, the whole truth and nothing but the truth, so
15 help you God?

16 THE WITNESS: Yes, ma'am.

17 THE CLERK: Please state your full name
18 and spell your full name for the record.

19 THE WITNESS: Vincent Oddo, O-D-D-O.

20

21 VINCENT ODDO,

22 having been first duly sworn, testified as follows:

23

24

25 ////

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8JDC00142

AA5076

DIRECT EXAMINATION

BY MR. HARMON:

Q Mr. Oddo, how old are you?

A Twenty-seven.

Q Do you live in the Las Vegas area?

A Yes.

Q How long have you lived in this community?

A Two-and-a-half years.

Q Are you employed?

A Yes.

Q Where do you work?

A Lone Star Steakhouse.

Q How long have you been employed at the Lone Star Steakhouse?

A Since January of '96.

Q I want to direct your attention to April the 15th, 1996. On that date were you also employed at the Lone Star Steakhouse?

A Yes.

Q At which restaurant, sir?

A 3131 North Rainbow.

Q Don't speak too quickly. The court reporter has to take everything down. Is that understood, Mr. Oddo?

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8JDC00143

AA5077

1 A Yes.

2 Q You said 3131 North Rainbow?

3 A Correct.

4 Q That is in Las Vegas, Nevada?

5 A Right on -- it's on the corner of

6 Cheyenne and Rainbow.

7 Q At what time did you report to the

8 business on April the 15th?

9 A About 7:00, 7:15.

10 Q You said 7:00 to 7:15.

11 A Correct.

12 Q Is that in the morning?

13 A Correct.

14 Q When were the business hours? That is

15 when was the Lone Star open to the public that day?

16 A We open up at 11:00, and we close at

17 10:00 at night.

18 Q 11:00 a.m. until 10:00 p.m.?

19 A Correct.

20 Q So how did it happen that you had to get

21 there at 7:00 or 7:15 in the morning?

22 A I'm a kitchen manager and I arrive right

23 about 7:00 o'clock every morning. It was a Monday

24 morning so 7:00 o'clock is about the normal time that

25 I arrive at work.

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8JDC00144
AA5078

1 Q What types of things had to be
2 accomplished at the Lone Star before it opens for
3 business at 11:00 a.m.?

4 A I need to perform my responsibilities
5 when my employees arrive around 8:00 o'clock, and we
6 prepare the food for daytime and nighttime for the
7 operation of the restaurant.

8 Q When you got to the restaurant between
9 7:00 and 7:15 in the morning, were any other persons
10 there?

11 A No.

12 Q After your arrival, did other employees
13 also get there?

14 A At around 8:00 o'clock.

15 Q What other employees?

16 A Carl Dixon and Matt Gianakes and Steve
17 Hemmes, I believe his last name is, how you pronounce
18 it.

19 Q When Mr. Hemmes arrived, did you have
20 some conversation with him?

21 A Yeah. He showed up with flip-flops, and
22 I had to send him home because it wasn't proper attire
23 to work with flip-flops.

24 Q Flip-flops means what, sandals?

25 A Sandals, correct.

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8JDC00145

AA5079

1 Q So you have indicated that you sent him
2 home?

3 A Yes.

4 Q For what purpose?

5 A Not having the proper attire for working
6 conditions.

7 Q Was he supposed to come back?

8 A Yes.

9 Q What did you send him home to do
10 specifically?

11 A To change his shoes and then come back to
12 work.

13 Q Do you have a best estimate of about what
14 time it would have been when you sent Mr. Hemmes home
15 to change shoes?

16 A Right about 8:00 o'clock. Anywhere give
17 or take five or ten minutes, about five of eight, 8:00
18 o'clock.

19 Q Once Mr. Hemmes left to go home, besides
20 yourself, how many other persons were at the Lone Star
21 Steakhouse?

22 A My two employees, Carl Dixon and Matt
23 Gianakes.

24 Q Do you know what they were doing at about
25 8:00 o'clock in the morning?

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8JDC00146

AA5080

1 A Well, they do their own routine. They
2 clock in and they got their aprons and stuff on, and
3 they look at the prep list and they do their normal
4 routine. They don't need much direction. They were
5 good employees. So they just do the normal routine.

6 I don't know exactly specifically what
7 they were doing, but just their normal business as far
8 as taking care of business.

9 Q You said that you were the kitchen
10 manager. I take it that you were their immediate
11 supervisor?

12 A Correct.

13 Q When you speak of them doing their normal
14 duties after getting their aprons on and getting
15 squared away, where inside the restaurant would they
16 perform their normal duties?

17 A In the back half of the restaurant called
18 our prep area. It's back by the cooler and back by
19 the back door.

20 Q Where is that from the men's restroom?

21 A From the men's restroom?

22 Q Yes. I'm sorry, restroom?

23 A It's sort of right in back of it, but
24 it's over to the left a little bit.

25 Q What is the approximate distance as you

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1 walk between the prep area and the men's restroom?

2 A Approximately 50 feet or so, 50, 75 feet,
3 depending which way that you take.

4 Q Was there a shorter route to take than 50
5 to 75 feet?

6 A No, but there is several ways to get to
7 the restroom, but most common way is 50 to 75 feet.

8 Q What were you doing at about 8:00 o'clock
9 in the morning on Monday, April the 15th, 1996?

10 A I was what they called trimming
11 tenderloins. They are filets that we have in the
12 restaurant, and I was back by the meat table trimming
13 tenderloins.

14 Q Did there come a time when you went into
15 the office area?

16 A Yeah. Right around 8:00 o'clock I order
17 fish. So at 8:00 o'clock I was in the office so
18 that's where I was about 8:00 o'clock.

19 Q Were you by yourself in the office?

20 A Yes.

21 Q Did there come a time when you became
22 aware that persons were -- a person or persons were
23 outside of the office?

24 A I never knew anybody was outside of the
25 office until somebody knocked on the door.

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8JDC00148

AA5082

1 Q So you did hear someone knock?

2 A Yeah. As soon as someone knocked on the
3 door, that's when I opened the door then, and then the
4 gentleman turned, came -- his hand came around the
5 door and pointed a gun right to my face.

6 Q When you heard the knock, what did you
7 think?

8 A I just thought it was your regular
9 employees because every day people knock on the door,
10 and it's just a regular routine, normal routine to
11 just open the door.

12 Q So you described being aware that there
13 were two other regular employees on the premises?

14 A Right. At that particular time, I only
15 knew that Carl and Matt were on duty or in the
16 restaurant.

17 Q But did you conclude that it was probably
18 either Carl Dixon or Matt Gianakes who had knocked?

19 A Yes.

20 Q You said that you opened the door to the
21 office?

22 A Correct.

23 Q And at that moment, what were you
24 describing about a gun?

25 A As soon as they knocked on the door, I

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8JDC00149

AA5083

1 opened the door and I was on the phone, and I just saw
2 a hand come around with a gun in it, and then
3 obviously I knew it wasn't Matt or Carl.

4 Q What happened after the hand came around
5 and you saw a gun?

6 A I hung up the phone, and I was just back
7 in my chair. And at that particular time, I don't
8 know -- I don't remember what was said. But my next
9 action was to get on my knees and go down to the safe.
10 At that particular time, I didn't see anybody else but
11 the one gentleman who -- or the one big stocky guy who
12 first opened the door or knocked on the door.

13 Q So you said there was a knock on the door
14 and you opened the door. And then you saw the hand
15 come around with a gun?

16 A Correct.

17 Q Where was the gun pointed?

18 A At my face.

19 Q How close was the gun to your face?

20 A Three or four inches.

21 Q Which side of your face?

22 A Right in the middle of my face.

23 Q Shortly after that, did you see who was
24 holding the gun?

25 A Yeah.

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1 Q And you're saying that first you were
2 unaware a second person was there?

3 A Correct.

4 Q Describe the person who you saw holding
5 the gun?

6 A Gentleman sitting right there with his
7 feet crossed next to the attorney on the right.

8 Q Describe an article of clothing the
9 individual was wearing that you have pointed at. Not
10 referring to then, I'm talking about this morning in
11 court.

12 A He's wearing a blue shirt or I don't know
13 what you call it, but kind of V-neck all the way down
14 to his chest.

15 MR. HARMON: Your Honor, may the record
16 show that the witness has identified the defendant,
17 Marlo Thomas?

18 THE COURT: It will.

19 MR. HARMON: Thank you.

20 BY MR. HARMON:

21 Q You indicate that you didn't remember for
22 sure what was said?

23 A No, I don't remember.

24 Q What was the effect upon you when you saw
25 the gun pointed within four inches of your face?

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8JDC00151

AA5085

1 A Just shock.

2 Q Did you become excited?

3 A I don't know. I was very shocked. I
4 obviously didn't know what to do. I just did what he
5 told me to do.

6 Q Now, after all this happened, did you
7 give a statement to the police?

8 A Yes.

9 Q Did you attempt to fully cooperate with
10 the police?

11 A Yes.

12 Q You said, although you didn't remember
13 for sure what was said, the next thing that you did
14 was go to the safe?

15 A Correct.

16 Q Have you ever said in your statement to
17 the police that you were told by the person with the
18 gun give me all your money?

19 A Again, it was at a point to where I
20 wasn't really sure what he said. I think I remember
21 he said something having to do with money or the safe.
22 And that's what made me lead to go down to the safe.

23 Q Now, my question was, have you said to
24 the police in your statement that the person who had
25 the gun said give me all your money?

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8JDC00152

AA5086

1 A Yeah, I said that.

2 Q Was that your best effort to describe to
3 the police officers what type of conversation was
4 going on?

5 A Yeah, similar to it.

6 Q Similar to it?

7 A Again, yes. That's exactly what I said
8 to the officer.

9 THE COURT: Mr. LaPorta, would you ask
10 your client not to make facial gestures. It's not
11 helping his case in any manner.

12 BY MR. HARMON:

13 Q Had you intended, Mr. Oddo, to go to the
14 safe in the office before you encountered the
15 defendant, Mr. Thomas, with the gun?

16 A I'm sorry, can you repeat that?

17 Q Well, you said that you were on the
18 telephone when there was a knock on the door?

19 A Right.

20 Q Had you intended to go right over to the
21 safe on your own?

22 A No.

23 Q Why did you go to the safe?

24 A He -- No. 1, he had a gun to my head.
25 Number 2, apparently whatever he told me to do had to

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1 do something with the safe. So that's the reason that
2 I went toward the safe.

3 Q So when you got to the safe, what
4 happened?

5 A At that particular time, I was on my
6 knees opening the safe. And they -- they, meaning the
7 two individuals, they had to make a switch because
8 when I turned around I saw another young kid with the
9 gun and no longer saw the bigger gentleman.

10 Q The defendant whom you have identified in
11 court?

12 A Correct.

13 Q You didn't see him anymore?

14 A No. He left the office, went -- did
15 whatever he was going to do.

16 Q Did you see him leave?

17 A No.

18 Q But you're saying that you were at the
19 safe. You turned around and you see the younger
20 person?

21 A Correct.

22 Q Did he have a gun at that time?

23 A Correct.

24 Q Was the gun exposed so you could see it?

25 A Yes.

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8JDC00154

AA5088

1 Q Was it pointed in any particular
2 direction?

3 A Right at me.

4 Q How close was the younger gentleman to
5 you when you had the gun pointed at you?

6 A Six feet. Five, six feet.

7 Q What part of your body was it pointed at?

8 A Well, when -- I am assuming when I was
9 down opening the safe it was pointed toward my back.
10 When I was standing up, it was pointed toward my
11 stomach.

12 Q I'm not asking you to make any
13 assumption. I'm asking you when you turned and you
14 actually see that he's there with the gun where was it
15 pointed at that time?

16 A Towards my chest.

17 Q Could you tell that it was the same gun
18 that the defendant, Mr. Thomas, had pointed at your
19 face or whether it was a separate gun?

20 A I couldn't tell whether it was the same
21 gun or not, but it was a gun.

22 Q A handgun?

23 A Correct.

24 Q Could it have been a different gun?

25 A Possibly.

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8JDC00155

AA5089

1 Q Could it have been the same gun?

2 A Possibly.

3 Q What happened at that time?

4 A At that time I just kind of started
5 talking to the younger kid, asking him what else he
6 wanted, what else do you want. I gave him as much
7 money as I could possibly find, again asking him what
8 else do you want. What else do you want. He wasn't
9 really sure what he wanted or what to ask for next. I
10 just gave him everything I possibly could.

11 Q What do you mean that the younger kid
12 wasn't really sure what he wanted or what to ask for
13 next?

14 A Just what I could get out of it by asking
15 him what else do you want, what else do you want. You
16 know, he was unclear as far as what he wanted. He
17 just was kind of like kind of give me it all, you
18 know.

19 Q Give it all to me?

20 A Basically.

21 Q Prior to turning around and being aware
22 that the younger kid was in the office also, had you
23 heard any type of conversation between the defendant,
24 Mr. Thomas, and someone else?

25 A No.

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8JDC00156

AA5090

1 Q Do you know how much money was that you
2 gave the second man?

3 A Approximately \$7,000.

4 Q Was that lawful money of the United
5 States?

6 A Yes.

7 Q Was it your money, or did it belong to
8 the Lone Star Steakhouse?

9 A Technically, it's the Lone Star's. But
10 yes, it was my money as far as being responsible for
11 it. But --

12 Q As the kitchen manager on duty, you had
13 responsibility for money that was there?

14 A Sure.

15 Q Where did you get the money which
16 approximated \$7,000?

17 A I saw a piece of paper that had a
18 detailed outline of exactly what was missing.

19 Q That isn't quite my question. Where that
20 morning, April the 15th, 1996, did you acquire the
21 money?

22 A Where did I acquire it from?

23 Q Yes.

24 A From inside the safe.

25 Q All of it from inside the safe?

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8JDC00157

AA5091

1 A Correct.

2 Q Was it currency, coins or both?

3 A Both.

4 Q Do you have any recollection of the

5 denominations that you gave to the younger kid?

6 A Yeah.

7 Q What types of denomination?

8 A Hundreds, fifties, twenties, tens, coin.

9 Q Did you just pass the coins and the

10 money, the currency, to him, or was it put into some

11 type of bag?

12 A Everything was put in the Bank of America

13 bag.

14 Q Single bag or several bags?

15 A I believe that there were two bags.

16 Q You say that you believe.

17 A The statement that I gave to the

18 officers, I believe, was two bags. So yeah, two bags.

19 Q Where did the Bank of America bags come

20 from? Were they in the office or were they brought

21 there by either Mr. Thomas or the younger man?

22 A They were inside the safe. They were not

23 brought by either one of the gentlemen.

24 Q How did it happen that you put the money

25 in the Bank of America bags?

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8JDC00158
AA5092

1 A Just took the money out of the drawers
2 that we had the money in in the safe and put the money
3 in the bags.

4 Q Did you give us the color of the bags?

5 A Blue bags.

6 Q What did you do once the money was inside
7 the two blue bags?

8 A Handed the money to the younger gentleman
9 who had the gun.

10 Q Did he take the money?

11 A Yes.

12 Q Was there any further conversation at
13 that time between you and him?

14 A No.

15 Q Did you know that person?

16 A No.

17 Q Had you ever seen the younger man?

18 A No.

19 Q What happened then?

20 A At that particular time, we both exited
21 the office.

22 Q Together?

23 A Yes. We both left the office together,
24 and at that particular time, I started hearing Matt
25 screaming no, no, no, stop, stop, stop. That type of

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8JDC00159

AA5093

1 reaction from Matt. And at that point, I didn't know
2 what to do or what to think.

3 And at that particular time, while we
4 were walking out of the office, the younger kid just
5 totally ignored me, walked towards the back of the
6 restaurant. And then I just took off and took or made
7 a left-hand turn and took off through the front of the
8 restaurant.

9 Q Where did you run to when you got to the
10 outside of the restaurant?

11 A Once I left the outside of the
12 restaurant, I went across the street to Albertson's.

13 Q What was your reason for going to
14 Albertson's?

15 A To call 9-1-1.

16 Q Did you locate a telephone or did you
17 call 9-1-1?

18 A Uh-huh.

19 Q Did you speak with a 9-1-1 operator?

20 A Eventually, yes.

21 Q What do you mean eventually?

22 A I was put on hold for about two minutes.

23 Q Did you after about two minutes speak
24 with an operator and explain that something was
25 happening at the Lone Star Steakhouse?

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8JDC00160

AA5094

1 A Yes, sir.

2 Q Did you give the operator information
3 regarding the location?

4 A Correct.

5 Q You mentioned that when you came out of
6 the office area and you left at the same time, is that
7 your testimony, as this younger man to whom you had
8 given the bags of money?

9 A Uh-huh. Correct.

10 Q Did he still have the gun out?

11 A No. I didn't really focus on the gun
12 anymore. I don't know. I don't know where he put the
13 gun. But once we exited the doors together, I no
14 longer saw the gun.

15 Q You say that he then walked off and just
16 ignored you to another part of the restaurant?

17 A He walked towards the back of the
18 restaurant, towards the prep area.

19 Q When he walked towards the prep area, did
20 he still have the bags of money?

21 A I would assume so, yes.

22 Q To your knowledge, was the money, which
23 you approximate as being \$7,000, ever recovered by the
24 Lone Star Restaurant?

25 A I don't know.

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8JDC00161

AA5095

1 Q Did you give the money to this younger
2 man in the two blue bank bags freely and voluntarily?

3 A Yes.

4 Q Why?

5 A Because he had a gun. And obviously he
6 was there for one reason and that was for the robbery.
7 So there was nothing else to do besides give him the
8 money.

9 Q Except for the gun, would you have
10 surrendered thousands of dollars belonging to the Lone
11 Star which were in your care to a stranger?

12 A That's a tough -- that's a tough answer.
13 I don't know.

14 Q Tough question?

15 A I mean --

16 Q Well, you're the kitchen manager, aren't
17 you?

18 A Sure am.

19 Q You said that you were in charge of the
20 money?

21 A Sure am.

22 Q Are you going to give it to anybody who
23 walks in off the street?

24 A No.

25 Q So were you affected by the presence of

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8JDC00162

AA5096

1 the gun?

2 A Sure.

3 Q Did you know whether the gun was loaded
4 or unloaded?

5 A No.

6 Q What did you assume?

7 A It was loaded.

8 Q Were you in fear of your safety?

9 A Sure.

10 Q As you walked out, you said that you
11 heard Matt?

12 A Correct. I heard Matt while we were
13 leaving the door, the office door, I heard Matt
14 screaming no, no, no, stop, stop, stop.

15 Q Did you definitely recognize the screams
16 as those of Matthew Gianakes?

17 A Yes.

18 Q From what part of the restaurant were the
19 screams coming from?

20 A From the back of the restaurant in the
21 prep area.

22 Q In the area where he would have been
23 carrying out his ordinary responsibility?

24 A Correct.

25 Q Did you see Carl Dixon at that time?

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8JDC00163

AA5097

1 A No.

2 Q Do you have any way of knowing exactly
3 where Carl Dixon was?

4 A No.

5 Q Did you see the other man, the defendant,
6 Mr. Thomas, when you walked out of the office area
7 with the person who had the money and you heard
8 Matthew Gianakes screaming?

9 A No.

10 Q Did you know at that time where Mr.
11 Thomas was?

12 A I assume in the back of the restaurant.

13 Q But you didn't actually see it?

14 A No.

15 MR. HARMON: May I have the Court's
16 indulgence.

17 Your Honor, may I approach the witness
18 again?

19 THE COURT: Yes.

20 BY MR. HARMON:

21 Q I'm showing you, Mr. Oddo, State's
22 Exhibit No. 6. Do you recognize who is shown in that
23 photograph?

24 A Carl Dixon.

25 Q I'm also showing you Exhibit No. 18. Do

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1 you recognize that person?

2 A Matthew Gianakes.

3 Q Are the persons depicted in Exhibits 6
4 and 18 the two employees whom you have previously
5 described in your testimony as Carl Dixon and Matthew
6 Gianakes?

7 A Correct.

8 Q When you mentioned hearing Matthew
9 Gianakes scream, were you referring to the same person
10 depicted in Exhibit No. 18?

11 A Correct.

12 MR. HARMON: May I again approach the
13 witness, Judge.

14 THE COURT: Yes.

15 BY MR. HARMON:

16 Q I'm showing you also, sir, Proposed
17 Exhibits 1 through 4. Would you look at those
18 pictures? Do you recognize the place where the
19 pictures were taken?

20 A Yes.

21 Q What is the business depicted in the
22 photographs, Proposed Exhibits 1 through 4?

23 A The business is Lone Star Steakhouse.

24 Q At 3131 North Rainbow?

25 A North Rainbow.

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1 Q Was that the business where the things
2 happened that you have been describing in your
3 testimony on April the 15th, 1996?

4 A Correct.

5 Q Does the first photograph depict the
6 front of the Lone Star Steakhouse?

7 A Yes.

8 Q Is there a Rebel Station located just to
9 the side of the Lone Star Steakhouse?

10 A Yes.

11 Q Is part of that depicted in Proposed
12 Exhibit 2?

13 A Yes.

14 Q Regarding Proposed Exhibits 3 and 4, does
15 that depict the men's restroom area of the Lone Star
16 Steakhouse?

17 A Yes.

18 Q And do you recognize the individual who
19 is depicted on the floor of the men's restroom?

20 A Yes.

21 Q Who is that person?

22 A Carl Dixon.

23 MR. HARMON: Your Honor, the State offers
24 Proposed Exhibits 1 through 4.

25 MR. LaPORTA: No objection, your Honor.

1 THE COURT: They will be admitted.

2
3 (State's Exhibits 1 through 4
4 admitted into evidence.)

5 MR. HARMON: That concludes direct,
6 your Honor.

7 THE COURT: Cross.

8 MR. LaPORTA: Thank you.

9
10 CROSS EXAMINATION

11 BY MR. LaPORTA:

12 Q Mr. Oddo, there came a knock at the door,
13 according to your direct testimony, you open that door
14 as a routine matter thinking that it was a fellow
15 employee; is that not correct?

16 A Correct.

17 Q How many guns did you see?

18 A One.

19 Q You said that you saw the gun come around
20 the corner or around the door; is that not correct?

21 A Correct.

22 Q You eventually saw who was holding that
23 gun, did you not?

24 A Correct.

25 Q Who was holding that gun?

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1 A The gentleman next to you, to the right
2 of you.

3 Q Did you ever see a second gun?

4 A No.

5 Q This all occurred approximately at 8:00
6 o'clock in the morning there at the restaurant. Is it
7 open to the public at that time?

8 A No.

9 Q The entries, both public and otherwise,
10 are they open, locked?

11 A Generally locked.

12 Q If you know, what was their condition
13 that morning, locked or open?

14 A Locked.

15 Q Prior to that morning, had you known Mr.
16 Thomas, the defendant?

17 A I worked with him for approximately a
18 week.

19 Q One week. Did you hire him?

20 A No.

21 Q Did he quit or was he fired?

22 A I believe he was fired.

23 Q Do you know who fired him?

24 A A gentleman by the name of Darren. I'm
25 sorry, not Darren, Darryl.

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8JDC00168

AA5102

1 Q Do you know Darryl's last name?

2 A Not off the top of my head, no.

3 Q Do you know why he was fired?

4 A He what we call no-call, no-showed for a
5 shift. I believe it was two shifts.

6 Q If you worked with him for a week, are we
7 to assume that he worked the day shift when you
8 worked?

9 A At that particular time, I was the
10 assistant kitchen manager, so my duties were generally
11 at nighttime. I just happened to open the restaurant
12 that morning because this was Darryl's day off.

13 Q Do you -- were you Mr. Thomas' direct
14 supervisor during this week?

15 A No, not really. It was more towards
16 Darryl who was the kitchen manager full time.

17 Q Outside of that week at the restaurant,
18 did you have a relationship with Mr. Thomas?

19 A No.

20 Q Had you personally ever had any problems
21 at work with Mr. Thomas?

22 A No.

23 Q When Mr. Thomas and the second
24 individual, when you first saw them that morning after
25 you opened the door, at that time you had testified

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8JDC00169

AA5103

1 that you saw one gun, one handgun, that Mr. Thomas was
2 holding. Did you see Mr. Thomas have on his person
3 any knives?

4 A No, and I couldn't tell.

5 Q Did you see the second individual, was he
6 in possession of any knives, to the best of your
7 knowledge?

8 A No.

9 Q The bathroom that was testified to during
10 your direct testimony that's near the prep area, is
11 that an employee only bathroom or public and employee?

12 A Public and employee.

13 Q Is that right off the prep area?

14 A No. It's considered into the front of
15 the house, and you have to exit the back of the house
16 to get to the front of the house, so it's not
17 considered the prep area, no.

18 Q About how many feet would you say that
19 bathroom is where, I believe it was, Mr. Dixon was
20 found?

21 A Correct.

22 Q About how many feet is that from the prep
23 area where he had been working?

24 A I said about 50 to 75 feet.

25 Q Fifty to seventy-five feet?

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1 A It could be an approximate. I could be
2 wrong.

3 Q About how long would it take you to work
4 from that prep area to the bathroom?

5 A Twenty seconds, depending on what part of
6 the prep area you were at.

7 Q Prep area that big?

8 A It's pretty much the width of the
9 restaurant.

10 Q During your direct testimony, you were
11 pretty sure about the fact that there was a knock at
12 the door and that you opened the door and that you saw
13 a handgun come around the door and that you saw Mr.
14 Thomas holding that gun. And then the next thing that
15 you recall vividly is being on your knees at the safe.

16 You seem to equivocate as to what you
17 actually heard or didn't hear Mr. Thomas or the second
18 individual say. Now, were you guessing?

19 A Guessing, no.

20 Q So it's your testimony that you actually
21 heard them say what?

22 A That I don't know. But he said something
23 in a manner to go down to the safe. Whether -- I
24 don't know exactly what he said. So you're right, I
25 was guessing.

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8JDC00171

AA5105

1 Q So you don't know if you were ordered to
2 give them any money or not?

3 A True. Correct.

4 Q It is safe to say because you saw the gun
5 you were assuming that they wanted money?

6 A No.

7 Q Why not?

8 A First of all, I didn't know what they
9 were doing there. Number 2, I mean, he had a gun. I
10 mean, he had to say something in order for me to go
11 down to the safe. I just wouldn't go down there
12 voluntarily and give them all the money in the safe.

13 Q What I'm asking is, did you assume that
14 they wanted money because you saw the gun?

15 A Yes.

16 Q Or did you go down on your knees at the
17 safe because you actually were following a directive
18 or a demand of them?

19 A Correct.

20 Q So your testimony is you assume that they
21 wanted the money?

22 A True.

23 Q As to victim Dixon, how long had you
24 known him?

25 A Probably about three months,

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8JDC00172

AA5106

1 three-and-a-half months.

2 Q About three-and-a-half months. And can
3 you describe the circumstances when you first met Mr.
4 Dixon?

5 A Describe to you the circumstances?

6 Q Yeah. I mean, was it at work?

7 A It was at work. He was an employee that
8 came back to work for us, and he was a prep cook for
9 us.

10 Q So he had worked for you once before?

11 A Not me, no. But the Lone Star, yes.

12 Q Did you socialize with Mr. Dixon outside
13 of work?

14 A No.

15 Q You testified that you were his direct
16 supervisor?

17 A Correct.

18 Q So you had quite a bit of interaction
19 with Mr. Dixon at work?

20 A Yes.

21 Q Was Mr. Dixon a person who lost his
22 patience easily?

23 A No.

24 Q Would you describe him as a hothead?

25 A No.

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8JDC00173

AA5107

1 Q Had you ever witnessed any violent acts
2 of his while at work?

3 A No.

4 Q Had you ever personally witnessed any
5 violent threats?

6 A No.

7 Q How would you characterize Mr. Dixon in
8 terms of his work?

9 A Very consistent worker. Always did what
10 he was told. Never had a problem as far as what we
11 asked him to do. He's on time. Always did the job.

12 Q As to the victim in this case Gianakes,
13 how long had you known Mr. Gianakes?

14 A It wasn't long. Maybe a month,
15 month-and-a-half, maybe.

16 Q Can you describe the circumstances that
17 you first met Mr. Gianakes?

18 A I interviewed him and then he got hired.

19 Q You personally hired him?

20 A I don't remember if it was myself or
21 Darryl.

22 Q Were you Mr. Gianakes' direct supervisor?

23 A Yes.

24 Q Can you describe Mr. Gianakes as an
25 employee?

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8JDC00174

AA5108

1 A Excellent employee. Always showed up on
2 time. Worked hard. Did what he was told. I never
3 had a problem. Enjoyed his work. Worked hard.

4 Q Had you ever personally witnessed Mr.
5 Gianakes commit any violent acts in your presence?

6 A No.

7 Q Did he ever lose his patience in front of
8 you?

9 A No.

10 Q Would you generally characterize him as a
11 hothead?

12 A No.

13 MR. LaPORTA: I have no further
14 questions, your Honor.

15 THE COURT: Anything further by the
16 State?

17 MR. HARMON: Just a couple of questions,
18 your Honor, if I may.

19

20 REDIRECT EXAMINATION

21 BY MR. HARMON:

22 Q Mr. Oddo, do you know how the defendant
23 and the younger man got into the Lone Star Steakhouse
24 that morning, April the 15th, 1996?

25 A No.

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1 Q You didn't let them into the restaurant?

2 A No. I was in the office.

3 Q I take it that you don't know whether
4 they were let in by one of the other employees, either
5 Carl Dixon or Matthew Gianakes?

6 A I don't know that.

7 Q You were asked on cross-examination if
8 you assumed when the gun was pointed at you by the
9 defendant that he wanted money.

10 A I assumed that.

11 Q However, in addition to the assumption,
12 was something said about money that caused you to go
13 to the safe?

14 A That I don't remember.

15 Q Do you have the copy of the statement
16 that you gave the police with you at the witness
17 stand?

18 A Not at the witness stand. It's in the
19 courtroom.

20 MR. HARMON: May I approach the witness?

21 BY MR. HARMON:

22 Q I want to direct you, Mr. Oddo, to page 3
23 of your statement. I would like you to look at the
24 last question and answer on page 3.

25 A Uh-huh.

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1 Q Will you read that to yourself?

2 A Okay.

3 Q Does that accurately reflect an answer
4 you gave to the homicide detectives who interviewed
5 you at the time you gave a recorded statement on April
6 the 15th, 1996, at 9:18 in the morning?

7 A Yes.

8 Q Was this very shortly after this event
9 had occurred?

10 A Yes.

11 Q Now, at that time at the bottom of page 3
12 were you asked this question, it was a gun. Okay.
13 What did he say to you? And did you answer, said --
14 you mean, he said give me all your money.
15 Something -- I honestly -- I really can't remember
16 what he told me. But obviously it had to do with
17 money because that was the next step I did was get the
18 money.

19 Now, was that the answer that you gave?

20 A Correct.

21 Q Was that correct information?

22 A To the best of my knowledge.

23 MR. HARMON: Thank you. That's all, your
24 Honor.

25 THE COURT: Anything further, Mr.

1 LaPorta?

2 MR. LaPORTA: Just briefly.

3

4

RE CROSS-EXAMINATION

5 BY MR. LaPORTA:

6 Q As to that interview that took place
7 approximately one hour after this incident --

8 A Yes.

9 Q You were still pretty excited then, were
10 you not?

11 A Sure.

12 Q Quite anxious?

13 A Sure.

14 Q Facts still jumbled in your head?

15 A No.

16 Q You've had some time to think about it
17 since then, have you not?

18 A It was about an hour afterwards.

19 Q I mean, since then. Since the incident,
20 and this morning, you have had some time to sort the
21 facts out, have you not?

22 A Sure.

23 MR. LaPORTA: No further questions, your
24 Honor.

25 THE COURT: Mr. Harmon?

1 MR. HARMON: Nothing further, Judge.

2 THE COURT: Thank you. You can step
3 down.

4 Can he be excused?

5 MR. HARMON: Yes.

6 MR. LaPORTA: Yes, sir.

7 THE COURT: All right. It's quarter to
8 12:00. How many more witnesses does the State have?

9 MR. HARMON: In all, probably only one
10 other witness. That would be Kenya Hall.

11 THE COURT: We'll be in recess. I have a
12 1:00 o'clock calendar, but we'll do this prelim. We
13 can either start in one hour or 1:00 o'clock, so you
14 tell me when.

15 MR. HARMON: 1:00 o'clock is fine with
16 the State, your Honor.

17 MR. LaPORTA: That's fine, Judge.

18

19 (Recess)

20

21 THE COURT: 96F7190A, State of Nevada
22 versus Marlo Thomas. Resumption of preliminary
23 hearing. It looks like all parties are present.

24 Call your next witness.

25 MR. HARMON: Kenya Hall.

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8JDC00179

AA5113

1 MR. STEFFEN: Prior to Mr. Hall taking
2 the stand, we would like to make a motion to exclude
3 any videotaping of his testimony. I believe that he's
4 a 15-year-old juvenile.

5 THE COURT: I told him that they couldn't
6 videotape his testimony.

7 MR. LaPORTA: Additionally, if any
8 witnesses that are here now, if you could make the
9 pitch to them.

10 THE COURT: Remaining witnesses, if there
11 are witnesses here, will have to wait in the hall
12 either if you have testified or haven't. If you're
13 subpoenaed on the Thomas matter, you have to go out in
14 the hall.

15 There are so many people I am not sure
16 who is a witness and who is not. So you guys have to
17 police that. One of the things that I would like to
18 say before we get started is this may be an
19 emotion-packed continuation of the prelim. I expect
20 no outbursts from anyone in this courtroom or the
21 courtroom will be cleared. This may be stuff --

22 THE CLERK: Stand up, please. Do you
23 solemnly swear the testimony which you are about to
24 give shall be the truth, the whole truth and nothing
25 but the truth, so help you God?

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1 THE WITNESS: Yes.

2 THE CLERK: Please state your full name
3 and spell your full name for the record.

4
5 KENYA HALL,

6 having been first duly sworn, testified as follows:

7
8 THE WITNESS: Where is my lawyer? First
9 I want to see my lawyer.

10 THE COURT: Who are you looking for?

11 THE WITNESS: My lawyer.

12 THE COURT: If you want to come up here
13 and sit, he would feel more comfortable if you are up
14 here by him.

15 THE COURT: Is there any objection to
16 that?

17 MR. LaPORTA: Judge, I am going to object
18 to him standing next to him, your Honor. I want this
19 witness's testimony. I don't want the attorney
20 coaching him.

21 THE COURT: Objection overruled. Don't
22 coach him.

23 What we'll do is this -- He's
24 representing this guy, Mr. LaPorta, not the State.

25 MR. STEFFEN: Could we meet? Can we have

1 a side bar? Thanks.

2
3 (At the bench discussion,
4 off the record.)
5

6 THE COURT: Would you take this young man
7 outside in the hall and be with him, and his attorney
8 wants to talk to him for just a second. Go out here.

9 DEFENDANT THOMAS: I wish to speak --

10 MALE SPEAKER: Your Honor, he would like
11 to talk to his mother.

12 THE COURT: Yes, get his mom.

13 Is Mr. Hall's mother here? Come up.

14 This witness wants to talk. Is there any
15 objection? He wants to talk to his mother.

16 DEFENDANT THOMAS: Yeah, she can talk.

17 THE COURT: Gee, thanks. Come up. Would
18 you come up? Your son is out there.

19 MR. HARMON: May I leave the courtroom,
20 your Honor?

21 THE COURT: Absolutely. We are in a
22 pause in the proceedings.
23

24 (Recess.)
25

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8JDC00182

AA5116

1 THE COURT: This is a resumption of
2 96F7190A, State of Nevada versus Marlo Thomas. Let's
3 get started.

4 Mr. Hall has been sworn in. Go ahead.

5
6 DIRECT EXAMINATION

7 BY MR. HARMON:

8 Q State your name, please?

9 A Kenya Hall.

10 MR. HARMON: Perhaps, your Honor, we
11 could have the microphone turned just a little bit.

12 BY MR. HARMON:

13 Q Can you spell your first name for the
14 record?

15 A K-E-N-Y-A. H-A-L-L.

16 Q Mr. Hall, how old are you?

17 A Fifteen.

18 Q What is your date of birth?

19 A 2-19-81.

20 Q Other than the temporary residence in the
21 Clark County Detention center, where do you live, sir?

22 A Hawthorne, Nevada.

23 Q How long have you lived in Hawthorne,
24 Nevada?

25 A Eight years.

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8JDC00183

AA5117

1 Q Do you know the defendant in this action,
2 Marlo Thomas?

3 A Yes.

4 Q Do you see him in the courtroom?

5 A Yes.

6 Q Will you point to him and describe
7 something that he's wearing in court?

8 THE COURT: Just describe it, if you
9 will.

10 THE WITNESS: Blue shirt, blue pants.

11 THE COURT: Is he the person sitting next
12 to the lawyer with the tie right there in front of
13 you?

14 THE WITNESS: Yes.

15 THE COURT: Record will reflect that he
16 identified the defendant.

17 MR. HARMON: Thank you, your Honor.

18 BY MR. HARMON:

19 Q How is it that you know Marlo Thomas?

20 A He's my sister's husband.

21 Q What's your sister's name?

22 A Angela Thomas.

23 Q Mr. Hall, I want to direct your attention
24 to April the 14th, of 1996, a Sunday. On that day did
25 you travel from Hawthorne, Nevada, to Las Vegas,

1 Nevada, with your sister, Angela Thomas?

2 A Yes.

3 Q And with the defendant, Marlo Thomas?

4 A Yes.

5 Q Did you use an automobile?

6 A Yes.

7 Q Describe the car, please?

8 A 1991 Mitsubishi Mirage.

9 Q Whose car was it?

10 A My mother's.

11 Q What is your mother's name?

12 A Denise Hall.

13 Q You said Denise Hall?

14 A Yes.

15 Q Will you spell your mother's first name?

16 A D-E-N-I-S-E.

17 Q Who drove the car from Tonopah -- excuse

18 me, from Hawthorne to Las Vegas?

19 A Angela Thomas.

20 Q Angela Thomas, your sister?

21 A Yes.

22 Q Was anyone else in the car? Did anyone

23 else make the trip with you besides the defendant, Mr.

24 Thomas, and your sister?

25 A No.

1 Q Did you get to Las Vegas that evening?
2 A Yes.
3 Q Sunday, April the 14th?
4 A Yes.
5 Q Where did you stay that night?
6 A At his aunt's.
7 Q You say at his aunt's. Whose?
8 A Marlo.
9 Q At Marlo Thomas's aunt's place?
10 A Yes.
11 Q Did you know his aunt prior to that
12 evening?
13 A No.
14 Q Do you remember about what time you got
15 up the next morning?
16 A About 6:00.
17 Q After you had been up for a while, did
18 you go somewhere?
19 A Yes.
20 Q Who did you leave with?
21 A Angela Thomas and Marlo Thomas.
22 Q Did you ride in a car?
23 A Yes.
24 Q Which car?
25 A A 1991 Mitsubishi Mirage.

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8JDC00186

AA5120

1 Q Your mother, Denise Hall's, car?
2 A Yes.
3 Q The same car that you had traveled from
4 Hawthorne to Las Vegas?
5 A Yes.
6 Q Who drove the car that Monday morning,
7 April the 15th, 1996?
8 A Angela Thomas.
9 Q Where did you go, Mr. Hall?
10 A Huh?
11 Q Where did you go?
12 A To a gas station.
13 Q Was gas put into the car?
14 A Yes.
15 Q After the gas station, did you go to the
16 location of a Lone Star Steakhouse?
17 A Yes.
18 Q Would you estimate about what time you
19 arrived there?
20 A 7:30. I don't know.
21 Q Perhaps 7:30 in the morning?
22 A Yes.
23 Q Is that simply an estimate by you?
24 A Yes.
25 Q Did you know why you had gone to the Lone

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8JDC00187

AA5121

1 Star Steakhouse?

2 A Sort of.

3 Q What does sort of mean?

4 A The reason I was told we was going there
5 wasn't the reason that we was there.

6 MR. LaPORTA: Your Honor, I'm sorry, but
7 I'm having trouble understanding a lot of what he
8 says. Could you ask him to move closer to the mike.

9 THE COURT: Speak up a little bit.

10 THE WITNESS: Because the reason we went
11 there wasn't the reason that I was told we was there.

12 BY MR. HARMON:

13 Q Let's start with what you were told.
14 Were you given a reason for going to the steakhouse?

15 A Yes.

16 Q Who gave you a reason for going there
17 originally?

18 A Marlo Thomas.

19 Q The defendant, Marlo Thomas?

20 A Yes.

21 Q What did he tell you at first was the
22 reason for going there?

23 A To get his job back.

24 Q To get his job back?

25 A Yes.

1 Q When you got to the location of the Lone
2 Star Steakhouse, is that still what you were thinking?

3 A Yeah.

4 Q What was the answer?

5 A Yes.

6 Q What happened after you got to the area
7 where the restaurant was located?

8 A What do you mean, what happened?

9 Q Was your sister, Angela Thomas, still
10 driving?

11 A Yes.

12 Q Did she pull into a shopping area?

13 A Yes.

14 Q Did she at some point stop the car?

15 A Yes.

16 Q Tell us what happened there?

17 A After that?

18 Q Yes.

19 A Sat there for a while, and we was just
20 watching.

21 Q You were just watching you said?

22 A Looking at the Lone Star, and then my
23 sister was told to drive over to the store.

24 Q Who told her to drive over to a store?

25 A Marlo Thomas.

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8JDC00189

AA5123

1 Q Had there been any conversation while the
2 three of you sat in the car just watching the
3 restaurant?

4 A Yes.

5 Q What was the conversation that you
6 remember?

7 A It was conversation about a white van
8 that was driving around the parking lot and went to
9 the Lone Star, and about money and stuff, about the
10 white van making a pickup.

11 Q What did Mr. Thomas say about the white
12 van and money?

13 A They do a pickup every day of the week,
14 and they do a pickup every Monday morning for the
15 weekend and stuff.

16 Q Are you saying that there actually was a
17 white van in the area of the restaurant?

18 A Yes.

19 Q Were you able to see where the white van
20 stopped, if it stopped at all?

21 A Yes.

22 Q Where did it stop?

23 A At the Lone Star parking lot.

24 Q Did you see people get out?

25 A Yes.

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8JDC00190

AA5124

1 Q Where did they go?
2 A Into the Lone Star.
3 Q Was there any comment at that time by
4 Marlo Thomas?
5 A Not that I remember.
6 Q Was there any further conversation?
7 A No.
8 Q Did you see people come out of the
9 restaurant?
10 A Yes.
11 Q The same people who had gone in from the
12 white van?
13 A I believe so.
14 Q You said that at some point Marlo Thomas
15 told your sister to go over to the store?
16 A Yes.
17 Q Did they drive the car to the store, or
18 did they simply get out and walk to the store?
19 A She drove the car over to the store.
20 Q What happened when you got to the store?
21 A She got on the phone.
22 Q She got on the telephone?
23 A Yes.
24 Q Where was the telephone located in
25 relation to the store?

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8JDC00191
AA5125

1 A On the side of the store.

2 Q Was she using the pay phone?

3 A Yes.

4 Q What happened while your sister was on
5 the telephone?

6 A Me and Marlo got out.

7 Q Why did you get out?

8 A Huh?

9 Q Why did you get out of the car?

10 A Go in the Lone Star.

11 Q Whose idea was it to go into the Lone
12 Star?

13 A Marlo's.

14 Q Did you have any interest in going into
15 the Lone Star Restaurant that morning?

16 A Not for a reason.

17 Q Was it your idea to go along with the
18 defendant and your sister to the Lone Star Restaurant?

19 A Yes.

20 Q You wanted to go with them?

21 A Yes.

22 Q Did you want to go into the restaurant?

23 A Yes.

24 Q Why?

25 A I didn't want to sit in the car. There

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1 was nothing else to do.

2 Q So did you and Mr. Thomas proceed to go
3 inside of the restaurant?

4 A I didn't hear you. I didn't understand.

5 Q Well, you said that the two of you got
6 out and that was for the purpose of going inside to
7 the Lone Star?

8 A Yes.

9 Q Did you go inside?

10 A Yes.

11 Q Was a weapon of any kind taken into the
12 restaurant?

13 A Not when we first got out. Well, into
14 it, yes.

15 Q You say not when you first got out?

16 A Yes.

17 Q What happened after you got out and
18 before you had actually entered the restaurant?

19 A Yes. Before. We got out of the car and
20 we started walking around the front of the Lone Star,
21 and there was a delivery truck. And Marlo said
22 something, turn around. We went back to the car, and
23 he got in the car and he started loading the gun
24 and --

25 Q You saw him get into the car and start to

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8JDC00193

AA5127

1 load a gun?

2 A Yes.

3 Q Did you know that he had the gun that

4 morning?

5 A I knew it was in the car.

6 Q Where in the car was it?

7 A The glove compartment.

8 Q Whose gun was it?

9 A Marlo's.

10 Q Who?

11 A Marlo's.

12 Q Marlo's, the defendant?

13 A Yes.

14 Q What kind of gun was it?

15 A A .32.

16 Q Did you have a gun?

17 A No.

18 Q You say that you actually saw Marlo

19 Thomas loading the .32 gun?

20 A Yes.

21 Q Where was he when he was loading it?

22 A In the car.

23 Q Did he get completely back into the car?

24 A No.

25 Q Was he sitting on the seat?

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8JDC00194
AA5128

1 A He was sitting on the seat, but his leg
2 was outside the door.

3 Q With the door open?

4 A Yes.

5 Q You mentioned that a delivery truck had
6 pulled up and Marlo said something.

7 A Yes.

8 Q That was as the two of you were walking
9 toward the Lone Star?

10 A Yes.

11 Q What did he say to you when the delivery
12 truck pulled up?

13 A He didn't say it to me.

14 Q Excuse me?

15 A He didn't say nothing to me. He said it
16 to himself.

17 Q He said what?

18 A He said it to himself.

19 Q Did you -- could you tell what he said to
20 himself?

21 A Yes.

22 Q What did he say to himself?

23 A Shit.

24 Q Did you see what the delivery truck did
25 when it pulled up?

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8JDC00195

AA5129

1 A No. I just seen it there.

2 Q But it was after it pulled up that he
3 went back and you say got the gun out of the glove
4 box?

5 A Yes.

6 Q Loaded the gun?

7 A Huh?

8 Q Loaded the gun?

9 A Yes.

10 Q With bullets?

11 A Yes.

12 Q What happened then?

13 A He said come on. We went back to the
14 Lone Star.

15 Q Did you then go up to a door of the Lone
16 Star Restaurant?

17 A Yes.

18 Q Do you remember what door you went to?

19 A Yes.

20 Q Which door?

21 A The back door.

22 Q Did Mr. Thomas still have the gun?

23 A Yes.

24 Q The .32 caliber gun that he had loaded?

25 A Yes.

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8JDC00196

AA5130

1 Q Did you have a weapon of any kind?
2 A No.
3 Q Did you have a knife?
4 A No.
5 Q Did Mr. Thomas have a knife as far as you
6 knew?
7 A No.
8 Q At the point that you arrived at a back
9 door, did anyone knock or ring a doorbell or say
10 anything?
11 A No, we just sat there for a while.
12 Q You just sat there for a while?
13 A Yes.
14 Q Up to that point, had Mr. Thomas said
15 anything about his purpose for going to the Lone Star
16 that was different than trying to get his job back?
17 A Not that day.
18 Q Did you know at the time you waited
19 outside the door that there was going to be a robbery?
20 A Pretty much.
21 Q Why did you pretty much know that there
22 was going to be a robbery?
23 A Because he had the gun.
24 Q Is that the only reason that you
25 concluded that?

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AA5131