

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

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SHAWN RUSSELL HARTE

Appellant,

v.

STATE OF NEVADA

Respondent.

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**CASE NO. 78978**

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Appeal from an Order Denying Petition and Supplemental Petition for Writ of  
Habeas Corpus (Post-Conviction) in Case CR98-0074A  
The Second Judicial District Court of the State of Nevada, Washoe County  
Honorable Connie J. Steinheimer, District Judge

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**JOINT APPENDIX VOLUME 3**

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1       that, please?

2           A       I can identify State's Exhibit No. 17-A based on my  
3       own sticker that's placed on the grip of the firearm which  
4       bears an item number and a case number and my initials.

5                   And the cartridge case package can be identified.  
6       It has my name on it. And the box I placed the cartridge case  
7       in was in our file, and that can be identified. And the  
8       plastic bag it is wrapped in bears a case number, item number,  
9       initials. I believe that is State's Exhibit 28.

10          Q       Criminalist Lattyak, how do you receive these items  
11       for you to conduct an examination?

12          A       Normally we go down to the evidence room and we'll  
13       actually check the evidence out and then to an examination.

14          Q       What information do you possess at the time you are  
15       beginning your examination?

16          A       Normally we have a work request which will bear  
17       possibly a laboratory case number, an agency item number, that  
18       sort of thing, a very brief description.

19          Q       Do you have any information about from where the  
20       item was seize or from what crime it is connected to, that  
21       sort of thing?

22          A       It may or may not be listed in the description.  
23       Sometimes they are, sometimes they are not.

24          Q       You know in this case you had information concerning

1 where 17-a and 28 were seized?

2 A Based on my recollection, I believe the cartridge  
3 case that is here before us today was listed as from a taxi,  
4 taxicab. The firearm, I don't recall. It may have been  
5 listed, recovered from a particular location. I don't recall  
6 right offhand.

7 Q Did you have occasion to make a comparison between  
8 the cartridge or Exhibit 28 and the weapon, Exhibit 17-a?

9 A Yes. A microscopic examination was conducted  
10 between the evidence cartridge case and test fired cartridge  
11 cases I actually fired from this particular firearm. So an  
12 examination was performed.

13 Q So briefly describe how you make the comparison,  
14 what you do to make a comparison between a cartridge case  
15 found at the scene and a cartridge case that you test fire.

16 A The evidence cartridge case would be put on one side  
17 of a two-stage comparison microscope, would and a two-stage  
18 comparison microscope would be basically two microscopes  
19 connected together. So I can look at one object on one side,  
20 on one stage, and put another object on the other side of the  
21 stage and actually move them together or apart and look at the  
22 characteristics.

23 So I had to test fire cartridges excuse me, so I had  
24 test fired cartridges on one side of the microscope, and, of

1 course, my evidence cartridge case on the other, and it is a  
2 microscopic examination. I'm looking for a variety of  
3 different markings that we place on the cartridge or cartridge  
4 case when it's fired in a gun.

5 Q Do you have to have a cartridge, a test fired  
6 cartridge that is similar to or the same as the one that's the  
7 evidentiary item?

8 A Sometimes it's a benefit to do that, and sometimes  
9 it isn't. I believe in this particular case I discharged a  
10 shot of similar ammunition. There may be times I may want to  
11 use a variety of ammunitions.

12 Q Do you know from where you got the similar  
13 ammunition?

14 A From our lab reference collection.

15 Q So it was not collected from or not given to you  
16 under any other evidence Q number?

17 A To my recollection, no. No ammunition was used  
18 other than a laboratory reference ammunition.

19 Q What is Q number for the cartridge case, Exhibit 28?

20 A The Q number that's place on the package is Q 12459.

21 Q What is the Q number for the pistol your holding in  
22 your hand, Exhibit 17-A?

23 A Q 12517.

24 Q Based upon your comparison of Exhibit 28 and your

1 test fired cartridges, do you have an opinion as to whether or  
2 not Exhibit 28 came from Exhibit 17-a?

3 A Yes. Based on my microscopic examination of State's  
4 Exhibit 28, I was able to determine that it was discharged in  
5 State's Exhibit 7-a or in other words, this particular firearm  
6 here.

7 Q So Exhibit 28 came from 17-a; is that correct?

8 A Yes. It was discharged in the gun, yes, that's  
9 correct.

10 MR. LEE: That's all I have at this time, Your Honor.

11 MS. PUSICH: Page 620, Your Honor.

12 THE COURT: Cross-examination.

13  
14 CROSS-EXAMINATION

15 BY MS. BOND:

16 Q Mr. Lattyak, did you also compare that casing taken  
17 from the cab, Q 12459 casing with any other firearm presented  
18 to you in this case?

19 A Yes. There were two other firearm submitted for  
20 examination.

21 Q And of those two firearms submitted for examination,  
22 did you run the exact same test?

23 A Yes. It would be a microscopic examination or  
24 microscopic test.



1           Q     Do you know offhand what other two weapons were  
2 submitted to you for examination?

3           A     To my recollection, a Ruger .22 caliber  
4 semi-automatic pistol was submitted as well a a Lorcin brand  
5 .22 brand pistol was submitted.

6           Q     Was there any match between president Lorcin  
7 .22-caliber submitted to you and the casing?

8           A     No, that was actually eliminated. In other words, I  
9 could say the cartridge case, State's Exhibit I believe 28,  
10 was not fired from that particular firearm.

11          Q     I believe you said state Exhibit 28. Let me see if  
12 I can refresh your recollection. It should be 18-A.

13          A     The cartridge case.

14          Q     Did you see that that could be eliminated entirely,  
15 correct?

16          A     Yes. Based on the firing pin impressions and other  
17 characteristics, that Lorcin pistol that was submitted was  
18 eliminated as having discharged State's Exhibit 28.

19          Q     Because it has a different firing pin characteristic  
20 when it strikes the bullet, or strikes the cartridge?

21          A     The cartridge, yes, that is correct.

22          Q     Do you recall writing a report in this matter?

23          A     Yes. I believe the actual report number was  
24 2752-97, I believe 20.

1 Q How many pages?

2 A I believe that is a one-page report on the Lorcin  
3 pistol.

4 Q You actually examined a Ruger pistol, a different  
5 pistol at a different time, correct?

6 A Ruger .22-caliber pistol was also submitted for  
7 comparison and examination, that is correct.

8 Q That was at the same time that you had examined the  
9 Smith and Wesson?

10 A I believe it was generally around the same time. It  
11 may have actually been later.

12 Q Do you have the Smith & Wesson pistol in front of  
13 you?

14 A No, I do not.

15 Q Or did counsel take that back? Let me provide you  
16 again with 17-A, that was the pistol you had examined; is that  
17 correct?

18 A This Smith and Wesson pistol was examined by me. It  
19 does bear my initials and item numbers, yes.

20 Q When you compared that or when you did your testing,  
21 you had tes fired other cartridges out of that weapon.

22 A Yes. To my recollection, I believe I shot this gun  
23 approximately twelve times.

24 Q Did you sae those cartridges?

1           A     Yes. They are in the Crime Laboratory.

2           Q     Now the cartridge that you examined for comparison  
3 was the one found in Exhibit 28, correct?

4           A     That is correct.

5           Q     Is that a .22-caliber cartridge?

6           A     It is a .22-caliber rim fire long rifle cartridge  
7 case.

8           Q     That is a long rifle cartridge?

9           A     Yes, that is correct.

10          Q     You knew that looking at it?

11          A     Yes.

12          Q     That's a very common round, isn't it?

13          A     The .22-caliber rim fire cartridge is, yes, are very  
14 popular.

15          Q     Could arguably say that is the most popular  
16 cartridge around?

17          A     I would say probably the most popular, that's  
18 correct.

19          Q     Would it be fair to say more than hundreds or even  
20 thousands of rounds of that fired every day?

21          A     That wouldn't surprise me in the least.

22          Q     Now when this weapon is fired, the cartridge is  
23 extracted in some way, right?

24          A     Yes. There is actually an extractor built on to

1       this particular firearm. In other words, when you depress the  
2       trigger and shoot this gun, the cartridge case is going to be  
3       withdrawn by the mechanism of the firearm and actually thrown  
4       out.

5           Q       When you perform your microscope analysis looking at  
6       the cartridges and comparing them, were you looking for firing  
7       pin marks or extraction marks?

8           Q       Basically everything. One of the things I noticed  
9       were similar firing pin impressions, as well detailed chamber  
10      marks that would actually be in the barrel firearm.

11          Q       These weapons, they are not handmade, are they.

12          A       Not at all.

13          Q       They are machine made?

14          A       That is correct.

15          Q       And if I wanted to repair one of those, if I needed  
16      say a new extractor, I could probably get a part for that  
17      extractor, couldn't I?

18          A       You certainly could.

19          Q       Brand new one from Smith & Wesson would actually fit  
20      in that weapon?

21          A       Yes.

22          Q       Or a new firing pin?

23          A       When you say fit right in, you might need to do a  
24      little hand fitting to it depending on the part.

1           Q     And I probably couldn't do that. I would probably  
2     want to get a gunsmith for that?

3           A     That is probably correct.

4           Q     That is the benefit of mass production, all the  
5     parts are the same?

6           A     They the same in general specifications.  
7     Microscopically they would all be indistinguishable to one  
8     another.

9           Q     And those are all the sorts of things that you  
10    looked at?

11          A     Yes. It was a complete microscopic exam.

12          Q     Counsel didn't ask you about something else you did,  
13    though. You also examined the bullet, didn't you?

14          A     Yes. There was a bullet submitted for comparison.

15          Q     And you looked at, I assume the rounds you fired out  
16    of the weapon, correct?

17          A     I actually compared the bullet that was submitted to  
18    test fired bullets that I fired from this gun.

19          Q     And the bullet, the evidence bullet you tested came  
20    from where?

21          A     The evidence bullet.

22          Q     Yes.

23          A     My recollection is on the package it was listed as  
24    from the victim.

1           Q     You were not able to say as a matter of opinion the  
2 bullet that came from the victim was fired from gun, were you?

3           A     Based on my microscopic examination, I was not able  
4 to identify or eliminate this gun as having fired that bullet.

5           Q     But put another way, you couldn't say one way or  
6 another?

7           A     That is correct.

8           MS. PUSICH:   Thank you.  Nothing further.

9           THE COURT:   Redirect examination.

10

11                               REDIRECT EXAMINATION

12       BY MR. LEE:

13           Q     Describe for the jury the condition of the bullet  
14 that came from the victim when you received it?

15           A     Based on my recollection, the bullet was in very  
16 poor condition.  There was only a limited amount of rifling  
17 characteristics or markings from the barrel I was able to look  
18 at and view.

19           Q     Is the bullet in one piece?

20           A     To my recollection, the bullet was in a number of --  
21 one medium size piece, and I believe some fragments.

22           Q     So you didn't have a complete bullet to compare to a  
23 test fired bullet ?

24           A     Based on its physical condition, I could say not,

1 no.

2 Q And tell me what it takes for you to say this came  
3 from that weapon? What do you have to have?

4 A In regards to a bullet, we would be looking first at  
5 all the class rifling characteristics, and that's a series of  
6 rifling marks that's cut into the barrel or channels that are  
7 cut into the barrel, and we'd be looking at those and seeing  
8 if they are similar. Then we would be looking for smaller  
9 individualistic characteristics. In other words, when they  
10 are making the barrels, they use cutters or a number of  
11 different techniques, and small chips are coming off at  
12 different rates or maybe tool chattering a little bit. That  
13 makes every gun barrel unique and individual; makes almost  
14 like a fingerprint. You can tell them apart. So that's what  
15 we would be looking for when we try to identify a bullet to a  
16 specific firearm. We're looking for individual  
17 characteristics.

18 Q Did you have to have a certain number of  
19 characteristics to make you comfortable in saying this bullet  
20 came from this weapon?

21 A It's not a number. It's the uniqueness and the  
22 relationship of one another that makes it very specific to a  
23 gun.

24 Q Were there any similar characteristics between the

1 bullet you examined and Exhibit 17-A?

2 A Yes. Based on my microscopic examination, the class  
3 rifling characteristics were similar.

4 Q What does that mean, class?

5 A In other words, the general overall characteristics.  
6 The width of the lanes and grooves, that sort of thing.

7 Q Can you tell by widths of lanes and grooves and the  
8 twists and the number who manufactured the barrel that the  
9 bullet came from?

10 A Well, you can get a list of manufacturers. It's  
11 very uncommon to narrow it down to one particular brand. But  
12 sometimes you can, sometimes you can't.

13 Q Do you recall if you got a list in this case in the  
14 comparisons you attempted?

15 A I believe I reviewed through our general rifling  
16 characteristics file, and there were quite a large number of  
17 different firearms manufacturers that produce rifle barrels  
18 similar in general class to State's Exhibit No. 28.

19 Q You mean 17, the gun?

20 A Excuse me 17-A.

21 MR. LEE: That's all I have. Thank you.

22 THE COURT: Further questions?

23 MS. PUSICH: Just a couple follow-up.

24 ///



## RECROSS-EXAMINATION

BY MS. PUSICH:

Q Following up on the State's examination, you said your microscopic examination was inconclusive, correct?

A      Of the bullet?

Q Of the bullet?

A Yes, that is correct.

Q It was not positively identified by you as having been fired from that weapon, correct?

A      That is correct.

MS. PUSICH: Thank you. Nothing further.

## FURTHER REDIRECT EXAMINATION

BY MR. LEE:

Q The casing was identified as coming from 17-A, correct?

A      Microscopically compared and identified, yes, that is correct.

MR. LEE: Thank you. That that is all I have.

THE COURT: Anything further?

MS. PUSICH: I do have one follow-up.

///

///

///

1 FURTHER CROSS-EXAMINATION

2 BY MS. PUSICH:

3 Q Investigator, can you tell when that casing came  
4 from that gun Exhibit 28?

5 A No. There is no way to age date a cartridge case as  
6 far as when it was discharged.

7 Q But, sir, you are absolutely certain that the casing  
8 found in Exhibit 28 did not or excuse me was not fired from  
9 the Lorcin; is that correct?

10 A The Lorcin pistol, yes, that is correct.

11 Q With respect to -- strike that.

12 MS. PUSCH: I have no other questions, Your Honor.

13 THE COURT: Anyone have anything more? You may step  
14 down. You are excused.

15 (Witness Excused.)

16 THE COURT: Counsel I want to look at the calendar.  
17 9:00 o'clock ladies and gentleman of the jury. That concludes  
18 the evidence you are going to hear tonight. We are going to  
19 continue with evidence tomorrow, and we will begin at 9:00  
20 a.m. So I would ask that you have a good night's sleep and  
21 you come back tomorrow ready to go and come into the courtroom  
22 at 9:00.

23 Now during this recess, remember until the trial is  
24 over, do not discuss the case with anyone including your

1 fellow jurors, your family members or anyone involved in the  
2 trial or anyone else. And do not allow anyone to discuss the  
3 case with you.

4 This includes discussing the case on the internet or  
5 internet chat rooms or through internet blogs, bulletin boards  
6 such as Facebook or twitter, e-mails or text messages. If  
7 anyone tries to communicate with you about the case, let me  
8 know immediately.

9 Do not read, watch, listen to or view any news media  
10 account or other account about the trial or anyone associated  
11 with it including any online Information.

12 Do not to any research such as consulting  
13 dictionaries, searching the internet or using other reference  
14 materials and do not make any investigation into or about the  
15 case on your own.

16 Have a nice evening. You may step out of the  
17 courtroom. Counsel, please be seated. I would like to, I know  
18 it s 5:00 o'clock, the time to go, but I do want to go over  
19 just very briefly and make sure we ae clear what was admitted  
20 when we had the power outage. The clerk and I were trying to  
21 get the real time up on the computer. We want to make sure we  
22 didn't miss anything. We show 17-a through e was admitted, and  
23 28 was previously admitted.

24 THE CLERK: During Charles Lowe's testimony I show

1 Exhibit 2-c, 28, 16, 16-a and 17-a through he.

2 MR. LEE: You said 28 as well?

3 THE CLERK: I did.

4 MR. LEE: That's all we sought, Your Honor.

5 THE CLERK: I just wanted to make sure nothing was  
6 admitted during the testimony that was presented by transcript  
7 that needed to be put on the record.

8 MS. PUSICH: It was already in.

9 THE CLERK: All of it was in.

10 THE COURT: With that being said, anything further  
11 for the Court?

12 MR YOUNG: No thank you, Your Honor.

13 THE COURT: You all kind of talked. Ms. Bod, you  
14 sort of said something about lunch tomorrow, then I think you  
15 were thinking you are going to start after lunch. But because  
16 we said Thursday, they maybe going kind of quickly, we may be  
17 looking at Jury Instructions tomorrow during the lunch hour,  
18 just kind of tentatively looking at them, and/or we could do  
19 it a little bit tomorrow evening. But I know everyone has  
20 places to be. So I just want you to be kind of thinking about  
21 that.

22 The law clerk and I have come up with some rewrites  
23 I don't think you have yet; is that correct?

24 MS. PUSICH: That's correct.

1           THE COURT: So we should have these rewrites, though  
2 anything you want me to look at by tomorrow, but in the  
3 morning we can do the ones we worked on and see if you like  
4 those. And then, Ms. Bond, maybe you can give us the rewrite  
5 of the other act evidence Instruction/.

6           MS. BOND: Yes, I can do that. I don't recall  
7 saying anything about lunch. I think I was talking about  
8 after lunch when we would start our case if it is 3:00 or 4:00  
9 or 4:30 or start Thursday. I think that is where my lunch  
10 came in.

11          THE COURT: I think tomorrow, based on what you told  
12 me, we only have a few witnesses.

13          MR YOUNG: I anticipate we'll be done by 2:00, 2:30,  
14 again with the one caveat the family will speak at a later  
15 time.

16          THE COURT: Right.

17          MS. PUSICH: Your Honor, one thing I need to put on  
18 the record just because it is an important case. I don't want  
19 it to be something somebody finds out later. During the  
20 information that came in through investigator Lowe, he said at  
21 the time of the autopsy he received the projectile from the  
22 decedent, put it into evidence by detective Mike Dugan.  
23 Shortly after, detective Dugan became a public investigator,  
24 however, he was never assigned to Mr. Harte's case at the time

1 Mr. Dugan was working for us.

2 THE COURT: Thank you for putting that on the  
3 record, but since it is not really a part of this  
4 determination for this jury I don't think there would be any  
5 issue there. Does anyone have any concern?

6 MR YOUNG: No, thank you.

7 THE COURT: Okay. Then we'll see you back tomorrow  
8 morning at 9:00 o'clock. Thank you. Court's in recess.|.

9 (Whereupon, the proceedings were concluded.)

10 --o0o--

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1 STATE OF NEVADA, )  
2 ) ss.  
3 COUNTY OF WASHOE. )

4 I, Judith Ann Schonlau, Official Reporter of the  
5 Second Judicial District Court of the State of Nevada, in and  
6 for the County of Washoe, DO HEREBY CERTIFY:

7 That as such reporter I was present in Department  
8 No. 4 of the above-entitled court on Tuesday,  
9 January 27, 2015, at the hour of 9:00 am. Of said day and that  
10 I then and there took verbatim stenotype notes of the  
11 proceedings had in the matter of THE STATE OF NEVADA vs. SHAWN  
12 RUSSELL HARTE, Case Number CR98-0074.

13 That the foregoing transcript, consisting of pages  
14 numbered 1-269 inclusive, is a full, true and correct  
15 transcription of my said stenotypy notes, so taken as  
16 aforesaid, and is a full, true and correct statement of the  
17 proceedings had and testimony given upon the trial of the  
18 above-entitled action to the best of my knowledge, skill and  
19 ability.

20 DATED: At Reno, Nevada this 1th day of March, 2015.

21  
22 /s/ Judith Ann Schonlau  
23 JUDITH ANN SCHONLAU CSR #18  
24

1 4185

2 JUDITH ANN SCHONLAU

3 CCR #18

4 75 COURT STREET

5 RENO, NEVADA

6  
7 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

8 IN AND FOR THE COUNTY OF WASHOE

9 BEFORE THE HONORABLE CONNIE J. STEINHEIMER, DISTRICT JUDGE

10 -o0o-

11 THE STATE OF NEVADA, )

12 Plaintiff, )

13 vs. )

14 SHAWN RUSSELL HARTE, )

15 Defendant. )

) CASE NO. CR98-0074A

) DEPARTMENT NO. 4

16  
17 TRANSCRIPT OF PROCEEDINGS

18 TRIAL (PENALTY PHASE)

19 WEDNESDAY, JANUARY 28, 2015, 9:00 A.M.

20 Reno, Nevada

21  
22 Reported By: JUDITH ANN SCHONLAU, CCR #18  
23 NEVADA-CALIFORNIA CERTIFIED; REGISTERED PROFESSIONAL REPORTER  
24 Computer-aided Transcription



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A P P E A R A N C E S

FOR THE PLAINTIFF:           OFFICE OF THE DISTRICT ATTORNEY  
  
                                  BY:   ZACH YOUNG, ESQ.  
  
                                  MATTHEW LEE ESQ.  
  
                                  DEPUTY DISTRICT ATTORNEY  
  
                                  WASHOE COUNTY COURTHOUSE  
  
                                  RENO, NEVADA

FOR THE DEFENDANT:           OFFICE OF THE PUBLIC DEFENDER  
  
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                                  RENO, NEVADA

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I N D E X

WITNESSES:	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
DAVID PAOSAARI, M.D.	5	15		
JAMES BELTRON	17	51		
LANETTE ANDERSON	59	70		
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<u>EXHIBITS:</u>	<u>Marked for Identification</u>	<u>Admitted into Evidence</u>
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3-a, 3-b		28
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64		130
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1 RENO, NEVADA; WEDNESDAY, JANUARY 28, 2015; 900 A.M.

2 -oOo-

3 THE COURT: Good morning. Thank you. Please be  
4 seated.

5 Okay. So I guess we have some issues with a witness.

6 MS. PUSICH: Your Honor, if we may. I heard from  
7 Dr. Piasecki early this morning. When I had given her our  
8 latest update on timing, Las Vegas, who also has her under  
9 subpoena, may have delayed her until tomorrow. I left a  
10 message trying to find out if she's already there.

11 If she's already there, she won't be back until  
12 Friday morning. If she hasn't left, we may be able to try and  
13 fit her in sooner. I am waiting for a response. I am checking  
14 my e-mail on the break.

15 The second issue, the State asked me yesterday about  
16 impeachment by a prior conviction for Mr. Castillo. I believe  
17 under the law they are entitled to that. We'll provide  
18 information from our presentation. I prepared two  
19 Instructions. One is a modification of the credibility  
20 impeachment by a lawyer Instruction. It was already provided.  
21 He won't actually be here under oath, but it talks about his  
22 statement. The other actual document, what he's been  
23 convicted of, it is my understanding the State does not object  
24 to those being given in addition to the impeachment by priors.

1 They proposed the proposed testimony.

2 MR. YOUNG: I have reviewed -- good morning -- both  
3 proposed Instructions by defense that were provided me this  
4 morning. I have no objection to either.

5 THE COURT: Okay. We'll add those to the packet.

6 MS. PUSICH: Thank you, Your Honor. I think we'll  
7 retype them, probably put them in the right font.

8 Did you send them electronically?

9 MS. PUSICH: I did not. I can do that at lunch. I  
10 was under the impression we were using Roman 12.

11 THE COURT: What do we use?

12 MS. CLERK: I think the main pack comes as courier.

13 THE COURT: Just try to keep it all the same. The  
14 clerk can do it for me if you send it electronically. She's  
15 magic. Make them all look the same. Okay. Now is there  
16 anything else before we bring the jury in?

17 MS. PUSICH: Not from us, Your Honor.

18 MR. YOUNG: Not from the State, Your Honor.

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

21 MR. YOUNG: State will, Your Honor.

22 MS. PUSICH: Yes, Your Honor.

23 THE COURT: Thank you. You may be seated. Good  
24 morning ladies and gentlemen of the jury. We have been here

1 working, so please don't think we kept you waiting  
2 unnecessarily. It was issues that we had to deal with. So  
3 thank you for your patience and we'll begin hearing testimony  
4 again now. Counsel, call your next witness.

5 MR. YOUNG: State calls Dr. Palosaari, Your Honor.  
6 Counsel, you may proceed

7  
8 DAVID PALOSAARI, M.D.

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

11  
12 DIRECT EXAMINATION

13 BY MR. YOUNG:

14 Q Good morning, Doctor. Could you please state your  
15 first and last name and spell both for the reporter?

16 A David Palosaari. D-A-V-I-D. P-A-L-O-S-A-A-R-I.

17 Q Sir, what is your profession or occupation?

18 A I am a medical doctor.

19 Q Specifically, do you have any Board certifications?

20 A Yes. I am board certified in anatomic and clinical  
21 pathology.

22 Q Could you explain, before we get into briefly your  
23 credentials, what is a pathologist?

24 A Well, pathology is the study of disease. There is,

1 from there you can, it branches out into several areas. If  
2 you are a medical doctor and pathologist, you could perform  
3 autopsies. You can oversee the clinical laboratory you can do  
4 surgical pathology in the hospital. You can do outpatient  
5 pathology. All kind of things you can do.

6 Q Your voice is a little soft. Either scoot your  
7 chair forward or use the microphone.

8 A I will get closer.

9 Q Did you attend medical school?

10 A Yes, I did.

11 Q When did you graduate?

12 A I graduated in 1982.

13 Q What school?

14 A University of Texas medical branch.

15 Q And what sort of training did you do upon your  
16 graduation from medical school?

17 A Well, then I performed a pathology residency which  
18 was four years. That was the University of Utah, in anatomic  
19 and clinical pathology.

20 Q Did you do a fellowship following that?

21 A Yes. Actually, I did two fellowships after that at  
22 MD Anderson Hospital in Texas. That was, one of them was in  
23 anatomic pathology, and the other in hepatic pathology.

24 Q Both fellowships, both related to pathology?

1           A     Yes.

2           Q     Did you graduate, complete your fellowship in about  
3 1998?

4           A     Yes.

5           Q     Excuse me, '88?

6           A     '88 exactly. Exactly.

7           Q     Following that, how have you been employed?

8           A     I have been employed at Sierra Pathology Associates  
9 in Reno. It is a pathology group.

10          Q     Are you still currently employed with Sierra  
11 Pathology Associates.

12          A     Yes.

13          Q     Was there a time in your career when you conducted  
14 forensic autopsies?

15          A     Yes.

16          Q     Explain to the jury what is a forensics autopsy and  
17 what is the purpose?

18          A     Forensic autopsy I think of as a medical-legal  
19 autopsy, so there are many autopsies that potentially would  
20 have legal consequences. That would be the broadest way of  
21 thinking about them. They typically focus on deaths that are  
22 suspected to be either of uncertain etiology or are  
23 suspicious.

24          Q     Okay. Could you explain to the jury the general

1 procedure that one follows when conducting such an autopsy?

2 A Generally, you first do an external examination of  
3 the body, collect any evidence that is necessary, then you do  
4 an internal examination where you open both the cranium and  
5 the thorax and the abdomen. You break through the skin and the  
6 bones as required and you examine all the organs.

7 Q Now hypothetically for a moment, if there is --  
8 before we get there. Is the purpose of a forensic autopsy to  
9 determine cause of death?

10 A Yes, it is.

11 Q Where there is, in a hypothetical situation, cause  
12 of death which seems rather obvious, do you stop the autopsy  
13 or do you complete the entire autopsy externally and  
14 internally?

15 A We complete the entire autopsy. Sometimes they will  
16 do, if it is a clear cut suicide, I might just not do an  
17 autopsy. You would do an external examination, but that is  
18 when you know that it is a suicide and you are just  
19 documenting evidence.

20 Q Outside of suicide, though, when conducting an  
21 autopsy, you will conduct an investigation or analysis of all  
22 organs, correct?

23 A Right. A forensic autopsy involves all organs.

24 Q Back in 1997, were you conducting such autopsies?



1           A     Yes.

2           Q     How often or how many autopsies were you doing back  
3 in that time frame?

4           A     So from 1988 to about 2000, the year 2000, we  
5 probably did, I personally probably did about 60 to 80  
6 autopsies a year.

7           Q     Sixty to 80 autopsies for the better part of a  
8 decade plus?

9           A     Right.

10          Q     And have you testified previously as an expert in  
11 regards to your conducting of autopsies in any courts of the  
12 State of Nevada?

13          A     Yes.

14          Q     Specifically, sir, on October 27th of 1997, did you  
15 conduct an autopsy on a subject identified as John Castro Jr.?

16          A     Yes.

17          Q     And did you conduct the autopsy, the full autopsy as  
18 you discussed about the external and internal examination?

19          A     Yes.

20          Q     Now for a moment, I am going to exclude Mr. Castro's  
21 head. The balance of the autopsy, was there anything you  
22 found or discovered which would have contributed to  
23 Mr. Castro's death?

24          A     Not outside of the head.

1           Q     Let's talk about the head. What did you -- What was  
2     revealed to you during the course of your autopsy?

3           A     Well, first on external examination it was noted  
4     there was a bullet hole in the back of his head somewhat to  
5     the right of the midline in the back of the head. And there  
6     was some blood exuding from the defect in the scalp. And there  
7     was a little bit of a black rim of soot around the hole. And  
8     then we reflected the scalp and removed the calvarium which is  
9     the skull cap, and we then examined the brain and we noticed  
10    that there was a bullet tract going through both cerebral  
11    hemispheres, and there was a lot of blood in the membrane over  
12    the brain, and there was a significant amount of blood on the  
13    left side of the cerebral hemisphere over the left cerebral  
14    hemisphere and a bullet tracking through both cerebral  
15    hemispheres which also had blood clots within it.

16               Then we also noticed there was some blood at the  
17    base of the brain. There was some skull fractures at the base  
18    of the brain in the area called the orbital plates which are  
19    very thin bones. And there was some-- There was also blood in  
20    the periorbital.

21               Going back to the external examination, there was  
22    blood and edema around the periorbital areas. And then going  
23    back to the internal exam, again there was a lot of edema of  
24    the brain, itself. We also discovered a few bullet fragments

1       within the cranial vault, and we collected those.

2           Q       For evidentiary purposes?

3           A       For evidentiary purposes.

4           Q       Let me go back to a couple of things you said. You  
5       said edema of the brain. Is edema another word for swelling?

6           A       Yes.

7           Q       You mentioned there was some fractures. You pointed  
8       to the front facial part of the orbital plate; is that what  
9       you testified to?

10          A       Yes, it is. If you consider the anterior or front  
11       of the head, then it would be as opposed to the back where the  
12       bullet actually came in, and you then look at the base of the  
13       frontal part of the skull, that is where these fractures were.

14          Q       Can you explain how a bullet hole to the back of the  
15       head would cause facial fractures to the front of the face?

16          A       The energy that is released from the bullet as it  
17       goes into the cranial vault is tremendous, and if it is great  
18       enough, it will cause fractures of those very thin bones in  
19       that area.

20          Q       Now did you identify any exit wounds to Mr. Castro?

21          A       There was no exit wound.

22          Q       Sir, at any autopsy, are photographs taken of the  
23       examination?

24          A       Yes.

1 Q Was that done in this case as well?

2 A Yes.

3 Q Have you reviewed some of these photographs in  
4 preparation of your testimony today?

5 A Yes.

6 Q Do you feel these photographs might help you explain  
7 your testimony to the jury?

8 A Yes.

9 MR. YOUNG: If I could approach, Your Honor.

10 THE COURT: You may.

11 BY MR. YOUNG:

12 Q Showing you, sir, admitted 6-a. These have not yet  
13 been admitted, 1-b and 1-c. Take a look and let me know if  
14 you recognize them?

15 A Yes, I recognize them from the autopsy photos that I  
16 reviewed the other day, couple of weeks ago.

17 Q There is a number of photographs taken of the full  
18 autopsy, correct?

19 A Correct.

20 Q These are a select few you are going to use?

21 A Correct.

22 MR. YOUNG: I move for 1-b and 1-c.

23 MS. PUSICH: No objection.

24 THE COURT: Exhibit 1-b and 1-c are admitted.

1 (Exhibits 1-b and 1-c admitted in evidence.)

2 MR. YOUNG: If I could publish, Your Honor?

3 THE COURT: You may.

4 MR. YOUNG: We'll start with 1-c, Your Honor.

5 BY MR. YOUNG:

6 Q Would you describe that to the jury, please?

7 A That shows the entrance wound where the bullet  
8 entered the skull.

9 Q Doctor, not to cut you off, you can actually touch  
10 that screen. It will come up on the screen.

11 A Okay. Right here we see the entrance wound. We have  
12 shaved a little of the hair around that area to expose it  
13 there. There is a tiny bit of soot in the center of that, and  
14 then there is also a small amount of brain tissue is exuding  
15 from that or has exuded from that area.

16 Q Let me show you 1-b. Is that effectively the same  
17 picture with a scale?

18 A Yes, it is.

19 Q Does this picture show something a little bit better  
20 than the first one did not?

21 A This one shows the sooting a bit better there. You  
22 can see the rim. It is quite readily noticed there and quite  
23 discreet.

24 Q What would cause that black rim of soot as you

1 described?

2 A That results from the residue, the burned residue  
3 when the bullet is fired. If the muzzle of the gun is very  
4 close to the target, then you get a discreet area of sooting  
5 like that around.

6 Q Thank you. I am going to show you 16-a. This has  
7 previously been admitted. Sir, what is it? Again, it is a  
8 little dark, but do you recognize that?

9 A Yes. That is a photo of some of the bullet fragments  
10 that were removed.

11 Q Those were covered from what part?

12 A Mr. Castro's body. The skull, the calvarium.

13 Q You have used some terms and we saw a picture. If I  
14 could ask you, doctor, to help describe the location and  
15 entrance wound and where you found these fragments using your  
16 own head as a reference, could you explain that to the jury,  
17 please?

18 A So-- Yes. If I had to point, I would show the  
19 entrance wound being approximately here.

20 Q You correct me if I am wrong, doctor, but you are  
21 pointing to the right side of your head slightly above the ear  
22 and maybe an inch or two behind your ear; is that accurate?

23 A Behind, depends what reference you use. This is the  
24 helix. I use the tragus which is right here, and I believe

1       that I said there was about, according to my report and  
2       according to what we can see there, it was about maybe three  
3       inches, two to three inches above this area, and then it was  
4       about four inches from the midline of the back of my head, so  
5       it would be about right here in this general vicinity.

6           Q       From that entrance wound, the trajectory of the  
7       bullet traveled in which direction?

8           A       It traveled forward, so from the back of my head  
9       toward the front, and we actually put a probe through that  
10      bullet tract and we estimated it at about a 20 degree angle  
11      from back to front.

12          Q       Now, doctor, based on your complete autopsy, were  
13      you able to determine a cause of death to Mr. John Castro Jr.?

14          A       Yes.

15          Q       What was that?

16          A       He died of a gunshot wound to the head.

17               MR. YOUNG:   Your Honor, I have no further questions.  
18      Thank you.

19               THE COURT:   Cross-examination.

20               MS. PUSICH:   Thank you, Your Honor.

21  
22                               CROSS-EXAMINATION

23      BY M. PUSICH:

24          Q       Good morning, doctor?

1           A     Good morning.

2           Q     In 1997, you were also board certified in anatomic  
3 and clinical pathology, correct?

4           A     Correct.

5           Q     Could you explain briefly the difference between or  
6 the additional requirements to be Board certified beyond the  
7 education you have already described?

8           A     In forensic pathology, you can become Board  
9 certified in forensic pathology if that is what you decide  
10 your career, the path of your career to be. So that would be  
11 either, depending on the program, depending on what has  
12 happened since then, it could be either one or two years after  
13 anatomic and clinical pathology four year residence.

14          Q     Don't you also have to take a test?

15          A     Yes, you do.

16          Q     You did that in the past?

17          A     No. I took the test for anatomic and clinical  
18 pathology, but I did not anticipate spending the rest of my  
19 life doing forensic pathology, so I did not, and I did not do  
20 the forensic Board training, so I did not take a test in  
21 forensic pathology.

22          Q     You talked about the skull fractures being the  
23 orbital plates around the eyes; is that correct?

24          A     Yes. At the base of the brain, actually, but they



1 are around the eyes.

2 Q You found that there was one wound that was fatal,  
3 correct?

4 A One gunshot wound.

5 Q Correct. And everything that you have described as  
6 observing during the course of the internal portion of your  
7 autopsy was caused by that one bullet wound, correct?

8 A Every one, correct.

9 MS. PUSICH: Thank you, Doctor.

10 MR. YOUNG: No questions, Your Honor.

11 THE COURT: Thank you, sir. You may step down. You  
12 are excused.

13 (Witness Excused.)

14 MR. YOUNG: State's next witness is Jim Beltron.

15 THE COURT: You may proceed.

16 MR. YOUNG: Thank you, Your Honor.

17

18 JAMES BELTRON

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

21

22 DIRECT EXAMINATION

23 BY MR. YOUNG:

24 Q Sir, good morning.

1           A     Good morning.

2           Q     Would you please state for the record your first and  
3 last name spelling both?

4           A     James Beltron. J-A-ME-S. B-E-L-T-R-O-N.

5           Q     Sir, by whom are you currently employed?

6           A     Legislative Counsel Bureau as a legislative police  
7 officer.

8           Q     Did that employment follow employment in another law  
9 enforcement capacity?

10          A     Yes, it did.

11          Q     What agency?

12          A     Twenty-six and a half years at the Washoe County  
13 Sheriff's Office.

14          Q     As part of your employment with the Washoe County  
15 Sheriff's Department, were you ever assigned to the Detective  
16 Division?

17          A     Yes, I was, sir.

18          Q     For approximately how long?

19          A     Approximately seven years.

20          Q     And in that seven years, did you participate in the  
21 investigations of homicide or murder cases?

22          A     Yes, I did.

23          Q     When you retired from the Sheriff's Office, when did  
24 you retire?

1           A     2012.

2           Q     '12?

3           A     2012, yes, sir.

4           Q     What capacity did you retire from the Sheriff's  
5 Department?

6           A     I was a sergeant.

7           Q     Now the seven years or thereabout you were assigned  
8 to the Detective Division, did that span the year 1997?

9           A     Yes, it did.

10          Q     Specifically on October 26th of 1997, were you  
11 called by a sergeant to respond to a homicide investigation?

12          A     Yes. My supervisor, Dave Butko, he called me in  
13 from home.

14          Q     Do you recall where you responded to?

15          A     I believe I went to Parr Boulevard to start.

16          Q     To get an initial briefing?

17          A     Yes.

18          Q     Did you ultimately make your way out to 17865 Cold  
19 Springs Drive?

20          A     Yes, I did.

21          Q     Without going into great detail, what was your  
22 previous understanding of the case you had been called to  
23 investigate?

24          A     There was a person that had been shot in a cab.

1       That person was taken to the hospital when I got on scene, but  
2       the cab was still there along with some fire and, obviously,  
3       patrol deputies.

4           Q     Did you learn the identity of the cab driver to be  
5       John Castro Jr.?

6           A     Yes, sir.

7           Q     Throughout the investigation, were you assigned as  
8       the lead detective?

9           A     Yes, I was.

10          Q     Now as part of your investigation, did that span  
11       several months?

12          A     Yes, it did.

13          Q     Did you learn through your investigation where the  
14       last, prior to being on Cold Springs Drive, the last known  
15       location of Mr. Castro was?

16          A     I believe he was dispatched from the Speedway on  
17       Neil Road and Peckham.

18          Q     Neil Road and Peckham, Washoe County, Nevada?

19          A     Yes. It is down by the mall in Reno.

20          Q     Likewise, is Cold Springs Drive also in Washoe  
21       County?

22          A     Yes, it is.

23               MR. YOUNG: If I could approach, Your Honor.

24               THE COURT: You may.

1 BY MR. YOUNG:

2 Q Showing you what has been marked for identification  
3 as 52, do you recognize that, sir?

4 A Yes.

5 Q What is that?

6 A It is a map describing 395, Interstate 80, parts of  
7 Reno, unincorporated areas of the County.

8 Q Appear to be a satellite image of that area?

9 A Yes.

10 MR. YOUNG: Move Exhibit 52.

11 MS. PUSICH: No objection.

12 THE COURT: Exhibit 52 is admitted.

13 (Exhibit 52 admitted in evidence.)

14 BY MR. YOUNG:

15 Q Now, sir, as part of your investigation, now this is  
16 being displayed, there is two pinpoints on that map, correct?

17 A Yes.

18 Q What are these areas identifying?

19 A One is the lower left or lower right East Peckham  
20 and Neil Road, and then you see Interstate 80 and then 395,  
21 and then you see 17865 Cold Springs Drive near the Dry Lake  
22 bed.

23 Q Based on your investigation, were you able to learn  
24 the approximate distance between those two points?

1           A     Yes, sir, about twenty-five miles.

2           Q     Twenty-five?

3           A     Yes.

4           Q     Again, through your investigation, did you learn  
5     that the person, the clothing and the like of Mr. Castro were  
6     searched along with the taxi cab he was driving?

7           A     Yes. There was a search by FIS, forensic  
8     investigative.

9           Q     Was a wallet located on Mr. Castro's person or in  
10    his cab?

11          A     No, it wasn't.

12          Q     Was there any money located on Mr. Castro's person  
13    or in his cab?

14          A     No, there wasn't.

15          Q     What about any drugs or drug paraphernalia, anything  
16    like that located on Mr. Castro's person or his taxi cab?

17          A     No, sir.

18          Q     Now can you explain at this point how you began your  
19    investigation, what steps you took?

20          A     Well, after arriving on scene, because it was parked  
21    in front of a residence, directly in front an occupied  
22    residence, we made contact with the people inside to see if  
23    they knew of anything, heard anything, saw anything or the  
24    last time that they were outside so you kind of get a time

1 frame besides the dispatch log. We asked them for permission  
2 to search their property for weapons in case the weapon was  
3 thrown away. Everyone was very cooperative. We also searched  
4 the following streets in the area in case it was thrown,  
5 obviously, one, for the evidentiary value, but because a child  
6 might pick it up or something like that. And then we  
7 continued to canvass the neighborhood, not only the house in  
8 front of it but those houses in and about the same area up in  
9 Cold Springs.

10 Q In your conversation with the occupants of 17865  
11 Cold Springs, the residence directly in front of the taxi cab,  
12 correct?

13 A Yes.

14 Q Were you advised of an approximate time that that  
15 vehicle was first seen around that area?

16 A Right around midnight of the previous evening.

17 Q Was that consistent with what the Reno-Sparks Cab  
18 company dispatch advised you as well?

19 A Yes.

20 Q Now in your canvass of the neighbors in that area,  
21 was there anything that helped identify a particular suspect  
22 or suspects?

23 A No, sir.

24 Q In your search of that residence, was there anything

1       that assisted you?

2           A     No, sir. It was unrelated.

3           Q     Did you in fact search other residences as well in  
4       the area?

5           A     Yes, we did.

6           Q     Now over the next couple of weeks, what did you do  
7       as far as the investigation of this case?

8           A     Well, we continued to canvass the area, re-canvass  
9       the area, even going beyond the main street of Cold Springs up  
10      into Sand Piper, Bobolink, some of the other side streets  
11      besides where the cab was found. We also had several Secret  
12      Witness, I believe I had two, three-inch binders of Secret  
13      Witness that came through we followed up on. We made  
14      interviews, checked backgrounds on the people that were  
15      mentioned in the Secret Witness.

16          Q     And was there also a time composite sketches were  
17      obtained?

18          A     Yes.

19          Q     Were those in fact completed and at one point placed  
20      into a newspaper?

21          A     Yes.

22          Q     Was there anything that law enforcement did with  
23      respect to local pawn shops?

24          A     We searched local pawn shops for any .22-caliber gun



1       that was pawned recently, because we found the casing in the  
2       back seat. It was .22 caliber.

3           Q       The reason you were looking for .22 caliber was  
4       because of a casing?

5           A       Yes.

6           Q       Anything with respect to any of those things you  
7       just described, the re-canvass, search of pawn shops, anything  
8       that helped identify a suspect?

9           A       No, sir.

10          Q       Now there has been some discussion or testimony  
11       about some paperwork on Mr. Castro's lap when he was found in  
12       the morning. Do you recall that information?

13          A       No, I don't.

14          Q       Do you recall being advised there was some paperwork  
15       on Mr. Castro's lap?

16          A       I may have been. I don't recall that.

17          Q       In any event, was there any paperwork in the vehicle  
18       located to help you identify suspect or suspects?

19          A       Yes. After contact with Weston Sirex.

20          Q       We are going to get there shortly. I am saying in  
21       the actual taxicab, itself, was there anything in there prior  
22       to contact with Mr. Sirex which helped you identify a suspect?

23          A       No, sir.

24          Q       Now getting to Mr. Sirex, was contact made with him

1 around November 12th or 13th of 1997?

2 A Yes, sir.

3 Q Up until that point, was there any suspect  
4 identified?

5 A No, sir.

6 Q And could you explain that initial contact with  
7 Mr. Sirex and how that assisted in your investigation?

8 A Basically, there was a crime committed in Churchill  
9 County, and they wanted to talk to a potential suspect in the  
10 City of Reno. They contacted us because they were in our  
11 County and wanted some assistance just going to the store.  
12 Detective Canfield accompanied the Churchill County detectives  
13 to contact Mr. Sirex. It was a voluntary knock on the door.  
14 When they asked him about their case out there, in general, he  
15 started making spontaneous statements about a murder.

16 Q Knowing the Churchill County case was not a murder,  
17 was the connection made to the homicide of Mr. Castro you were  
18 investigating?

19 A Yes. Detective Canfield was basically a co-  
20 detective with me on the John Castro murder. So we started  
21 making spontaneous statements about a murder. In particular,  
22 I believe he said something about north of Reno. It was  
23 enough Larry connected the two and then they asked him to come  
24 into the station to make a statement.

1 Q When you say Larry?

2 A Larry Canfield.

3 Q That is Larry Canfield?

4 A Yes.

5 Q I won't have you get into detail what was said, but  
6 was there a full interview of Mr. Weston Sirex conducted?

7 A Yes, there was.

8 Q Did you participate in that interview?

9 A I did the interview, yes.

10 Q Did you advise Mr. Sirex of his Miranda rights and  
11 did he waive?

12 A Yes?

13 Q Was the interview video and audio taped?

14 A Yes.

15 Q At the conclusion of your interview with Mr. Sirex,  
16 did you seek consent to search Mr. Sirex' residence?

17 A Yes. He gave us permission to search his trailer on  
18 Chism Drive.

19 Q I am sorry?

20 A Chism Trailer Park on Second Street.

21 Q Did you participate in that search as well?

22 A Yes.

23 Q Was there anything in the execution of the search of  
24 Mr. Sirex' trailer that was of relevance to your

1 investigation?

2 A Yes. In a compartment above the bed, because he  
3 lived in like a camping trailer, there was a map book and some  
4 other items from the cab. Mr. Castro's wallet. Underneath  
5 the bed was also a container that had a pistol.

6 MR. YOUNG: If I could approach, Your Honor.

7 THE COURT: You may.

8 BY MR. YOUNG:

9 Q I will show you first 3-a and 3-b. Do you recognize  
10 those?

11 A Yes.

12 Q What are those?

13 A The first one is the picture where the items were  
14 found under his bed at or near this area. And then these are  
15 the items that were taken out of the wallet, or valise or  
16 pouch that contained what would have been the money and other  
17 items.

18 Q Fair and accurate representation?

19 A Yes.

20 MR. YOUNG: Your Honor, I move for 3-a and b.

21 THE COURT: Any objection?

22 MS. PUSICH: No.

23 THE COURT: 3-a and 3-b are admitted.

24 (Exhibits 3-a and 3-b admitted in evidence.

1 MR. YOUNG: Thank you, Your Honor.

2 BY MR. YOUNG:

3 A A little bit of delay. You were describing the area  
4 these items were located in. Is 3-b we are looking at, is  
5 that what you were just describing?

6 A Yes. Those items were inside.

7 Q Now I will show you 3-a again. You previously  
8 testified to this, but specifically, what items are those and  
9 who did they belong to through your investigation?

10 A The map book was John Castro's. The wallet is John  
11 Castro's, and the blue zipper pouch is Mr. Castro's.

12 MR. YOUNG: If I could approach again, Your Honor.

13 THE COURT: You may.

14 BY MR. YOUNG:

15 Q Showing you what has been marked 18-a through I  
16 believe c, yes 8-a through c. Without showing that to the jury  
17 quite yet, could you explain what you recognize that is?

18 A It is a Lorcin .22-caliber pistol.

19 Q And some items related to that pistol?

20 A Yes.

21 Q Was that likewise found in Mr. Sirex' house during  
22 the search?

23 A Yes. I believe it was underneath his bed in a gray  
24 box.

1           Q     There is some evidence tape and the like. That box  
2 is open. Do you recognize that to be for custody purposes?

3           A     Jay Strait.

4           Q     Who is Jay Strait?

5           A     JJ Strait is the forensic person that went with us  
6 on the search.

7           MR. YOUNG: Your Honor, I move for 18-a through c.

8           THE COURT: Any objection?

9           MS. PUSICH: No, Your Honor.

10          THE COURT: 18-a through c admitted.

11          (Exhibit 18-a, 18-b, 18-c admitted in evidence.)

12          BY MR. YOUNG:

13          Q     I will have you pull out 18-a. For the Court and  
14 jury's information, the firearm has been secured safe. Explain  
15 that to the jury?

16          A     There is a tag through the magazine into the chamber  
17 to lock the barrel open so it can't be loaded, and also  
18 through the trigger guard.

19          Q     Specifically, what are you holding in your hand?

20          A     Lorcin .22 semi-automatic pistol. It is six or seven  
21 shots.

22          Q     B and c that are contained in that box, what are in  
23 these items?

24          A     This package has eight .22-caliber rounds. This is

1 the magazine for the gun. It fits in the bottom of the handle.

2 Q For that Lorcin?

3 A For that Lorcin.

4 Q Now through your investigation, did you learn  
5 whether that Lorcin was the murder weapon related to Mr.  
6 Castro or not?

7 A It was not the murder weapon.

8 Q That was through some analysis done by Mr. Lattyak?

9 A Yes, the firearm expert we had at the time.

10 Q Through your investigation, did you learn whether  
11 there was a firearm that was discovered to be the murder  
12 weapon by matching it to the shell casing in the taxicab?

13 A It was a Smith & Wesson.

14 Q Where was that located?

15 A It was found in Mr. Harte's car.

16 Q Thank you. Now based on your interview with  
17 Mr. Sirex and items that you located at his residence, did you  
18 then respond to Churchill County and have an opportunity to  
19 interview Latisha Babb?

20 A Yes, I did. As soon as we were finished with  
21 Mr. Sirex, we went to Churchill County to speak to her.

22 Q Likewise, was she given her Miranda rights and free  
23 to speak?

24 A She came voluntarily to the Churchill Sheriff's

1 Office and talked with us.

2 Q Again, you participated in that interview?

3 A Yes, I did.

4 Q Was that, to your knowledge audio and video recorded  
5 as well?

6 A Yes, it was.

7 Q Again, I am not going to get into the details of  
8 that interview, based on what was located at Weston Sirex'  
9 residence, some Search Warrants in Churchill County, your  
10 interviews of Mr. Sirex and Ms. Babb, did you have an  
11 opportunity to interview Mr. Harte?

12 A Yes, I did.

13 Q Do you see Mr. Harte in the courtroom?

14 A Yes, I do.

15 Q Point him out?

16 A Blue shirt next to Ms. Pusich.

17 MR. YOUNG: If the record could reflect the  
18 identification.

19 THE COURT: The record will so reflect.

20 MR. YOUNG: Thank you.

21 BY MR. YOUNG:

22 Q Through your investigation, were you able to  
23 identify approximately how much money was taken from Mr.  
24 Castro?



1           A     Through the separate interviews, about \$89 all  
2     total.

3           Q     Eighty-nine dollars all total. What do you mean?

4           A     Well, change and folding money, about \$89.

5           Q     Was the interview of Mr. Harte audio or video  
6     recorded as well?

7           A     Yes, it was.

8           Q     Back in 1997, was it recorded on VHS tapes?

9           A     Yes, it was.

10          Q     For preparation of court this week, were those  
11     transferred, I guess, for lack of a better word on to a DVD  
12     disc?

13          A     Yes, because no one has a VHS player.

14          Q     Fair enough. Now on that disc, itself, is there one  
15     part when the two VHS tapes are more or less merged together,  
16     put on the DVD, it kind of flashes and shows some figures,  
17     like an interruption?

18          A     Yes. It is because there were two separate tapes  
19     used but it is only one DVD.

20          Q     Does the DVD contain the full content of both tapes?

21          A     Yes.

22          Q     Is there also a part on the DVD early on when you  
23     ask for the Defendant's Social Security number that is muted  
24     out?

1           A     Yes.

2           Q     The actual providing of a Social Security number?

3           A     Yes.

4           Q     You know that to be because of court requirements,  
5 correct?

6           A     Right.

7           Q     Providing Social Security numbers and other personal  
8 identifiers, is that something you do in every interview?

9           A     Try to. That way you know who you are talking to.

10          Q     Now as the interview of Mr. Harte began, did you  
11 likewise advise Mr. Harte of his Miranda rights?

12          A     Yes, I did.

13          Q     I don't want to assume anything. Miranda rights are  
14 what we mentioned several times?

15          A     Right to remain silent if you choose to.

16          Q     The rights most people have heard on TV or the like?

17          A     Absolutely.

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

19               THE COURT: You may.

20 BY MR. YOUNG:

21          Q     Showing you what has been marked Exhibit 38, do you  
22 recognize that?

23          A     Yes, sir.

24          Q     Fair and accurate -- Is that actually the form that

1       you used?

2           A       It is one of them. I think it is the second or  
3       third copy, but it is one of the originals. It is a  
4       triplicate form.

5           Q       This is the form you used with Mr. Harte, correct?

6           A       Yes, it is.

7           MR. YOUNG: Move for 38, Your Honor.

8           THE COURT: Any objection?

9           MS. PUSICH: No Your Honor.

10          THE COURT: Exhibit 38 is admitted.

11                   (Exhibit 38 admitted in evidence.)

12       BY MR. YOUNG:

13          Q       There is some Information at the top of that,  
14       detective, and then some writing at the bottom. Describe what  
15       all that writing is.

16          A       Basically, it is a Washoe County form. It has our  
17       name, the case number assigned to the case you are  
18       investigating, the dates used, the time it is used, the place  
19       where you are at and investigating whatever crime it is. In  
20       this case, it is a homicide. Then it goes through the rights,  
21       and I read them as well as have them read them. I read them  
22       out loud, and then at the end ask do you fully understand what  
23       you have just been told? It is a yes or no. The answer in  
24       there is a yes written by Mr. Harte and signed by Mr. Harte

1       witnessed by myself and also Detective Canfield who was with  
2       me on the interview, and again the time.

3           Q       So the date listed up there November 3, 1997, and  
4       the time at the bottom 10:38, that is the specific date and  
5       time this form was signed?

6           A       Yes.

7           Q       Where it says, do you fully understand what you have  
8       just been told, the response is yes. Who actually wrote in  
9       the word yes?

10          A       I believe Mr. Harte did.

11                   MR. YOUNG: Approach one more time, Your Honor?

12                   THE COURT: You may.

13       BY MR. YOUNG:

14           Q       Showing you what has been marked for identification  
15       as 11-d, again, do you recognize that?

16           A       Yes.

17           Q       What is that?

18           A       It is the DVD. That is a compilation of the two DVD  
19       tapes we have just been discussing.

20                   MR. YOUNG: Move 11-d, Your Honor.

21                   THE COURT: Any objection?

22                   MS. PUSICH: No objection.

23                   THE COURT: It is admitted.

24                   MR. YOUNG: This is the one, for purpose of the

1 record, the Social Security number has been muted out.

2 THE COURT: Okay.

3 (Exhibit 11-d admitted in evidence.)

4 BY MR. YOUNG:

5 Q Before we play this, could you just give, very  
6 briefly, a general overview of the progress of the interview  
7 of Mr. Harte?

8 A Basically, it started with, obviously, introducing  
9 ourselves, Mirandizing him, because he was currently in  
10 custody there, and explained to him we were investigating a  
11 homicide. And then, basically, just asking him for his side  
12 of the story. And then after some rambling, so to speak,  
13 where it goes back and forth and denial of any information at  
14 all, it came down to basically convincing him we already knew  
15 the story, because he didn't want to tell us something that we  
16 didn't already know to get the others in trouble. And it came  
17 down to telling him, basically, three things only those people  
18 involved would know. Because of the prior interviews, I was  
19 able to tell him three items that he was wearing, a body wire,  
20 they had a follow car, and I have drawn a blank right now.  
21 After being convinced of those items that we knew that part of  
22 the story, he began to speak to us plainly and told us what he  
23 had done.

24 Q Was it your testimony you informed Mr. Harte you

1 knew about the lack of the taxi cab having GPS?

2 A Yes. The area of Cold Springs, the cab's GPS  
3 emergency alarm system wouldn't work in that area. Knowing no  
4 GPS, he was wearing a wire, he decided to tell us what he  
5 knew.

6 Q Was there some discussion in the interview with  
7 Mr. Harte about the comment of do you want to party?

8 A Yes.

9 Q Does that phrase make sense to you?

10 A Yes. During the interview, there was a signal  
11 between he and Mr. Sirex that they still wanted to go through  
12 with it, that would be the robbing of the cab. The code  
13 phrase was do you still want to party.

14 Q Was there also some conversation in the interview  
15 with respect to somebody else, that being Ms. Babb, listening  
16 in through a microphone what was happening in the cab?

17 A Yes. Mr. Harte was wearing a body wire. She was in  
18 a follow car. They were able to speak to her at relatively  
19 close distance but far enough she could follow. They were  
20 able to communicate back and forth with her after the murder  
21 in the area so they could get in her car, the follow car to  
22 leave the area.

23 Q Now at the conclusion of your portion of the  
24 interview, was there an investigator from the Churchill County

1 Sheriff at the time, Mark Joseph, who entered the room and  
2 also spoke with Mr. Harte?

3 A Yes, they did.

4 Q Were you in the room for a majority of that portion  
5 as well?

6 A Yes, I was.

7 Q Was that related to the Churchill County case?

8 A Yes, it was.

9 Q In that portion of the interview, did the defendant  
10 admit being involved in the Churchill County shooting as well?

11 A Yes, he did.

12 Q Also during the interview, is there some discussion  
13 about other plans to commit robberies at other places?

14 A Yes. They had talked about wiping down the bullet  
15 so fingerprints weren't on the bullet. But, also, they had  
16 plans for other places to include drawings of a 7-Eleven, a  
17 mom and pop store. I think there were several different ones.  
18 But they had maps for entry and exit.

19 MR. YOUNG: Your Honor, I ask at this time the State  
20 be allowed to play 11-d.

21 THE COURT: You may publish it.

22 MR. YOUNG: Just for the Court's information, the  
23 entire interview is about two hours and fifteen minutes, so I  
24 will start it now. It will certainly carry over the break.

1       Whatever time you would like to break let me know unless you  
2       would like to take a break now.

3               THE COURT:   Shall we take a break now and listen to  
4       the whole thing, or is there a place in the middle we could  
5       break?

6               MR. YOUNG:   There is a place where detective Beltron  
7       finishes his portion and detective Joseph begins his. It would  
8       probably go beyond where the break would be, but probably  
9       before lunch, if that makes sense.

10              THE COURT:   It is two hours and fifteen minutes?

11              MR. YOUNG:   Correct, thereabout.

12              THE COURT:   What I think we'll do, we will hear it  
13       all at one time.   So what I think we will do is take a short  
14       recess now so that you are ready to sit for two hours and  
15       fifteen minutes.

16              Ladies and gentlemen of the jury, remember the  
17       admonition I have given you at all breaks.   Do not discuss the  
18       case amongst yourselves or with any other person.   Do not form  
19       or express any opinion about the ultimate outcome of the case.  
20       Do not make any independent investigation inquiring into any  
21       of the facts and circumstances surrounding the case and do not  
22       listen to, view or read any news media accounts or any other  
23       accounts regarding this case should there be any.

24              When I talk about discussing or looking at or making



1 any independent investigation that includes using the  
2 internet, posting, tweeting or text messaging. All of those  
3 things by now you know you cannot do, right?

4 Go ahead and go into the jury room and we will be in  
5 recess. Court's in recess.

6 (Short recess taken.)

7 THE COURT: Okay. We have some issues with the  
8 cameras and the TV and everything. How are we doing here?

9 THE BAILIFF: I believe we are good, Your Honor.

10 THE COURT: You sure? You look kind of close to  
11 that.

12 THE WITNESS: I can move that way if I need to,  
13 ma'am.

14 THE COURT: We could move the bookcase even closer  
15 to me.

16 THE WITNESS: No, I am fine here.

17 THE COURT: Okay. All right. So we'll bring the jury  
18 out. Counsel, will you stipulate to the presence of the jury?

19 MR. YOUNG: State will, Your Honor.

20 MS. PUSICH: Yes, Your Honor.

21 THE COURT: Thank you. Please be seated. Can  
22 everyone see the screen? All the jurors can see the screen.  
23 Okay. Your chairs do turn so you can turn around and make  
24 yourself comfortable. Counsel, go ahead.

1           MR. YOUNG: Thank you, Your Honor. For the record  
2 Your Honor, this is 11-d.

3           (Whereupon the tape was played to the jury.)

4           THE COURT: Counsel, I misunderstood. I thought it  
5 was two hours and fifteen minutes. I told the jury that. We  
6 went a little longer than that.

7           MR. YOUNG: Two and a half hours. I apologize.

8           THE COURT: Can we take our recess now?

9           MR. YOUNG: Certainly.

10          THE COURT: Ladies and gentlemen, we are going to  
11 take our noon recess. I know it is 1:00. We are going to  
12 take this recess. You go ahead and go and have your lunch.  
13 Be back here at 2:15. We'll start back with the evidence then.  
14 During the recess, remember that until the trial is over, you  
15 are not to discuss the case with anyone including your fellow  
16 jurors, family members, friends or anyone involved in the  
17 trial or anyone else, and do not allow anyone to speak of the  
18 case to you. This includes discussing the case on the  
19 internet, internet chat rooms, through internet blogs,  
20 bulletin boards such as Facebook, and twitter, e-mail or text  
21 messaging. If anyone tries to communicate with you with regard  
22 to the case, please let me know immediately.

23          Do not read, watch, listen to or view any news media  
24 accounts or any accounts regarding the trial or anyone else,

1 including any online information.

2 Do not do any research such as consulting  
3 dictionaries, searching the internet, and do not make any  
4 investigation on your own about the case or anyone involved in  
5 the case. Have a nice lunch. I will see you back at 2:15.  
6 Court is in recess.

7 Please be seated. Counsel, I was given some  
8 information from the clerk. Maybe you can fill me in what the  
9 scheduling circumstances are.

10 MS. PUSICH: Your Honor, this morning I sent an  
11 e-mail to Ms. Stone and to the State advising that Dr.  
12 Piasecki is under subpoena in Las Vegas. She was originally  
13 under subpoena today. Unfortunately, their case is taking an  
14 opposite track than ours, taking longer, and they have moved  
15 her to tomorrow. I sent her a return e-mail. I just checked on  
16 my phone, because I was at work at 8:33 saying are you in Las  
17 Vegas today, to find out if I might be able to move her up,  
18 but I haven't gotten a response. I think the answer is  
19 probably yes. So I don't have her today or tomorrow. She will  
20 be available Friday which is potentially changing the  
21 schedule. She has maintained contact with us. We went much  
22 more quickly than we anticipated when this was all scheduled  
23 to begin with. When I notified her this morning I expected to  
24 need her tomorrow, that is when she wrote back and said they

1 had moved her to tomorrow.

2 THE COURT: Okay. But the clerk also tells me you  
3 think your case in chief, your full case will take about four  
4 hours?

5 MS. BOND: I think that is the outside maximum. I  
6 don't want to underestimate. I think that is an over  
7 estimation.

8 THE COURT: What that tells me is we can't do your  
9 whole case on Friday afternoon, and give this case to the  
10 jury.

11 MS. PUSICH: I think most of our case will probably  
12 finish later this afternoon. I don't think the State has too  
13 much left. And then we would have some tomorrow, but we won't  
14 consume all of tomorrow or Friday if you tell us that is the  
15 way.

16 THE COURT: I have a few issues. I am not suppose  
17 to be working Friday afternoon because of the transport  
18 issues, so we have somebody on a unique transport situation.  
19 We would be bringing a lot of people in for overtime Friday  
20 afternoon to call this witness. So that isn't what I really  
21 consider a particularly good use of the time, because we can't  
22 have the jury deliberate. I don't think we can have her  
23 testify, instruct the jury and deliberation having to go past  
24 5:00 o'clock on Friday. They would be even worse than having

1 us hear the case Friday afternoon. So that is my concern.

2 MS. PUSICH: I understand, Your Honor. You had  
3 mentioned to us earlier Friday morning was not available.

4 THE COURT: Correct.

5 MS. PUICH: She would be available in the morning  
6 but that doesn't help the rest of the calendar. I will keep  
7 checking, but at this point, she usually is very responsive to  
8 messages, I think it probably it mens she's in court in Las  
9 Vegas. I won't know that until I get a message back.

10 THE COURT: So is it your thought you want to put on  
11 a case this afternoon and tomorrow morning and then we will go  
12 all the way the full afternoon?

13 MS. PUSICH: I don't think so, Your Honor. I don't  
14 think it will take us that long.

15 THE COURT: Before you run out of witnesses?

16 MS. PUSICH: Correct.

17 THE COURT: Who do you have for tomorrow?

18 MS. PUSICH: Your Honor, we have -- Can I have just  
19 a moment?

20 THE COURT: Yes.

21 MS. PUSICH: Thank you, Your Honor. At this point, I  
22 don't think it is any surprise, we'll have Mr. Harte. He will  
23 probably take the bulk of our time. Then we'll have Ms.  
24 Marshall and read the transcript from Linda Solomon. Both of

1       them I expect will be very brief. The transcript, itself,  
2       redacted is maybe eight or ten pages. Not very long. And  
3       then we would have Dr. Piasecki after that.

4               THE COURT: So you are going to put Mr. Harte on  
5       this afternoon?

6               MS. PUSICH: I believe we would if the State  
7       finishes, yes, Your Honor. And I think they will.

8               THE COURT: Okay. Mr. Harte, you understand that  
9       you have a right against self-incrimination?

10              THE DEFENDANT: Yes, Your Honor.

11              THE COURT: Do you understand you can assert that  
12       right and not say anything at this penalty hearing?

13              THE DEFENDANT: I do understand that.

14              THE COURT: Do you also understand once you take the  
15       stand and begin testifying, you cannot stop testifying? In  
16       other words, you can't answer just the questions you want to  
17       answer and then tell the State, no, I am not going to answer  
18       those questions.

19              THE DEFENDANT: I understand.

20              THE COURT: So, actually, the rule with regard to a  
21       defendant testifying, if you answer one question from your  
22       attorney, then you are subject to cross-examination on the  
23       whole, any possible relevant information in this case from the  
24       State.

1 THE DEFENDANT: Yes, ma'am.

2 THE COURT: Now you do also have a right of  
3 allocution. That means you are not sworn and you aren't  
4 testifying, but you may make a statement, and you can make a  
5 statement with regard to remorse, apologies and plans and hope  
6 for the future. You can do that without being sworn and  
7 submitting yourself to cross-examination. So do you  
8 understand that?

9 THE DEFENDANT: I do. I choose not to invoke my  
10 right to allocution.

11 THE COURT: You would rather testify?

12 THE DEFENDANT: Yes, ma'am.

13 THE COURT: Have you talked to your attorneys about  
14 this choice?

15 THE DEFENDANT: Yes, ma'am.

16 THE COURT: You are making the choice freely and  
17 voluntarily?

18 THE DEFENDANT: I am.

19 THE COURT: Okay. Anything else on inquiry counsel  
20 would like to put on the record?

21 MS. BOND: No. I think that covers it.

22 THE COURT: Mr. Young?

23 MR. YOUNG: No, thank you.

24 THE COURT: Let's go ahead and get the jury back.

1 We'll finish the State's case, do a regular afternoon, then I  
2 will sort of mull in my mind how we are going to do the  
3 defense case. We might just recess until Monday.

4 MS. BOND: Would Your Honor recess and do the whole  
5 case in the morning Monday?

6 THE COURT: Right. No. I was thinking I would hear  
7 Mr. Harte today. We have got the jury here.

8 MS. BOND: I wanted to double check.

9 THE COURT: My concern is I hate to bring the jury  
10 in and say thank you for coming in, we have got an hour, hour  
11 and a half of testimony, thank you very much, go away and come  
12 back a day or two later.

13 MS. BOND: We can do it at any time. I wanted him  
14 to be able to know.

15 THE COURT: Okay. Anything?

16 MR. YOUNG: No. Thank you, Your Honor.

17 THE COURT: Let's bring the jury in. Counsel, will  
18 you stipulate to the presence of the jury?

19 MR. YOUNG: State will, Your Honor.

20 MS. PUSICH: Yes, Your Honor.

21 THE COURT: You may proceed, Mr. Young.

22 ///

23 ///

24 ///



DIRECT EXAMINATION CONTINUED

BY MR. YOUNG:

Q Good afternoon, detective.

A Good afternoon, sir.

Q If you recall, we finished and broke at the lunch break at the conclusion of your interview with Mr. Harte?

A Yes.

Q The recorded interview. I have one final main area to discuss with you, sir. As the lead detective you were, after the investigation in November, the time frame we discussed, the video actually shows you advising Mr. Harte he's under arrest for the murder of John Castro and the related crime of robbery, correct?

A Yes.

Q Did you similarly arrest Latisha Babb and Mr. Sirex for the same charges as Mr. Harte?

A Yes.

Q Are you aware whether all three were tried at the same jury trial by way of a filed Indictment?

A Yes.

Q Are you aware, again as the lead investigator, that all three were found guilty of murder with the use of a deadly weapon and robbery with the use of a deadly weapon?

A Yes, sir.

1 Q Are you aware as to the murder conviction for Ms.  
2 Babb, what sentence she received?

3 A Life without.

4 Q Life without?

5 A Yes, plus enhancement.

6 Q Do you mean life without the possibility of parole?

7 A Yes.

8 Q The enhancement goes to the use of a firearm?

9 A Yes.

10 Q Are you aware of the sentence as to the murder  
11 conviction that Mr. Sirex received?

12 A Yes.

13 Q What was that?

14 A The same. Life without plus enhancement.

15 MR. YOUNG: Your Honor, at this time I would move  
16 for admission of Exhibits 53 and 54. They are both certified  
17 copies of an Indictment for both packets. Judgment of  
18 Conviction is Exhibit 53 for Latiha Babb, and 54 is a Judgment  
19 of Conviction for Weston Sirex related to the exact same case.

20 THE COURT: Counsel?

21 MS. PUSICH: Your Honor, no objection subject to the  
22 Court's earlier rulings.

23 THE COURT: Thank you. So you are moving those into  
24 admission?

1 MR. YOUNG: Correct.

2 THE COURT: May I see them, please?

3 MR. YOUNG: Yes, of course.

4 THE COURT: I am going to reserve ruling on  
5 admission of the exhibits for now. I will let you know in a  
6 little while.

7 MR. YOUNG: Okay. Very well.

8 BY MR. YOUNG:

9 Q Based on that, the co-defendants related to this  
10 case for the murder both received sentences of life without  
11 possibility of parole, correct?

12 A Yes.

13 MR. YOUNG: That is all the questions.

14 THE COURT: Cross-examination.

15 MS. PUSICH: Thank you, Your Honor.

16

17 CROSS-EXAMINATION

18 BY MS. PUSICH:

19 Q Detective Beltron, how long did you work with the  
20 Sheriff's Office before retirement?

21 A Twenty-six and a half years, ma'am.

22 Q And during the course of that experience, did you  
23 become aware that in certain cases that involve a financial  
24 loss, restitution is imposed?

1           A     Yes.

2           Q     And that might be part of the sentence, correct?

3           A     Yes.

4           Q     For example, in Churchill County, Mr. Harte was  
5 never prosecuted, correct?

6           A     I don't know what happened with that case, ma'am.

7           Q     As the lead detective working with the other  
8 gentlemen we have seen on the video and testifying, is that  
9 normally something they would bring to your attention?

10          A     They could. But in this case, our case was much  
11 greater than theirs.

12          Q     They deferred and let Washoe County proceed first,  
13 correct?

14          A     I think they did, but, again, I don't know what  
15 happened with their case out there.

16          Q     Wouldn't it be true, if in fact Mr. Harte was not  
17 prosecuted in Churchill county, there wouldn't be a vehicle to  
18 impose restitution for a conviction there?

19          A     I wouldn't know that, ma'am.

20          Q     Would it be fair to say several things have changed  
21 in the investigation and prosecution of criminal cases during  
22 the course of your career since your retirement?

23          A     Absolutely.

24          Q     For example, we used a DVD despite the fact we

1 started with VHSs?

2 A Yes, ma'am.

3 Q And several things advanced at the Crime Lab as  
4 well?

5 A Yes, ma'am. I originally started with thin layer  
6 chromatography as a type of drug test. Now we use gas  
7 chromatograph.

8 Q You referenced some of the forms of Miranda have  
9 changed over time, as well, correct?

10 A Yes.

11 Q Today they have two questions, right?

12 A I don't know about today's questions, ma'am. I have  
13 been gone for three years. It may have changed since then.

14 Q During the course of Mr. Harte's interview, he told  
15 you that he would be more comfortable if he were not being  
16 recorded?

17 A Yes.

18 Q You turned off a little hand-held recorder that was  
19 on the table?

20 A My pocket tape recorder was in my pocket.

21 Q There was still video on going with the Churchill  
22 County Sheriff's office?

23 A Yes.

24 Q That's what we saw?

1           A     Yes.

2           Q     In fact, when you started to interview Mr. Harte,  
3     you took off his handcuffs and the chains, correct?

4           A     Yes, ma'am.

5           Q     Is that fairly standard to try and make him a little  
6     bit more comfortable talking to you?

7           A     Yes. He wasn't violent, so we talked to him.

8           Q     But you also want to keep everyone safe, correct?

9           A     Absolutely.

10          Q     So in that interview, you take off his handcuffs but  
11     you and Detective Canfield are between Mr. Harte and the door,  
12     correct?

13          A     I think the door was directly behind me. Actually,  
14     the door is to my left, so the door would be actually between  
15     Mr. Harte and myself.

16          Q     You weren't going to let him walk out, correct?

17          A     Oh, no, no. He was in custody, ma'am.

18          Q     So you want him to feel a little more comfortable to  
19     have the conversation, but he's not going anywhere?

20          A     Right.

21          Q     You referenced, I believe it was you, I apologize if  
22     I am wrong, trip sheets?

23          A     Trip sheets?

24          Q     From the cab company.

1           A     I think that was detective Canfield, but I know what  
2     you are talking about.

3           Q     In fact, in the course of your investigation, the  
4     person who understood the import of trip sheets among the  
5     three accused was Mr. Sirex, correct?

6           A     Yes.

7           Q     Because he had been a cabbie himself?

8           A     Yes.

9           Q     Having those removed from the cab before the police  
10    or any one else got near it would remove some evidence who had  
11    most recently been a passenger?

12          A     Or possible destination, yes, ma'am. I don't know  
13    if they write down names, but definitely destination.

14          Q     In this case, you were the lead detective, correct?

15          A     Yes, ma'am.

16          Q     Among other things, does that mean that other people  
17    are giving information they get to you?

18          A     Yes, ma'am?

19          Q     Police reports, interviews, things like that?

20          A     Yes, ma'am.

21          Q     So you said you had come on scene after  
22    Mr. Castro had been removed to the hospital, but you were  
23    given the opportunity to view photographs from other officers  
24    who got there sooner?

1           A     Yes.

2           Q     At one point, you described going to talk to  
3     Mr. Sirex. You said you did a voluntary knock on the door.  
4     What does that mean?

5           A     That was detective Canfield and Churchill. I wasn't  
6     present during that time. All they said, they approached his  
7     door and knock on it.

8           Q     When you call it a voluntary, you mean they knocked,  
9     he answered and everything was fine?

10          A     Yes, ma'am.

11          Q     In the course of your investigation, did you  
12     determine Weston Sirex was also armed at the time of the  
13     robbery of John Castro?

14          A     Yes.

15          Q     And also armed at the time of the shooting in  
16     Churchill County?

17          A     Yes.

18          Q     Was it your standard procedure to have a person who  
19     was being questioned, read the Miranda and also read it out  
20     loud to them?

21          A     I like to make sure I am as thorough as I can be  
22     instead of just assuming, you know. You are right, actually  
23     read it, then read it to them out loud, and then I have had  
24     some that don't know how to read and write.



1           Q     That is just being thorough. But in this case, it  
2 turns out there is no problem with Mr. Harte reading them?

3           A     No.

4           Q     Do you know how long Mr. Harte had been awake before  
5 you got the opportunity to interview him?

6           A     No.

7           Q     Do you know how long he had been in custody?

8           A     I am assuming it was just a day. I don't know.

9           Q     He was interviewed by Churchill County and the FBI  
10 before he was interviewed by you?

11          A     I believe so. I just didn't know what the time frame  
12 was. I know it occurred before I got there.

13          Q     And other than a few moments when you are out of the  
14 room and nothing is happening, the District Attorney removed  
15 so we wouldn't be watching silence and the Social Security  
16 number referenced, the beginning of your interview with  
17 Mr. Harte is part of the DVD the jury has seen, correct?

18          A     Yes.

19          Q     So he didn't say I won't talk to you or I am leaving  
20 now or put me back in my cell. He kept talking to you?

21          A     No. The DVD was accurate.

22          Q     During the course of your investigation, you learned  
23 Mr. Harte had family in Fallon, correct?

24          A     I believe it was his mother, yes.

Q Did you also learn Ms. Babb had family locally or nearby?

A Yes. We actually talked to Ms. Babb's mother. In the morning, we talked to her.

Q Do you know if Mr. Sirex had any local family?

A I don't know that.

MS. PUSICH: Thank you, detective. Thank you, Your Honor.

THE COURT: Redirect?

MR. YOUNG: I have no other questions.

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

THE WITNESS: Thank you.

(Witness excused.)

THE COURT: Call your next witness.

MR. YOUNG: State calls Lanette Anderson.

THE COURT: You may proceed.

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LANETTE ANDERSON

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

DIRECT EXAMINATION

BY MR. YOUNG:

Q Good afternoon, ma'am?

A Hi.

Q Could you go ahead and state your first and last  
name and spell both for our reporter?

A Lanette Anderson. L-A-N-E-T-T-E. A-N-D-E-R-S-O-N.

Q Is Lanette Anderson, the name Anderson, your married  
name?

A Yes.

Q What was your maiden name?

A Bagby, B-A-G-B-Y.

Q Ma'am, do you know an individual by the name of  
Shawn Harte?

A I do.

Q How is it you know Mr. Harte?

A I used to date him.

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

A I do.

Q Point him out to the jury and describe what he's

1       wearing, please.

2           A       Has on a light-ish blue shirt in the middle of the  
3       table on the right.

4           MR. YOUNG:   Record reflect the identification,  
5       please?

6           THE COURT:   The record will so reflect.

7       BY MR. YOUNG:

8           Q       Now, ma'am, to get this out of the way as far as  
9       your criminal history, have you suffered felony convictions?

10          A       I have.

11          Q       Was there a time back in 1998 when you actually  
12       served a prison sentence in the Nevada Department of  
13       Corrections and released on parole?

14          A       Yes.

15          Q       When was that in relation -- Was that after you had  
16       been dating Mr. Harte?

17          A       Yes. That was in 2009 I was released, I believe.

18          Q       Okay. Was there a time -- Let's backtrack to 1998?

19          A       Oh, '98?

20          Q       Was there a time you were in prison at that point as  
21       well?

22          A       Yes.   Yes.

23          Q       Fine.   In relation to your dating Mr. Harte, did you  
24       date Mr. Harte prior to 1998?

1           A     Yes, I believe so. That's a long time ago.

2           Q     Was there a time in 1998 when you received a letter  
3     which brings you to court today?

4           A     Yes.

5           Q     Do you know who wrote and sent you that letter?

6           A     Shawn Harte did.

7                 MR. YOUNG: If I could approach, Your Honor?

8                 THE COURT: You may.

9     BY MR. YOUNG:

10          Q     I am going to show you what has been marked as 8-d.  
11     Just flip through that, ma'am, and let me know if you have  
12     seen that before.

13          A     Yes.

14          Q     Is that the letter you were just referencing?

15          A     Yes.

16          Q     How do you know that is from Shawn Harte?

17          A     Well, it is signed by Shawn, but it goes into a  
18     whole lot of detail of things about me being out of prison and  
19     my daughter.

20          Q     That Mr. Harte knew?

21          A     Yes.

22          Q     You had, based on your dating relationship with  
23     Mr. Harte, had you seen his writing, penmanship?

24          A     Oh, yeah.

1 Q Is that consistent with what is on the letter?

2 A Yes.

3 Q One last question. Is that a true and accurate copy  
4 of the letter you received from Mr. Harte?

5 A Yes.

6 MR. YOUNG: Move for 8-d, Your Honor.

7 MS. BOND: No objection, Your Honor.

8 THE COURT: The exhibit is admitted.

9 (Exhibit 8-d admitted in evidence.)

10 BY MR. YOUNG:

11 Q Now a couple questions, ma'am, about this.  
12 Actually, I will let you keep this. I will look at my copy.

13 A Thank you.

14 Q The letter, itself, is six pages,, correct?

15 A Yeah. Yes.

16 Q Okay. What is attached on the front of that is a  
17 copy of the envelope which you received the letter in?

18 A Yes.

19 Q And there is the mailing stamp, if you will, showing  
20 the date of the service of that. Is that listed as it  
21 appears, May 6, 1998?

22 A It says 1998. I could just see the 6.

23 Q The year is 1998?

24 A Yes.

1           Q     Why don't you go ahead and flip to the first page of  
2 the letter itself. Is there a date Mr. Harte lists?

3           A     Monday, October 5th.

4           Q     In the upper right corner it starts out with  
5 "Lanette Dawn?"

6           A     Yes.

7           Q     Is that you?

8           A     Yes.

9           Q     The very last page, if you will, ends with "yours  
10 always," and it appears to be letters. Whose letters are  
11 those?

12          A     Shawn Russell Harte.

13          Q     Now you said this letter discusses things including  
14 your daughter, being released from prison, and the like,  
15 correct?

16          A     Yes.

17          Q     What is your daughter's name?

18          A     Kelsey.

19          Q     That is, again, referenced in this letter?

20          A     Yes.

21          Q     What I am going to have you do, ma'am, is go ahead  
22 and read that letter out loud to the jury, please?

23          A     "Lanette Dawn.

24                How are you my beautiful free girl friend. So I

1       guess you were released yesterday. Last night I was thinking  
2       how Oct 4 must be one of the best days in your life. You got  
3       your freedom, a new chance, and best of all you get to be with  
4       Kelsey again. So I suppose you are at New Frontier now. That  
5       means you already got my letter. I only sent one there. My  
6       mom told me to send them to her and she'd give them to you."

7           Q       Ma'am, the Court reporter is taking everything down.  
8       If you would do her a favor and slow down just a little.

9           Q       "Maybe that was just a reason to see you more.

10                "When was Kelsey born? Was it September or October  
11       of '95? I don't think I was in the Army yet. Just curious.  
12       I am glad you're not in prison anymore. Now I can write you  
13       anything I want without worry of it being read.

14                "So what is this all about? Well there are 3 major  
15       things fucked up with this country and only two of them can be  
16       fixed purely by violence. These problems are over population  
17       of lesser races, drugs and the extension of the family."

18                THE COURT: You are still going too fast for the  
19       court reporter.

20                THE WITNESS: Sorry.

21                "I've always known I had a special purpose in life.  
22       I've always known I was different." Is that better, ma'am?

23                THE COURT: Yes.

24                THE WITNESS: "I planned to live a normal life up to



1 about 30 years old. Normal meaning family, owning a house,  
2 paying bills, and living legit, etc. But while I was living a  
3 normal life, I would be saving up money, fire power and  
4 weapons. Gaining more knowledge, and pre-picking members of a  
5 force or militia to bring together in ten years or so, but  
6 hopefully sooner hopefully to begin training, etc. So far  
7 I've obtained two really good people who I can trust with my  
8 life, who would have come upon request. However, I wasn't  
9 going to have them move to Nevada for about another year until  
10 I could buy a new doublewide. Within these ten years, I  
11 wanted to have about eight people ready for action. Fully  
12 ready.

13 "So being how these people must be THE BEST, I've  
14 only found two. Gino would have been good, but not smart  
15 enough and too unreliable, untrustable. The two I already  
16 chose live far away.

17 So then I meet my co-defendant/rat, Weston Sirex, in  
18 Korea. He's from Reno. Naturally we discussed Nevada. We  
19 became good friends and eventually talked about things he was  
20 interested in like explosives. I told him the shit that would  
21 be produced would be high-order TNT/RX mercury fulminate,  
22 etc., not some toy pipe bomb filled with gunpowder that will  
23 only take off your hand. He became fascinated with the idea.  
24 I tried to teach him some chemistry. I taught him the

1 nitrifications and dehydration process, too and the NO2 ion  
2 safely to an organic base. His IQ was 120 plus, so he looked  
3 like a good member.

4 "I explained my future militia structure, and he  
5 fell in love with it. He liked the idea of firearms,  
6 technology, methods of elimination, methods of monetary gain,  
7 and he was highly impressed with my knowledge.

8 I told him how it was important that every member  
9 was free of addiction, could kill, and had no religion,  
10 preferably. I explained every member would have their own  
11 special firearms along with 1 of 4 special methods to kill.  
12 These firearms must be a caliber .22lr, 9mm. .40, .45,  
13 7.62x39mm, 12ga, or 7mm Magnum. I explained the four methods.  
14 First was cleaning. That was a walk-in with the shotgun and  
15 assault rifle, brute force killing. Second was planting.  
16 That involves the planting of an explosive, poison or  
17 sabotage. Third was assassinry. That utilized the art of a  
18 physically induced silent method, usually blade or silenced  
19 firearm. Last was sniper, self-explanatory.

20 "He chose sniper. Weapons: Gock.17, 9mm and  
21 average .116 high power 7mm Magnum.

22 "So I get out of the Army, hook up with Weston in  
23 Reno. We do some fraud, although credit cards and checks get  
24 boring. They're easy and highly profitable. We do some weapons

1 training. I express the importance of a .22 caliber handgun,  
2 so he buys one.

3 "Then comes time for some real training. We go  
4 twenty miles south and plan to disable a vehicle /take  
5 hostages. We constructed devices of epoxy and nails to  
6 flatten tires. We park far away from the road and go in on  
7 foot. I'd have an SKS and he had my .22 silent rifle.  
8 Stopped one car. Kids, so we let them go. Couldn't flatten  
9 anymore tires, so we went for brute force. We decided to just  
10 open up on random vehicle then take hostage. I had the heavy  
11 high power, so I went for the engine compartment. He went for  
12 tires.

13 "Blue Jeep Cherokee. I scored 17 hits on that  
14 fucker. Weston fired twice, missed twice. It got away. So  
15 we casually went back to town behind. By the time we heard the  
16 call over the scanner, we were safe.

17 "So he fucked up there but swore it was because I  
18 was in his way. Okay. One more chance. We take someone out.  
19 Naturally we decide it'd be someone who had it coming. I  
20 wanted to do a drug house, but he was scared. He had no skill  
21 in that. Okay. Latisha says 'cab driver.' He says, 'yes, they  
22 all deal'. So the 3 of us plan it out. She follows me and him  
23 in cab while I wear transmitter so she can hear what is going  
24 on. Weston was supposed to take him out. He gets scared

1 again. Takes out his clip and signals a "no." So this cab  
2 driver is just spurting off mouth how he got ripped off of  
3 \$1,000 cash earlier, blah, blah, blah. Now what could that  
4 all have been about? Drugs. Fuck this piece of shit. It's  
5 because of people like him that I don't have a son or  
6 daughter. Fuck him. I chambered a round, a CCI Stinger.  
7 .22-caliber hyper-velocity, hollow-pointed, lubaloy 40 grain  
8 slug fired out of my Smith & Wesson semi-auto with 4 inch  
9 barrel. Point blank. An inch above the ear and two behind.

10 "Boom. That simple. That easy. No remorse.  
11 Honestly. I jumped up front and let the cab coast right in  
12 front of a drug dealer's house in Cold Springs. Perfect.  
13 Windows were up, so it was noiseless (except that ringing in  
14 my ears.) Got out. Dark neighborhood. Dark car. Latisha  
15 waiting about 300 feet ahead. We left, went to Circus Circus,  
16 played some games, gambled. Continued our good time Went to  
17 Taco Bell, (Latisha's choice, not mine.) And ate. Went home.  
18 Simple. Nothing to do it. Just another chore like taking out  
19 the trash except easier and funner.

20 "So now you know. Are you happy? Weston was a cab  
21 dispatcher. He felt guilty. He said no more killing. He  
22 wanted to be a member still, just couldn't kill. Okay.

23 "But the cops questioned every cab company employee.  
24 He told them everything for no reason. Didn't even call me on

1 my cell phone (which I took everywhere) to give me a 10 minute  
2 warning. He's going to die.

3 "So I had it made. Working at Radio Shack  
4 full-time, going to school and getting paid for it. More  
5 credit cards than I knew what to do with, and the night I got  
6 arrested I got offered a job at Fallon Auto Mall selling new  
7 cars. I went there to buy. Assistant manager offers me a  
8 job.

9 "Then I get pulled over right outside of Cock and  
10 Bull. I had just told my mom about knew job. Latisha's kid  
11 was in the back, so couldn't have a shoot-out. Oh well.  
12 Denied everything at first. But when Latisha knew Weston  
13 talked, she talked. The next day I found out she talked. I  
14 talked. I'm not a liar.

15 "Prison is just a whole new opportunity. I am  
16 young. I don't expect automatic respect. When people realize  
17 my intelligence and knowledge, I become a God. I will  
18 temporarily unite all races in prison and teach that  
19 'prisoner' is a race and that anyone trying to keep us  
20 imprisoned is another race. I will create a system and have  
21 reps for each race or 'clique'. Freedom will be obtained. I  
22 will first see the chances of just myself escaping or perhaps  
23 a few. But mass people riots just sounds so much fun.

24 Anyway, Lanette, here's your explanation. Weston is

1 a weak-minded rat and that's that.

2 About us staying in contact, I don't know. You know  
3 how I feel about that and why. I do love you so much Lanette  
4 but I just can't bear the pain. I'd love for you to visit me,  
5 but I just can't. Sorry Honey. Yours always, SRH."

6 Q When you received that letter, ma'am, did you  
7 contact law enforcement and turn that over to law enforcement?

8 A It was intercepted,, yes.

9 MR. YOUNG: That's all the questions I have, Your  
10 Honor. Thank you, ma'am.

11 THE COURT: You're welcome.

12 THE COURT: Cross-examination.

13 MS. BOND: Thank you, Your Honor.

14

15 CROSS-EXAMINATION

16 BY MS. BOND:

17 Q Ms. Anderson, when you say that letter was  
18 intercepted, what do you mean?

19 A I was actually on parole. Mr. Harte had already  
20 been arrested, had been all over the news and the world. My  
21 mother actually intercepted the letter before I got to read  
22 it.

23 Q Your mother intercepted it?

24 A Yes, to my parole officer.

1 Q That was in 1998?

2 A Yes.

3 Q Since that time, did you have any further  
4 correspondence with Shawn Harte?

5 A No, I don't believe so.

6 Q You didn't receive any letters from him or write  
7 back to him?

8 A No.

9 Q Did you have any telephone conversation with  
10 Mr. Harte since that time?

11 A No, I don't believe so.

12 Q Other than seeing him in courtroom proceedings, have  
13 you had any other contact with Mr. Harte since 1998?

14 A No.

15 MS. BOND: No further questions, Your Honor.

16 THE COURT: Anything further?

17 MR. YOUNG: No, thank you.

18 THE COURT: Okay. Thank you, ma'am, you may step  
19 down.

20 (Witness excused.)

21 MR. YOUNG: Your Honor, can counsel and I come  
22 sidebar, briefly?

23 THE COURT: Certainly.

24 (Discussion at the bench.)

1 THE CLERK: 53-a and 54-a marked.

2 (Exhibits 53-a and 54-a marked for identification.)

3 MR. YOUNG: Your Honor I would move for 53-a and  
4 54-a which are the Judgments of Conviction, remove the  
5 Indictment as to both Mr. Sirex and Ms. Babb.

6 MS. PUSICH: No objection subject to the Court's  
7 earlier ruling.

8 THE COURT: 53 and 53-b are admitted.

9 MR. YOUNG: 53-a and 54-a.

10 THE COURT: 53-a and 54-a.

11 (Exhibits 53-a and 54-a admitted in evidence.)

12 MR. YOUNG: Thank you. Your Honor, I understand it is  
13 the Court's intention to allow the family of John Castro to  
14 address the Court at the appropriate time.

15 THE COURT: Yes.

16 MR. YOUNG: So with that, the State has no further  
17 evidence, again, beyond the family addressing the jury.

18 THE COURT: Okay. Counsel.

19 MS. BOND: Defense would call Shawn Harte.

20 THE COURT: Okay. You made proceed.

21 ///

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SHAWN RUSSELL HARTE

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

DIRECT EXAMINATION

BY MS. BOND:

Q Would you please state your name?

A Shawn Harte.

Q You are the defendant in this case?

A Yes.

Q Mr. Harte, how are you feeling right now?

A Ashamed, disgusted, sick, concerned.

Q Why are you feeling that way?

A It is very difficult to sit over there and watch the  
person that I was 17 years ago.

Q You are talking about the video tape we just  
watched?

A All of the evidence.

Q Your birth date is 1977; is that correct?

A Yes, ma'am.

Q How old are you today?

A I am 37.

Q How old were you in October of 1997?

A I was twenty.

1           Q     Is that the date of the events we have been hearing  
2     about throughout this case occurred?

3           A     Yes.

4           Q     When were you arrested in this case?

5           A     I believe it was November 12 of 1997.

6           Q     Since that time, have you ever been out of custody?

7           A     No.

8           Q     Where were you first held in custody on these  
9     charges?

10          A     Churchill County Jail.

11          Q     Were you moved subsequently to Washoe County?

12          A     Yes, ma'am.

13          Q     Ultimately, you were convicted of the charge of  
14     first degree murder with the use of a deadly weapon in 1999;  
15     is that right?

16          A     Yes.

17          Q     At that time, where were you then held in custody  
18     after that?

19          A     I was transferred to the Nevada Department of  
20     Corrections.

21          Q     Which particular prison facility have you been  
22     housed in since then?

23          A     Ely State Prison predominantly.

24          Q     Just a few minutes ago Lanette Anderson was

1       testifying, and you heard that, correct?

2           A       Yes.

3           Q       And she read from a letter that is marked as Exhibit  
4       8-d?

5           A       Yes, she did.

6           Q       Did you write that letter.

7           A       I did, yes, regrettably.

8           Q       To whom did you send it?

9           A       I'm not sure. Either my mother or her. I believe  
10       it was my mother, to give to her.

11          Q       Who were you intending to give the information  
12       contained in the letter?

13          A       Repeat that, please.

14          Q       Who was the letter addressed to? Who were you  
15       sending it to?

16          A       I mailed to it my mom's house.

17          Q       It is captioned to Lanette.

18          A       Yes.

19          Q       That would be Ms. Anderson; is that right?

20          A       Yes.

21          Q       What was your relationship with her at that time?

22          A       Ms. Anderson?

23          Q       Yes?

24          A       An ex girl friend that I had periodically been

1 seeing overtime.

2 Q When you wrote that letter to Ms. Anderson where  
3 were you housed, I guess?

4 A I was at the Washoe County Jail.

5 Q When did you write that letter?

6 A Late 1998.

7 Q At the point that letter was written, had you yet  
8 been convicted of the murder charge in this case?

9 A No, ma'am.

10 Q You said you sent the letter you believed to your  
11 mother's house to give to Ms. Anderson?

12 A Yes.

13 Q Did you ever learn that your mother learned what  
14 that letter contained?

15 A Yes, she read it.

16 Q Did she give you any response to that?

17 A She did.

18 Q How did she respond?

19 A She stated that the ideas about Latisha was  
20 something she respected.

21 Q That was her response to you from that letter Ms.  
22 Anderson just read?

23 A Yes.

24 Q When you heard Ms. Anderson read that letter out

1       loud in the courtroom just a few minutes ago, how did that  
2       make you feel today?

3           A       Ashamed, disgusted, sick, concerned, saddened.

4           Q       Before you heard her read that whole letter out  
5       loud, did you recall everything that was in that letter?

6           A       No, ma'am.

7           Q       Were there some things that you were reminded of  
8       only as she read it?

9           A       Much of it, yes.

10          Q       How old were you when you wrote that letter?

11          A       Twenty-one I believe.

12          Q       This is while you were at Washoe County Jail?

13          A       Yes, ma'am.

14          Q       Were you housed with other people at the Washoe  
15       County Jail?

16          A       I was.

17          Q       Who were you housed with? I am not looking for  
18       names. I just mean generally speaking.

19          A       Well, when I was arrested at 20 years old, I was  
20       placed into the Washoe County Jail. That is a high security  
21       unit. We came out in groups, but they were high security,  
22       therefore, most of them were hardened criminals. Some of them  
23       had swastikas tattooed on their face or had affiliation with  
24       very notoriously violent biker gangs, a lot of people like

1       that.

2           Q     And did you communicate with these people that you  
3       were housed with, the other inmates at the jail?

4           A     Yes.

5           Q     You had conversations?

6           A     Yes.

7           Q     Do you recall anything about a teardrop tattoo on  
8       any of them?

9           A     Yes, I do.

10          Q     Tell me about that, please.

11          A     He was a man named Mark. He was my cellmate for a  
12       while, actually, and he had a few tear drops underneath his  
13       eye which he told me were tattoos for each person that he  
14       killed.

15          Q     And how old was Mark?

16          A     I believe in his late 30's at the time.

17          Q     He was your cellmate for a while?

18          A     Yes.

19          Q     You described a man with a swastika tattoo?

20          A     Yes.

21          Q     Was that something he showed you or was it evident?

22          A     It was blatantly evident around his forehead and  
23       around his face.

24          Q     Did you have conversation with him as well?

1           A     I did.

2           Q     In the course of these conversations, did you come  
3 to have any belief about how you were supposed to behave in  
4 custody on these charges?

5           A     At age 20 I was very naive about incarceration, so  
6 you could imagine at age 20 I was rather intimidated, rather  
7 frightened. My knowledge of prison at the time was that it  
8 was a place where young people basically went to get assaulted  
9 or raped. And because of that, I felt that -- How do I  
10 explain it? In an incarcerated environment, it is very common  
11 for older males to take what are called the youngsters under  
12 their wing, teach them the ways of prison, the convict  
13 mentality. You know, it is a whole different set of  
14 incarcerated ethics or etiquette, if you will.

15          Q     Did you develop an understanding from those people  
16 when you were at that age in Washoe County Jail about how you  
17 were suppose to act, about the charges you were there for?

18          A     Yes. They made it very clear.

19          Q     What did you -- How did you believe you had to  
20 portray yourself?

21          A     Well, unfortunately in prison, if you didn't kill a  
22 baby or a woman, then you are basically encouraged to be proud  
23 of your crime if you kill an adult male.

24          Q     That came out a little backwards. If you didn't

1 kill a baby or woman, it was okay?

2 A Yes.

3 Q At the time you went into the Washoe County Jail on  
4 these charges, other than your brief incarceration in  
5 Churchill County related to this as we heard about, had you  
6 ever been to jail before?

7 A No, ma'am.

8 Q Had you ever been to juvenile jail?

9 A No, ma'am.

10 Q You said you had some naive ideas about what it was  
11 like to be in jail or prison. Where did those ideas come  
12 from?

13 A Mostly television and TV shows.

14 Q When you wrote this letter, I am talking about 8-d,  
15 the letter Lanette Bagby Anderson just read in Court today?

16 A Yes.

17 Q How did that relate to what you perceived to be the  
18 way you were suppose to be behaving?

19 A I think that letter can best be characterized as me  
20 attempting to fit into a new role. And I was going to be in  
21 prison for probably a very long time, and I think that that  
22 letter at the time was me basically trying to portray a new  
23 persona I had basically been indoctrinated with.

24 Q Can you tell me some of those things that you heard



1       today in the letter that you had completely forgotten about?

2           A       Forgotten about?  Some of the parts about Mr. Sirex.  
3       Some of them I recollected, some of them I did not.

4           Q       Do you recall hearing Ms. Anderson talk about a car  
5       full of kids?

6           A       I do, yes.

7           Q       Was that something that you recall writing about?

8           A       No.

9           Q       Are you certain as you sit here now having heard  
10       that, what that was about when you wrote it?

11          A       Which instance?

12          Q       The part in the letter where you described that you  
13       and Mr. Sirex had flattened some tires on the car, but there  
14       were kids, so you let them go?

15          A       Yeah.  I don't have recollection of that.

16          Q       It surprised you today when you heard it?

17          A       Yes.

18          Q       That it was even in there?

19          A       Yes.  I suspect it was a bit of fantasy.

20          Q       I am sorry was what?

21          A       A bit of fantasy.  That whole letter, reading it,  
22       when I see it now it, seems like it was written by a 20 year  
23       old kid who was very scared, very damaged, didn't know what to  
24       make of his new environment, and seeing it, it seemed to me a

1 lot of narcissistic defenselessness and a lot of delusion,  
2 fantasy which is probably why none has transpired.

3 Q I want to get to another specific -- Well, there is  
4 a description in that letter about, by you, about killing Mr.  
5 Castro, that it was just another chore, like taking out the  
6 trash. That it was easy. At the time that you wrote that, did  
7 that seem to be an acceptable thing in your mind at that time  
8 to write?

9 A Yeah. It was something I was basically encouraged  
10 to take on as my attitude, my crime.

11 Q That was part of being proud of your crime because  
12 it wasn't a baby or a woman?

13 A Absolutely.

14 Q Did you ever consider how John Castro's family might  
15 feel if they read a letter like that?

16 A No.

17 Q Didn't even occur to you at that time to think about  
18 his family?

19 A It didn't at the time, no.

20 Q You said that you felt disgusted, when you first  
21 took the witness stand?

22 A Yes, ma'am.

23 Q About hearing that letter and the evidence you have  
24 heard in court. Have you personally changed since you wrote

1       that letter in 1998?

2           A       Drastically.

3           Q       Is that a change that has been recently made?

4           A       I would say it started approximately 1999 and has  
5 progressed very slowly but consistently since then.

6           Q       In 1998, around the time this letter was written,  
7 had you ever felt, actually felt empathy for anyone?

8           A       I would say no.

9           Q       Were you able to intellectually understand the  
10 concept of sympathy?

11          A       It was the only way I could do it, yes.

12          Q       Tell me how you see the difference between  
13 understanding sympathy intellectually and actually feeling  
14 empathy?

15          A       I think-- I think it might best be described in many  
16 introductory level psychology books in the physiology section  
17 on color vision. They have examples, stories, excuse me,  
18 where a grandfather and his grandson are picking cherries and  
19 they decide to have a contest to see who can pick the most  
20 cherries. And the grandson wins drastically. The grandfather  
21 only has a few at the end of the day. And the grandfather asks  
22 his grandson, you know, how the heck do you see them all. And  
23 the son can't understand how the grandfather cannot see the  
24 cherries. But the grandfather eventually comes to realize

1 he's color blind and cannot distinguish between red and green.  
2 It all looks the same to him. I think that is the best way I  
3 can describe what it is like to grow up and not feel empathy  
4 whatsoever.

5 Q Like being color blind?

6 A Yes. You don't know that it is missing.

7 Q Did you realize that was something missing in your  
8 self at that point?

9 A Not in 1996. Around 2001 or '2 I think it was.

10 Q Why do you say around 2001 or '2 you think you began  
11 to understand that?

12 A It was actually a TV show. I was watching one of  
13 the shows that had lots of home videos, and it was a bunch of  
14 people basically getting injured. And watching one of the  
15 scenes I saw a kid fall off either a skateboard or bicycle and  
16 break his forearm. And you could see it bend in a way it  
17 shouldn't bend, and actually hear it snap. And all of a  
18 sudden my body from my solar plexus radiating outward down to  
19 my toes up to my fingers. It was that visceral feeling of  
20 pain. It startled me at first because I had not literally  
21 felt someone's pain. After all, all I had been able to do  
22 prior to that was seeing something hurt and have to rationally  
23 cognize, okay, that probably hurt. As far as feeling  
24 somebody's pain, I was never able to do that prior to about

1       2001 or 2002.

2           Q       That just happened by chance as you watched that  
3       show?

4           A       For no reason, apparently, yes.

5           Q       Did you ever try to figure out why you hadn't  
6       experienced that feeling before?

7           A       I did.

8           Q       What did you conclude as you tried to do that or how  
9       did you try to do that?

10          A       Well, I had a lot of time in prison, of course. And  
11       I studied a lot of psychology and looked into things like  
12       that. The mirroring hypothesis resonated with me, matched a  
13       lot of what I was and wasn't feel.

14          Q       Prior to that time, prior to 1998, had you ever seen  
15       an adult in your family, model empathy? Had you seen them  
16       react with an empathetic response to you or anyone else?

17          A       I would have to answer in the negative there,  
18       because I don't even recall knowing what empathy was.

19          Q       That it even existed?

20          A       Right.

21          Q       Let's talk for a minute about your family. Who  
22       raised you?

23          A       Well, at first it was my biological mother and  
24       father.

1 Q What was your mother like?

2 A She's very, she's very controlling and manipulative.  
3 She has had issues with alcohol. I think a lot of her  
4 problems pre-existed me. She got married at a very young age,  
5 16 or 17. And the guy she married was just very, very ill. I  
6 believe he was schizophrenic. I am certain he was a cocaine  
7 addict and alcoholic, and he abused her in terrible ways. So  
8 because of that, I believe she ended up marrying my dad,  
9 eventually, and he was much different. He's a lot more  
10 introverted and passive. And I think that comforted her. It  
11 made her feel safe. And I think that eventually she began to  
12 resent him and she began to emotionally be cruel to him in  
13 many different ways. And that created a very sick environment  
14 in the family. He was depressed. He was suicidal. What  
15 abuse he received from my mom, emotionally he basically  
16 dispatched to my brother who was not his biological child.

17 Q Let me stop and make sure we are getting all the  
18 "he's" correct. Prior to you being born, your mother was  
19 married to someone other than your biological dad?

20 A Yes.

21 Q That was the father of your older brother?

22 A Yes.

23 Q I think your older brother is five years older than  
24 you?

1           A     Yes.

2           Q     At some point, that marriage dissolved and your  
3 mother married the man who is your biological father?

4           A     Yes.

5           Q     That is the "he" you have been talking about passive  
6 and initially made your mom feel safe?

7           A     Correct.

8           Q     You said your mother had some issues with alcohol?

9           A     Uh-huh?

10          Q     Was she an alcoholic?

11          A     I don't believe at that time she was, but into my  
12 teens, definitely.

13          Q     What time you don't believe she was?

14          A     In early childhood I don't think she was an actual  
15 alcoholic. She had some issues, but I don't think it was  
16 full-on alcoholism yet.

17          Q     She drank sometimes to excess, but you don't believe  
18 really hit daily full alcoholism until later?

19          A     Not until, I remember, around age 10, 11, 12, 13.

20          Q     When you were a young child five to six years old,  
21 what do you recall about your health at that time?

22          A     I was in and out of the hospital a lot. A lot of the  
23 time a lot of needles. That is where I gained my fear of  
24 needles.

1 Q What were you in and out of the hospital for?

2 A The symptoms were a lot of gastrointestinal  
3 symptoms, like that. And nothing was really found.

4 Q You described some testing that was done to try to  
5 find out what was going on.

6 A Yeah, lengthy, over many years, yeah.

7 Q At that point, was your mom protective of you?

8 A I would say pathological so, yes.

9 Q What do you mean by that?

10 A She had a tendency to sabotage relationships with  
11 other family members of mine to keep me closer to her. She  
12 would tell me a lot of things that were very age inappropriate  
13 for myself to hear at a young age.

14 Q When you say she would sabotage your relationship  
15 with other family members, what do you mean by that?

16 A Tell lies basically about relatives saying  
17 derogatory things about me. Certain things very private  
18 about my dad that should not be shared with a young kid.

19 Q When you say tell lies, tell those to whom?

20 A Me.

21 Q So she would lie to you about other family members?

22 A Yes. Yes.

23 Q As a young child, how did you feel about your mom  
24 and about being around your mom?



1           A     As a young child?

2           Q     Yes. Very young, five to six years old?

3           A     I would say that I had a very high dependency upon  
4 her. I think I had separation anxiety disorder.

5           Q     When you were in very early elementary school,  
6 kindergarten through about third grade, can you describe how  
7 that affected you?

8           A     First grade, second grade, third grade, I could be  
9 at school in class and just start crying out, "I want my  
10 mommy," for no apparent reason. That sickness, anxiety was so  
11 severe without her.

12          Q     You mean physically ill?

13          A     Psychosomatic, gastrointestinal issues.

14          Q     You are calling it psychosomatic. No organic causes  
15 were found?

16          A     Right.

17          Q     Is that what you referred to as separation anxiety a  
18 few minutes ago?

19          A     Similar, but not exactly the same, no.

20          Q     The reaction that you had in school sometimes?

21          A     Yes. Yes. Absolutely.

22          Q     Were you given much stability where you went to  
23 school?

24          A     None at all.

1 Q How many schools did you attend?

2 A I believe it was eleven schools for eleven grades.

3 Q At what point did you drop out of school?

4 A Literally 11th grade.

5 Q Was that with your mother's permission?

6 A Yes.

7 Q Do you recall an incident between your father and  
8 your then 11 year old brother, you would have been about 6,  
9 that occurred in Hawaii?

10 A Yes, I do.

11 Q Could you please describe that?

12 A My father was in the Navy, and we had just  
13 transferred to Hawaii, and we were waiting for housing. And  
14 so we were staying at a hotel and some conflict happened. I  
15 don't remember exactly what started it. But my dad, he ended  
16 had up punching my brother in the nose, and he was bleeding  
17 all over his shirt, and --

18 Q He who was bleeding on his shirt?

19 A My brother. My brother. I was I think five or six at  
20 the time, and my brother was eleven. And my mom to help with  
21 the problem suggested that my father jump off the, I think it  
22 was the 15th story balcony. And then he proceeded to attempt  
23 it and, yeah, it was a mess.

24 Q You said your mother suggested that. Had it sounded

1 very calm?

2 A Yes.

3 Q And almost irrational? Did she calmly say you  
4 should jump off the balcony?

5 A I don't remember exactly. I remember her saying to  
6 the effect you should go kill yourself and jump.

7 Q What did your father do in response to that?

8 A Pretty much obeyed.

9 Q Did he actually jump off the balcony?

10 A No. He didn't get over the edge. It was in the  
11 attempt to.

12 Q He headed toward the balcony, at least appeared to  
13 be going over it?

14 A Yes.

15 Q How did your mom respond to that?

16 A She tried to physically restrain him, then there  
17 were other people involved somehow and it was a big mess.

18 Q And what was going on with your 11 year old brother  
19 at the time who had been bleeding from the nose while your  
20 mother and father were going through this?

21 A I don't remember that. I was paying attention to  
22 the scene on the balcony.

23 Q At six years old, how did you respond to that whole  
24 event?

1           A     Oh, it was traumatic. That was the first time that  
2     I have a memory of serious, serious abuse. Then the suicide,  
3     attempted suicide. It taught me that home and family is not a  
4     safe place to be. That even from the people you love most,  
5     the people suppose to protect you most, those are the people  
6     who you should probably expect to be harmed by most  
7     frequently.

8           Q     And did you develop from that any belief about what  
9     you should do if you do something that is harmful to someone  
10    else or if you engage in bad behavior?

11          A     Absolutely. It taught me that if you do something  
12    bad like say accidentally or intentionally hit someone in the  
13    nose and cause them to bleed and you regret it, don't  
14    apologize, don't try to work it out. Just do something more  
15    drastic to try to satisfy the problem.

16          Q     In your mind as a six year old, how would that solve  
17    the problem?

18          A     It didn't make any sense to me at all. I remember  
19    sitting there, standing there crying, stop, stop, stop. I  
20    didn't know what was going on.

21          Q     Was it essentially just chaos?

22          A     Yeah. It was pandemonium.

23          Q     Did your dad eventually get deployed when you were  
24    about 12 or 13?

1           A     Yes, to Operation Desert Storm.

2           Q     The time he was gone on that deployment, what  
3 happened with your mom?

4           A     She was having a male boyfriend live at the house  
5 with us in her and my father's bedroom.

6           Q     You were living in the house at the time?

7           A     Everyone, yes.

8           Q     How did you feel about that at that age?

9           A     I was very, I was very angry about it. I was angry  
10 with my mom. I was angry with this strange guy. And then my  
11 dad came back, and he was pretty spineless about it. Pretty  
12 much allowed it to happen. There was an initial  
13 confrontation, but then he moved out, and knowing this new guy  
14 was staying there, continued to pay for our rent while he  
15 lived in the barracks on the Naval base.

16          Q     He who moved out?

17          A     That was my father.

18          Q     Your father?

19          A     Yes.

20          Q     So your father lived in the barracks but continued  
21 to pay rent for her mother and her boyfriend?

22          A     Yes.

23          Q     You were living in the house at that time with your  
24 mother?

1           A     Yes.

2           Q     How did that affect how you viewed women in general?

3           A     Oh, that is not an easy one. I didn't trust women.

4     This is right about the age when at 12 or 13 or 14 I am  
5     starting to conceptualize romantic relationships, and I think  
6     this scenario right here completely ruined my ability to have  
7     healthy romantic relationships for probably the next ten  
8     years.

9           Q     So you were about 12 or 13, so to your early  
10    twenties?

11          A     Yes.

12          Q     In fact, after the death of Mr. Castro?

13          A     Yes, ma'am.

14          Q     Right through that point, you didn't really have a  
15    healthy relationship with women?

16          A     Never once.

17          Q     Has that changed then?

18          A     Absolutely.

19          Q     Do you feel differently about women and romantic  
20    relationships at this point?

21          A     Oh, absolutely, yes. At the time, I think as a 12  
22    or 13 year old trying to make sense of human relationships and  
23    human interaction when my, you know, model for those was  
24    forming, I believe that at that age I just didn't have the

1 skill or the tools to be able to discern what a healthy  
2 relationship versus unhealthy one and not having the ability  
3 to do that at the time, especially when my mother who I still  
4 idolized at that age, could do something like that, betray  
5 someone so severely at war. It gave me this distrust that was  
6 very, very deep for humans in general, but particularly  
7 romantic relationships where I felt I could never ever trust  
8 anyone. The violence in the home, betrayal in the home, it  
9 made me feel as if no human being was trustable no matter what  
10 you do, how much you love someone, regardless what you do, you  
11 will be hurt or betrayed in some way.

12 Q You said you feel differently about that now. That  
13 is how you felt then for about ten years or so?

14 A Yes.

15 Q Are you currently involved in a relationship with  
16 Janine Marshall?

17 A I am, yes.

18 Q What relationship is that?

19 A It is a very healthy, romantic relationship.

20 Q Do you view that differently than you viewed the  
21 relationships based on your mother's actions?

22 A Completely, yes.

23 Q Is that part of the changes you talked about when  
24 you said you are not the same person you were in 1997 and

1 1998?

2 A I believe that would be a result of them, yes.

3 Q I want to jump back to your teens for a few moments  
4 and ask if you recall a time in your early teens when you saw  
5 an older lady lose some money in a grocery store?

6 A Oh, yeah, I remember that.

7 Q Please tell us about that?

8 A Well, I believe I was about fourteen years old. My  
9 mother and I were in a grocery store, and we were behind an  
10 old lady probably about 80 years old, perhaps, in the  
11 check-out line. And she was paying for her groceries, about to  
12 pay for her groceries, and they were being rung up and the  
13 bill came to about \$350. And she had dropped a 100 dollar  
14 bill. And my mother and I had saw her drop this hundred-dollar  
15 bill and it was picked up.

16 Q Who picked it up?

17 A I believe it was my mother who picked it up. And  
18 the elderly lady had \$300 and needed four. She sat there  
19 lamenting about not having enough money for her groceries,  
20 when my mother and I had basically stolen this money she had  
21 dropped. And we laughed about it when we left the grocery  
22 store.

23 Q So your mother's reaction to the distress of that  
24 woman in front of her was to do what?



1           A     Everyone to laugh about it.

2           Q     Did she give the money back?

3           A     No. We split it.

4           Q     You and your mom?

5           A     Yes.

6           Q     What did you learn from that event with your mom?

7           A     Yeah, I think I learned that -- I learned that you  
8 just, you really can't trust anybody. I think, though, what  
9 was even more damaging to me, I had the opportunity of  
10 learning that was missed out on, it wasn't necessarily what it  
11 taught me, it was okay just to take advantage of anybody at  
12 any time, even an elderly lady. I think it was the  
13 opportunity to sincerely help a person to do the right thing.  
14 I think that is what was damaging to me was it was the lost  
15 opportunity, the lost lesson. It wasn't -- I was used to  
16 taking advantage of people. That was the norm in my family.

17          Q     Did this occur after your mom, after you had  
18 discovered your mom had been cheating on your dad with her  
19 boyfriend?

20          A     It would have been I think a year or two after that.

21          Q     At that time, you were angry with your mom for the  
22 cheating event?

23          A     Yes.

24          Q     Did you still want her approval.

1           A     I think in some sick way, absolutely.

2           Q     Did you feel you got that with this event?

3           A     I think I would characterize it as a bonding  
4 experience between mother and son, as sick as that sounds.

5           Q     What was it about it that felt like that to you?

6           A     It was something we did together. It felt like it  
7 was us versus the rest of society. It was, I mean essentially  
8 it was a crime we did together. As a young kid in my  
9 environment that was kind of cool to me as sick as that  
10 sounds.

11          Q     It was cool to you because your mom participated in  
12 it with you?

13          A     Right.

14          Q     In fact, you laughed together about it?

15          A     Absolutely, yes.

16          Q     During this time frame in your early teens, do you  
17 recall any particular neighbors that you had?

18          A     Just about that same time, actually, we had, there  
19 was a family that lived across the street.

20          Q     What do you recall about that?

21          A     I recall them the leave it to beaver family we  
22 called them. We actively mocked them, ridiculed them in many  
23 different ways. They were a family where they didn't have the  
24 newest car, they didn't have the nicest lawn, didn't even have

1 a very nice house. We tried to do that. We had three new  
2 cars. We had the best lawn. We had a very nice house. And  
3 because they didn't have this, we ridiculed them all the time.  
4 They had picnics together on the front lawn which we mocked  
5 them for, because in our mind, they were just being fake.  
6 Families don't really like to be around each other. Things  
7 like that we constantly ridiculed them for.

8 Q As you look back on that family now, how would you  
9 characterize the family that lived across the street?

10 A Now I am retrospectively envious. I wish we would  
11 have emulated that instead of mocking it.

12 Q When you say we mocked it, who was that?

13 A Primarily my mother and I, but also her boyfriend  
14 soon to be third husband.

15 Q Is that someone she eventually married?

16 A Yes.

17 Q At the time that you and your mother and her then  
18 boyfriend would mock this family across the street, did that  
19 seem acceptable to you?

20 A I would say, yes, in some way. It was my family.  
21 In many ways, my family was normal to me. A lot of people, a  
22 lot of people expressed envy toward my family because  
23 outwardly we cared about appearances. We did a very, very  
24 good job to hide our disfunction and our sickness, so because

1 of that, growing up in that type of sickness and seeing other  
2 people envy us, it gave me the impression as a child this is  
3 as good as it got.

4 Q You viewed your family as the normal family?

5 A Enviably normal family, yes.

6 Q You think differently about that now?

7 A Yes. Oh, yes.

8 Q Do you recall when you were about 14 and you had  
9 been in a family argument over a movie, an actor? Do you  
10 recall that time?

11 A I do. It was, I believe it was a Thanksgiving  
12 event, and there were a few family members there present.

13 Q What was the argument about?

14 A It was about whether or not Paul Hogan was the star  
15 of Crocodile Dundee, or if it was another actor.

16 Q And after that argument occurred, were you later on  
17 the telephone?

18 A I was talking to my then high school girlfriend. I  
19 believe I was 14 years old. It would have been 9th grade.

20 Q You were talking to a girl?

21 A Yes.

22 Q What happened while you were talking to that girl on  
23 the phone?

24 A My mother's then boyfriend came up behind me and put

1 me in a choke hold and picked me up and slammed me on the  
2 ground.

3 Q Was that because you mentioned that argument you had  
4 with the family?

5 A That was the culmination of that, yes.

6 Q Was that type of violence toward you something that  
7 was unusual?

8 A Not unusual, but that even was a defining moment for  
9 me, because it was, I believe, the first time where I was  
10 unable to hide the pervasive sickness in the family. I was on  
11 the phone with a girl friend, and you can't lie about that.  
12 It happened. And you can't, you can't hide that, because, you  
13 know, she was on the phone with me.

14 Q So she heard it?

15 A Oh, yes. Yes. I left crying on my mountain bike and  
16 road to the local grocery store, called her on a pay phone  
17 sobbing. And, yeah.

18 Q How did your mother and her boyfriend feel about  
19 that, that someone outside the family knew this had happened?

20 A They were -- they were ashamed. I think we had  
21 gotten caught, essentially.

22 Q What happened to you as a result of that?

23 A Very, very quickly I was placed in a group home.

24 Q Who placed you in a group home?

1           A     My mother and her boyfriend, but primarily her  
2 because I believe it was paid for by her insurance.

3           Q     The State didn't take you away? Your mother sent  
4 you away?

5           A     Yes.

6           Q     How did that affect you when you were sent away for  
7 embarrassing your family, making family troubles?

8           A     Beside the obvious rejection, yeah. I don't know  
9 how to describe it beyond the obvious sense of rejection or  
10 beyond the notion, at the time, I was actually a pretty good  
11 kid. I wasn't skipping school. I wasn't using drugs. I  
12 wasn't using alcohol. I wasn't stealing. I was attending  
13 school. And so to have something like that happen and then to  
14 feel blame for it, I was the one that had to be removed from  
15 the family, it was a big sense of betrayal to be punished for  
16 something I just wasn't doing wrong. You know what I mean?

17          Q     You mentioned that you were attending school. Were  
18 your parents really concerned about school?

19          A     No, no. It wasn't ever discussed in the household.

20               MS. BOND: If I may approach, Your Honor?

21               THE COURT: You may.

22               BY MS. BOND:

23          Q     I am going to show you what has been marked as  
24 Exhibit 65. I will just have you look at that for a moment.

1           A     Okay.

2           Q     What is that you are looking at in Exhibit 65?

3           A     Looks like it is two pieces of documentation.  The  
4     top three pages are the results of my Nevada high school  
5     proficiency examination which I took while at Ely State  
6     Prison.  And the second two pages appear to be my college,  
7     excuse me, high school transcript.

8           Q     I want you to look at the transcript portion for  
9     just a moment.

10          A     Okay.

11          Q     Does it show grades for years 1996?

12          A     Yes.  It begins in 1991.

13          Q     Does that appear to be a record of your own  
14     transcript?

15          A     Yes, it is.

16          Q     If I could see that for a second.  And the second two  
17     pages, the transcript, the high school transcript, does that  
18     appear to accurately reflect the grades that you received  
19     during the time periods that are shown in that transcript?

20          A     They do, yes.

21          Q     And the front three pages, you said that is your  
22     high school proficiency exam you took in the Ely State Prison?

23          A     Yes.  It is a test you have to take to get your high  
24     school diploma in Nevada.

1 Q Does that accurately reflect the grades and results  
2 you were given at that time?

3 A Yes. They are all correct.

4 MS. BOND: Move to admit Exhibit 65.

5 MR. YOUNG: Could I just see it briefly, make sure  
6 what is being moved in? Thank you, Your Honor. No objection.

7 THE COURT: Exhibit 65 is admitted.

8 (Exhibit 65 admitted in evidence.)

9 BY MS. BOND:

10 Q Shawn, if you would look at the last two pages for  
11 me, the transcript of your high school grades?

12 A Yes.

13 Q Particularly the grades prior to 1999?

14 A Uh-huh.

15 Q What were your grades like at that time?

16 A Between 1991 and 1994 I see D, C, D, F, C, F, C, D,  
17 C, B, B F, A, B, B, F, B, F, F, C.

18 Q I think that is sufficient.

19 A Primarily Cs, Ds and Fs.

20 Q So you were attending school at that time?

21 A Yes.

22 Q You weren't getting in trouble at school at that  
23 time?

24 A No.



1           Q     But you also weren't doing particularly well?

2           A     I was barely really showing up.  Primarily just  
3     taking tests.

4           Q     And so when you say -- You mean you hadn't dropped  
5     out?

6           A     Correct.

7           Q     You hadn't really gotten in trouble there?

8           A     Right.

9           Q     But you weren't working to your full potential?

10          A     No, not even close.  My attendance was poor, so I  
11     was very rarely showing up.

12          Q     Were your parents concerned about that at all?

13          A     Not really, no.  My mother, she signed the papers  
14     for me to drop out.

15          Q     Thank you.  I will put that back.  A few minutes ago  
16     you talked about being sent away to a group home?

17          A     Yes.

18          Q     Essentially for troubled children.  Being in the  
19     argument resulted in your family being embarrassed and wanted  
20     you away?

21          A     Yes.

22          Q     At some point after that, did you move back into  
23     your mom's house?

24          A     Eventually, yes.

1           Q     What did your mom do for you after that when you  
2 moved back into her house? Maybe I should say what did she  
3 buy for you?

4           A     Okay. After the group home, I lived with my  
5 grandmother for some time, and after living with her, I moved  
6 back in with my mother, and I believe it was to please me for  
7 my 16th birthday somewhat. After that, she purchased, her  
8 boyfriend purchased for me a firearm.

9           Q     What kind of firearm?

10          A     It was a black assault rifle style .22 rifle.

11          Q     Yesterday there was some testimony that you were not  
12 allowed to live with your mother because she didn't like guns  
13 in her house?

14          A     Yes.

15          Q     Do you recall that testimony?

16          A     I do.

17          Q     Was that true?

18          A     No, it was not true.

19          Q     Who was in that house that didn't like guns?

20          A     It was her boyfriend, but even that would require  
21 some explanation.

22          Q     What do you mean by that?

23          A     He was fairly neutral about guns, but he was the one  
24 who technically bought the gun for me at 16 or shortly

1       thereafter. It wasn't until I was not living there where I  
2       came home and they were having an argument and he was being  
3       very emotionally verbally abusive to my mother, and I  
4       threatened him.

5           Q       So at that point, he knew you had a gun and wanted  
6       you out of the house?

7           A       He didn't like me having keys, wanted me completely  
8       not to be at that residence whatsoever.

9           Q       Your mother complied with that and sent you away  
10      again?

11          A       Yes. I moved in with another person.

12          Q       How old were you at that time when you moved in with  
13      that other person?

14          A       I was 17.

15          Q       And where were you living then when you moved out of  
16      your mother's house?

17          A       Where?

18          Q       Yes.

19          A       I was in Fallon, Nevada.

20          Q       With whom were you living?

21          A       A girl friend.

22          Q       How old was she?

23          A       She was approximately 30.

24          Q       You were 17 at the time?

1           A     Yes.

2           Q     How long did you live with her?

3           A     At least six months, possibly more.

4           Q     Did there come a point where you received more guns  
5 after that .22 rifle you described?

6           A     Yes.

7           Q     When did you get those?

8           A     I believe when I was 17, the older girl friend  
9 purchased me a handgun.

10          Q     What kind of handgun?

11          A     Black Smith & Wesson model 422.

12          Q     I am showing you on the screen what has been, I want  
13 to get it focused, marked and admitted as Exhibit 17-a?

14          A     Yes.

15          Q     Is that the Smith & Wesson firearm you are talking  
16 about?

17          A     Yes, it is.

18          Q     That was purchased for you by the 30 year old girl  
19 friend?

20          A     Yes.

21          Q     How old were you when it was purchased for you?

22          A     I believe I was still 17.

23          Q     Is that the same firearm that was later found in  
24 your car after you had been pulled over at the Cock & Bull?

1           A     Yes, it was.

2           Q     You had it the whole time from 17 to essentially 20?

3           A     Yes, .

4           Q     Slightly over 20?

5           A     Yes.

6           Q     That was the gun that killed Mr. Mr. Castro?

7           A     Yes, it was.

8           Q     Shawn, you described violence and chaos in your  
9 family as you were growing up. Was there a point where you  
10 just tried to get away from that?

11          A     Yeah. Eventually, I got tired of it. I tried to  
12 escape.

13          Q     How did you do that?

14          A     By joining the Army.

15          Q     When did you join the Army?

16          A     I believe I went active in October of '95.

17          Q     It is during that time period in the Army we heard  
18 that you met Weston Sirex in Korea?

19          A     Yes, it was.

20          Q     Your trip to Korea was duty in the Army?

21          A     Yes.

22          Q     Prior to you joining the Army, had you met Lanette  
23 Anderson, back then Lanette Bagby?

24          A     Yeah. I had when I was 16 or 17.

1           Q     What kind of relationship did you and Lanette Bagby  
2     at the time have?

3           A     It was a casual, noncommitted relationship.

4           Q     What do you mean by that?

5           A     It was primarily a periodic physical relationship.

6           Q     Are you talking about sexual encounters?

7           A     Yes.

8           Q     So at the time that you went into the Army, were you  
9     still having that periodic relationship with her?

10          A     I believe so, yes.

11          Q     With Ms. Bagby?

12          A     I believe so.

13          Q     At some point while you were in the Army, did Ms.  
14     Anderson then Bagby relate some information to you about  
15     herself?

16          A     Yeah. That was after I returned from Korea, yes.

17          Q     What did you learn at that time?

18          A     After I returned from Korea, we were periodically  
19     seeing each other. I went to Ft. Campbell, Kentucky. After a  
20     couple of months, she informed me she was pregnant with my  
21     child, allegedly.

22          Q     She told you it was your child?

23          A     Yes.

24          Q     What was your response to that?

1           A     At the time, I didn't want to be an absent military  
2     father like my father was. I didn't want to be dragging my  
3     kid around, my soon to be child, around to different places  
4     through the military. And so my idea was to get out of the  
5     military as quickly as possible.

6           Q     And did you do that?

7           A     Yes.

8           Q     How did you do that?

9           A     At first I went to my commanding officer and told  
10    him he needed to discharge me or there was going to be  
11    problems. He sent me to a psychiatrist who I told I was  
12    having hallucinations.

13          Q     Ultimately, you were then discharged from the Army?

14          A     Yes.

15          Q     After you got out of the Army, what happened to the  
16    baby?

17          A     She miscarried.

18          Q     And how did you find out about that, that she  
19    miscarried?

20          A     I believe, I believe it was her father that told me.  
21    I called to speak to her and found out that she had been  
22    arrested for drug use.

23          Q     I am sorry, for what?

24          A     For drug use.

1 Q And that was --

2 A I believe a day or two within, after the  
3 miscarriage.

4 Q Coinciding right within the couple days of the  
5 miscarriage?

6 A Yes.

7 Q How did you respond to that?

8 A I was very angry. I was very upset.

9 Q Why?

10 A I felt that, I felt that I had just drastically  
11 altered my life. I didn't want to be career military, but at  
12 the time, I think at the time it was working for me. It was  
13 very well structured. It was an escape from the toxicity of  
14 my family life, all the toxic relationships I was in. So it  
15 was something healthy. The people in the military are  
16 generally healthy. They keep you out of trouble. It was a  
17 good environment for me, and I sacrificed that to come home to  
18 a miscarriage.

19 Q Did you, did you ascribe any cause to that  
20 miscarriage?

21 A Yeah. I was fairly certain it was from her  
22 methamphetamine use.

23 Q That, in your mind, connected her arrest and  
24 miscarriage as this must be the cause of it?



1           A     Yes.

2           Q     Had you already had anything negative occur in your  
3 life as a result of illegal controlled substance?

4           A     Yeah. When I was in high school, about 14, it was  
5 Washington State. My best friend, Joe Montero was killed by a  
6 gang basically that was dealing drugs.

7           Q     That occurred in, I am sorry, did you say  
8 Washington?

9           A     Bremerton, Washington. The killing may have  
10 actually been in Tacoma. I am not sure.

11          Q     You were given to understand the killing of your  
12 best friend was based on a drug issue?

13          A     Yes. Yes.

14          Q     So when you got out of the Army and then Ms.  
15 Anderson miscarried, what year are we talking about? What  
16 time frame?

17          A     That would be 1997, I believe, the Summer of 1997.

18          Q     By late 1997, how were you feeling?

19          A     I was angry with the world. I hated my life. I hated  
20 pretty much everybody around me. I was suicidal. I didn't  
21 value my own life. I didn't value anybody else's life.

22          Q     Did you have any thoughts about actually achieving  
23 suicide?

24          A     I had a few, yes.

1           Q     What were those?

2           A     Possibly shooting myself or suicide by cop as it is  
3     known.

4           Q     I noticed something, backup to the letter Ms.  
5     Anderson read, the letter from 1998, even in that you  
6     displayed some concern for kids. You talked about stopping a  
7     car with kids in it?

8           A     Yes.

9           Q     And you said, well, there were kids, so we let them  
10    go?

11          A     Yes.

12          Q     This was in reference to a framework about taking  
13    hostages, that is why you were going to stop the car, but you  
14    couldn't take them as hostages because there were kids?

15          A     That's what I wrote, yes.

16          Q     That is the section you meant earlier surprised you.  
17    You didn't even recall that being in the letter?

18          A     That's correct.

19          Q     Why is it in the letter?

20          A     I don't really know, to be honest.

21          Q     Is that letter accurately relating things that  
22    really happened?

23          A     I can't be certain. I suspect there is a degree of  
24    exaggeration and fantasy in it.

1 Q Why would that be there, exaggeration and fantasy?

2 A Because at the time I was writing that letter,  
3 again, as I previously said, to try to portray a role, to  
4 basically try to test out to see if I could fit into this new  
5 mentality I thought I was going to have to adopt to be in  
6 prison to survive and be safe.

7 Q There are some things in that letter that were  
8 accurate?

9 A I am sure there were, yes.

10 Q You talked about Mr. Castro dying?

11 A Yes.

12 Q Being shot in the head?

13 A Yes.

14 Q That was accurate?

15 A Yes.

16 Q You even talked about when, I say you talking about,  
17 I am referring to you wrote in the letter Exhibit 8-d you talk  
18 about meeting Mr. Sirex in Korea?

19 A Yes.

20 Q In the military?

21 A Yes. That's true.

22 Q And that was true?

23 A Uh-huh.

24 Q There are elements of truth in here?

1           A     Absolutely.

2           Q     And elements of exaggeration?

3           A     I would say yes.

4           Q     Is it easy to clarify which is which?

5           A     No. No, it is not.

6           Q     Yesterday you heard Mr. Steuart testify, the  
7 Churchill County officer?

8           A     Yes.

9           Q     Or retired officer, though he was the one who  
10 approached your car. It was pulled over in front of the Cock  
11 & Bull in Fallon. Do you recall his testimony about him  
12 learning that you had intended to shoot it out with the cops  
13 when you were pulled over?

14          A     I did not recall that until he said it, then it did,  
15 I remember it, yes.

16          Q     In fact, the .22 pistol that is in the 17-a exhibit  
17 we looked at a few minutes ago was actually right there in  
18 your car?

19          A     Yes, it was.

20          Q     You could have reached it with almost no effort?

21          A     Very easily.

22          Q     But then did you hear Mr. Steuart when he said it  
23 had been related to him the reason you didn't do that was  
24 because there was a baby in the car?

1           A     Yes.

2           Q     Is that why you didn't engage in any negative  
3 reaction to being pulled over?

4           A     Yeah. At the time, I thought they actually did that  
5 intentionally.

6           Q     They pulled you over while there was a baby in the  
7 car?

8           A     Yes. That was my assumption.

9           Q     Both Mr. Stewart and sergeant Coleman yesterday  
10 talked about your reaction when they told you they had a  
11 warrant to search your mother's house?

12          A     Yes.

13          Q     Do you recall how they described it?

14          A     Did they say I was indifferent, is that correct?

15          Q     Yes. They both described you appearing to be  
16 indifferent about the whole warrant and issue?

17          A     Uh-huh.

18          Q     Why didn't you react more?

19          A     I don't know how to answer other than to say I just  
20 don't think I cared about anything at the time. When you are  
21 suicidal, you don't think about things like that. You don't  
22 really care what happens to you or anybody else.

23          Q     You heard a great deal of testimony also yesterday  
24 about the Churchill County shooting incident. Mr. Abraham Lee

1 testified and several deputies?

2 A Yes.

3 Q It was also mentioned in your interview. Can you  
4 explain what was happening in your life at that point that led  
5 you to do that?

6 A I think the -- I think my state of mind at the time  
7 was so disturbed and so sick I had no value in my life. I had  
8 no meaning in my life. I had no purpose in my life. And I  
9 hated my existence. I was very depressed. Suicidal, as I  
10 said. I think, because of that, I didn't care about myself and  
11 I just really didn't care about anybody else either.

12 Q In the video taped interview that we watched earlier  
13 today, several times you described the three of you, that  
14 would be Mr. Sirex, Ms. Babb and yourself?

15 A Yes.

16 Q As being desperate?

17 A Yes.

18 Q In fact, that interview you described that Ms. Babb  
19 was struggling to keep her baby?

20 A Right.

21 Q I don't mean a baby she was carrying, a born child?

22 A Custody.

23 Q She lost her job?

24 A Yes.

1 Q She was struggling financially?

2 A Yes.

3 Q Mr. Sirex appeared to be struggling financially?

4 A Yes.

5 Q You had a job?

6 A I did.

7 Q You personally weren't struggling financially, were  
8 you?

9 A I wasn't very well off, but no, I wasn't struggling,  
10 no.

11 Q But you described yourselves together as we were  
12 desperate.

13 A I think desperation can come in many different  
14 forms.

15 Q How is it that that was the description you gave for  
16 yourself in connection with Mr. Sirex and Ms. Babb at that  
17 time?

18 A I don't understand the question.

19 Q Was there a connection between you and Ms. Babb or  
20 you and Mr. Sirex that made you feel like their desperation  
21 was your desperation, or was it something else?

22 A A general history of pretty traumatic abuse and  
23 unstable violent family history. I think that would be the  
24 main one.

1 Q That was the connection between the three of you?

2 A If I had to just give an answer very quickly right  
3 now, yes, my tentative answer.

4 Q At least a drawing factor?

5 A We were all --

6 Q Hold on a moment. It gave you some common ground?

7 A Absolutely.

8 Q You described a minute ago when I asked you a real  
9 general question how did all this Churchill County stuff  
10 happen that you were, life was meaningless to you, you were  
11 hate filled and angry?

12 A Yes.

13 Q Did it ever occur to you other people might be  
14 having a better life?

15 A I think I projected a lot and assumed that everybody  
16 was probably just as miserable as me. Anybody who appeared  
17 otherwise was just faking it.

18 Q Is that based on how you grew up?

19 A Yeah. I didn't know happiness and health were  
20 actual possibilities in life.

21 Q In your family it was all faked?

22 A Yes, completely.

23 Q Did you know John Castro?

24 A I did not.



1           Q     Did any of you, Mr. Sirex, Ms. Babb select his  
2 particular cab?

3           A     Not particularly, no.

4           Q     How did it come to be his was the cab you robbed  
5 that night?

6           A     That particular one I believe was fairly random.

7           Q     It responded to a telephone call?

8           A     Yes.

9           Q     At the time you got in the cab that night, how old  
10 were you?

11          A     I was 20 years old.

12          Q     How old was Mr. Sirex?

13          A     I believe he was twenty-five.

14          Q     In your letter to Ms. Anderson, you wrote about Mr.  
15 Castro?

16          A     Yes.

17          Q     It is because of people like him that I don't have a  
18 son or daughter. What did you mean by that?

19          A     I was under the impression that, excuse me, that cab  
20 drivers of a certain company were dealing drugs.

21          Q     And you connected that in your mind to your child  
22 that was miscarried?

23          A     It became a convenient story to I think excuse my  
24 anger, to vent my rage on the world or somebody.

1           Q     You didn't know Mr. Castro?

2           A     No, not at all.

3           Q     You had no personal reason to believe he was  
4 actually involved in dealing drugs?

5           A     That's correct.

6           Q     Was this part of your projection of your own misery  
7 on other people?

8           A     I think that would be safe to characterize it as  
9 that, yes.

10          Q     Did it ever occur to you that night he might not be  
11 miserable, Mr. Castro?

12          A     No, it didn't occur to me at all.

13          Q     In your letter you described shooting Mr. Castro in  
14 the head. I think you called him the cabbie or the cab  
15 driver, shooting him in the head point blank. That was  
16 accurate, wasn't it?

17          A     It was, yes.

18          Q     You wrote, boom, that simple. That easy. No  
19 remorse. Honest. Then you followed that by a description that  
20 it was just another chore like taking out the trash except  
21 easier and funner.

22          A     Yes.

23          Q     Was that part true? Was it simple and easy?

24          A     At the time. At the time, to a degree somewhat,

1       yes.

2           Q       Was it something that you thought about from his  
3 perspective at that point?

4           A       No.  Never.

5           Q       Okay.  From his family's perspective?

6           A       Never.

7           Q       In your interview we just watched this morning, you  
8 indicated that -- You were asked was it thrilling?

9           A       Yes.

10          Q       Your response was no?

11          A       That's correct.

12          Q       And you said you didn't want to do it again?

13          A       Right.

14          Q       That interview occurred very shortly after this.  
15 The same year about a month, less than a month later?

16          A       That's correct.

17          Q       Is that right?  So even though it was something you  
18 felt was cathartic or positive for you after it had happen?

19          A       I think prior with the way I was feeling about life  
20 and myself, essentially I just wanted to die, I think I had  
21 some type of insane notion that if perhaps I was able to  
22 present my misery to the world adequately and make everybody  
23 just as miserable as me, assuming that they weren't, that  
24 would give me some cathartic satisfaction as you say.

1 Q Did it give you that feeling?

2 A Not even slightly.

3 Q As you sit here today, do you feel remorse now for  
4 Mr. Castro's death?

5 A I do.

6 Q Did that -- Is that something that developed  
7 instantly or did it take time?

8 A It took several years.

9 Q Is that a process that you had to go through over  
10 those years?

11 A Yes. I think it was a result of my own growth.

12 Q That is some growth that occurred while you were in  
13 prison?

14 A Correct.

15 Q I want to talk about your letter for a moment,  
16 before we talk about things you learned in prison. In the  
17 letter, you suddenly shifted gears and started talking about  
18 Weston Sirex?

19 A Yes.

20 Q And you wrote he was a rat?

21 A Yes.

22 Q What did you mean by that?

23 A That's a term used in prison to describe someone  
24 who, because of their statements, gets other people caught or

1 in trouble.

2 Q And you wrote he was going to die.

3 A Yes. Yes, I did write that, silly as it is.

4 Q After that letter was written post, late 1998, were  
5 you ever face-to-face with Weston Sirex?

6 A I've seen him many times, yes.

7 Q When?

8 A Pretrial court hearings, often times in holding  
9 cells.

10 Q Were the two of you held in the same cell together?

11 A Yes.

12 Q Did you have physical access to him?

13 A Yeah. Often times it was just he and I.

14 Q Did you and he speak to one another?

15 A Yes.

16 Q As far as you know, he's still alive today?

17 A Yes, he is.

18 Q Did you harm him at that time?

19 A Never. Never.

20 Q At one point while you were in custody, were you  
21 actually approached by a member of a violent prison gang about  
22 Mr. Sirex?

23 A I was.

24 Q What did they offer to you?

1           A     Because this individual was aware of certain  
2     circumstances of the case, he offered something violent to be  
3     done to Mr. Sirex.

4           Q     Is that because they viewed him as a rat, also?

5           A     Exactly.

6           Q     How did you respond to that offer to hurt Mr. Sirex?

7           A     I declined very, very politely.

8           Q     Based on the nature of the group that offered you  
9     that?

10          A     Absolutely.

11          Q     You have explained once you were convicted in 1996  
12     you ended up in Ely State Prison?

13          A     I did.

14          Q     How old were you approximately at the time you went  
15     to the Ely State Prison?

16          A     I believe I had just recently turned 22.

17          Q     In your letter to Ms. Anderson, you talked about  
18     mass people riots. It sounds like so much fun, when you were  
19     talking about incarceration and imprisonment?

20          A     Yes.

21          Q     Did you ever follow through with formulating any  
22     riots?

23          A     No. No.

24          Q     Did you make any effort, while you were imprisoned,

1 to encourage anyone else to engage in negative or harmful  
2 behavior?

3 A No. In fact, I have discouraged it quite a bit.

4 Q Did you try to formulate any riots at all?

5 A Never once.

6 Q You talked about while you were in Washoe County  
7 Jail, 20 years old, just got there?

8 A Yes.

9 Q That you were trying to give the persona of a  
10 sociopath bad guy killer?

11 A Yes.

12 Q Did you still maintain that belief that you needed  
13 to do that when you got to Ely State Prison.

14 A No. Upon arriving in Ely, it was quite different.  
15 It was not the environment I expected it to be based on what I  
16 was told.

17 Q What kind of environment did you find it to be?

18 A Well, prison certainly does have the share of  
19 violence, rape and drug abuse and mental illness, all sorts of  
20 things we just wouldn't want to be around. It is fairly easy  
21 to stay out of trouble if you avoid certain things.

22 Q Avoid what certain things?

23 A Avoid drugs. Avoid gambling. Avoid borrowing,  
24 avoid prison gangs.

1 Q Drugs are available in prison?

2 A Continually.

3 Q Did you engage in drug creation or drug use while  
4 you were in prison?

5 A Never once.

6 Q You talked about having a little bit of chemistry  
7 background?

8 A Yes.

9 Q Did you engage in drug chemistry, drug making?

10 A No.

11 Q Did you encourage anyone else to do that?

12 A No. In fact, I discouraged it.

13 Q Once you realized you didn't have to maintain this  
14 front, what did you decide to do?

15 A I think I kind of had a Dr. Phil moment where I  
16 landed in prison and I had to ask myself, you know, how is  
17 this working out for me where my life had led up to that point  
18 prison. How was that working out for me? And I had to start  
19 getting real with myself and start being honest about the fact  
20 I just wasn't living my life right. I didn't necessarily know  
21 what to do. In my household, there were never any healthy  
22 options. I didn't know what psychological health was. I  
23 didn't know what a good life was. So for lack of anything  
24 better, I pursued conventional education.



1 Q Did you start with getting your high school diploma?

2 A Yes.

3 Q Okay. I am going to hand you Exhibit 64, what has  
4 been admitted as 64 and 65. Can you look at Exhibit 64?

5 A Okay.

6 Q What is that you are looking at in Exhibit 64?

7 A This is my high school diploma from Mountain High  
8 School, a local school in Ely which services the prison's  
9 educational needs.

10 Q So you completed your high school education, right,  
11 at Ely State Prison?

12 A Yeah. I believe within six months of getting there.

13 Q As you look at Exhibit 65, you said those were some  
14 of the results of your equivalency exam?

15 A Proficiency examination.

16 Q Is that related to getting your diploma?

17 A Yes. After you complete your credits, you have to  
18 pass the test to get your diploma.

19 Q 64 is a copy of the diploma you received?

20 A Yes, it is.

21 MS. BOND: Move for admission of Exhibit 64.

22 MR. YOUNG: Can you just show it to me? No  
23 objection.

24 THE COURT: Exhibit 64 is admitted.

1 (Exhibit 64 admitted in evidence.)

2 BY MS. BOND:

3 Q Now if you could look at 65. You have already  
4 looked at it, and described your grades that were there in the  
5 transcript from pre-1996?

6 A Yes.

7 Q Are there any on there that are from after you got  
8 to Ely State Prison?

9 A Looks like there is maybe ten of them.

10 Q What do those look like grade wise?

11 A I believe that every single one of them is an A  
12 except for maybe an A-.

13 Q Were you making better effort at that point?

14 A Yes. I was taking it very seriously.

15 Q In getting that high school diploma, were you really  
16 changed at that point?

17 A No. Absolutely not.

18 Q Did you continue on with conventional education?

19 A I did.

20 Q What type of education did you continue with?

21 A Two kinds. From PCDS, I enrolled in their pharmacy  
22 program. Ohio University, I enrolled in an Associates degree  
23 program.

24 Q I am going to hand you Exhibits 66, 67, 68. I am

1 going to have you go in order. 66 is a little difficult to  
2 read. Take a moment and review that and see if you recognize  
3 what that is?

4 A This looks like one of the Ohio University course  
5 examination reports. Basically, when you take a test, these  
6 are all supervised tests, the education department takes them  
7 to the visiting room, or they would come confiscate all my  
8 books so I couldn't cheat. You take a test under supervision.  
9 You have the test supervisor mail your test in. This is what  
10 comes back with your results.

11 Q 66 is from Ohio University?

12 A Yes, it is.

13 Q And what is 67?

14 A 67 is from Professional Career Development  
15 Institute.

16 Q What does it contain?

17 A This is an unofficial student transcript containing  
18 all aspects of the course and the grades.

19 Q What type of course was that?

20 A Pharmacy technology.

21 Q Does that report -- Is that a report you received  
22 regarding how you did in those courses?

23 A Yes.

24 Q 68, what is that?

1           A     68 is a copy of a transcript from UNR along with,  
2           again, test examination feedback from the professor.

3           Q     Does that reflect the grades that you received or  
4           the results you received on specific tests from the University  
5           of Nevada Reno?

6           A     Yes, they do.

7           MS. BOND:   Move admission of 66, 67, 68.

8           MR. YOUNG:   No objection.

9           THE COURT:   Exhibit 66, 67, 68 are admitted.

10          (Exhibits 66, 67, 68 admitted in evidence.)

11         BY MS. BOND:

12          Q     How did you do in these courses?

13          A     I was very proficient at them.

14          Q     Primarily A level work?

15          A     Almost always, yes.

16          Q     And you received some learning test results in the  
17         records in Exhibit 68 from UNR?

18          A     Oh, yes.   Yes.

19          Q     One is from instructor Robert McQueen, page 2.

20          A     Yes.

21          Q     What did he write to you?

22          A     It might be difficult to read.   His writing is  
23         atrocious.   He says:   Shawn, you have proven yourself to be a  
24         consistently good student."   I can't make this part out.

1 Q Is there one world that is difficult to read?

2 A Two of them. Words two and three of the second  
3 sentence.

4 Q "I am sure?"

5 A "I am sure." I will start over. "You have proven  
6 yourself to be a consistently good student. I am sure you  
7 would have been an outstanding success on the college campus.  
8 While I would not pretend to understand the stress and anxiety  
9 that you face each day, I sense that you are better able to  
10 deal with it than most. Best regards, Robert McQueen."

11 Q The third page is a comment from a different  
12 professor?

13 A Yes, Mary Barnes.

14 Q What did she write to you?

15 A She said: "Shawn, you have the highest final score  
16 of any student who has taken this class. Excellent work.  
17 Hope to "see you" in HEC 261.

18 Q When you got those messages from those instructors,  
19 Dr. McQueen and Dr. Barnes, how did you feel about that?

20 A It made me feel good.

21 Q Was it a positive experience for you?

22 A Very. Academic success was not something I was  
23 accustomed to.

24 Q At the time you received that, you were in prison at

1 Ely State Prison?

2 A Yes, for a few years by this time. I believe for  
3 three years.

4 Q So you completed as you called it conventional  
5 education through high school and through some college  
6 courses?

7 A Yes.

8 Q While you were in Ely State Prison in 2003, did you  
9 see a movie there that had a strong affect on you?

10 A Yes. It was a movie that radically altered me.

11 Q What movie was that?

12 A Goodwill Hunting.

13 Q What was significant about that movie to you at that  
14 time?

15 A Well, at the time I saw the movie come on, it was  
16 Robin Williams and Matt Damon, and those are very good actors  
17 in my opinion. So I decided to watch the movie and some way  
18 into it there was a scene where -- I should probably reference  
19 it by saying the movie is about Matt Damon plays a character  
20 where he's very bright intellectually but he's, for lack of a  
21 better term, he's 20 years old, drinking, getting into fights,  
22 no purpose to his life whatsoever, on parole or probation.  
23 He's not doing what he should be doing because he gets into  
24 trouble. He gets court ordered to see a therapist. The

1 therapist turns out to be Robin Williams. In one of these  
2 meetings, Matt Damon's character insults Robin Williams'  
3 character, insults his wife, not realizing Robin Williams wife  
4 had recently died. This disturbs Robin Williams very, very  
5 badly. So about a week later at their next meeting they are at  
6 a park bench overlooking a pond, and Robin Williams basically  
7 starts off in this monologue. This was the moving part to me.  
8 He says, "You insulted me and you disrespected my wife and she  
9 died. This really, really, wounded me deeply. And it  
10 occurred to me that I shouldn't even be bothered by this  
11 because you don't have the slightest idea what you are talking  
12 about." Basically he says I realize you are just a kid, you  
13 don't know anything. He goes into this monologue, if I asked  
14 you about love, you know, you might be able to quote me some  
15 poetry or maybe you got lucky a few times, but you have never  
16 been next to your wife, you know, while she was laying there  
17 dying of cancer. You have never, you have never, you don't  
18 know anything about it. If I asked you about war, maybe you  
19 would cite some facts about World War II or Vietnam but you  
20 never sat there when your buddy was bleeding to death in your  
21 lap, gurgling his last breath. And then finally it culminates  
22 where he says you have never actually known real loss so you  
23 have nothing to say because you don't know or you can't know  
24 what real loss is until you lose something that you love more

1       than yourself. And I am pretty sure that has never happened  
2       to you. That was very, very powerful. He continues on to say  
3       I see you are very brilliant. You can attack me. You can  
4       insult me. You can wound me, but I don't see you as an equal.  
5       You are just a scared cocky smart ass kid who had a really bad  
6       life that tries to hide behind your intellect. When I saw  
7       that scene, it occurred to me Robin Williams was essentially  
8       speaking to me and my whole life.

9           Q       And how did that moment affect you?

10          A       It was a profound moment. In that very instant, I  
11       realized that it was simultaneously embarrassing but  
12       empowering. Embarrassing in the sense I had to admit my whole  
13       life was fake. Everything I did was completely illegitimate.  
14       All the harm I had done to people, all the time that I had  
15       wasted doing nothing of value or of meaning or purpose, but at  
16       the same time conversely it was liberating because it wasn't  
17       just a rejection of my former life, it was the comfort and  
18       peace that comes from realizing a new way is possible.  
19       Realizing that health and peace and kindness and compassion,  
20       these are real things. These aren't weaknesses as my previous  
21       life had taught me. These are real, attainable goals. At  
22       that moment, I decided I needed to devote the rest of my life  
23       persuing them

24          Q       You said you had to admit some painful things about



1       yourself?

2           A       Yes.

3           Q       Who did you have to admit that to?

4           A       To myself.

5           Q       Was that a shocking idea to you?

6           A       It was completely new. I think prior to that, I had  
7       formed this idea it just wasn't possible. It would be too  
8       painful, or that, I didn't know, I didn't have the tools  
9       perhaps. And afterwards I realized that confronting myself  
10      wasn't, it wasn't going to be the painful horrible distressing  
11      experience I thought it was. It was actually quite liberating  
12      and endowed me with a degree of peace to be able to confront  
13      myself honestly without having to hide from myself or anybody  
14      else. It was completely liberating to me.

15          Q       Are you saying at that moment suddenly all was  
16      better?

17          A       Oh, absolutely not. No. It wasn't about everything  
18      became better. It was merely the potential for becoming  
19      better, dawning at that moment, because this is difficult for  
20      a lot to understand, but prior to that, health, psychological  
21      health, healthy relationships of any kind, loving myself,  
22      caring about myself and caring and loving other people, those,  
23      for whatever reason, weren't really viable options in my mind  
24      prior to that.

1           Q     Those were things you didn't even know you could  
2 achieve?

3           A     I had no clue.

4           Q     Did your focus change? You had been doing  
5 conventional education, high school diploma, college. Did  
6 your focus change after seeing that movie?

7           A     There was a very serious shift, yes.

8           Q     How did it -- How did it shift?

9           A     Well --

10           THE COURT: Excuse me. We are over two hours. I  
11 don't know how many more questions you have. Maybe we better  
12 take a short recess.

13           Ladies and gentlemen, remember the admonition I have  
14 given at other breaks. Do not form or express any opinion  
15 about the outcome of the case. Do not speak about the case  
16 with anyone. Should any person attempt to influence you  
17 regarding the case, report it to me immediately. Do not make  
18 any independent investigation or inquiry into the  
19 circumstances surrounding the case. We are going to try to  
20 make this a very quick ten minute recess. We are close to the  
21 5:00 o'clock hour. Court's in recess.

22                     (Short recess taken.)

23           THE COURT: Please be seated. I misunderstood when  
24 you held it up, I thought you had about 15 more minutes. The

1 clerk told me you are only halfway in?

2 MS. BOND: Maybe just over halfway.

3 THE COURT: That is okay.

4 MS. BOND: I have quite a bit more.

5 THE COURT: I think I should just go ahead and send  
6 the jury home and we'll back tomorrow morning at 9:00 o'clock.  
7 Okay. I have admonished them. Are you comfortable with me  
8 allowing the bailiff to let them go?

9 MS. BOND: We are comfortable with the bailiff  
10 letting them go.

11 THE COURT: Mr. Young?

12 MR. YOUNG: Because you gave them the admonishment  
13 when they walked out for what was going to be a break, I am  
14 okay with that as well.

15 THE COURT: Then I ask the bailiff to notify the  
16 jury to return at 9:00 a.m. tomorrow morning.

17 THE BAILIFF: Yes, Your Honor.

18 THE COURT: Counsel tomorrow, so I don't  
19 misunderstand where we are at, you are going to finish up with  
20 the direct of Mr. Harte, and then counsel will have an  
21 opportunity to cross and then we have, as I understand it, you  
22 are going to put on the transcript of Linda Soloman and the  
23 witness Janine Marshall?

24 MS. PUSICH: Correct, Your Honor.

1 THE COURT: So I can see us going into the afternoon  
2 depending on what cross-examination looks like.

3 MS. BOND: That was the part I was having trouble  
4 anticipating how long we would be, why I didn't want to say  
5 three hours.

6 THE COURT: So, Mr. Young, at that point, we would  
7 be looking at rebuttal except for we have the psychiatrist  
8 still who hasn't testified, so I guess I am just trying to  
9 figure out logistics for Monday, if you anticipate putting on  
10 a rebuttal case. Give me a percentage.

11 MR. YOUNG: It's a dangerous question, Your Honor.

12 THE COURT: Okay.

13 MR. YOUNG: If we do do a rebuttal, I can assure you  
14 it will be brief. What I anticipate, a lot of the rebuttal  
15 questions that I had anticipated I may very well be able to  
16 elicit answers I am interested in through Mr. Harte and/or Dr.  
17 Piasecki. Of course, I don't know that, but if there is one,  
18 like I said, it would be short. That is the best I can give  
19 at this time.

20 THE COURT: What I am trying to figure out is  
21 whether or not I should bring the jury back Friday afternoon  
22 for only Dr. Piasecki's testimony or whether or not tomorrow  
23 afternoon when we are done, we let the jury go and ask them to  
24 come back on Monday morning. That is what I am trying to

1 gauge.

2 MR. YOUNG: I was just conferring with counsel about  
3 what she expects Dr. Piasecki, how long that would last.  
4 Without holding her to this, I probably agree with her,  
5 probably about an hour total.

6 MS. PUSICH: Both of us.

7 MR. YOUNG: If that is the case, the option would  
8 be, if we are able to settle Jury Instructions say tomorrow at  
9 the conclusion. I don't want to step on Your Honor's feet.

10 THE COURT: No. No. We can.

11 MR. YOUNG: If we settle Instructions tomorrow, we  
12 may be able to launch into closing argument Friday afternoon.  
13 Again, as you were talking about the transport issues,  
14 obviously, how long the jury deliberates is what controls. I  
15 will certainly defer to Your Honor if you want to do Friday  
16 afternoon or move over to Monday.

17 THE COURT: The question for me isn't whether or not  
18 I give it to the jury Friday afternoon. I am not going to  
19 give it to the jury Friday afternoon. That is just way too  
20 much of a possibility of too much overtime. It is bad enough I  
21 am doing overtime Friday afternoon. The question is can we  
22 get Dr. Piasecki Monday morning, family of Mr. Castro Monday  
23 morning, any rebuttal, reading of the Instructions and  
24 argument, can that all be done on Monday and get to the jury

1 Monday afternoon to begin deliberating?

2 MR. YOUNG: I am confident we can do that.

3 MS. BOND: All of that done Monday morning or early  
4 afternoon.

5 THE COURT: Hopefully Monday morning.

6 MS. PUSICH: I think we could. Also, I told  
7 counsel, because I haven't heard from Dr. Piasecki, it is  
8 possible they took her sooner than they expected. If I find  
9 that out tonight, I will let them know and the Court.

10 THE COURT: We will be here at 9:00 o'clock  
11 tomorrow. Certainly we have the whole day. Someone else is  
12 covering my criminal calendar. We have the whole day  
13 tomorrow. We can go until 5:00 o'clock. And if we have any  
14 extra time, we can do Jury Instructions so we get that done.

15 MR. YOUNG: Is it Your Honor's intention one way or  
16 the other not to be here Friday at all and reconvene on  
17 Monday.

18 THE COURT: That is what I am thinking. If things  
19 kind of go sideways, you all have a lot of testimony left to  
20 go, we need to do that, we'll be back Friday afternoon. But  
21 if it is just Piasecki for an hour and Mr. Castro's family,  
22 but we have everything else finished, then I think that would  
23 be fine to give the jury a day off. Does that make sense for  
24 everybody?

1           MR. YOUNG: I understand now. Thank you.

2           MS. BOND: I am trying to anticipate closing. We are  
3 all anticipating closing is going to be Monday. The question  
4 I have is do we do witnesses on Friday or not, depending how  
5 we are rolling.

6           THE COURT: Exactly. That is what I am saying. I  
7 think you both will have the weekend to prepare your closings,  
8 okay. So the other question, Mr. Harte, you can go ahead and  
9 retake your place.

10          THE WITNESS: Thank you.

11          THE COURT: The other question I have with regard to  
12 Jury Instructions is whether or not you want to do -- if you  
13 have any more. I think, Mr. Young, you have some more you are  
14 working on. So when you get those, we have received the ones  
15 that you have sent Ms. Bond. Ms. Pusich, you handed some to  
16 us. The law clerk has been working on them. I think we'll  
17 have a packet of at least a packet of the ones we are going to  
18 talk about that I am interest in, even considering giving.  
19 We'll try to have that for you tomorrow so you can start with  
20 them during the lunch hour tomorrow before we begin going over  
21 them. So if you have anything else in the morning, you can  
22 give it to us, okay?

23               Now is there anything else for today?

24          MR. YOUNG: Not from the State, Your Honor.

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MS. PUSICH: No, thank you.

THE COURT: Thank you. Court's in recess.

(Whereupon, the proceedings were concluded.)

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1 STATE OF NEVADA, )  
2 ) ss.  
3 COUNTY OF WASHOE. )

4 I, Judith Ann Schonlau, Official Reporter of the  
5 Second Judicial District Court of the State of Nevada, in and  
6 for the County of Washoe, DO HEREBY CERTIFY:

7 That as such reporter I was present in Department  
8 No. 6 of the above-entitled court on Wednesday,  
9 January 28, 2015, at the hour of 9:00 a.m. of said day and  
10 that I then and there took verbatim stenotype notes of the  
11 proceedings had in the matter of THE STATE OF NEVADA vs. SHAWN  
12 RUSSELL HARTE, Case Number CR98-0074A.

13 That the foregoing transcript, consisting of pages  
14 numbered 1-146 inclusive, is a full, true and correct  
15 transcription of my said stenotypy notes, so taken as  
16 aforesaid, and is a full, true and correct statement of the  
17 proceedings had and testimony given upon the trial of the  
18 above-entitled action to the best of my knowledge, skill and  
19 ability.

20 DATED: At Reno, Nevada this 11thth day of March, 2015.  
21  
22

23 /s/ Judith Ann Schonlau  
24 JUDITH ANN SCHONLAU CSR #18