

IN THE SUPREME COURT OF THE STATE OF NEVADA

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Case No. 83796

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Elizabeth A. Brown  
Clerk of Supreme Court

DONTE JOHNSON,  
Petitioner,

v.

STATE OF NEVADA, *et al.*,  
Respondent.

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Appeal From Clark County District Court  
Eighth Judicial District, Clark County  
The Honorable Jacqueline M. Bluth, District Judge  
(Dist. Ct. No. A-19-789336-W)

APPELLANT'S APPENDIX

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Defendant's (Pro Se) Request for Petition to be Stricken as it is Not Properly Before the Court, <i>Johnson v. Gittere, et al.</i> , Case No. A-19-789336-W, Clark County District Court, Nevada	04/11/2019	46	11606-11608
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196. Trial Transcript (Volume IX), <i>State v. Smith</i> , District Court, Clark County, Nevada Case No. C153624 (June 18, 1999)	02/13/2019	46	11376–11505

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197. Voluntary Statement of Luis Cabrera (August 14, 1998)	02/13/2019	46	11506–11507
198. Voluntary Statement of Jeff Bates (handwritten)_Redacted (Aug. 14, 1998)	02/13/2019	46	11508–11510
199. Voluntary Statement of Jeff Bates_Redacted (Aug. 14, 1998)	02/13/2019	46	11511–11517
200. Presentence Investigation Report, State’s Exhibit 236, <i>State v. Young</i> , District Court, Clark County, Nevada Case No. C153461_Redacted (Sep. 15, 1999)	02/13/2019	46	11518–11531
201. Presentence Investigation Report, State’s Exhibit 184, <i>State v. Smith</i> , District Court, Clark County, Nevada Case No. C153624_Redacted (Sep. 18, 1998)	02/13/2019	46	11532–11540
202. School Record of Sikia Smith, Defendant’s Exhibit J, <i>State v. Smith</i> , District Court, Clark County, Nevada (Case No. C153624)	02/13/2019	46	11541–11542
203. School Record of Sikia Smith, Defendant’s Exhibit K, <i>State v. Smith</i> , District Court, Clark County, Nevada (Case No. C153624)	02/13/2019	46	11543–11544

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204. School Record of Sikia Smith, Defendant's Exhibit L, <i>State v. Smith</i> , District Court, Clark County, Nevada (Case No. C153624)	02/13/2019	46	11545–11546
205. Competency Evaluation of Terrell Young by Greg Harder, Psy.D., Court's Exhibit 2, <i>State v. Young</i> , District Court, Clark County, Nevada Case No. C153461 (May 3, 2006)	02/13/2019	46	11547–11550
206. Competency Evaluation of Terrell Young by C. Philip Colosimo, Ph.D., Court's Exhibit 3, <i>State v. Young</i> , District Court, Clark County, Nevada Case No. C153461 (May 3, 2006)	02/13/2019	46	11551–11555
207. Motion and Notice of Motion in Limine to Preclude Evidence of Other Guns Weapons and Ammunition Not Used in the Crime, <i>State v. Johnson</i> , District Court, Clark County, Nevada Case No. C153154 (Oct. 19, 1999)	02/13/2019	46	11556–11570
208. Declaration of Cassondrus Ragsdale (Dec. 19, 2018)	02/13/2019	46	11571–11575
209. Post –Evidentiary Hearing Supplemental Points and Authorities, Exhibit A: Affidavit of Theresa Knight, <i>State v. Johnson</i> ,	02/13/2019	46	11576–11577

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210. Post –Evidentiary Hearing Supplemental Points and Authorities, Exhibit B: Affidavit of Wilfredo Mercado, <i>State v. Johnson</i> , District Court, Clark County, Nevada Case No. C153154, June 22, 2005	02/13/2019	46	11578–11579
211. Genogram of Johnson Family Tree	02/13/2019	46	11580–11581
212. Motion in Limine Regarding Referring to Victims as “Boys”, <i>State v. Johnson</i> , District Court, Clark County, Nevada Case No. C153154	02/13/2019	46	11582–11585
213. Declaration of Schaumetta Minor, (Dec. 18, 2018)	02/13/2019	46	11586–11589
214. Declaration of Alzora Jackson (Feb. 11, 2019)	02/13/2019	46	11590–11593
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215. <i>Holloway v. Baldonado</i> , No. A498609, Plaintiff's Opposition to Motion for Summary Judgment, District Court of Clark County, Aug. 1, 2007	12/13/2019	47–48	11840–11867
216. <i>Holloway v. Baldonado</i> , No. A498609, Opposition to Motion for Summary Judgment Filed by Defendants Stewart Bell, David Roger, and Clark County, District Court of Clark County, filed Jan. 16, 2008	12/13/2019	48–49	11868–12111
217. Letter from Charla Severs, dated Sep. 27, 1998	12/13/2019	49	12112–12113
218. Decision and Order, <i>State of Nevada v. Johnson</i> , Case No. C153154, District Court of Clark County, filed Apr. 18, 2000	12/13/2019	49	12114–12120
219. State's Motion to Disqualify the Honorable Lee Gates, <i>State of Nevada v. Johnson</i> , Case No. C153154, District Court of Clark County, filed Apr. 4, 2005	12/13/2019	49	12121–12135
220. Affidavit of the Honorable Lee A. Gates, <i>State of Nevada v. Johnson</i> , Case No. C153154, District	12/13/2019	49	12136–12138

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221. Motion for a New Trial (Request for Evidentiary Hearing), <i>State of Nevada v. Johnson</i> , Case No. C153154, District Court of Clark County, filed June 23, 2000	12/13/2019	49	12139–12163
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223. Declaration of Dayvid J. Figler, dated Feb. 10, 2020	02/11/2019	49	12245-12247
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<sup>1</sup> This transcript was not filed with the District Court nor is it under seal.

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## **CERTIFICATE OF SERVICE**

I hereby certify that on May 27, 2022, I electronically filed the foregoing Appendix with the Nevada Supreme Court by using the appellate electronic filing system. The following participants in the case will be served by the electronic filing system:

Alexander G. Chen  
Chief Deputy District Attorney  
Clark County District Attorney's Office

/s/ Celina Moore

Celina Moore  
An employee of the Federal  
Public Defender's Office

19           1           Q       Could the defendant have been on the street at  
2           the time your brother was involved in this fight?

3           A       I don't know.

4           Q       Do you recall telling someone on August 19th,  
5           1998 that you saw this defendant at the party and that he  
6           was the one who took a gun from you?

7                   MR. FIGLER: I'll object. It's leading and  
8           he's impeaching.

9                   MR. SCHWARTZ: I am impeaching my own witness,  
10          yes.

11                   THE COURT: Overruled. You may proceed.

12                   THE WITNESS: I plead the Fifth to that  
13          question.

14          BY MR. SCHWARTZ:

15           Q       Do you know Bobby Mireles?

16           A       Other than on paper, no.

17           Q       Did you see anybody get shot on February the  
18          28th, 1997 at this party?

19           A       No. I just heard gunshots.

20           Q       How many gunshots did you hear?

21           A       Three.

22           Q       How many of those gunshots did you fire?

23           A       I plead the Fifth to that, sir.

24                   MR. SCHWARTZ: I have nothing further, Your  
25          Honor.

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THE COURT: Cross.

CROSS-EXAMINATION

BY MR. FIGLER:

Q Miguel, at some point were you arrested for the murder of Erik Gates?

A Yes.

Q Is it true that the Henderson Police Department was following you around on the street even after you were released from prison on this charge?

A Yes. I'm pretty sure they still do. I am not even sure anymore.

Q Do you believe that you were harassed by the police?

A Yes. Very harassed.

Q Now, the charges were dropped against you; is that correct?

A I'm not even quite certain of the status those are still at this point.

Q It's your understanding they could be filed against you again?

A I'm pretty sure they can.

Q And listen very carefully to this question. You have not testified in court today, correct, that this man was at that party? You haven't made any testimony like

19           1       that today; isn't that correct?

2                   A       Correct.

3                   MR. FIGLER: No further questions.

4

5                               REDIRECT EXAMINATION

6       BY MR. SCHWARTZ:

7                   Q       Do you know whether or not the defendant was at  
8       that party?

9                   A       I plead the Fifth.

10                  MR. SCHWARTZ: I have nothing further, Your  
11       Honor.

12                  THE COURT: Thank you for your testimony.  
13       You're excused and you're free to leave.

14                  Next witness.

15                  MR. SCHWARTZ: Joel Moskowitz.

16

17                               JOEL MOSKOWITZ,

18       called as a witness by the State, having been first duly  
19       sworn, was examined and testified as follows:

20

21                  THE CLERK: Please state your name and spell  
22       your last name for the record.

23                  THE WITNESS: Joel Moskowitz,

24       M-o-s-k-o-w-i-t-z, J-o-e-l.

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19

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DIRECT EXAMINATION

2

BY MR. SCHWARTZ:

3

Q Sir, by whom are you employed?

4

A Clark County district attorney's office.

5

Q In what capacity?

6

A I'm an investigator.

7

Q Directing your attention to August 19th, 1998

8

were you present at a meeting on the fourth floor of the

9

courthouse involving you, myself, Mr. Laurent, Miguel Lopez

10

and his attorney Carmine Colucci and their investigator

11

Michael Levin?

12

A Yes, I was.

13

Q Did Miguel Lopez identify through a photo

14

lineup an array of photographs an individual who he observed

15

shoot Erik Gates on February 28th, 1997?

16

MR. FIGLER: I object, Your Honor. On two

17

grounds. The first one should be dispositive, it's leading.

18

And I'll object on the second ground after your ruling on

19

the fact that this is a leading question.

20

MR. SCHWARTZ: I'll rephrase the question.

21

THE COURT: All right.

22

BY MR. SCHWARTZ:

23

Q Were questions put to Miguel Lopez concerning

24

whether or not he was present at a party on February the

25

28th, 1997 on Crony Street in Henderson, Nevada?



19

1 A Yes.

2 Q And was Mr. Lopez asked whether or not an  
3 individual took a gun from him?

4 A Yes.

5 Q And did he identify anybody who took that gun?

6 MR. FIGLER: Your Honor, I am going to object.  
7 Again this is both leading and it calls for a hearsay  
8 response.

9 MR. SCHWARTZ: Your Honor, Mr. Lopez testified  
10 sporadically a moment ago and I'm trying to impeach him with  
11 prior inconsistent statements that he made on August 19th,  
12 1998.

13 MR. FIGLER: First of all it's highly improper  
14 to be impeaching a witness with another witness, Your Honor.

20

15 Secondly, we have a serious Bruton problem. If  
16 he refused to testify and expose himself to  
17 cross-examination on a particular line of questioning and  
18 that was a statement made when he was under threat of arrest  
19 or rearrest for a murder -- in fact, he had been charged and  
20 did six months in the county for this murder charge awaiting  
21 trial -- any statements that he made which would be pointing  
22 the finger at someone else or which would implicate somebody  
23 else or which would implicate my client are inadmissible in  
24 that I don't have a chance to cross-examine him on that.

25 MR. SCHWARTZ: Your Honor, Mr. Lopez was

20

1 charged, he was indicted, the indictment was dismissed  
2 without prejudice. He doesn't face any criminal charges as  
3 we stand here today. He refused to answer some questions,  
4 but when Mr. Figler asked him about this fellow being  
5 present at that party or out in the street during the  
6 shooting, he said no. Now I want to impeach what he said on  
7 August the 19th.

8 MR. FIGLER: I did not ask him that question,  
9 Your Honor. If you'll recall I made a very specific  
10 question did you make any testimony as to whether or not  
11 this individual was here and he said no. So I was making  
12 sure that the record was clear with regard to his testimony,  
13 I did not ask him straight out and he did not respond.  
14 Either way it belies the initial question I don't have him  
15 to cross-examine on what statements he made under threat  
16 because even though the murder charges were dismissed  
17 against him as the State has indicated they were dismissed  
18 without prejudice, meaning they could be refiled, and he was  
19 under that impression and he stated that. So he was in that  
20 meeting, it's highly improper for anything he said to come  
21 out through these means. If you want to recall him and see  
22 perhaps if he'll waive the privilege, then I have the  
23 opportunity to cross-examine him. Otherwise due process is  
24 being violated, Your Honor.

25 THE COURT: Wasn't the question asked by you,

20

1 Mr. Schwartz, whether he was there or not?

2 MR. SCHWARTZ: I thought he said that -- he  
3 didn't take the Fifth. He either said I am not sure or I  
4 don't know. He didn't say he wasn't and he didn't take the  
5 Fifth.

6 THE COURT: That was my understanding.

7 MR. FIGLER: The sequence of questions was  
8 whether or not he knew Michael Celis and he answered that he  
9 in fact knew who Michael Celis was. Then the State jumped  
10 into a line of questions talking about the events that  
11 occurred that night. I objected with regard to the leading  
12 nature. The follow-up questions were objected to with  
13 regard to leading and then when they were asked, then he  
14 invoked his Fifth Amendment right.

15 Just to clear up the record, Your Honor, I  
16 asked him specifically did you make any testimony today  
17 regarding whether or not Michael Celis was at that party and  
18 he said no, he didn't make any testimony with regard to  
19 that. So it's his understanding as well that he was  
20 invoking the Fifth with regard to that line of questioning.  
21 So the privilege was invoked.

22 MR. SCHWARTZ: When I asked him if Mr. Celis  
23 was at the party or in the street, I believe he said I don't  
24 know.

25 THE COURT: Now, of course there's a record

20

1 that's made and of course that's going to stand, whatever it  
2 was, but my recollection at this point in time is that as to  
3 that particular point he didn't invoke the Fifth and I think  
4 as to that particular point Mr. Moskowitz should be allowed  
5 to respond.

6 MR. FIGLER: If I might just because of the  
7 specific questioning, I think it became very clear to this  
8 court that this witness Miguel Lopez was not going to make  
9 any testimony whatsoever which indicated that Michael Celis  
10 was or was not at this party. If there was a specific  
11 question which he did not have knowledge of, that does not  
12 amount to the same thing as a waiver of the privilege which  
13 he very clearly indicated to this court that he would be  
14 invoking with regard to that line of questioning. If he  
15 said no or yes. But if he says I don't know to some  
16 responsive question, he is stating he doesn't have personal  
17 knowledge of that. If he doesn't have personal knowledge of  
18 what the question is, perhaps maybe we'll have a  
19 clarification, we can recall Miguel Lopez and ask him that  
20 question again. But I think because of a way a question was  
21 asked or an inflection in a particular answer that that  
22 should not do anything to vitiate the fact that this  
23 individual made very clear that he was not answering any  
24 questions on the subject matter due to the invocation of the  
25 right and it would be highly improper to impeach because

20

1 it's extrinsic.

2 THE COURT: I understand what you're saying,  
3 but again Mr. Lopez picked and chose what he pled the Fifth  
4 to and what he didn't. Insofar as the presence at the party  
5 my recollection is that it was either I don't know or that  
6 he didn't invoke the Fifth, I'm not sure what the exact  
7 answer was, but he didn't plead the Fifth to that particular  
8 question.

1

9 MR. FIGLER: The proper question to be posed to  
10 Mr. Moskowitz, if he said that he didn't know, the one and  
11 only question of Mr. Moskowitz by my view of the court's  
12 ruling, would be did Mr. Lopez during that meeting indicate  
13 whether or not he was sure or not of whether Mr. Celis was  
14 there, because he did not make any response with regard to  
15 him physically being there or not. So that would be the  
16 only proper question that apparently got through this loop  
17 hole in this otherwise proper invocation of the Fifth  
18 Amendment right. He can say was he sure or not and Mr.  
19 Moskowitz can answer based on apparently what he had  
20 personal knowledge of.

21 MR. SCHWARTZ: I don't have a clue what he's  
22 talking about, but Mr. Lopez said he's not sure whether or  
23 not this defendant was at the party. The offer of proof  
24 from Mr. Moskowitz will be he identified a photograph of  
25 Celis saying he was at the party. He was there. No doubt.

1 1 MR. FIGLER: I'll object to that, Your Honor.

2 MR. SCHWARTZ: Which is totally contrary to  
3 what he testified today.

4 MR. FIGLER: I'll object to that offer of  
5 proof. If there's a very limited back doorway into the  
6 Bruton problem, Your Honor, then there should be a very  
7 limited examination that goes specifically to whatever Mr.  
8 Lopez didn't waive even though it was clearly his intention  
9 in this court to waive on that line of questioning.

10 THE COURT: I agree with you, but I think like  
11 I say he wasn't as careful when this particular subject came  
12 up and --

13 MR. FIGLER: Before you make your ruling then  
14 can we play back the record with regard to Mr. Lopez so we  
15 know what we're talking about before we get into the hearsay  
16 statements?

17 (Record read.)

18 MR. FIGLER: The problem, Your Honor, with the  
19 line of the questioning is that we get directly into it  
20 before establishing -- he asked him a question before that,  
21 do you know the defendant and then he starts getting into  
22 these other questions and obviously the individual doesn't  
23 want to give a response. He says he doesn't know. There  
24 was no point of clarification. Then we started getting into  
25 leading and there was no establishment that he even said

1           1       whether or not the defendant was there, and I cleared that  
2           2       up on my cross-examination.

3                       Whatever he said again I am going to make the  
4           4       record that to the point where you don't think that Bruton  
5           5       applies, where you don't think there's a problem with lack  
6           6       of ability to cross-examine the witness, that it would be  
7           7       extraordinarily unfair.

8                       THE COURT: I am going to allow him in the  
9           9       limited scope to follow up. I think clearly he gave an  
10          10       answer.

11                      MR. SCHWARTZ: I think it should be gone into  
12          12       to a certain degree because on readback I also asked Mr.  
13          13       Lopez did you see the defendant doing anything on the street  
14          14       and he says I don't know. He specifically told myself and  
15          15       Mr. Moskowitz what he saw the defendant doing.

16                      MR. FIGLER: Your Honor, had we established who  
17          17       the defendant was, who he was talking about at that time on  
18          18       the record?

19                      MR. SCHWARTZ: Yes.

20                      MR. FIGLER: How do we know?

21                      MR. SCHWARTZ: He identified the defendant as  
22          22       Michael Celis.

23                      MR. FIGLER: That he understood the defendant  
24          24       was that --

25                      THE COURT: It was right before he identified

1 the defendant by name.

2 MR. FIGLER: He said he knew Michael Celis.

3 MR. SCHWARTZ: Do you see him in the courtroom.

4 MR. FIGLER: It's clear to me I don't have an  
5 ability to cross-examine this witness on any of this stuff.

6 THE COURT: I think you would. Of course this  
7 witness you do and of course as to what he may have said  
8 you'd be able to cross-examine Mr. Lopez because he didn't  
9 plead the Fifth on that and he's subject to  
10 cross-examination as to what he said, what he waived as to  
11 that particular thought or concept. I agree with you as to  
12 whether he gave the gun to him, whether he saw him shoot,  
13 that clearly he pled the Fifth, but as to whether or not he  
14 was there, what he was doing, he elected to answer that. So  
15 I think that Mr. Schwartz can follow up on those two points.

16 MR. SCHWARTZ: Thank you, Your Honor.

17 Q Mr. Moskowitz, during this meeting on August  
18 the 19th, 1998 what if anything did Miguel Lopez say with  
19 regards to the presence of Michael Celis at this party at  
20 505 Crony Street on February the 28th, 1997?

21 MR. FIGLER: I object again for the record,  
22 Your Honor.

23 THE WITNESS: My recollection is a photo spread  
24 was presented, he picked the photo out, you asked him who  
25 this is and I think he said to you in a contemptuous, "You



1 know who this is," and threw the photo down in your  
2 direction. You proceeded to ask him questions concerning  
3 what had happened at that party and he indicated he had had  
4 a gun in his possession when he came out into what is best  
5 described as a melee. He fired a shot in the air. He saw  
6 his brother was being beaten, he detailed after some  
7 altercations and physical confrontations someone whose head  
8 was bloody took the gun.

9 MR. FIGLER: Object to that. Beyond the scope.

10 THE COURT: Sustained.

11 BY MR. SCHWARTZ:

12 Q Now, the photo spread that he was shown, he  
13 identified one person as being the person who he was  
14 referring to?

15 A Yes.

16 Q Showing you State's Proposed Exhibit 3 I'd ask  
17 you to identify that exhibit.

18 MR. FIGLER: Can we have context. What  
19 question was being posed to him when he pointed out this  
20 person.

21 Can I also make inquiry whether or not there's  
22 any type of memorialization of recordation of this alleged  
23 interview for foundation purposes? I'll object on  
24 foundation purposes.

25 THE COURT: Mr. Schwartz, do you want to follow

2           1       up.

2                       MR. SCHWARTZ: I'll try to.

3           Q       With regard to the photo display did Mr. Lopez  
4       indicate who the person was, in other words what role this  
5       person played if any at the incident that took place on  
6       February the 28th, 1997? He picked out the photograph as  
7       being who?

8           A       My recollection was he identified this guy as  
9       Bones.

10          Q       And did he indicate whether he was present  
11       during the altercation?

12          A       Yes, he did.

13          Q       Did he say he was there?

14          A       Yes.

15          Q       And is Exhibit No. 3 the picture that he picked  
16       out referring to as Bones and threw at me?

17          A       Yes, sir.

18          Q       Do you recall if you took any notes with regard  
19       to or recording with regard to the statements made by Miguel  
20       Lopez at this meeting?

21          A       I prepared a brief affidavit for the assigned  
22       detective.

23          Q       Who was the assigned detective?

24          A       Detective Collins.

25          Q       That's of the Henderson Police Department?

2

1

A Correct.

2

MR. SCHWARTZ: Thank you.

3

MR. FIGLER: Can I take him on voir dire about  
that?

5

THE COURT: Sure.

6

7

VOIR DIRE EXAMINATION

8

BY MR. FIGLER:

9

Q You were filling out an affidavit while this  
interview was going on?

10

11

A No, I prepared it after.

12

Q Did you do it from memory or notes?

13

A From my memory.

14

Q Was there any recording whatsoever of this  
alleged interview or discussion?

15

16

A An audio recording?

17

Q That's correct.

18

A Not to my knowledge.

19

Q Was there a video recording?

20

A Not to my knowledge.

21

Q Was anyone else taking notes of responses and  
questions?

22

23

A Appeared to, yes.

24

Q Who were those people?

25

A Mr. Laurent, Carmine Colucci and his

investigator.

MR. FIGLER: Thank you, Your Honor.

MR. SCHWARTZ: I have no further questions,  
Your Honor.

THE COURT: Cross?

CROSS-EXAMINATION

BY MR. FIGLER:

Q Did you do any field research in this case?

A No, I did not.

Q So your only involvement in this case was at  
that one meeting?

A Correct.

Q Have you had any other meetings with witnesses  
in this case?

A No, I have not.

Q Do you have a copy of that affidavit that you  
filled out?

A Not in my possession.

Q Can you obtain a copy of that affidavit?

A Yes, I can.

Q To your knowledge that affidavit still exists?

A Yes.

MR. FIGLER: We would ask that any  
memorialization of this discussion be provided to the

2           1       defense. I understand Your Honor has a limited ability to  
3           2       order it, but just for the record I'm making a request to  
4           3       the State to provide said affidavit.

5           4           THE COURT: Any problem with that, Mr.  
6           5       Schwartz?

7           6           MR. SCHWARTZ: No, Your Honor.

8           7           MR. FIGLER: No further questions.

9           8           THE COURT: Thank you. Thank you for your  
10          9       testimony. You're excused and you're free to leave.

11          10          MR. SCHWARTZ: We don't have any additional  
12          11       witnesses we want to call at this point so we'll rest.

13          12          THE COURT: State's rested. Do you have any  
14          13       witnesses?

15          14          MR. FIGLER: Yes, Your Honor, if we could have  
16          15       the court's indulgence. First of all I indicated to my  
17          16       client his right to take the stand at the preliminary  
18          17       hearing and at this time it's not his election to do so.

19          18               I do have one witness that I would like to  
20          19       call, Your Honor, and apparently he's in route. He was here  
21          20       earlier this morning, he is under subpoena. If we could  
22          21       have the court's indulgence for approximately ten minutes.  
23          22       I know he's no more than 15 minutes away.

24          23          THE COURT: I'll work with you. I think it's  
25          24       time for a restroom break so we'll be in recess for a few  
26          25       minutes.

(Recess.)

THE COURT: Next witness.

MR. FIGLER: Thank you, Your Honor. The defense's next witness would be Michael Levin who is in the courtroom.

MR. LAURENT: The State would invoke the exclusionary rule, there should not have been any witnesses here from the defense. He said first witness so if there are any others.

MR. FIGLER: To my understanding unless something comes up with this witness this will be our one and only witness.

MICHAEL LEVIN,

called as a witness by the Defendant, having been first duly sworn, was examined and testified as follows:

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

THE WITNESS: Michael Levin, L-e-v-i-n.

DIRECT EXAMINATION

BY MR. FIGLER:

Q Mr. Levin, how are you currently employed?

A I am a private investigator here in town.

3           1           Q     And how long have you been a private  
2 investigator?

3           A     Approximately one year now.

4           Q     And prior to that what was your employment?

5           A     I was a special agent with the FBI here in Las  
6 Vegas for approximately eight years.

7           Q     Now, did there come a time when you were  
8 employed by an individual by the name of Miguel Lopez or  
9 Miguel Lopez's attorney Carmine Colucci?

10          A     That is correct.

11          Q     What assignment were you given?

12          A     My assignment was to locate witnesses in this  
13 murder investigation and to interview them.

14          Q     You reference a murder investigation. What  
15 murder are we talking of of?

16          A     The murder of Erik Gates.

17               MR. LAURENT: Judge, I don't know if he's  
18 waiving his attorney/client privilege here that he may or  
19 may not have with Miguel Lopez.

20               MR. FIGLER: First of all I'm not going to get  
21 into any --

22               MR. LAURENT: What assignments, if it was  
23 coming from Mr. Colucci, I assume that was a waiver at this  
24 point. It's not his privilege to hold. I don't think that  
25 type of testimony can come in unless there's going to be a

3 1 waiver.

2 MR. FIGLER: It's an interesting point;  
3 however, I don't plan on getting into any privileged areas,  
4 I'm just going to talk about the investigation itself. My  
5 questioning is actually going to be very limited and very  
6 focused and not refer to any information given to him by Mr.  
7 Colucci or by Mr. Lopez.

8 With regard to any other privilege issues I  
9 would imagine those might come up at the appropriate times  
10 during any further proceedings, but here it's a very narrow  
11 scope of investigation.

12 MR. SCHWARTZ: It may be narrow, but in talking  
13 with defense counsel part of it is dealing with a photo  
14 lineup and one of the photos is this defendant's and the  
15 reason the defendant's photo is in and that comes in from  
16 conversation between this gentleman, his attorney and  
17 Miguel.

18 MR. FIGLER: I can make a prove-up. I  
19 understand the testimony to be any photograph of Michael  
20 Celis that came into the possession of this investigator did  
21 not come from Miguel Lopez or Carmine Colucci but it came  
22 from an alternate source altogether.

23 THE COURT: Proceed.

24 MR. FIGLER: If we get into a trouble area I  
25 would hope Your Honor sua sponte would interject. It's not



3           1       intended to go into privileged areas.

2           Q       You indicated you were investigating the murder  
3       of Erik Gates; is that correct?

4           A       Yes.

5           Q       Do you know when the death of Erik Gates  
6       occurred?

7           A       I believe it was in October of '97.

8           Q       Could it have been as early as February of  
9       1997?

10          A       That is correct.

11          Q       When did you start your investigation on this?

12          A       I was hired in late January of '98.

13          Q       Now, as part of that investigation did you go  
14       and interview witnesses to this offense?

15          A       That is correct, I did.

16          Q       Where did you get the names of the witnesses?

17          A       From the district attorney's office.

18          Q       Did you have discovery documents that were  
19       provided to the --

20          A       Yes, I did.

21          Q       And from that you read through various police  
22       reports and things of that nature?

23          A       That is correct.

24          Q       Is that an additional source of where you got  
25       the witness list?

3           1           A     Yes. Primarily from the district attorney's  
2           office. All of the discovery that Mr. Colucci had given to  
3           me.

4           Q     So now as part of your investigation of these  
5           witnesses what did you do? What were the techniques or what  
6           were you trying to accomplish by interviewing these  
7           witnesses?

8           A     There were no real special techniques involved  
9           at all. My job in the interest of my client and my goal was  
10          to interview individuals that were at the party, people that  
11          perhaps had witnessed this crime and to interview those  
12          people and then to present that information to Mr. Colucci.

13          Q     To that end did you present any individuals  
14          with any photographs one way or another? Did you or did you  
15          not present photographs to any individuals?

16          A     As in the form of a photo lineup?

17          Q     You tell me.

18          A     Yes, I did. On several occasions several  
19          witnesses I did interview I did have the opportunity to show  
20          them a photo lineup.

21          Q     What is a photo lineup?

22          A     It's just a basic procedure that law  
23          enforcement utilizes and I take it out, you have six  
24          pictures in a certain sequence and you simply show that to  
25          the individual that you're interviewing to see if they can

3 1 identify the person or persons involved.

2 Q And you did this on or about January of 1998?

4 A No. Not in the beginning of my investigation.  
4 Perhaps in the later part of my investigation I did.

5 Q So can you tell me approximately when you did  
6 that?

7 A Perhaps it was in February or March.

8 Q Now, had you used lineups before in your prior  
9 law enforcement position?

10 A Yes, I have.

11 Q Now, you stated that there were six pictures  
12 that you were using with these witnesses?

13 A That is correct.

14 Q Can you tell me what witnesses you interviewed  
15 using whatever photos? I just want to know the list right  
16 now.

17 A If I may take a look at my notes?

18 Q As long as that will refresh your memory?

19 A Yes. I can tell you I know the witnesses that  
20 I — there were numerous witnesses I interviewed. Not all  
21 of the witnesses I showed or I displayed a photo lineup, but  
22 I do remember in particular several witnesses that I did  
23 show the photo lineup to.

24 Q Why don't you review your notes and see if it  
25 refreshes your memory with regard to who you showed a photo

4           1       lineup to first of all.

2           A       I recall William Howard, Eric Rogasch and an  
3       individual by the name of Dana Ellis.

4           Q       Is there anyone else?

5           A       I think that's it.

6           Q       Now, where did you get the photos that you were  
7       using for your photo lineup?

8           A       I received them from the district attorney's  
9       office.

10          Q       Directly from the district attorney's office?

11          A       Yes.

12          Q       Who in the district attorney's office gave you  
13       these photos?

14          A       Dave did.

15          Q       And when you say "Dave did", who are you  
16       referring to?

17          A       To the attorney.

18                   MR. SCHWARTZ: Schwartz.

19                   THE WITNESS: I am sorry. Mr. Schwartz did.

20       BY MR. FIGLER:

21          Q       Seated right over here?

22          A       Forgive me.

23          Q       And you got those from him directly?

24          A       Yes, I did.

25          Q       Do you have that photo lineup that you used

4           1       that day with you today?

2                   A       No, I do not.

3                   Q       And do you know where that photo lineup is  
4       today?

5                   A       No, I do not. I don't recall whether or not --  
6       I remember discussing the photo lineup with Detective  
7       Collins of the City of Henderson and I'm not sure whether I  
8       gave him those photos or if I returned them to the district  
9       attorney's office, I am not sure, but I don't have them in  
10      my possession.

11                  Q       Now, is it your recollection as to who was in  
12      those photos?

13                  A       Two out of the six individuals, yes.

14                  Q       And who were those two?

15                  A       Miguel Lopez and Michael Celis.

16                  Q       I am going to show you what's been marked  
17      State's Exhibit 2 and ask you if you recognize that  
18      photograph that's depicted in State's Exhibit 2?

19                  A       Yes, I do.

20                  Q       And how do you recognize that photograph?

21                  A       Well, this is the photograph that I utilized as  
22      the person being Michael Celis.

23                  Q       So that was the photograph that you used in  
24      your lineup?

25                  A       Yes.

4 1 THE COURT: Let me interject since you're  
2 referring to this. I take it you have no objection to that  
3 being admitted?

4 MR. SCHWARTZ: We don't either, Your Honor.

5 MR. FIGLER: I thought it was already admitted.  
6 It was just proposed? Oh, we were waiting for the purposes  
7 of Detective Collins to testify with regard to a specific  
8 lineup with regard to another witness testifying that that  
9 was in fact the photo. I'm offering it for the limited  
10 purpose that this was a photo that this individual used, not  
11 with regard to the other individual, that it is a photo of  
12 Michael Celis, I think Your Honor can make that  
13 determination just looking at the photo and look at Mr.  
14 Celis.

15 THE COURT: Of course either side once it's  
16 entered they can argue, but once it's entered.

17 MR. FIGLER: I'll move to enter it as Defense  
18 Exhibit B then. I don't know if you want to double mark it  
19 or leave it as is.

20 THE COURT: We could leave it as is and it's  
21 admitted.

22 (State's Exhibit No. 3 was  
admitted into evidence.)

23 BY MR. FIGLER:

24 Q So that was the photo that you used?

25 A That is correct.

4           1           Q       Now, what was the result of you showing that  
2 photo in the lineup to Eric Rogasch?

3           A       There was no positive identification of either  
4 Mr. Celis or Mr. Lopez.

5           Q       Which if any other witnesses were able to  
6 identify Mr. Celis out of that photo lineup?

7           A       None.

8           Q       Is it possible that you showed that photo to  
9 additional persons beyond William Howard, Eric Rogasch and  
10 Dana Ellis?

11          A       Perhaps, but it doesn't reflect on my notes so  
12 I don't think so.

13          Q       You don't have independent recollection of that  
14 right now?

15          A       That is correct.

16          Q       Now, during the course of your investigation  
17 into the death of Erik Gates did you learn anything else  
18 material to your investigation about Erik Gates himself?

19          A       Yes.

20                 MR. SCHWARTZ: Your Honor, I am going to object  
21 on the grounds of relevancy.

22                 THE COURT: Relevancy?

5                 MR. FIGLER: I just want to know if there was  
23 anything about this particular victim that is material note  
24 to him as an investigator. He said yes, I am curious what  
25

5       1       it is.

2                   THE COURT: Mr. Schwartz, would you like to  
3       hear it?

4                   MR. SCHWARTZ: It depends how he obtained this  
5       knowledge. I don't know where he got it from. If somebody  
6       said something to him, then it's hearsay.

7                   MR. FIGLER: We could find out if it was  
8       material and then you can move to strike it.

9                   THE COURT: I agree that no relevance has been  
10      shown, the fact it may be interesting to learn is another  
11      issue. If you're withdrawing the objection, we'll let him  
12      continue, but if you're still objecting, then I will sustain  
13      it.

14                  MR. SCHWARTZ: We'll object.

15                  THE COURT: Sustained.

16       BY MR. FIGLER:

17                  Q       Did you interact with other investigators who  
18      were working for the police department or some other entity  
19      during the course of your investigation?

20                  A       Not really. Just Detective Collins, but on a  
21      very peripheral sense. We had conversations about the case,  
22      so forth and so on, and we discussed some of his  
23      investigation, but I was not assisted by any other either  
24      private investigator or anyone from the D.A.'s office.

25                  Q       In interacting with Detective Collins did you



5           1       learn whether or not he had used the photo lineups before  
2           2       you or after you or anything like that?

3           A       I can't answer that truthfully. I don't know  
4           4       whether or not he had used those photo lineups or not.

5           MR. FIGLER: I have no further questions at  
6           6       this time.

7           THE COURT: Cross.

8           MR. SCHWARTZ: Thank you, Your Honor.

9

10                   CROSS-EXAMINATION

11          BY MR. SCHWARTZ:

12           Q       Sir, initially during the course of your  
13           13       investigation there was a point in time when Miguel Lopez  
14           14       was indicted for the crime of murder and attempt murder; is  
15           15       that correct?

16           A       That is correct.

17           Q       And I believe a trial date had been set?

18           A       That is correct.

19           Q       And as it got closer to trial I believe  
20           20       yourself and Mr. Colucci came to my office on at least one  
21           21       occasion, perhaps more, to discuss the case?

22           A       That is correct.

23           Q       And would it be fair to say at that time I  
24           24       didn't know anything about the name Michael Celis, I had no  
25           25       clue if at all Michael Celis existed?

5

1

MR. FIGLER: Your Honor, I am going to object.

2

What we're getting into right now is an area of hearsay and

3

it may in fact impact -- I don't know if that would impact,

4

but I think we need to be a lot of more careful going into

5

this area of anything that transpired during the

6

conversation.

7

MR. SCHWARTZ: I'll be careful, Your Honor.

8

Q Sir, with regard to the photograph that you've

9

identified, I think it's State's Exhibit 2, the photograph

10

of the defendant Michael Celis, did you provide me with a

11

small snapshot of that same individual, yes or no?

12

A I'm thinking. There's a possibility. There's

13

a possibility.

14

Q Would it be fair to say that I never brought

15

the name Michael Celis to your attention, that it came from

16

your office?

17

MR. FIGLER: I am going to object at this

18

point, Your Honor.

19

MR. SCHWARTZ: Your Honor, he introduces this

20

picture and now he wants to be totally silenced about how it

21

all came to be.

22

MR. FIGLER: First of all I didn't ask him

23

about where it was, and the second point is, Your Honor, I

24

was very narrow with regard to the investigation itself.

25

The time frames were not brought out whether it came before

5       1       or after so it would be irrelevant.

2               THE COURT: Sustained.

3               MR. SCHWARTZ: If I might add, Mr. Lopez never  
4       denied knowing Mr. Celis so the fact that that photograph  
5       may have come from this gentleman here I don't think in any  
6       way invades the privilege. He came up here and said he  
7       knows this guy. I mean, I don't see what we're saying is  
8       somehow breaching some privilege between this gentleman and  
9       Miguel Lopez. I'm not asking him anything Miguel Lopez  
10      said. I am just asking him what if anything he did with  
11      regard to a small photograph of that individual.

12              THE COURT: He already said that he can't  
13      remember whether he provided you with one or not.

14      BY MR. SCHWARTZ:

15              Q       Did there come a time, sir, when you showed me  
16      a photograph that had Miguel Lopez and Michael Celis in it?

17              A       I think there's a possibility that I did, that  
18      is correct.

19              Q       And do you know if that is how I became aware  
20      of the name Michael Celis?

21              MR. FIGLER: Object, Your Honor. Calls for  
22      speculation. If he knows how he became aware. I don't know  
23      if Mr. Schwartz had other knowledge, I don't know if Mr.  
24      Schwartz is offering himself as a witness in this case.

25              THE COURT: This is personal knowledge. Only

5       1       to your knowledge can you answer that, do you know?

6       2               THE WITNESS: I think you are correct. It's  
      3       safe for me to assume that -- I'm getting into an area.

      4               THE COURT: Only if you know. I don't want you  
      5       to guess.

      6       BY MR. SCHWARTZ:

      7               Q       What was your impression?

      8               A       Based on my discussions with you?

      9               Q       Yes.

     10              A       That during the course of my investigation --  
     11       and we were on a very friendly basis and open dialogue --  
     12       strong possibility, yes, that we discussed Michael Celis,  
     13       that is correct.

     14              Q       And would it be fair to say that you brought it  
     15       to my attention, the name?

     16              A       That is correct.

     17              MR. SCHWARTZ: I have nothing further, Your  
     18       Honor.

     19

     20                               REDIRECT EXAMINATION

     21       BY MR. FIGLER:

     22              Q       Do you have any personal knowledge whether or  
     23       not David Schwartz knew anything about Michael Celis before  
     24       your conversation?

     25              A       No, sir.

6

1

MR. FIGLER: No further questions.

2

THE COURT: Thank you for your testimony.

3

You're excused and you're free to leave.

4

Any other witnesses?

5

MR. FIGLER: No, Your Honor. At this time the

6

defense would rest.

7

THE COURT: Defense has rested. Argument?

8

MR. SCHWARTZ: We'll reserve, Your Honor.

9

MR. FIGLER: Paraded before you this morning

10

and this afternoon, Your Honor, were a number of kids who

11

were all present at a party where there were more kids up to

12

probably including a couple hundred of kids who were all in

13

the streets. Each gave what amounts to a different account

14

of what they saw.

15

Individuals who were familiar with Michael

16

Celis indicated to this court that he was not in fact there,

17

even though it would be clear that by saying that Michael

18

Celis was there would be contrary to their true interests

19

and I refer to the Lopez brothers, Erick Lopez and Jesus

20

Lopez. People who would be in the best position to be able

21

to identify Michael Celis and who had prior contact with

22

Michael Celis said Michael Celis wasn't there, even though

23

their brother who they know is under a surveillance and at

24

least has been charged once with the murder of Erik Gates,

25

his life stands in the balance and I think they made it very

6       1       clear that they would do anything probably short of lying  
2       2       under oath to protect their brother. But not Mr. Celis.

3               So what witnesses we do have each with a bias  
4       4       which became very clear to the court through their testimony  
5       5       show stories which don't amount to credibility which may  
6       6       very well be for a jury but a matter of incredulity because  
7       7       of the way that each and every piece of testimony  
8       8       contradicts that of the other individual who testified.  
9       9       It's not a matter of credibility, it's the fact that from  
10      10      where they said they were and what they said they saw  
11      11      there's no corroboration whatsoever in the record. The  
12      12      record is devoid and barren of corroboration that Michael  
13      13      Celis shot Erik Gates.

14             You've got individuals who were promised  
15      15      benefit, an individual who started with an attempt murder  
16      16      charge who got probation for his changed testimony. But  
17      17      even if you believe Chance Lesueur, Your Honor, he testified  
18      18      that he saw Lopez shoot Gates. He turned on Lopez, Your  
19      19      Honor. He said that he saw the first shot and the second  
20      20      shot and the second shot went into Gates and Lopez was the  
21      21      individual who shot Gates.

22             You have Lopez admitting and everyone else  
23      23      admitting that they saw Lopez with the gun, that Lopez  
24      24      brought the gun to the party, that Lopez produced the gun,  
25      25      that Lopez discharged the gun and you have an admission by

6           1       Lopez, even though he invoked the Fifth on other matters or  
2           2       whatever purposes and that can't be considered by the court,  
3           3       you have an admission from Lopez that he did in fact  
4           4       discharge the gun.

5                     Now, the witnesses say that, let's see, there  
6           6       was Eric Rogasch, Eric Rogasch who was unable to pick Mr.  
7           7       Celis out of a lineup when Michael Levin showed him Michael  
8           8       Celis's picture, says, yes, it was in fact Michael Celis.  
9           9       He's sure of that because he had a clear and unobstructed  
10          10       view. But from the placement of where he was to the other  
11          11       individuals it proved to this court that he didn't know what  
12          12       he was talking about. He did not see Mireles, he said that  
13          13       Mireles wasn't there, but he also told the court he knew who  
14          14       Mireles was. Then only upon prodding and confronting him  
15          15       with the statement that he made prior did he say oh, yeah, I  
16          16       was behind bushes. His testimony is not -- it's beyond not  
17          17       credible. It's uncorroborated and it's made up, Your Honor.

18                    Same thing with Mr. Anderson who came in, Todd  
19          19       Anderson who two years after the fact states that the only  
20          20       individual he sees in custody and jumpsuit was definitely --  
21          21       he's never been more sure of anything in his life that he's  
22          22       the individual who he saw shot Erik Gates. He also didn't  
23          23       see Bobby Mireles, he made some reference to people throwing  
24          24       rocks, he stated he was far away and then he came back. He  
25          25       stated that even though he saw him for a glimpse, he was

7           1     able to identify this individual as the man, but that night  
2           2     he had no specific details or characteristics which were  
3           3     provided. His story matches up with none of the other  
4           4     witnesses as far as where he was standing.

5                     It is uncorroborated and any other witness who  
6           6     was paraded before all denied that there was any fight that  
7           7     they had caused, that they were brutalizing Erik Gates in  
8           8     any way, that Erik Gates was being smashed in the mouth with  
9           9     a beer bottle and that other brutality was being committed  
10          10     upon Mr. Lopez. Mr. Lopez whose family was there and whose  
11          11     brother Miguel Lopez brought out the gun. I think it also  
12          12     came out today that Miguel Lopez was indicted for the murder  
13          13     of Erik Gates but that at some point later that was  
14          14     dismissed without prejudice.

15                    So the problem before this court — and I  
16          16     understand that the standard is slight or marginal evidence,  
17          17     but whenever a witness comes forward who has a clear bias  
18          18     and who clearly contradicts the testimony of all the other  
19          19     witnesses, that has to be considered by the court with the  
20          20     determination of whether or not any slight or marginal  
21          21     corroborating evidence exists within the record. The court  
22          22     doesn't have that before it and therefore the testimony of  
23          23     Todd Armstrong, the testimony of Eric Rogasch, the testimony  
24          24     of Chance Lesueur should be discounted and discarded by this  
25          25     court.



7

1 Now, there was an investigator, there were  
2 detectives none of whom who were brought before the court so  
3 the court didn't have any of that to hear what was learned  
4 or achieved by the police department in their investigation.  
5 What the State chose to do was to parade before you a bunch  
6 of teenagers who all admitted that they were friends with  
7 the victim and then you have the victim himself Bobby  
8 Mireles who stated he didn't see Erik Gates being shot, he  
9 saw himself being shot and he identified Michael Celis as  
10 being the person who shot him. Now, he's in a different  
11 position from all the other witnesses because he had the  
12 direct sight of the individual who shot him and he's saying  
13 that he believes that it was Michael Celis. I asked him  
14 certain questions, his recollection of that night, his  
15 conversations with other individuals, he indicated that he  
16 found out that another party had brought a gun to the event,  
17 an individual named Bullet, he was told by the people that  
18 Bullet might have been the one who shot at him and so he  
19 took it upon himself to track down this Bullet and find out  
20 whether or not he did or not.

21 I think that Mr. Mireles made very clear that  
22 he had a hazy recollection of that night and that a lot of  
23 the details two years later were being filled in by other  
24 people who he spoke with. He mentioned Michael Celis by  
25 name but he said he'd never known Michael Celis before and I

7           1       think that was a clear indication that he had been receiving  
2           2       information from other people and that his testimony should  
3           3       be discounted. But even if Your Honor feels that an amount  
4           4       of credibility for the jury he said he was shot, not that  
5           5       Erik Gates was shot, and so at the maximum his testimony if  
6           6       even considered by this court only goes to the attempt  
7           7       murder charge, not the murder charge.

8                       In summation, Your Honor, you have the State  
9           9       going forward on a very weak case. They had a case before  
10          10       that I'm sure they were very certain about against Miguel  
11          11       Lopez and for whatever reason that case fell through for  
12          12       them. So now they're taking a second crack at an individual  
13          13       who has no ties whatsoever with this, that witnesses who  
14          14       identified him were not in a position to identify him and  
15          15       who come into this courtroom today completely denying the  
16          16       facts of this, any brutality against Erick Lopez or that  
17          17       they were in any way impacted or influenced by the brutality  
18          18       that they were committing against Erick Lopez. This could  
19          19       have been a self-defense matter, this could have been a  
20          20       defense of others matter. There is no indication of where  
21          21       Erik Gates comes into any of this, but ultimately look at  
22          22       the facts, the fact they paraded in seven or eight witnesses  
23          23       all who say different things should not be sufficient for  
24          24       even the slight and marginal standard. The reason we have  
25          25       preliminary hearings is two fold, Your Honor; one is for

8           1       that standard to be met by the State, slight or marginal  
2           2       evidence. But there's a reason -- and this is the second  
3           3       part of why that standard exists -- and that's so a citizen  
4           4       so accused of a crime, and here a horrible crime, the crime  
5           5       of murder, does not have to stand and defend himself against  
6           6       these charges, does not have to go before the jury even if  
7           7       there's nothing that in the record would be credible or  
8           8       corroborated for purposes of forcing a citizen so accused to  
9           9       face these heinous charges. I'd submit to you that the  
10          10       standard was not met.

11                   THE COURT: State.

12                   MR. SCHWARTZ: Thank you, Your Honor. Mr.  
13           13       Figler talks about the fact that the State's witnesses were  
14           14       inconsistent. Let's talk about the Lopez family first.  
15           15       Miguel Lopez testified -- and he picked and chose what he  
16           16       wanted to, when he wanted to invoke the Fifth Amendment.  
17           17       However, with his brother Erick Lopez he testified that he  
18           18       had gotten hit in the mouth with a beer bottle, that he lost  
19           19       some teeth, that was corroborated by several of the other  
20           20       witnesses who came in and I believe it was Bobby Mireles or  
21           21       one of the others who said they saw Jim Reed strike a  
22           22       Hispanic male in the mouth with a bottle, a consistent  
23           23       statement. Erick Lopez also said that with regard to the  
24           24       excited utterance made mention by Miguel Lopez that some  
25           25       fool took Miguel's gun when they met up at the truck after

8 1 the shooting.

2 Several of the witnesses, Chance is one,  
3 mentioned there appeared to be a transfer, either the second  
4 person took the gun from the first person or was handed the  
5 gun to the second person. So you have a consistency there.  
6 Chance Lesueur says that Miguel Lopez who he knows, he's  
7 known for close to a year I believe, fired the first shot  
8 into the air, then he fired a second shot at which time  
9 Chance saw he believes Eric went down. Then it was this  
10 defendant who he identified took the gun from Miguel Lopez  
11 and fired two shots, one right in and out of Bobby Mireles.

12 Bobby Mireles is consistent with Chance  
13 Lesueur. There is no indication these guys are friendly or  
14 know each other. He was shot by this defendant and as he  
15 spun or walked away he saw Erik start to go down.

16 Jesus Lopez indicated that he saw an individual  
17 who he described as a Caucasian conveniently who happened to  
18 be bleeding from the head fire at least one or two shots  
19 into a person who had hit him with a bottle. Again a  
20 consistency, this time from one of the Lopez individuals.  
21 It appeared to Jesus Lopez that that one bullet went through  
22 the first individual and struck a second individual because  
23 he saw two people go down. Again a consistency with several  
24 of the other witnesses called by the State.

25 Chance Lesueur identified this individual as

8           1       being at the scene with a gun in his hand and firing at  
2           2       least two shots, this defendant. Eric Rogasch identified  
3           3       this defendant specifically as the individual who shot Erik  
4           4       Gates. Bobby Mireles identified this individual as the  
5           5       person who shot him and then observed Erik Gates fall down  
6           6       shortly after Bobby Mireles had been shot. Todd Armstrong  
7           7       who was never shown a lineup by any law enforcement officer  
8           8       at least through the testimony today identified this  
9           9       individual as the person who shot and killed Erik Gates.

10                   There's also been testimony -- if we're going  
11           11       to talk about bias -- that the Lopez family or at least two  
12           12       of the brothers are close friends with this defendant. Now,  
13           13       certainly they don't want to see their brother go down for a  
14           14       killing especially if he didn't do it. They don't want to  
15           15       see a friend either I suggest.

16                   Your Honor, for purposes of probable cause I  
17           17       believe the State has proven at least for probable cause the  
18           18       elements of each and every count in the three counts in the  
19           19       amended complaint and we'd submit it.

20                   THE COURT: Mr. Celis, would you please stand.

21                   MR. FIGLER: Your Honor, for the record we had  
22           22       noted an objection prior to the introduction of the juvenile  
23           23       record with regard to the third count, the felony possession  
24           24       and I don't know if the court ruled on it.

25                   THE COURT: I was looking at it and what I

8           1       think is interesting -- because I had your objection  
2           2       noted -- is that it states, "Specifically note this is an  
3           3       adult superior court commitment and the act can be enhanced  
4           4       by a year on a future revocation of parole." I don't know  
5           5       how California law works in this regard and that would be  
6           6       something you might want to check out at the District Court  
9           7       level, but I think for purposes of probable cause just that  
8           8       notation would indicate there was an adult superior court  
9           9       commitment and maybe District Court has jurisdiction on  
10          10       younger offenders or certain age to sentence them to the  
11          11       California Youth Authority because there was no doubt he was  
12          12       sentenced to the California Youth Authority. But on the  
13          13       other hand it's clear here that it was an adult commitment  
14          14       by superior court and so maybe they have that sentencing  
15          15       discretion based on the commitment to CYA. So for purposes  
16          16       of probable cause at this stage it's been met but certainly  
17          17       that would be something for both parties to look into to see  
18          18       whether that is true or not.

19                 Mr. Celis, at this stage of the proceedings as  
20          20       your attorney has explained the burden is slight or marginal  
21          21       evidence and I do believe that the State has met their  
22          22       burden at this stage so I am binding you over for jury trial  
23          23       at this time.

24                 It appearing to me from the complaint on file  
25          25       herein and the testimony that's been adduced at this

9           1       preliminary hearing that crimes have been committed, to wit:  
2           2       Attempt murder with use of a deadly weapon, murder with use  
3           3       of a deadly weapon and possession of firearm by ex-felon,  
4           4       and there is sufficient cause to believe the defendant named  
5           5       herein, Michael Celis, committed said crimes. I hereby  
6           6       order said defendant be held to answer to said charges in  
7           7       the Eighth Judicial District Court, State of Nevada.

8                     You are to appear for your initial arraignment  
9           9       on --

10                    THE CLERK: February 11th, nine o'clock,  
11           11       Department X.

12                    MR. FIGLER: At this point Mr. Celis would  
13           13       request a reasonable bail be set for the offenses he's been  
14           14       bound over on.

15                    THE COURT: What are you requesting?

16                    MR. FIGLER: A hundred thousand dollar bail I  
17           17       think would be more than sufficient for the three charges,  
18           18       Your Honor. I think anything over that would be excessive.  
19           19       It should be noted that Mr. Celis qualified for the special  
20           20       public defender's office and public defender's office prior  
21           21       to that so he is an indigent individual as determined by the  
22           22       code of those agencies. That would be an amount that would  
23           23       secure his attendance in the court, Your Honor.

24                    MR. SCHWARTZ: Your Honor, he was extradited  
25           25       out of the State of California. I believe he's on parole

9           1       there for the assault with a deadly weapon charge and we  
2           2       would oppose the motion — I don't know what the current  
3           3       bail status is, he might be held without bail.

4                   THE COURT: It's at one million now.

5                   MR. SCHWARTZ: We would ask that the bail  
6           6       remain. There's also a detainer hold from the State of  
7           7       California is my understanding because of his parole  
8           8       situation.

9                   MR. FIGLER: If that's the case, Your Honor,  
10          10       even if he were to make bail, it would be academic because  
11          11       he still might be in custody in California. So there seems  
12          12       to be no harm in issuing him a reasonable bail.

13                  MR. SCHWARTZ: We still ask that the million  
14          14       dollar bail stand.

15                  THE COURT: I think under the circumstances  
16          16       that bail should remain as is and of course you can raise it  
17          17       at District Court, the issue again. Thank you.

18                  MR. SCHWARTZ: Thank you, Your Honor.

19  
20                               (The proceedings concluded.)

21                               \* \* \* \* \*

22                  ATTEST: Full, true and accurate transcript of  
23          23       proceedings.

24                                 
25                               LISA BRENSKE, CCR No. 186



# EXHIBIT 56

# EXHIBIT 56

DISTRICT COURT  
CLARK COUNTY, NEVADA

FILED IN OPEN COURT

*June 18* 1999

SHIRLEY B. PARRAGUIRRE, CLERK

BY *ORIGINAL* *Skinner*

OLINDA SKINNER DEPUTY

THE STATE OF NEVADA, )

Plaintiff, )

vs. )

CASE NO. C153624

SIKIA LAFAYETTE SMITH, )

Defendant. )

**REPORTER'S TRANSCRIPT OF JURY TRIAL**  
VOLUME VIII

Before the Honorable Joseph Pavlikowski  
District Judge  
Department III

Thursday, June 17, 1999  
2:10 p.m.

For the State:

**GARY GUYMON, ESQ.**

Deputy District Attorney

**ROBERT DASKAS, ESQ.**

Deputy District Attorney

For the Defendant:

**PETER CHRISTIANSEN, ESQ.**

**ANTHONY P. SGRO, ESQ.**

REPORTED BY: LORI M. JUDD, CCR #233, RPR

CE23

LORI JUDD & ASSOCIATES  
(702) 260-9678

AA07546

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1 LAS VEGAS, NEVADA, JUNE 17, 1999, 2:10 P.M.

2 \* \* \* \* \*

3 THE COURT: This is the continuation of  
4 the matter State of Nevada versus Sikia Smith, case  
5 C153624. The record will indicate the presence of  
6 the same parties that were in court at the time we  
7 recessed.

8 Will counsel stipulate to the presence of  
9 the jury and four alternates?

10 MR. GUYMON: Yes, your Honor.

11 MR. CHRISTIANSEN: Yes, your Honor.

12 THE COURT: We're ready to proceed with  
13 cross-examination.

14 CROSS EXAMINATION

15 BY MR. SGRO:

16 Q. Good afternoon, Detective Buczek?

17 A. Good afternoon.

18 Q. A couple questions before we get started  
19 on the statement. First of all, you characterized  
20 two different conversations that took place with  
21 Mr. Smith on September 8th; is that right?

22 A. That's correct.

23 Q. And one of them is the interview off the  
24 tape and one of them is the interview on the tape;  
25 correct?

1           A.     The taped statement, that would be  
2 correct.

3           Q.     And it is your position that you  
4 typically have this pre-taped interview in order to  
5 gain information; is that correct?

6           A.     Yes.

7           Q.     And now at some point during your  
8 direction did you also not tell Mr. Guymon, the  
9 District Attorney, that sometimes you do, in fact,  
10 turn the tape recorder on right from the beginning?

11          A.     Sometimes it happens, yes.

12          Q.     Okay, and you explained that one of the  
13 reasons you don't turn the tape recorder on right  
14 away is because of an intimidation factor that  
15 exists; is that right?

16          A.     Sometimes, yes.

17          Q.     Okay. Now, in this particular case you  
18 had already spoken to Sikia Smith on August 26, 1998;  
19 is that right?

20          A.     That's correct.

21          Q.     And you described him as helpful;  
22 correct? Cooperative?

23          A.     He appeared to be, yes.

24          Q.     Okay. And I think you said he looked you  
25 right in the eye, almost as if he wanted to help?

1           A.     That's what he was doing, yes.

2           Q.     And there came a time during that  
3 interaction with Mr. Smith on August 26th where you  
4 read him his Miranda rights, or he read them out  
5 loud; correct?

6           A.     That's correct.

7           Q.     And you thereafter on August 26th during  
8 the tape-recorded statement referred to the fact that  
9 he had read his rights; is that right?

10          A.     My partner did, yes.

11          Q.     Okay. Would it be fair to say then that  
12 September 8th, when you approached him to speak to  
13 him again about his involvement, if any, in the Terra  
14 Linda situation, you had already spoken to him once  
15 before; right?

16          A.     That's right.

17          Q.     You had already tape-recorded him once  
18 before?

19          A.     Yes.

20          Q.     Would it be fair to say that some of the  
21 intimidation had been eliminated because he had  
22 already been taped before?

23          A.     I can't say that. I don't know if the  
24 intimidation would have been eliminated.

25          Q.     You certainly had given him an

1 opportunity to speak to you on tape in the past, and  
2 he had complied?

3 A. Yes.

4 Q. All right. Now in terms of the  
5 conversation that takes place before the tape gets  
6 turned on, you testified that you give Miranda  
7 warnings before any of that happens; is that right?

8 A. Yes.

9 Q. And then you want to engage in a  
10 conversation and thereafter tape it; correct?

11 A. Correct.

12 Q. Now if the individual you are speaking to  
13 doesn't want to be taped, you can still use the  
14 actual conversation against that person in court, can  
15 you not?

16 A. Yes.

17 Q. And you would take notes, I imagine,  
18 reduce it to writing what that conversation was  
19 about?

20 A. That's correct.

21 Q. Okay, and did you do that in this case?

22 A. No, I did not.

23 Q. You have no notes or writings as to what  
24 took place prior to you turning the tape on?

25 A. That's right.

1 Q. So this happened September of 1998; is  
2 that correct?

3 A. That's correct.

4 Q. We are now in June of 1999, some nine  
5 months have passed; is that correct?

6 A. That's correct.

7 Q. And you as a homicide detective do not  
8 have the luxury of working on one case at a time?

9 A. That's correct.

10 Q. You are doing many cases which involve  
11 numerous witnesses; correct?

12 A. Yes.

13 Q. The part of the conversation that is not  
14 taped lasted some 25 minutes; is that correct?

15 A. Yes.

16 Q. And that is the part of the conversation  
17 for which we have no notes; right?

18 A. That's right.

19 Q. And incidentally, Detective Thowsen  
20 didn't write any of the things down that were being  
21 spoken of and maintain them; is that correct?

22 A. That's correct.

23 Q. Now, when you turned the tape on, the  
24 tape-recorded conversation only lasts 18 minutes;  
25 correct?



1 A. That's correct.

2 Q. So the part that's not on tape lasted  
3 longer than the part that's actually taped?

4 A. That's right.

5 Q. And whose decision is it when to turn the  
6 tape recorder on?

7 A. It was my decision.

8 Q. You could have turned the tape recorder  
9 on at any time; is that right? On September 8th,  
10 1998 you had the ability to turn the tape recorder on  
11 at any time you saw fit?

12 A. That's right, and I did so.

13 Q. Okay. In terms of Mr. Smith and whether  
14 or not he read his rights, do you recall that line of  
15 questioning by Mr. Guymon?

16 A. Yes.

17 Q. And your position is that he read these  
18 rights out loud?

19 A. That's correct.

20 Q. These rights that Mr. Smith purportedly  
21 read out loud were not taped; correct?

22 A. That's correct.

23 Q. You were asked by Mr. Guymon in court  
24 today to read a card the same way Mr. Smith read it  
25 to you back in September of '98; correct?

1           A.     That's correct.

2           Q.     Would you agree that it would be more  
3 fair for a jury in making determinations to have that  
4 sort of information also provided on the tape?

5           THE COURT: I don't know how he can  
6 answer that question.

7           MR. SGRO:

8           Q.     Whose decision is it to not have  
9 Mr. Smith, or whose decision was it to not have  
10 Mr. Smith read that card aloud as the tape recorder  
11 played?

12          A.     It was my decision. I never have that  
13 done. It is not a practice that I follow.

14          Q.     Whose decision was it to not mention  
15 anything relative to Miranda rights throughout the  
16 entire course of the September 8th statement?

17          A.     It was an oversight on my part, however,  
18 it's not necessary that I do.

19          Q.     Was it your decision to not reaffirm the  
20 fact that rights had been read or you advised  
21 Mr. Smith of Miranda?

22          MR. GUYMON: Asked and answered, Judge.  
23 He just answered it was an oversight.

24          THE COURT: It was an oversight.

25        ///

1 MR. SGRO:

2 Q. Whose decision was it?

3 THE COURT: He already answered that.

4 MR. SGRO: I thought he answered it was  
5 an oversight.

6 Q. Was it an oversight on your part?

7 A. That's correct.

8 Q. Was it a violation of your policy to not  
9 mention Miranda on the statement?

10 A. When you are referring to your policy.

11 Q. Your personal policy, did you breach your  
12 own personal policy?

13 A. My personal policy, yes, I did.

14 Q. Did you also breach the policy that  
15 Detective Thowsen has typically engaged in when you  
16 failed to mention anything about the Miranda rights  
17 on the September 8th statement?

18 A. Yes.

19 Q. And you have had an opportunity to  
20 testify about this issue in the past, have you not?

21 A. Yes.

22 Q. And did you maintain -- strike that. You  
23 were under oath at that proceeding; is that correct?

24 A. That's correct.

25 Q. And some of these same questions came up;

1 is that right?

2 A. I disagree.

3 Q. Pardon me?

4 A. I disagree.

5 Q. Did we talk about the statement?

6 A. Yes, we did.

7 Q. Did you ever say that there is no policy  
8 or proposition that Miranda rights should be on tape?

9 A. That Miranda rights? That's correct, I  
10 did say that. There is no policy by our department  
11 that we must put Miranda rights as read off the card  
12 on the tape.

13 Q. And then do you recall me asking you if  
14 it was a judgment call on the part of the homicide  
15 detective whether or not to mention anything about  
16 Miranda on the tape?

17 A. About the Miranda rights? Yes.

18 Q. And then I asked you your position as a  
19 homicide detective, in two and a half years you have  
20 always elected to not tape the rights?

21 A. To the rights as read from the card,  
22 that's correct.

23 Q. Okay, so in your mind you make the subtle  
24 distinction between all the rights versus  
25 confirmation of the rights on tape?

1 A. That's what you asked me.

2 Q. Is that correct?

3 A. That's what I understood you to ask me,  
4 yes.

5 Q. I see. When you spoke to Mr. Smith on  
6 September 8th, 1998, it's true, is it not, that you  
7 did not have any concern about his educational level  
8 or his mental background?

9 A. I didn't have any reason to be concerned.

10 Q. And Mr. Smith was 18 years old when you  
11 spoke to him?

12 A. Yes.

13 Q. And you made no effort to contact the  
14 parent or guardian?

15 MR. GUYMON: I'm going to object,  
16 relevancy. It is not required, there's no mandate at  
17 all.

18 THE COURT: Sustained.

19 MR. SGRO:

20 Q. When you are speaking to Mr. Smith for 24  
21 minutes, are you attempting to get a feel in your own  
22 mind as to how to conduct the interview once the tape  
23 gets turned on?

24 A. Yes.

25 Q. Are you guiding him through the initial

1 24 minutes before the tape gets turned on?

2 A. I'm not guiding him, no. He's guiding me  
3 through the event.

4 Q. When you actually turned the tape on and  
5 you begin to ask him questions, in your opinion would  
6 it be better to ask a question and allow an  
7 individual to answer, or would it be better to  
8 provide information and have the individual say yes  
9 or no?

10 MR. GUYMON: I'm going to object, Judge.

11 THE COURT: That's not what he did. What  
12 he did is exactly what's in evidence the tape.

13 MR. SGRO: I understand.

14 Q. Would you agree that it would be better  
15 to ask an open-ended question of an individual if you  
16 are trying to not guide him or her and allow that  
17 individual to simply answer a question?

18 A. At times, yes.

19 Q. Do you recall at times during the  
20 interview with Sikia Smith where you had to finish  
21 the sentence for him?

22 MR. GUYMON: Judge, I'm going to object.  
23 The tape speaks for itself.

24 THE COURT: Sustained.

25 MR. SGRO: Your Honor, he testified that

1 he has no --

2 THE COURT: The tape speaks for itself.  
3 The jury has the tape in evidence. They can look at  
4 it. They can take it into account.

5 MR. SGRO:

6 Q. We can't look at the 24 minutes that  
7 happened before the tape; right? Right, Detective  
8 Buczek?

9 A. Right.

10 Q. Do you recall if during the 24 minutes  
11 that the conversation was happening prior to turning  
12 the tape on, whether there were occasions where you  
13 had to complete Mr. Sikia Smith's sentences?

14 A. I don't recall.

15 Q. Do you recall in the 24 minutes that's  
16 not on tape if you had to lead him through any  
17 particular subject matter?

18 A. No.

19 Q. Do you recall if Detective Thowsen had to  
20 lead him through any particular subject matter?

21 A. No, he did not.

22 Q. And just for clarity of the record, do  
23 you recall if Detective Thowsen ever had to complete  
24 Sikia Smith's sentences?

25 A. I don't believe so, no.

1           Q.     If there was an opportunity or -- strike  
2     that.  If there was a need to complete his sentences  
3     on the tape, would that be something that would have  
4     been different than what happened during the 24  
5     minutes that were not taped?

6           A.     Could you rephrase your question?  I'm a  
7     little confused.

8           Q.     Certainly.  If on the tape Sikia Smith  
9     would begin a sentence and you would complete it,  
10    would that be different than how the conversation  
11    took place on the part that's not taped?

12          A.     I don't believe that I actually completed  
13    his sentences.  I think there may have been a little  
14    over-talk between the two of us.

15          Q.     So if it would have happened on the tape,  
16    it would have been different than what happened in  
17    the part that's untaped?

18                 MR. GUYMON:  Judge, I --

19                 THE COURT:  I don't understand your  
20    question.

21                 MR. GUYMON:  Nor do I.

22                 MR. SGRO:

23          Q.     Okay, during the taped statement, if  
24    there was a situation where Sikia Smith began a  
25    statement, didn't finish it, and you completed it for



1 him, just assume that's true, would that be the same  
2 type of thing that happened in the part of the  
3 conversation that was not taped, or would it be  
4 different?

5 MR. GUYMON: Judge, I'm going to object.

6 THE COURT: He testified he did not  
7 complete the statement in the prior pre-interview.

8 MR. SGRO:

9 Q. So then would it be definitely --

10 MR. GUYMON: Judge, again I'm going to  
11 object because it is an impermissible hypothetical.

12 THE COURT: Sustained.

13 MR. SGRO:

14 Q. When you spoke to Mr. Smith on August  
15 26th, the first time you spoke to him, did he assist  
16 you in locating Red?

17 A. No.

18 Q. Okay. He described him, did he not?

19 A. Yes.

20 Q. He described a girlfriend?

21 A. Yes.

22 Q. And he told you a location of town where  
23 the girlfriend lived; is that correct?

24 A. That's correct.

25 Q. When you got to the September 8th

1 statement I believe you testified that Mr. Smith had  
2 no hesitation to cooperate; is that correct?

3 A. Again, which date?

4 Q. September 8th, 1998, did you testify  
5 before this jury that Mr. Smith had no hesitation to  
6 cooperate?

7 A. That's correct.

8 Q. Mr. Smith did essentially whatever you  
9 asked him to do; correct?

10 A. Not what I asked him to do.

11 Q. He complied with what was being told of  
12 him in terms of turning the tape recorder on and  
13 agreeing to give a statement?

14 A. Yes, that's correct.

15 Q. And you indicated that during the 24  
16 minutes that were not on tape you had told Sikia  
17 Smith that Red had been arrested and given his side  
18 of the story; is that right?

19 A. Yes.

20 Q. Okay, and the incident that we're here in  
21 court about today occurred on August 14th; is that  
22 correct?

23 A. Yes.

24 Q. The date of the statement, when you tell  
25 Sikia Smith you have spoken to Red, that's September

1 8th; correct?

2 A. I'm sorry?

3 Q. The date you spoke to Sikia Smith the  
4 second time is September 8th?

5 A. Yes.

6 Q. That's when you told him you had already  
7 spoken to Red?

8 A. That's correct.

9 Q. So some three to four weeks had gone by  
10 between the time of the homicide until the time you  
11 had spoken to Sikia?

12 A. That's fair, yes.

13 Q. You asked Mr. Smith -- I'm sorry. In the  
14 beginning of the tape you list some background  
15 information: Social security number, date of birth,  
16 black male, that sort of thing; is that correct?

17 A. That's correct.

18 Q. And you indicated on the tape that  
19 Mr. Smith's address was 1300 East Fremont; is that  
20 correct?

21 A. That's right.

22 Q. On August 26th do you remember how long  
23 the statement lasted?

24 A. No, I don't.

25 Q. Do you remember how much time went by

1 between the time you initially met Mr. Smith and the  
2 time he turned the tape recorder on?

3 A. No, I don't.

4 Q. Do you remember if the time that lapsed  
5 between turning the tape on and your initial contact  
6 with him was more or less than the tape was actually  
7 turned on?

8 A. I don't recall.

9 MR. SGRO: May I approach the clerk, your  
10 Honor? 166, may I retrieve that, your Honor?

11 Q. Showing you State's Exhibit 166, is that  
12 the diagram that you testified about earlier?

13 A. Yes, it is.

14 Q. Now if I recall correctly, the only thing  
15 that Mr. Smith put on that diagram are the stick  
16 figures?

17 A. Yes, on the diagram, yes.

18 Q. On the diagram and then obviously he  
19 signed it; is that right?

20 A. That's correct.

21 Q. Okay. So Detective Thowsen drew the box  
22 and the lines; is that right?

23 A. Yes, he did.

24 Q. Just to clear that up, Mr. Smith was not  
25 asked to break it up in terms of rooms?

1 A. No, he was not.

2 Q. Court's indulgence, your Honor.

3 Did you keep any sort of checklist of  
4 things you wanted to ask Mr. Smith on September 8th?

5 A. No, I did not.

6 Q. And the rights card, is that what, with  
7 the clerk, your Honor?

8 THE COURT: Yes, which one?

9 MR. SGRO: May I approach the witness  
10 again, your Honor?

11 THE COURT: Yes.

12 MR. SGRO:

13 Q. Now you were asked some questions by  
14 Mr. Guymon about the method by which you corroborate  
15 the fact that you gave someone rights and you said he  
16 read them out loud and then he signed this card; is  
17 that right?

18 A. Yes, that's correct.

19 Q. Okay, now Defense Exhibit B, like boy, is  
20 that a copy of the transcript of the statement of  
21 September 8th?

22 A. Yes, it is.

23 Q. Okay, and on the top of the statement on  
24 September 8th, 1998, there is a section that says  
25 what the rights are and they are listed one through

1 six; is that correct?

2 A. That's correct.

3 Q. And these existed in your office on  
4 September 8th, 1998; is that right?

5 A. The rights?

6 Q. The rights listed one through six; is  
7 that correct?

8 A. That's correct.

9 Q. And underneath the form -- and this is a  
10 form available in the Metropolitan Police Department;  
11 is that correct?

12 A. That's right.

13 Q. Part of the form that lists the rights  
14 also has underneath it a waiver; is that correct?

15 A. That's right.

16 Q. Okay, and the waiver portion essentially  
17 says okay, I understand my rights and even though I  
18 know I have all these rights, I still want to talk to  
19 you, or words along those lines?

20 A. Correct.

21 Q. The gist of it is, it's called a waiver;  
22 is that correct?

23 A. Yes.

24 Q. That waiver portion does not appear on  
25 Defense Exhibit C, the rights of persons arrested

1 card; is that correct?

2 A. That's right.

3 Q. And in fact, you never read the waiver  
4 portion to Mr. Smith, did you not?

5 A. No, I did not.

6 Q. And neither did Detective Thowsen;  
7 correct?

8 A. That's correct.

9 Q. And Mr. Smith never signed anything that  
10 had that sort of language on it, did he?

11 A. No, he did not.

12 MR. SGRO: That's all, your Honor.

13 THE COURT: Mr. Guymon.

14 REDIRECT EXAMINATION

15 BY MR. GUYMON:

16 Q. Counsel asked you about a prior hearing  
17 on this very topic about waiver of rights, and forms  
18 and the like; is that correct?

19 A. Yes, sir.

20 Q. Did that occur in front of this court on  
21 April 14, 1999?

22 A. Yes.

23 Q. These very same type questions?

24 A. Yes, it did.

25 Q. And who was present?

1 A. His Honor.

2 Q. You say His Honor, the judge?

3 A. That's correct.

4 Q. Okay.

5 A. District Attorney Gary Guymon, District  
6 Attorney Daskas, and the defense counsel and also  
7 Mr. Smith.

8 Q. And what did you understand the purpose  
9 of that hearing to be?

10 MR. SGRO: Objection, relevancy.

11 THE COURT: Sustained.

12 MR. GUYMON:

13 Q. Did we discuss the very conduct, that  
14 being the rights card and the like, in that hearing?

15 A. Yes.

16 Q. Now then, the exhibit that they referred  
17 to that had a waiver on it, let me ask you, did on  
18 September 8th of 1998, the date of the second  
19 statement by the defendant, did he understand his  
20 rights, based on your communications with him?

21 MR. SGRO: Objection to what he  
22 understood, he can't tell --

23 THE COURT: He described what Mr. Smith  
24 did at that time. Sustained.

25 ///



1 MR. GUYMON:

2 Q. And did you assess his understanding by  
3 asking him if he understood his rights?

4 A. Yes, I did.

5 Q. Did he waive his rights and speak to you?

6 A. Yes, he did.

7 Q. Now is it, pursuant to the department  
8 policy, that being the Las Vegas Metropolitan Police  
9 Department, is it necessary to have a person sign a  
10 waiver in order for them to speak to police?

11 A. No, it is not.

12 Q. Can you tell me how often -- well, how  
13 many times have you Mirandized a person in your  
14 career as a law enforcement?

15 A. Hundreds.

16 Q. And how many times have you actually had  
17 a person sign, either in the field at the street, out  
18 in the street, or in the detective bureau, an actual  
19 waiver form?

20 A. I never have.

21 Q. According to your understanding of police  
22 procedure, does it make any difference at all?

23 A. No, it does not.

24 Q. Now then, they asked if you had a  
25 checklist for the second interview. Do you recall

1 that question?

2 A. Yes, I do.

3 Q. And your answer?

4 A. No, I did not.

5 Q. Who provided the information by which you  
6 would ask questions about?

7 A. Mr. Smith did.

8 Q. And they asked you a little bit about the  
9 time of the first statement; is that correct?

10 A. That's correct.

11 Q. Do you recall your responses?

12 A. Yes, I do.

13 Q. You indicated --

14 MR. SGRO: This is leading, your Honor.  
15 It's still his witness.

16 THE COURT: It's preliminary, but quit  
17 leading, Gary.

18 MR. GUYMON: Judge, I'm sorry. If I  
19 could approach, thank you.

20 Q. Showing what you has been marked for  
21 purposes of the record only as State's Proposed  
22 Exhibit 167, is that a transcribed copy of your taped  
23 statement of the defendant on 8/26/98?

24 A. Yes, it is.

25 Q. Does it have a time on it similar to the

1 second statement that we have now heard in court?

2 A. Yes, it does.

3 Q. Does it state the time that the interview  
4 begins or the statement begins and the time that it  
5 ends?

6 A. It starts at 1734 hours and ends at 1734  
7 hours.

8 Q. Is that a mistake?

9 A. Yes, it is.

10 Q. Tell me, if you would, what time Sikia  
11 Smith signed his rights card, the first time on  
12 8/26/98?

13 A. It would have been at 1700 hours.

14 Q. Okay, how much time transpired between  
15 1700 and 1734?

16 A. 34 minutes.

17 Q. Does that assist you in any way as to how  
18 long you met with Sikia Smith on 8/26/98?

19 A. As far as the initial interview, yes, it  
20 does.

21 Q. Okay, and on the first interview of  
22 8/26/98, did you in any way suggest to him or share  
23 with him information about the quadruple homicide?

24 A. No.

25 Q. Are you sure of that?

1 A. Yes.

2 Q. Now then, the defense asked you if you  
3 had written down any notes of the interview, the  
4 second interview, before you turned on the tape, do  
5 you recall your response?

6 A. Yes.

7 Q. And what was your response?

8 A. No, I did not.

9 Q. Do you have an independent recollection  
10 of the things that Sikia Smith said to you during  
11 that interview?

12 A. Yes.

13 Q. And how is it that you have an  
14 independent recollection of that without notes?

15 A. It was such a horrific situation that  
16 occurred, it was difficult to forget.

17 Q. In your career with law enforcement, how  
18 many quadruple homicides have you investigated?

19 MR. SGRO: Relevancy.

20 THE COURT: Overruled.

21 THE WITNESS: One.

22 MR. GUYMON: Lastly, they asked you, I'm  
23 sorry. Strike that, I'll leave it alone.

24 THE COURT: Mr. Sgro.

25

2 BY MR. SGRO:

6 A. Yes.

11           A.     That would be correct.

13 THE COURT: Now you are arguing.

15 Q. How long do you think it takes you to  
16 read those rights?

19 THE COURT: Overruled.

21 Q. Less than 30 seconds?

23 Q. Less than a minute?

25 Q. Less than an hour? Can you, Detective

1 Buczek, give me an estimate?

2 A. Couple minutes.

3 Q. Couple minutes. And you were asked if  
4 the statement that you took on August 26th, 1998, the  
5 first one was 34 minutes or the interaction with  
6 Mr. Smith was 34 minutes, do you remember that?

7 A. Yes.

8 Q. Okay. Does that refresh your memory in  
9 terms of those 34 minutes you were more on tape or  
10 off tape? Do you understand what I'm saying?

11 A. No, I sure don't.

12 Q. Of the 34 minutes, does that help you to  
13 recall how many minutes the tape was versus how many  
14 minutes your untaped conversation was?

15 A. Not offhand.

16 Q. And you were asked about the waiver and  
17 whether or not you personally had ever had anyone  
18 sign off on it, is that correct?

19 A. That's correct.

20 Q. The waiver is, in fact, part of the Las  
21 Vegas Metropolitan Police Department form; correct?

22 THE COURT: Asked and answered. You  
23 asked that on cross-examination.

24 MR. SGRO:

25 Q. Is it part of the form?

1 MR. GUYMON: Asked and answered, Judge.

2 MR. SGRO: I'm setting the predicate.

3 THE COURT: He already answered he  
4 already showed it to him. You have the rights and  
5 you have the waiver underneath it.

6 MR. SGRO:

7 Q. Is the election to not read the waiver a  
8 personal decision of yours that you don't need to do  
9 it?

10 MR. GUYMON: Judge, I'm going to object.  
11 It is not mandated and I think it's unfair.

12 THE COURT: He already answered the  
13 question anyway. He said it is not policy. You  
14 asked him on cross-examination. You opened the door.

15 MR. SGRO: That's fine, your Honor.

16 THE COURT: Sustained.

17 MR. SGRO: Nothing else.

18 THE COURT: Anything further?

19 MR. GUYMON: No, Judge.

20 THE COURT: Detective Buczek you are  
21 excused. You are admonished not to discuss your  
22 testimony with anyone until we complete the case.  
23 You are free to go, thank you. Next witness.

24 MR. GUYMON: Try Dr. Green, he has two  
25 places to be at the same time. I'm not sure he's

1 off. If he's not, Sergeant Hefner.

2 MR. GUYMON: Sergeant Hefner.

3 KEN HEFNER,

4 called as a witness, and having been first duly sworn  
5 to testify to the truth, the whole truth, and nothing  
6 but the truth, was examined and testified as follows:

7 THE COURT: Be seated. Give us your full  
8 name, spell your last name, your business address and  
9 your occupation.

10 THE WITNESS: Ken Hefner, H-E-F-N-E-R.  
11 Business address is 6753 West Charleston. That's the  
12 homicide office of Las Vegas Metropolitan Police  
13 Department where I am a sergeant.

14 THE COURT: And how long have you been  
15 employed with Metro, Sergeant Hefner?

16 THE WITNESS: 19 years.

17 THE COURT: Were you employed on or about  
18 the 14th day of August 1998?

19 THE WITNESS: Yes, I was.

20 THE COURT: What were your duties at that  
21 time?

22 THE WITNESS: I was a homicide sergeant.

23 THE COURT: Mr. Daskas, Mr. Guymon.

24 MR. CHRISTIANSEN: You might want to tell  
25 the sergeant that the microphone doesn't work.



1 DIRECT EXAMINATION

2 BY MR. GUYMON:

3 Q. Sergeant Hefner, who is it that you  
4 supervise?

5 A. I supervise four detectives, Detective  
6 Thowsen, Buczek, Morgan and Marren.

7 Q. And when you say you "supervise," what is  
8 it that you actually do?

9 A. I supervise their day-to-day activities.  
10 I respond on crime scenes with them, I assist in the  
11 investigations, I monitor the progress of  
12 investigations and the quality of the investigations  
13 and the general things that a first line supervisor  
14 will do.

15 Q. You say first line supervisor, do you  
16 have a supervisor over yourself?

17 A. Yes, I do.

18 Q. Who would that be?

19 A. Lieutenant Peterson.

20 Q. Now then, as a supervisor of Detectives  
21 Thowsen and Buczek, did you respond to the location  
22 of 4825 Terra Linda on the 14th day of August, 1998?

23 A. Yes, I did.

24 Q. And what was the purpose for your being  
25 there?

1           A.     We were requested by general assignment  
2     detectives to respond to the scene of a quadruple  
3     homicide.

4           Q.     Did you prepare any notes with regards to  
5     your being there and your observations at that  
6     particular scene?

7           A.     At that particular scene, no, I didn't, I  
8     just oversaw the investigation.

9           Q.     Despite not preparing notes, do you  
10    remember that scene?

11          A.     Yes.

12          Q.     And how is it that you remember that  
13    scene without notes?

14          A.     One, it hasn't been that long since it  
15    occurred. A quadruple homicide is very rare and the  
16    dramatic nature of this crime scene and the  
17    investigation itself, it's one that stayed fresh in  
18    my memory and probably will for quite some time.

19          Q.     And in total, let me take you now days  
20    later. At the conclusion of your leaving the scene  
21    on the 14th of August, 1998, did you have any  
22    suspects named at that time?

23          A.     No.

24          Q.     Were you involved in actually identifying  
25    suspects and their arrests?

1           A.     It was an ongoing attempt as the initial  
2 investigation progress, but when we left that night I  
3 don't believe we had any relevant suspect  
4 information.

5           Q.     Did there come a point in time when you  
6 had a first suspect that you made arrests?

7           A.     Yes.

8           Q.     Who was that person?

9           A.     Donte Johnson.

10          Q.     Do you recall the date?

11          A.     That was several days later. On or about  
12 the 17th of August we received some information that  
13 started the investigation focusing toward some  
14 relevant suspects.

15          Q.     You say you started receiving  
16 information. Was that from witness statements?

17          A.     Yes.

18          Q.     Are you familiar with the names Ace Hart?

19          A.     Yes.

20          Q.     Tod Armstrong?

21          A.     Yes.

22          Q.     BJ Johnson?

23          A.     Yes.

24          Q.     Do you know if they had been interviewed  
25 by the 17th of August, 1998?

1           A.     I believe that was the day that we first  
2     had information, contact with them, and I believe  
3     were able to take statements from them and get their  
4     information.

5           Q.     And with the information that you were  
6     receiving did you make an arrest of Donte Johnson on  
7     the 17th?

8           A.     It was the early morning hours of 18th, I  
9     believe, but it was one long day.

10          Q.     Okay. You say early morning hours of the  
11     18th of August 1998. Do you recall where the arrest  
12     was effectuated at?

13          A.     Yes.

14          Q.     Where was it effectuated at?

15          A.     4815 Everman.

16          Q.     Were you involved in that arrest?

17          A.     Yes.

18                 MR. GUYMON: May I approach, Judge?

19                 THE COURT: Yes.

20                 MR. GUYMON:

21          Q.     Showing you what has been marked State's  
22     Exhibit 98, I'll ask you if you recognize it?

23          A.     Yes, I do.

24          Q.     How is it you recognize it?

25          A.     This is a photograph of the front door

1 and showing the address, the numbers of the residence  
2 at 4815 Everman. I recognize it as I was there.

3 Q. Okay, and I want you to quickly run  
4 through 99 through 112 and ask you if those also are  
5 the Everman address as it appeared on the night in  
6 question or the morning in question of the 18th of  
7 August 1998?

8 A. Yes, I recognize these as photographs  
9 taken at that scene, pursuant to a search by CSA  
10 Washington.

11 Q. You say pursuant to a search, did you  
12 have authorization to search the Everman house?

13 A. Yes, we did.

14 Q. Who did you receive authorization from?

15 A. Tod Armstrong.

16 Q. What was your understanding as to who  
17 stayed at the house?

18 A. Based on information we received,  
19 primarily --

20 MR. SGRO: Objection to what he received,  
21 your Honor.

22 THE COURT: Based on certain information.

23 THE WITNESS: Based on certain  
24 information, Tod Armstrong and Ace Hart were the ones  
25 that lived there on a full-time regular basis and had

1 access and permission to be at the house.

2 MR. GUYMON:

3 Q. With that information did you get Tod  
4 Armstrong to consent the search to house?

5 A. Yes.

6 Q. Did you, in fact, enter the house?

7 A. Yes.

8 Q. When you entered the house was Crime  
9 Scene Analyst Washington present as well?

10 A. Not initially. He responded later.

11 Q. Did you disturb the items in the Everman  
12 address in any way prior to Crime Scene Analyst  
13 Washington getting there?

14 A. Only minorly, so as I was conducting the  
15 search with the assistance of some of the other  
16 officers looking for particular items, when I would  
17 find an item of importance I would try to set it  
18 aside so when Washington showed up for the  
19 photography and the impound I could tell them those  
20 things there, we'll need these things there, and  
21 stuff. So just basically compiling things for  
22 impound.

23 Q. Are the items that are depicted in those  
24 particular photographs, 98 through 112, do they  
25 depict the --

1 MR. SGRO: Objection, leading.

2 THE COURT: It's preliminary. Overruled.

3 MR. GUYMON:

4 Q. Do they depict the Everman residence and  
5 the items that you saw there?

6 A. Yes.

7 Q. Were there particular items of  
8 evidentiary value that you wanted either photographed  
9 or impounded?

10 A. Yes.

11 Q. And what were those items?

12 A. A pair of jeans that had a blood stain on  
13 them, a VCR. We recovered several weapons and there  
14 was a gym or tote bag that had a partial roll of grey  
15 duct tape inside of it.

16 Q. Why were the jeans of importance to you?

17 MR. SGRO: Objection, relevancy.

18 THE COURT: He seized them for evidence.  
19 Overruled.

20 THE WITNESS: We received information  
21 that --

22 MR. SGRO: Your Honor, it's hearsay,  
23 objection.

24 THE COURT: Overruled.

25 THE WITNESS: -- that one of the victims'

1 blood might have been transferred to a pair of pants  
2 in that house. And then when he did find a pair of  
3 pants that had been described to me with a very fresh  
4 apparent to me blood-like substance on it, that that  
5 was something that I wanted to seize as evidence.

6 MR. GUYMON:

7 Q. Were those pants, in fact, seized?

8 A. Yes.

9 Q. Do you know if they were ultimately  
10 submitted for DNA analysis in this case?

11 A. Yes.

12 Q. And with the stipulation of counsel, I  
13 might ask, do you know what the results of the  
14 analysis of those pants were?

15 A. Yes, there was blood belonging to one of  
16 the victims in the quadruple homicide was identified  
17 as coming off of that stain on the pants.

18 MR. GUYMON: Court's indulgence, your  
19 Honor.

20 It's my understanding the parties have  
21 stipulated that Tom Wahl, a specialist with the Las  
22 Vegas Metropolitan Police Department who has  
23 specialized training in DNA, actually took the very  
24 pants that Sergeant Thowsen is speaking about now --  
25 I'm sorry, Sergeant Hefner, he analyzed the eight



1 blood drops, concluded that they were human, number  
2 one, and in fact, was the blood of Tracy Gorringer.

3 THE COURT: Mr. Sgro.

4 MR. SGRO: That's fine, your Honor.

5 MR. GUYMON: They would further stipulate  
6 that there was analysis done to the front zipper area  
7 of those pants. There was human semen found on those  
8 pants and the semen was DNA tested and the semen was  
9 found to be the semen of Donte Johnson.

10 THE COURT: Mr. Sgro.

11 MR. SGRO: Yes, your Honor.

12 THE COURT: The record will so show, due  
13 to stipulation, as to the pants and the semen.

14 MR. GUYMON:

15 Q. Were other items other than the pants  
16 seized and impounded?

17 A. Yes, along with the pants and the VCR  
18 that I mentioned and the gym and tote bag in the  
19 backyard were, we found a pager, a Motorola pager and  
20 two metal keys to a motel room that were buried in  
21 the backyard.

22 Q. Do the pager and keys appear in these  
23 particular diagrams?

24 A. Yes, they do, the items themselves, as  
25 well as the location of their discovery, are depicted

1 in photographs 108 through 112.

2 Q. And when items are impounded, can you  
3 tell the jury very briefly what the police procedure  
4 is in order to impound a piece of property?

5 A. In this situation, a homicide scene for  
6 instance, the pager and the keys when they were  
7 discovered, I said yes to the CSA, those are things  
8 we want to take, please impound them. And at my  
9 direction the crime scene analyst will take the  
10 items, physically take custody of them, impound them,  
11 put them in the vault and they are later transferred  
12 to the main evidence vault.

13 Q. Were you present when Crime Scene Analyst  
14 Washington actually seized and impounded the  
15 particular items, that being the keys and the pager?

16 A. Yes.

17 Q. And do the photographs fairly and  
18 accurately predict where they were found?

19 A. Yes.

20 Q. In the backyard?

21 A. Yes.

22 Q. Is there a succession of pictures there  
23 that kind of show the unearthing of those items, or  
24 the removal of dirt until they are found?

25 A. That's correct. They took a photo,

1 basically when he hit something and could tell what  
2 it might be and that it might be of interest and then  
3 there's photos showing them closer up, a little more  
4 unearthed, and then completely unearthed and close-up  
5 items.

6 MR. GUYMON: Your Honor, prior to having  
7 some of these witnesses come to court, counsel and I  
8 stipulated to have all of the evidence brought to  
9 court and they graciously indicated that they would  
10 stipulate to having the evidence opened up and have  
11 it marked for expeditious purposes. They will still.  
12 All of the items were sealed when they were brought  
13 to court in their intact condition and that we opened  
14 them up together.

15 MR. SGRO: That's correct.

16 THE COURT: Mr. Sgro, so we have, as to  
17 getting them from the evidence vault to here, there  
18 will be no questions as to the chain of evidence?

19 MR. GUYMON: That's correct. They will  
20 stipulate to the chain of custody. Thank you, Judge.

21 Q. Showing you what has been marked as  
22 State's Proposed Exhibit 154, which those now have  
23 been opened since being brought to court, do you  
24 recognize it?

25 A. Yes, I do.

1 Q. How is it that you recognize it?

2 A. I have had interaction with this piece of  
3 evidence and this bag, it has my signature on it on  
4 two occasions when I checked it out of the vault for  
5 some follow-up work on to.

6 Q. It has a police seal on it?

7 A. Yes.

8 Q. Whose seals are those?

9 A. Several people's seals on them, including  
10 myself, and the original impounding officer and then  
11 also one by one of our latent fingerprint examiners  
12 when he took the item out to process for  
13 fingerprinting.

14 Q. Are items commonly opened after they are  
15 impounded and put in evidence, analyzed and then  
16 resealed?

17 A. Yes.

18 Q. Such as has been done in this case?

19 A. Yes.

20 Q. Can you remove the contents and tell me  
21 what it is you are removing and if those items have  
22 been marked?

23 A. This is a plastic belt holster for a  
24 pager, what people wear on the belts and the pager  
25 slides into it.

1 THE COURT: Does it have a marking on it?

2 THE WITNESS: It has a marking on it,  
3 state's Proposed Exhibit 154A, and it also has some  
4 other initials on it that I recognize from latent  
5 print examiners and crime scene analysts. There are  
6 several envelopes that have metal keys in there that  
7 I recognize as being the keys that we recovered in  
8 the backyard.

9 THE COURT: Are there markings on it?

10 THE WITNESS: Yeah, 154D & C as in  
11 Charles, 154B as in Baker, is an envelope with a  
12 pager in it and another envelope that formerly  
13 contained a pager. It bears seals with my names and  
14 initials on it with several dates that occurred when  
15 I had this pager shipped out for examination.

16 MR. GUYMON: Move for the admission of  
17 State's Proposed 154 and its contents.

18 MR. SGRO: No objection.

19 THE COURT: 154, the evidence bag, and A,  
20 B, C and D are admitted into evidence.

21 MR. GUYMON: Thank you.

22 Q. As to 154A, the actual pager that's in  
23 front of you, you indicated that you shipped -- I'm  
24 sorry, did I get it wrong?

25 A. 154A is the holster.

1           Q.     154B, you indicated that you shipped that  
2 off. Why?

3           A.     I shipped it to a research and  
4 development facility for Motorola pagers themselves.  
5 They are the manufacturer of this pager. It was  
6 extensively damaged when it was unearthed. The local  
7 vendor could not restore the function and with their  
8 assistance and with Motorola's assistance, I shipped  
9 it off to a place where they were able to fix it and  
10 restore its function and provide us with a number,  
11 the cap code as they call it in the pager trade,  
12 which is the code for this particular pager.

13          Q.     Once you received the cap code and  
14 number, were you able to identify that particular  
15 pager as belonging to any of the victims in this  
16 case?

17          A.     Yes.

18          Q.     And whose pager is that, Sergeant?

19          A.     It belonged to victim Talamentez.

20          Q.     And counsel will stipulate, so we don't  
21 have to bring in the person from Motorola, that in  
22 fact this was the pager of Peter Talamentez, being  
23 given to him under the number, the same number that  
24 he received?

25                 MR. SGRO: Yes.

1 THE COURT: He was one of the alleged  
2 victims in this case.

3 MR. GUYMON: Yes, your Honor.

4 Q. Now, the keys that are in front of you, C  
5 and D, I believe 154, were you able to determine  
6 where those keys went to or where they are from?

7 A. Yes, they are from the Thunderbird Hotel.

8 Q. In the photographs 98 through 112 there  
9 is a picture of a video machine, is there not, a VCR?

10 A. Sir, which photos were you referring to?

11 Q. If you pick one and give us the number  
12 that shows a video machine or a VCR player?

13 A. A photo marked State's Exhibit 99.

14 Q. Was the video machine in State's Exhibit  
15 99 impounded as evidence?

16 A. Yes, it was.

17 Q. And who impounded it?

18 A. CSA Washington.

19 Q. Were you present when he impounded it?

20 A. Yes.

21 Q. Can you tell us what precautions, if any,  
22 he used in order to impound this particular VCR?

23 A. When crime scene analysts recover  
24 evidence that might have fingerprints or whatever on  
25 it, they often will handle it very carefully while

1 wearing latex gloves not to obscure any prints that  
2 might be on it.

3 Q. In this particular case did Crime Scene  
4 Analyst Washington wear gloves to impound this?

5 A. Yes.

6 Q. Were you present when he did so?

7 A. Yes.

8 Q. Showing you what has previously been  
9 marked as State's Exhibit 153, this bag once came to  
10 court in the presence of the defense counsel and I  
11 intact, unopened, with seals on it. Do you recognize  
12 it?

13 A. This is a bag that bears the initials and  
14 P number of Crime Scene Analyst Washington and  
15 includes the CSA's identifying serial number and  
16 that's the same one that I saw at the scene and  
17 directed him to impound.

18 Q. And showing you what has been marked as  
19 153A, do you recognize it?

20 A. Yes, I do.

21 Q. And how is it that you recognize it?

22 A. From my memory and from refreshing my  
23 memory before testifying and looking at the photos  
24 and including the photo that you just showed me, this  
25 VCR is somewhat distinctive, it was a little bit



1 dirty at the scene, it's missing a door that covers  
2 the adjustment buttons or setting buttons and I  
3 remember it from my observations there.

4 Q. Is it in substantially the same condition  
5 today as it was when it was in the Everman house on  
6 the 18th of August 1998?

7 A. Yes, it is except for having some  
8 fingerprint powder applied to it.

9 MR. GUYMON: Move for the admission of  
10 State's Proposed Exhibit 153 and contents.

11 MR. SGRO: No objection.

12 THE COURT: And you stipulated to the  
13 chain of custody?

14 MR. SGRO: Yes, your Honor.

15 THE COURT: 153, the bag, is admitted;  
16 153A, the VCR is admitted.

17 MR. GUYMON:

18 Q. Will you put that back in the containers  
19 for us, sir?

20 THE COURT: We're ahead of you.

21 MR. GUYMON:

22 Q. As 153 gets put away, I might ask you, do  
23 you know who it was that actually analyzed 153 for  
24 fingerprints?

25 A. I would have to refer to my reports. I'm

1 fairly sure it was Ed Mosure, who did all the  
2 processing in this particular case. I can't say  
3 right at this point for certain.

4 Q. That's all right. Showing you what has  
5 been marked as State's Proposed Exhibit 157. It was  
6 previously in a sealed condition, unopened with the  
7 evidence tape on it. It has subsequently been opened  
8 by defense counsel and I here in court. Do you  
9 recognize it?

10 A. Yes, I recognize the description on the  
11 bag and again it bears CSA Washington's initials and  
12 P number.

13 Q. Will you remove the contents and tell me  
14 what that's been marked?

15 A. This is the, I recognize this as the  
16 green and black tote bag, duffle bag that was in the  
17 living room of the house on Everman.

18 Q. Is it in substantially the same condition  
19 today as when it sat in the living room of the  
20 Everman residence on the 18th of August, 1998?

21 A. Yes, it is.

22 Q. Has it been preserved and brought to  
23 court now as evidence?

24 THE COURT: Is that what, 157A?

25 MR. GUYMON: Yes, it is.

1 THE WITNESS: Yes, sir.

2 THE COURT: 157.

3 THE WITNESS: Yes, it is in the same  
4 condition.

5 MR. GUYMON: Move for the admission of  
6 State's 157 and 157A.

7 MR. SGRO: No, objection.

8 THE COURT: Stipulate to the chain of  
9 custody?

10 MR. SGRO: Yes.

11 THE COURT: 157, and the bag and the  
12 duffle bag are admitted into evidence.

13 MR. GUYMON:

14 Q. Tell me, Sergeant, is evidence such as  
15 this commonly impounded by police personnel and  
16 brought to court as you have done today?

17 A. Yes.

18 Q. Showing you what has been marked as  
19 State's Proposed Exhibit 155, it came to court in a  
20 sealed condition, it has subsequently been opened by  
21 defense counsel and I with the stipulation of the  
22 parties. Do you recognize it?

23 A. Again, I recognize the event number, CSA  
24 Washington's P number and initials on it.

25 Q. You have removed an item. Has it been

1 marked?

2 A. Yes, it has been marked. It bears  
3 Exhibit 155A, as in Adam.

4 Q. Do you recognize 155A as in Adam?

5 A. It appears to me to be the same roll of  
6 duct tape that was inside the previously just  
7 described duffle bag recovered in the living room at  
8 4815 Everman.

9 Q. Were you present when the duct tape was  
10 removed from the bag?

11 A. Yes.

12 Q. Is it in substantially the same condition  
13 today as it was when impounded by Crime Scene Analyst  
14 Washington?

15 A. Yes, save for the effect of the  
16 fingerprint processing.

17 Q. Move for the introduce of State's  
18 Proposed Exhibit 155 and 155A?

19 THE COURT: Mr. Sgro.

20 MR. SGRO: No objection.

21 THE COURT: Stipulate to the chain of  
22 custody.

23 MR. SGRO: Yes.

24 THE COURT: 155, the evidence bag and the  
25 tape, admitted into evidence.

1 MR. GUYMON:

2 Q. Sergeant Hefner, other than the tape  
3 being, the duct tape being in the duffle bag, were  
4 there any other items in the duffle bag?

5 A. Not that I recall.

6 Q. Showing you what has been marked as -- it  
7 has not been marked?

8 THE BAILIFF: No, it hasn't been opened.

9 THE COURT: We have to mark it first.  
10 Show it to Mr. Sgro. Are you familiar with that  
11 article, Mr. Sgro and Mr. Christiansen?

12 MR. SGRO: Yes.

13 THE COURT: Stipulate to the chain of  
14 custody?

15 MR. SGRO: This never got opened, your  
16 Honor.

17 MR. GUYMON: Court's indulgence. Your  
18 Honor, I believe counsel will stipulate to the chain  
19 of custody.

20 THE COURT: All right, the record will  
21 indicate that Mr. Sgro and Mr. Christiansen will  
22 stipulate to the chain of custody.

23 MR. GUYMON: Let the record reflect that  
24 I'm opening it without disturbing the seals.

25 Q. Showing you what has been marked as

1 State's Proposed Exhibit 168, I'll ask you if you  
2 recognize it?

3 A. This package also contains the same event  
4 number, Crime Scene Analyst Washington's initials and  
5 P number and the contents that are labeled on it are  
6 items that I did direct him to impound.

7 Q. Were you present when they were  
8 impounded?

9 A. Yes.

10 Q. Will you begin to remove them, and as you  
11 do we'll quickly mark them.

12 The first item you are removing, is it  
13 sealed?

14 A. Yes, it is.

15 Q. Does it have police evidence tape on it?

16 A. Yes, it does.

17 Q. Will you open, without disturbing the  
18 seals, and carefully remove it, examine it and we'll  
19 mark it A.

20 THE COURT: 168A. What did you remove,  
21 Sergeant Hefner?

22 THE WITNESS: I removed what's commonly  
23 called a banana clip. It is a plastic magazine for a  
24 .22 caliber long rifle ammunition. I'm familiar with  
25 these type of items. They are often used on .22

1 rifle guns, particularly Rugers and other high  
2 quality rifles.

3 THE COURT: Put that bag on tag on it.

4 MR. GUYMON:

5 Q. Can you attach that tag on it?

6 A. I don't think there's anyplace to loop  
7 the wire through.

8 Q. Does that particular clip appear to be in  
9 substantially the same condition today as it was in  
10 the night in question?

11 A. Yes, it was.

12 Q. Was that removed from a gun or was it on  
13 a gun?

14 A. It was in a gun.

15 Q. Will you remove the next item?

16 THE COURT: He is replacing 168A back  
17 into the bag.

18 MR. GUYMON: Thank you, Judge.

19 THE COURT: 168B. What have you removed?

20 THE WITNESS: I have removed a .380  
21 caliber semi-automatic handgun.

22 THE COURT: Will you check it, please?

23 THE WITNESS: It has a safety flex cut  
24 through the breach action, which renders it  
25 inoperable. It is safe.

1 THE COURT: 168B.

2 MR. GUYMON: I might ask you, is that --

3 THE COURT: 168B.

4 MR. GUYMON:

5 Q. Is 168B in the same condition today as it  
6 was the night in question when it was impounded from  
7 the Terra Linda, or the Everman residence? I'm  
8 sorry.

9 A. Yes, it was.

10 Q. Can you tell us the caliber of that  
11 particular gun?

12 A. It is a .380.

13 Q. Is that gun capable of shooting .380  
14 cartridge cases?

15 A. Yes.

16 Q. Was that a semi-automatic or is it a  
17 revolver?

18 A. It is a semi-automatic.

19 Q. Can you quickly tell the jury what  
20 happens to a cartridge case when this semi-automatic  
21 is fired?

22 A. When a semi-automatic is fired the slide  
23 will slam back, based on the gas pressure. It is  
24 retarded by the spring. When it reaches the full  
25 rear position it hits an ejector port, which will



1 throw the spent casing out or up, depending on the  
2 make of the gun, and eject it, and then the spring  
3 forces the slide back forward, chambering a new live  
4 round out of the magazine.

5 Q. Sergeant, based on your experience are  
6 cartridge cases commonly impounded from crime scenes  
7 and analyzed?

8 A. Yes.

9 Q. What is the purpose to analyze a  
10 cartridge case?

11 A. Very often firearms examiners can match  
12 particular casings as being fired from a particular  
13 gun based on the unique extractor or ejecting pin  
14 marks that a weapon leaves on the safety brass, the  
15 case.

16 Q. In this case were the cartridge casings  
17 that were impounded at the Terra Linda residence  
18 analyzed in order to make a determination as to what  
19 gun fired those casings?

20 A. I believe so, yes.

21 Q. And has a gun been identified or  
22 impounded in this case that would match the cartridge  
23 cases found at the crime scene?

24 A. No, it has not.

25 Q. Based on that answer, is it safe to

1     assume that that gun then is not the deadly weapon in  
2     this case?

3             A.     That's correct.

4             Q.     Is there another item of evidence in the  
5     evidence bag? The record should reflect he has  
6     placed that item back into the evidence bag.

7                     You have removed an additional brown  
8     paper back that has police seals on it. Is it  
9     currently intact in a sealed condition?

10            A.     It is in a sealed condition. The front  
11     barrel of the gun has poked through the paper  
12     slightly in the area where I am now trying to open it  
13     up. It is not enough to extract the whole firearm,  
14     just slight point of the barrel.

15                     THE COURT: Did you clear the weapon,  
16     Sergeant Hefner?

17                     THE WITNESS: It has been rendered safe  
18     by a flex cuff through the bolt action.

19                     MR. GUYMON: We'll mark that as --

20                     THE COURT: 168C. Do you want him to  
21     place it back in the evidence bag?

22                     MR. GUYMON: Please.

23             Q.     As you do that, I might ask you to  
24     describe that particular weapon?

25             A.     It's a .22 caliber long rifle,

1 semi-automatic rifle with a folding stock.

2 Q. Does the banana clip that you previously  
3 had as 168A fit into that particular weapon?

4 A. Yes, it would fit. When they found it,  
5 it was in, it will fit in here to feed this weapon  
6 with ammunition.

7 Q. Does that weapon have a butt or a stock?

8 A. Yes, it does. It's a folding stock,  
9 folded up against the side right here. If you were  
10 to release the switch, the lever that will fold out  
11 and would stop.

12 Q. Now let me ask you -- I'm sorry. And I'd  
13 move for the admission of 168C as well, Judge.

14 MR. SGRO: No objection.

15 THE COURT: State's Exhibit 168, the  
16 large evidence bag; 168A, the magazine; 168B, the  
17 .380; and 168C, the .22 caliber will be admitted into  
18 evidence.

19 MR. GUYMON:

20 Q. Sergeant, is State's Exhibit 168C, the  
21 .22 caliber rifle, capable of firing .380 cartridge  
22 cases?

23 A. No.

24 Q. Showing you what has previously been  
25 marked as 156 and ask you if you recognize it?

1           A.     This is an evidence packet impounded by  
2 one of the crime scene analysts from the scene. It  
3 contains several .380 spent ejected casings.

4           Q.     Now, it is a biohazard so I'm not going  
5 to remove the materials, but contained within 156 is  
6 there, in fact, four .380 cartridge cases that were  
7 found at the Terra Linda residence on the night of  
8 the discovery of this crime, that being the 16th of  
9 August?

10          A.     Yes, four casings.

11                 MR. GUYMON: Move for the admission of  
12 State's Proposed 156 and contents.

13                 MR. SGRO: No objection.

14                 THE COURT: Stipulate to the chain of  
15 custody, Mr. Sgro?

16                 MR. SGRO: Yes.

17                 THE COURT: As to 168 and the contents?

18                 MR. SGRO: Yes.

19                 MR. GUYMON: 156 and contents.

20                 THE COURT: I didn't get that on the  
21 record. We already did 156.

22                 MR. GUYMON: Mistakenly counsel and I, it  
23 was in a sealed condition because it was marked with  
24 biohazard, I would ask to have it resealed.

25                 THE COURT: All right, that will be the

1 order.

2 MR. GUYMON: Pass the witness, your  
3 Honor.

4 THE COURT: Mr. Sgro.

5 CROSS EXAMINATION

6 BY MR. SGRO:

7 Q. Good afternoon, Sergeant.

8 A. Good afternoon.

9 Q. If I understand correctly, you were  
10 involved primarily in this case in the search of the  
11 residence at Everman; is that correct?

12 A. Yes.

13 Q. And you found some articles of clothing,  
14 including the pants that we spoke of earlier; is that  
15 correct?

16 A. Yes.

17 Q. And you recovered some articles of  
18 clothing that you were able to connect to Donte  
19 Johnson; is that correct?

20 A. Yes.

21 Q. And you recovered some articles of  
22 clothing that belonged to Red or Terrell Young; is  
23 that correct?

24 A. Yes, sir.

25 Q. Okay, you did not recover any items or

1 articles of clothing belonging to Sikia Smith;  
2 correct?

3 A. Right.

4 Q. And just so the record is clear, you  
5 looked at a few weapons in the last few minutes here  
6 in court; correct?

7 A. Yes.

8 Q. None of those weapons were the weapons  
9 that were able to be matched to the cartridges  
10 located at the Terra Linda residence; is that  
11 correct?

12 A. That's correct.

13 Q. And if I understand correctly, were you  
14 the individual in charge of the I.D. techs during  
15 this search at the Everman residence?

16 A. Yes, I was the only homicide detective  
17 there and they were assisting me in the documentation  
18 and recovery of evidence.

19 Q. So if you had a directive from someone or  
20 if you wanted a particular test done, you had the  
21 ability to do that?

22 A. Yes.

23 Q. And how many VCR's were recovered in this  
24 case?

25 A. My understanding, I believe only one.

1 Q. And is that the VCR you have testified  
2 about and brought with you to court?

3 A. Yes.

4 MR. SGRO: Nothing else, your Honor.

5 THE COURT: Mr. Guymon.

6 MR. GUYMON: Judge, I had one oversight,  
7 there's one additional piece of evidence.

8 THE COURT: Any objection to reopen,  
9 Mr. Sgro?

10 MR. SGRO: No.

11 MR. GUYMON: Thank you.

12 FURTHER DIRECT EXAMINATION

13 BY MR. GUYMON:

14 Q. I'm showing Sergeant Hefner what has been  
15 marked as State's Proposed 169, and I'll ask you if  
16 you can identify it?

17 A. Yes, this is a remote control to an RCA  
18 VCR. It bears the related event number and this was  
19 impounded by Detective Buczek, whose name and  
20 initials and P number, as well as his written  
21 signature I'm very familiar with and recognize.

22 Q. Were you present when Detective Buczek  
23 actually received it and impounded it?

24 A. Yes.

25 Q. Is that particular piece of evidence in a

1 sealed condition today as it presents itself in  
2 court?

3 A. Yes.

4 MR. GUYMON: I would ask that it be  
5 opened, Judge.

6 THE COURT: Do not disturb the seals  
7 sergeant, please.

8 MR. GUYMON:

9 Q. If you have personal knowledge, can you  
10 tell us who Detective Buczek received that from while  
11 you were present?

12 A. Yes, we received it from the father of  
13 one of the victims. Matt's father, his name escapes  
14 me at the moment.

15 Q. That's all right.

16 THE COURT: What did you remove from the  
17 bag, Sergeant Hefner?

18 THE WITNESS: I removed an RCA brand  
19 remote control for a VCR.

20 THE COURT: 169A.

21 MR. GUYMON: Move for the admission of  
22 169 and 169A.

23 THE COURT: Any objection?

24 MR. SGRO: No, your Honor.

25 THE COURT: You'll stipulate to the chain



1 of custody?

2 MR. SGRO: Yes, your Honor.

3 THE COURT: 169, the evidence bag; 169A,  
4 the remote, are admitted into evidence.

5 MR. GUYMON: Nothing else, your Honor.

6 THE COURT: Any further questions.

7 RECROSS EXAMINATION

8 BY MR. SGRO:

9 Q. Just the remote was not as a result of  
10 any search that you executed at Everman; is that  
11 correct?

12 A. Correct.

13 MR. SGRO: That's all, your Honor.

14 THE COURT: Sergeant Hefner, you are  
15 excused. You are admonished not to discuss your  
16 testimony with anyone until we complete the case.  
17 You are free to go.

18 Who do you have out there?

19 MR. DASKAS: Dave Mowen as the next  
20 witness, a very quick one.

21 THE COURT: Let's call him. Dave Mowen  
22 was in the courtroom; is that correct?

23 MR. DASKAS: That's correct, Judge.

24 THE COURT: Do you have any objection  
25 that he testify in this case, Mr. Sgro?

1 MR. SGRO: Your Honor, we talked about  
2 this earlier.

3 THE COURT: We did. I want to be sure it  
4 is back on the record. We did talk about it.

5 MR. SGRO: As an accommodation to family  
6 or friends, we had no opposition to them remaining in  
7 the courtroom and so we have no opposition to this  
8 testimony.

9 THE COURT: Thank you. Raise your right  
10 hand, sir.

11 DAVID MOWEN,  
12 called as a witness, and having been first duly sworn  
13 to testify to the truth, the whole truth, and nothing  
14 but the truth, was examined and testified as follows:

15  
16 THE COURT: Be seated, give us your full  
17 name, spell your last name, your business address and  
18 your occupation.

19 THE WITNESS: David Mowen, M-O-W-E-N.  
20 Business address is 3222 West Desert Inn Road, Las  
21 Vegas, 89102. I am in sales.

22 THE COURT: How long have you lived in  
23 Clark County, Mr. Mowen?

24 THE WITNESS: Eight years.

25 THE COURT: Mr. Daskas.

1 MR. DASKAS: Thank you, Judge.

2 DIRECT EXAMINATION

3 BY MR. DASKAS:

4 Q. Mr. Mowen, you are the father of Matthew  
5 Mowen, one of the victims in this case; is that  
6 correct?

7 A. Yes.

8 Q. Can you tell me, Mr. Mowen, when it was  
9 that your son lived with you in 1998 and when he  
10 ultimately moved out of your home?

11 A. Matt moved out to grow up on his own on  
12 his birthday, February 10th of last year. He was 19.

13 Q. When he moved out of your home did he  
14 move into the Terra Linda house?

15 A. He moved in with a friend into an  
16 apartment.

17 Q. And do you know how long Matt lived in  
18 the apartment?

19 A. Approximately three months.

20 Q. I guess that brings us to around May of  
21 1998. Then did he move into a different residence?

22 A. From there he had moved down to the Terra  
23 Linda address with one of those friends from the  
24 apartment.

25 Q. And what's the name of the friend that he

1 moved in with to the Terra Linda residence?

2 A. Nick Gorringer.

3 Q. While Matt lived in your home did he have  
4 an entertainment center and a VCR?

5 A. Yes, he did.

6 Q. Can you describe the entertainment center  
7 for the jury?

8 A. The entertainment center that he had was  
9 in his bedroom next to his bed. It contained a  
10 television, a VCR and some games for like a Game Boy  
11 and different things like that, black lacquer in  
12 color. We had put it together for Christmas  
13 together.

14 Q. And I believe you also mentioned a VCR, a  
15 video cassette recorder?

16 A. The VCR was a unit that his mother and I  
17 had purchased when we lived back in Iowa, in, I  
18 believe it was 1986, just after moving into a new  
19 home back there, yes.

20 Q. Did Matt, in fact, have that  
21 entertainment center and VCR in his bedroom when he  
22 lived in your home?

23 A. He would have had the VCR approximately  
24 about, I would say 15 to 18 months in his bedroom in  
25 our home, yes.

1 Q. When Matt moved out of your home on his  
2 birthday in 1998, did he take that entertainment  
3 center and the VCR with him?

4 A. Yes, he did.

5 Q. Did he also take those items with him  
6 when he moved into the Terra Linda residence some  
7 three months later?

8 A. Yes.

9 Q. Have you visited your son at the Terra  
10 Linda residence once he moved in?

11 A. Yes, I had.

12 Q. And did you, in fact, see that black  
13 lacquer entertainment center along with the VCR  
14 inside the Terra Linda residence?

15 A. Yes, I did.

16 Q. Let me show you what's been marked and  
17 what defense counsel has seen as State's Exhibit 55  
18 and ask you if you recognize what's depicted in that  
19 photograph, sir?

20 A. My son's entertainment center, the VCR,  
21 and most of things were there, his tapes and things  
22 like that.

23 Q. Is that the entertainment center as it  
24 appeared in the Terra Linda residence when Matt moved  
25 into the residence?

1           A.     That same black one, yes.

2           Q.     Do you recall whether you had any remote  
3 control for that VCR when you and your wife purchased  
4 the VCR?

5           A.     Yes, when we purchased the VCR back in  
6 '86 we had also purchased a same model of a 25 inch  
7 color console and at the time the remote from the  
8 television worked both of them so we never used the  
9 VCR, or the remote that came with it, we had just  
10 kept it with the rest of our entertainment things,  
11 should we ever need it down the road, for whatever  
12 reason.

13          Q.     When Matt moved out of your residence and  
14 took the VCR, did he also take the remote control  
15 with him to the VCR?

16          A.     No, he did not.

17          Q.     At some point after you learned of Matt's  
18 death did somebody contact you and ask you to locate  
19 some ownership items for that video cassette  
20 recorder?

21          A.     Yes, I was contacted and asked that.

22          Q.     Did you make an effort to locate  
23 something to indicate that in fact the VCR located in  
24 the Everman house was yours or your son's VCR?

25          A.     I went through every inch of my house.

1           Q.     And tell me what, if anything, you found  
2 when you were looking for some ownership item for  
3 that VCR?

4           A.     The remote for it. It was brand new,  
5 didn't have any scratches, never used with the rest  
6 of our stereo equipment.

7           Q.     Did you at some point take the remote  
8 control to the evidence vault of the Las Vegas  
9 Metropolitan Police Department?

10          A.     Yes, I did.

11          Q.     And did you provide that remote control  
12 to detective James Buczek?

13          A.     Yes, I did.

14          Q.     Mr. Mowen, let me show you what's been --  
15 Thank you, Judge, marked and admitted, as State's  
16 Exhibit 169A and I'll ask you if you recognize that  
17 exhibit?

18          A.     May I pick it up?

19          Q.     Absolutely.

20          A.     Yes, I do.

21          Q.     What is that?

22          A.     It's the remote control for the VCR that  
23 we had purchased and that Matt had in his bedroom and  
24 there on Terra Linda.

25          Q.     It's the very same remote that you

1 brought to Detective Buczek of the Metropolitan  
2 Police Department?

3 A. Yes, it is.

4 Q. Are there batteries inside that remote  
5 control?

6 A. Yes, there are.

7 Q. With the court's permission, Judge, I'm  
8 going to ask to plug in the VCR that's been marked  
9 and admitted, the same VCR that was recovered from  
10 the Everman residence and ask Mr. Mowen if he can  
11 operate the remote control to determine if it, in  
12 fact, turns on that VCR.

13 Mr. Mowen, if you take the remote and  
14 point it at the VCR, perhaps the power button and  
15 tell me what, if anything, happens to the VCR?

16 A. Right now it is plugged in and there are  
17 some lights on the front of it, LED lights on there  
18 and the stop button is highlighted now in red or  
19 amber color.

20 Q. Tell me, did you push --

21 A. After pressing the power button, the  
22 lights back behind the LED area that was showing like  
23 an O2 there, have now lines going across there and  
24 the power to the light that was on there on the stop  
25 button is now off, showing to me that it's plugged in



1 and not on.

2 Q. You can return to your seat.

3 Judge, I would ask the record to reflect  
4 the power button and the remote control turned off  
5 the power to the remote control.

6 THE COURT: The record will so show.

7 MR. DASKAS: Thank you, Judge.

8 Q. Let me ask you one other question,  
9 Mr. Mowen. I showed you previously what was marked  
10 and admitted as State's Exhibit 5A and asked you if  
11 you recognized it. You identified that as your son's  
12 entertainment center and I believe you mentioned that  
13 you saw a VCR in that picture. Let me ask you the  
14 question, do you, in fact, see a VCR pictured in  
15 State's Exhibit 55?

16 A. Not his.

17 Q. Okay. Let me ask you one final question.  
18 The VCR that you walked down and operated with the  
19 remote and is State's Exhibit 53A, do you recognize  
20 that VCR?

21 A. May I look at it again?

22 Q. Absolutely.

23 A. May I touch it?

24 Q. With the Court's permission?

25 THE COURT: Yes.

1 THE WITNESS: It was Matt's.

2 MR. DASKAS:

3 Q. Is there something unique or distinctive  
4 about the VCR that you recognize as having belonged  
5 to your son Matt?

6 A. Two things, he always had a lot of games  
7 over the years and when he was young when we first  
8 got it I would do the interchange of the different  
9 cables behind there, so I kind of recognize that,  
10 remember that, and what was unique about this was the  
11 door was broken off the front of it where all the  
12 controls were off the front and that was broken off,  
13 I'm going to say three years ago.

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

16 THE COURT: Mr. Christiansen, Mr. Sgro?

17 MR. SGRO: No questions, your Honor.

18 THE COURT: Mr. Mowen, you are excused.  
19 Thank you very much. You are admonished not to  
20 discuss your testimony. Do you have another witness?

21 MR. GUYMON: Dr. Green.

22 THE COURT: How long is that going to  
23 take? Do we need to take a recess, ladies and  
24 gentlemen? It may be about 40 minutes. Let's take a  
25 short recess.

1 I want to admonish you that you must not  
2 discuss this case amongst yourselves or with any  
3 other person, or read, watch, or listen to any news  
4 communicate about this trial, whether it be  
5 television, radio, or newspaper, or form any opinion  
6 as to what the final result will be until the entire  
7 matter is submitted to you for your deliberation in  
8 the jury room.

9 We'll be in recess about ten minutes.

10 (Recess taken.)

11 THE COURT: This is the time set for  
12 further proceedings in State of Nevada versus Sikia  
13 Smith. The record will indicate the presence of the  
14 same parties that were in court at the time we  
15 recessed.

16 Mr. Guymon, Mr. Sgro, what are we doing?

17 MR. SGRO: Judge, we have been attempting  
18 to expedite matters by stipulating to certain things  
19 to save witnesses from coming. We served Richard  
20 Good, an expert in firearms, and Mr. Guymon and I  
21 worked out a stipulation where we are essentially  
22 going to lift about four or five relevant paragraphs  
23 from his report. I'll just read them into evidence  
24 and I think that's pretty much the sum and substance  
25 of the stipulations, but it will save a lot of time

1 in terms of qualifying him as an expert.

2 THE COURT: Do we want to redo parts of  
3 his report that's going to be admitted into evidence  
4 and mark it as an exhibit, or do we want to read it  
5 in?

6 MR. GUYMON: I'll prepare a paragraph  
7 just like you indicated. We'll have the Judge tell  
8 them that Richard Good examined the firearms, he  
9 examined the casings, and we can show them the two  
10 and he has concluded none of the guns impounded in  
11 this case fired the cartridge casings.

12 THE COURT: That's in evidence before  
13 from Sergeant Hefner.

14 MR. GUYMON: I understand, but for some  
15 reason he wanted Richard Good.

16 THE COURT: Prepare one paragraph stating  
17 that so we can admit into evidence.

18 MR. GUYMON: Two other things. There  
19 will be a stipulation to this exhibit, this will be  
20 the next in order.

21 THE CLERK: 170.

22 MR. GUYMON: The parties will stipulate  
23 that 170 is a map showing the two addresses in  
24 question: 4825 Terra Linda and Everman. We moved to  
25 have it admitted at this point in time and tell the

1 jury.

2 Lastly, Judge, one of the other parties  
3 will stipulate that Sherri Norman attended the  
4 autopsies and impounded the evidence, that we went  
5 through all of the personal effects, the clothing of  
6 the decedents there at the autopsy, and no paper  
7 currency was found on any of the persons, including  
8 the young man that had a wallet attached to his body.

9 MR. SGRO: She already testified to that.

10 MR. GUYMON: Sherri Norman hasn't  
11 testified.

12 THE COURT: Are we going to call her  
13 tomorrow?

14 MR. SGRO: We'll stipulate to that,  
15 Judge.

16 THE COURT: When the State is resting  
17 their case in chief we'll put these on. Before you  
18 rest, we'll admit 170 and then you begin your case in  
19 chief. We'll first have Detective Good, or  
20 Specialist Good's testimony read into the record and  
21 then we'll have the other witness, no paper money  
22 found.

23 MR. GUYMON: That will be us. We'll do  
24 that before we rest today.

25 MR. SGRO: Just for the record there's

1 two matters that need to be put on the record. The  
2 court indicated we'll take them up tomorrow morning  
3 and I wasn't waiving anything by raising them now,  
4 we're just trying --

5 THE COURT: What are you going to raise?

6 MR. SGRO: Your Honor, I have to make two  
7 motions for a mistrial, based on the following  
8 grounds: The first is Mr. Guymon's questioning of  
9 Detective Buczek relative to a prior hearing that  
10 took place. My questioning of him was just insofar  
11 as prior testimony was concerned, Mr. Guymon  
12 attempted to have you stamp an approval of the  
13 court --

14 THE COURT: I sustained your objection  
15 before anything came in.

16 MR. SGRO: My recollection, your Honor,  
17 is a couple questions were asked, I began to object,  
18 Mr. Guymon continued to ask questions. So based on  
19 that the inference that he was making that the court  
20 had put the stamp of approval on the statement and  
21 how it came into evidence, I thought was improper.

22 THE COURT: I disagree with you. I think  
23 your objection was proper and timely and I sustained  
24 your objection and I don't think there's any  
25 prejudicial statements that came in through

1 Mr. Guymon. What's the other one?

2 MR. SGRO: The other one where I  
3 attempted to get back into the waiver issue that  
4 Mr. Guymon explored on redirect examination, the  
5 court had cut me off and indicated that I had  
6 previously asked the question that had been answered.  
7 I was opening it up again on recross and as a result  
8 of the court cutting me off, I certainly am not going  
9 to engage in an argument with the court at any time;  
10 however, as a result of that I basically abandoned  
11 the recross.

12 THE COURT: I think you were wise and I  
13 don't think I would cut you off. I think those  
14 matters were covered on direct, redirect and cross.  
15 So your motion for a mistrial on both matters are  
16 denied. Are you ready?

17 MR. GUYMON: Yes, your Honor.

18 THE COURT: Bring in the jury.

19 (The jury entered the courtroom.)

20 THE COURT: This is continuation of the  
21 matter State of Nevada versus Sikia Smith, case  
22 C153624. The record will indicate the presence of  
23 the same parties that were in court at the time we  
24 recessed. Will counsel stipulate to the presence of  
25 the jury and the four alternates?

1 MR. SGRO: Yes, your Honor.

2 MR. GUYMON: Yes, your Honor.

3 THE COURT: We have a stipulation  
4 regarding State's Proposed Exhibit 170, Mr. Guymon?

5 MR. GUYMON: Right here, Judge.

6 THE COURT: It's a map that the State is  
7 offering into evidence which contains the two  
8 addresses as listed and you heard about during the  
9 course of this trial, Terra Linda, and Everman. It  
10 will be admitted into evidence by way of stipulation.  
11 Mr. Sgro.

12 MR. SGRO: Yes, your Honor.

13 THE COURT: That's the order.

14 THE COURT: All right, now call your next  
15 witness. Dr. Green.

16 MR. GUYMON: Dr. Green.

17 THE COURT: Remain standing, raise your  
18 right hand and be sworn by the clerk.

19 GILES SHELDON GREEN,

20 called as a witness, and having been first duly sworn  
21 to testify to the truth, the whole truth, and nothing  
22 but the truth, was examined and testified as follows:

23 THE COURT: Be seated. Give us your full  
24 name, spell your last name, your business address,  
25 and your occupation.



1           You won't need that, Doctor, you have  
2   been here before.

3           THE WITNESS: My name is Giles Sheldon  
4   Green, G-R-E-E-N. Our business address, which is the  
5   Clark County Coroner Medical Examiner Department, is  
6   1704 Pinto Lane, here in Las Vegas, and I am a  
7   physician. My specialty is forensic pathology.

8           THE COURT: And briefly what is your  
9   background, education and experience, Doctor?

10          THE WITNESS: I received my degree of  
11   doctor of medicine from the University of Oregon  
12   School of Medicine in 1959. I served one year of  
13   internship at St. Mary's Hospital in San Francisco  
14   and then one year of postgraduate training or  
15   residency training in the field of obstetrics and  
16   gynecology, also at St. Mary's.

17          The end of that year I changed my field  
18   of interest to pathology and spent the following two  
19   years in residency training in pathology at St.  
20   Joseph's Hospital, also in San Francisco. Following  
21   that I moved to Houston, Texas and spent the  
22   following three years in postgraduate training in  
23   pathology at the University of Texas, M.D. Anderson  
24   Hospital and Tumor Institute.

25          Following that I was appointed to the

1 staff of Anderson Hospital as assistant pathology and  
2 assistant professor of pathology in the University of  
3 Texas system. I remained there on the staff for  
4 approximately two years and in the fall of 1968 I  
5 joined the Harris County Medical Examiner's  
6 Department, which also is in Houston. I remained on  
7 that department for approximately seven years, first  
8 as assistant medical examiner and then as deputy  
9 chief medical examiner.

10 Finally in 1975 I moved here to Las Vegas  
11 to join the coroner medical examiner department and I  
12 have been here ever since.

13 I am certified by the American Board of  
14 Pathology in the fields of anatomic pathology,  
15 clinical pathology and forensic pathology. I am  
16 licensed to practice medicine here in Nevada, of  
17 course, and I still have an active license over in  
18 California.

19 Without boring you with a list, I am a  
20 member of the major professional organizations in  
21 North American which deal with the problems of  
22 forensic pathology and the forensic sciences  
23 generally.

24 THE COURT: Have you testified in the  
25 courts of the State of Nevada in the field of

1 pathology, Dr. Green?

2 THE WITNESS: Many times, sir.

3 THE COURT: And any questions of  
4 Mr. Green, Mr. Christiansen?

5 MR. CHRISTIANSEN: No, your Honor.

6 THE COURT: He's qualified.

7 MR. GUYMON: We would offer him as an  
8 expert.

9 THE COURT: He's qualified.

10 DIRECT EXAMINATION

11 BY MR. GUYMON:

12 Q. Dr. Green, are you familiar with  
13 Dr. Buckland?

14 A. Yes, I am.

15 Q. How are you familiar with Dr. Buckland?

16 A. Dr. Buckland is a very old friend who I  
17 have known for very many years. He worked in the  
18 same office in Houston as I did, although we were  
19 there at different times, and he worked for, or with  
20 us for a number of years here in Las Vegas.

21 Q. You say he worked with us there at the  
22 Clark County Medical Examiner's office?

23 A. Yes.

24 Q. How many years at the Clark County  
25 Medical Examiner's office?

1 A. I think it was about five years.

2 Q. And has Dr. Buckland previously testified  
3 as an expert in the Eighth Judicial District in the  
4 State of Nevada?

5 A. Yes, I know that he has.

6 Q. And can you tell me if he has similar  
7 qualifications as you, Doctor?

8 A. Probably even better.

9 Q. Tell me just what is forensic pathology?

10 A. A forensic pathologist is a physician who  
11 specializes in the medical part of the investigation  
12 of sudden unexpected or violent death. You start out  
13 in the general pathology, the kind of work that is  
14 done by hospital pathologists, and then branch out or  
15 specialize or maybe you should say sub-specialize in  
16 this field of, it is called forensic pathology.

17 Q. Are both you and Dr. Buckland forensic  
18 pathologists?

19 A. Both of us are certified by the American  
20 Board of Pathology, yes.

21 Q. Can you tell me, Doctor, approximately  
22 how many autopsies have you performed in your career?

23 A. Me? Probably right around 11,000.

24 Q. Can you estimate for me how many  
25 Dr. Buckland has performed in his career?

1           A.     Probably a lot more than that. I know  
2     that he did his first one in 1945.

3           Q.     Does he continue to work in the field of  
4     forensic pathology, even today?

5           A.     He is doing some consultation work. He's  
6     basically retired.

7           Q.     How long ago was it that he left the  
8     Clark County Medical Examiner's office?

9           A.     The end of last year.

10          Q.     Okay. Now, in this particular case was  
11     Dr. Buckland the doctor that actually performed the  
12     autopsies?

13          A.     Yes, he was.

14          Q.     Can you tell me what Dr. Buckland's  
15     procedures is when he performs an autopsy with  
16     regards to making a report?

17          A.     He basically follows the same pattern of  
18     activity I think that all of us do. Of course we all  
19     have our minor variations, but the basic pattern is  
20     the same. We look at the information that's  
21     available on any given case, we have reports filed by  
22     our field investigations which give us the basic  
23     run-down on what happened, who the person is, where  
24     the body was located, under what circumstances it was  
25     found, and as much as may be known at that time about

1 what happened.

2 In cases where there is police  
3 investigation, we often have investigating officers  
4 with us in the morgue and they can often fill in a  
5 lot more information than was available at the time  
6 of the initial discovery of the body. Sometimes  
7 there's not much more information available,  
8 sometimes there's a great deal.

9 So we try to find out as much as we can  
10 about the problem we're looking at. Then the body is  
11 examined externally. We use hand held dictating  
12 equipment so we can walk around the table and see it  
13 from every viewpoint and dictate as we go, describing  
14 the body, describing anything that's out of the  
15 ordinary, any evidence of injury, a scar, a tatoo,  
16 whatever may be there.

17 Finally the body is opened and we look at  
18 all of the organs of the chest and the abdomen,  
19 together in their normal relationships. Again we're  
20 looking for anything out of the ordinary, any  
21 accumulation of fluid where it doesn't belong,  
22 evidence of injury or disease, and finally each of  
23 the vital organs is removed, weighed, measured and  
24 described individually. If there are injuries, they  
25 are described individually.

1           By the time we get through with all of  
2 this, hopefully we have a pretty good idea what has  
3 happened to this person. We may go on to do  
4 additional studies, we may not. We have lots of  
5 options we can follow. Then we do microscopic  
6 studies on some of the tissues, in the case of  
7 mechanical injuries such as motor vehicle accidents,  
8 gunshots and so on, we usually don't do that. We may  
9 and often do ask for toxilologic studies. We want to  
10 know was there any alcohol in this person's system  
11 that might perhaps have played some role in the event  
12 that killed him; were there drugs, either legitimate  
13 or street drugs, and did they have anything to do  
14 with this death. So we do a lot of different things  
15 to try and arrive at a good answer.

16           Q.     And Doctor, have you been present or  
17 assisted Dr. Buckland on occasion when he performs  
18 autopsies and prepares reports?

19           A.     I certainly have been present. I don't  
20 recall actually assisting him. I mean I certainly  
21 may have, nothing wrong with it.

22           Q.     Doctor, I might ask you in this  
23 particular case did Dr. Buckland prepare autopsy  
24 reports that you have reviewed?

25           A.     Yes.

1           Q.     Are his autopsy reports commonly kept as  
2     a business record there at the Clark County medical  
3     examiner's office?

4           A.     Yes, they are.

5           Q.     In order to be reviewed either by himself  
6     or by other doctors such as yourself?

7           A.     Correct.

8           Q.     Are you, having reviewed both photographs  
9     and his autopsy reports, are you able to testify to  
10    the cause and manner of deaths in the four decedents  
11    in this case?

12          A.     Yes. I don't have any problem there.

13          Q.     Doctor, which autopsy would you like to  
14    start with?

15          A.     You name it.

16          Q.     All right. In order, I believe Peter  
17    Talamentez was the first, am I correct Judge --

18          A.     I'm sorry?

19          Q.     Peter Talamentez was the first autopsy  
20    performed, am I correct, according to the notes?

21          A.     It may have been. Let me check the times  
22    and dates here. That's on the afternoon of the 15th.

23          Q.     You are right. How about Jeffrey Biddle?

24          A.     Okay, that was noon on the 15th.

25          Q.     All right. Noon on the 15th, from your



1 review of Dr. Buckland's notes, an autopsy was  
2 performed; is that correct?

3 A. Yes.

4 Q. And can you identify the first decedent?

5 A. The first one we're talking about, his  
6 name was reported to us as Jeffrey Charles Biddle,  
7 B-I-D-D-L-E.

8 Q. And from your review of Dr. Buckland's  
9 reports are you able to give us the approximate age  
10 of Jeffrey Biddle?

11 A. Dr. Buckland stated he was a young adult  
12 male and the age that was given by our investigator  
13 was 19.

14 Q. Can you give us an approximate height and  
15 weight?

16 A. Forgive me for having to look at all of  
17 this, I didn't have a chance to memorize it.

18 Q. I understand.

19 A. Five feet eight inches, 173 pounds.

20 Q. And showing you what has previously been  
21 marked, was an external examination done by  
22 Dr. Buckland and reported in the autopsy report?

23 A. Yes.

24 Q. Was there anything significant in the  
25 findings of the external examination?

1           A.     He records two things that are probably  
2 important, obviously important. One was that the  
3 ankles were bound with silver colored duct tape and  
4 the wrists were bound, I believe behind the back,  
5 with a similar form of tape, and subsequently he  
6 finds that there is a bullet hole in the back of the  
7 head.

8           Q.     Doctor, showing you what has been marked  
9 as State's Proposed Exhibits 135 through 139, 142,  
10 145, and 144, let me ask you if those photographs  
11 purport what is reflected in the autopsy report  
12 prepared by Dr. Buckland?

13          A.     Let me take a quick look through here.  
14 It appears to me that they do. I do not think I  
15 would care to comment on Exhibit 136, which shows  
16 clothing laid out on a sheet on the floor. There is  
17 only a brief mention of the clothing in the report.

18          Q.     With the exception of 136 then, do those  
19 photographs fairly and accurately depict what  
20 Dr. Buckland noted in his autopsy report?

21          A.     I think they do, yes. We have several  
22 showing the duct tape, I believe that he commented on  
23 the markings left by the duct tape on the wrists at  
24 least, as is shown in 142 and the back of the  
25 victim's head is shown in 145. There's a ruler going

1 across the upper part of the picture, the bullet hole  
2 is there, somewhat obscured by the victim's hair, and  
3 in 144, the second photograph of the same area,  
4 except now the area of the bullet wound has been  
5 shaved, so you can see it and the ruler is --

6 MR. CHRISTIANSEN: Doctor, I'm going to  
7 object, if I can voir dire him, I don't think he  
8 needs the pictures to testify as to what the autopsy,  
9 the procedure found. If I ask him a few questions,  
10 I'm pretty sure I can establish that. I don't know  
11 that there's --

12 THE COURT: It's a problem to me,  
13 Mr. Guymon, because he was not present and all he can  
14 testify to is from the notes left in the reports made  
15 by Dr. Buckland.

16 MR. GUYMON: If we can approach then,  
17 Judge.

18 THE COURT: Sure.

19 (Conference at the bench.)

20 MR. GUYMON:

21 Q. Doctor, let me ask you a question, do the  
22 pictures assist you in describing to the jury the  
23 findings of Dr. Buckland?

24 A. I would think they might be helpful to  
25 the members of the jury. I can describe things with

1 or without, but if it would be helpful to them, that  
2 might be another story.

3 Q. Do the pictures show, for instance, the  
4 stippling that Dr. Buckland refers to in his reports?

5 A. In this particular once I have this in  
6 front of me. I don't see any stipulating, I think it  
7 was only one of the four.

8 Q. Do photographs commonly show stippling,  
9 if in fact, the doctor that's doing it is also seeing  
10 stippling?

11 A. Yes.

12 Q. Would the photographs in this particular  
13 autopsy show the charring of the border that were  
14 found by Dr. Buckland?

15 A. There's a slight blackening of the wound  
16 edges. There is a heat transfer as the bullet goes  
17 through the skin.

18 Q. Let me ask you, Doctor, will the  
19 photographs also show the diameter or demonstrate the  
20 diameter that was seen and reflected by Dr. Buckland?

21 A. In this particular photograph where you  
22 have a ruler right close to it, then you can look at  
23 the ruler and you can look at the hole and get a  
24 pretty good idea of exactly how big it is.

25 Q. Do the photographs assist you then in

1 demonstrating both what Dr. Buckland saw and noted on  
2 the date in question?

3 A. I think they might be helpful. Again,  
4 let me emphasize they are not necessarily to me, but  
5 the ladies and gentlemen of the jury, I'm sure most  
6 of them have never even seen a bullet hole.

7 MR. GUYMON: Judge, I would submit it on  
8 that.

9 MR. CHRISTIANSEN: Can I voir dire him  
10 real quick?

11 VOIR DIRE EXAMINATION

12 BY MR. CHRISTIANSEN:

13 Q. Dr. Buckland -- or Dr. Green, you are  
14 certainly as qualified as Dr. Buckland; correct?

15 A. Yes.

16 Q. And if Dr. Buckland wouldn't have needed  
17 those pictures to demonstrate the things Mr. Guymon  
18 has questioned you about to a grand jury, there's no  
19 reason you would need them today, is there?

20 MR. GUYMON: The standard in front of a  
21 grand jury is completely different than the  
22 standard --

23 THE COURT: Sustained.

24 MR. CHRISTIANSEN:

25 Q. Dr. Green, you have testified in cases

1 where I have been the defense attorney before; is  
2 that accurate?

3 A. That's true.

4 MR. GUYMON: I'm going to object as to  
5 relevance.

6 THE COURT: Sustained.

7 MR. CHRISTIANSEN:

8 Q. Dr. Green, haven't you, in fact on more  
9 than one occasion, testified about an autopsy that  
10 you performed without showing or using or relying  
11 upon pictures?

12 MR. GUYMON: I'm going to object as to  
13 relevancy.

14 THE COURT: He can answer that.

15 THE WITNESS: I suppose I have. We have  
16 -- usually you do use them, but I'm sure it's  
17 happened.

18 MR. CHRISTIANSEN:

19 Q. In the Wegner case you didn't need them;  
20 is that correct?

21 A. In what?

22 Q. The Wegner case you didn't need them?

23 A. I don't know. What was the Wegner case?

24 Q. The child homicide that I did?

25 MR. GUYMON: Judge, I'm going to

1 object --

2 THE COURT: Sustained.

3 MR. GUYMON: -- as to what was needed in  
4 that case.

5 MR. CHRISTIANSEN:

6 Q. You showed up here today anticipating  
7 that you were going to testify about autopsies you  
8 did not perform; is that correct?

9 A. That's correct.

10 Q. And you showed up today ready to testify  
11 without ever looking at those pictures; is that  
12 accurate?

13 A. I had seen them.

14 Q. You had seen them before today?

15 A. Not before today, today only.

16 Q. Okay, so you showed up here ready to come  
17 in and tell these people on the jury without those  
18 pictures what Dr. Buckland had done in his autopsies?

19 A. They illustrate what he found.

20 Q. Is that a yes? You showed up today  
21 without those pictures ready to explain to the people  
22 in the jury what the autopsies or what conduct  
23 Dr. Buckland had taken during the autopsies?

24 A. I can do that.

25 Q. So you were prepared to do that today,

1 absent those pictures?

2 MR. GUYMON: Judge, I'm going to object.  
3 That's not the standard, Judge.

4 THE COURT: Sustained.

5 MR. CHRISTIANSEN:

6 Q. You certainly don't need every photo you  
7 have in front of you to demonstrate to the jury what  
8 a bullet hole looks like; is that correct?

9 A. Well, there are some that don't show the  
10 bullet holes, they show other things.

11 Q. You certainly can, for purposes of  
12 demonstrating a bullet hole, tailor down the pictures  
13 that you have in front of you for that particular  
14 autopsy to maybe one picture to adequately  
15 demonstrate what a bullet hole looks like?

16 MR. GUYMON: Judge, that again is not the  
17 standard. I will tell the court and counsel, as I  
18 have, that I will limit the photographs to as few as  
19 possible, but I renew my request that he be able  
20 to --

21 THE COURT: He's not finished on voir  
22 dire.

23 MR. CHRISTIANSEN: Do you recall the  
24 question?

25 THE COURT: You don't need all the



1 photos, do you, Dr. Green?

2 THE WITNESS: Probably not.

3 MR. CHRISTIANSEN:

4 Q. You believed you would probably find the  
5 one close-up of each of the bullet holes with the  
6 ruler on it and use that and that would be adequate?

7 A. If we have the ruler in the ones that I  
8 would like to use, for example, here we've got this  
9 one with the hair shaved out so we can see the hole  
10 clearly, and we have the ruler that makes it easy.

11 Q. That would be sufficient for you to  
12 demonstrate and assist this jury?

13 A. In terms of the bullet hole, yes. It's  
14 not going to help us for the duct tape.

15 MR. CHRISTIANSEN: Judge, I renew my  
16 objection as to all of the particular pictures. If  
17 the court is inclined to allow some of the pictures,  
18 I would ask that it --

19 THE COURT: I'm inclined to allow some of  
20 the pictures, counsel.

21 (Conference at the bench.)

22 MR. GUYMON:

23 Q. Doctor, let's work with two photographs.  
24 It will be State's Exhibit 144 and State's Exhibit  
25 135.

1           A.     Okay.

2           Q.     All right. Does 134 -- I'm sorry 135 and  
3 144 fairly and accurately document the findings and  
4 the recovery of Dr. Buckland pursuant to his autopsy?

5           A.     I think they do.

6           Q.     I move and let me ask you, do crime scene  
7 analysts commonly photograph the autopsy proceeding  
8 and evidence removed and obtained?

9           A.     I'm sorry, I missed the first of your  
10 question.

11          Q.     Do crime scene analysts commonly  
12 photograph autopsies and the findings?

13          A.     Yes, that's what they are paid for.

14          Q.     As well as the evidence that's collected?

15          A.     Correct.

16          Q.     And in State's Proposed Exhibit 135, the  
17 one in front of you here, Doctor, do you recognize  
18 what's depicted there?

19          A.     These are bullet fragments, four of them  
20 on a piece of paper here, and the paper has on it the  
21 event number from the Metropolitan Police Department,  
22 and at the bottom of that card is the word "head" on  
23 the left and "neck" on the right, which would be  
24 logical to assume that this is indicating the area of  
25 the body from which they were obtained. And what we

1 have certainly are recognizable pieces of a metal  
2 jacket and other distorted piece of lead.

3 Q. The photographs comport with the findings  
4 as documented by Dr. Buckland?

5 A. They are consistent, yes.

6 MR. GUYMON: I would move for the  
7 admission of State's Proposed Exhibits 145 and 144.

8 MR. SGRO: No objection.

9 THE COURT: It will be admitted.

10 MR. GUYMON:

11 Q. Having reviewed Dr. Buckland's report,  
12 Doctor, were there any significant external findings  
13 by Dr. Buckland?

14 A. The most significant by far of course was  
15 the gunshot wound.

16 Q. Can you describe it as Dr. Buckland  
17 viewed it and recorded it in his autopsy report?

18 A. He describes this as a wound of entry,  
19 slightly to the right of the midline of the back of  
20 the head. It would be, I would say, about 5/16ths of  
21 an inch in diameter, 3/8 at the most. It has a  
22 blackened margin that he suggested.

23 Q. What does a blackened margin suggest to  
24 you as a forensic pathologist?

25 A. Very little. It's a heat transfer

1 effect, when it is hot. And some heat is absorbed by  
2 the skin as it pulls through and the degree of  
3 blackening is in large part dependent upon what kind  
4 of metal is sliding through the skin. If it is a  
5 lead bullet, you are going to get a lead pipe and a  
6 lot more black just from the transfer of the  
7 microscopic metal fragments than you will with a  
8 jacketed bullet, but the jacketed bullet still  
9 produces a little blackening such as we see here very  
10 frequently.

11 Q. And Dr. Green, Dr. Buckland performed an  
12 internal examination of this particular decedent,  
13 Jeffrey Biddle?

14 A. Yes, he did, yes.

15 Q. Have you reviewed his autopsy report and  
16 the findings of the internal examination?

17 A. Yes.

18 Q. Can you tell us what the significant  
19 internal findings were, pursuant to that examination,  
20 based on your review?

21 A. The significant internal findings is  
22 damage to the brain created by the bullet.

23 Q. Can you, having reviewed Dr. Buckland's  
24 report, are you able to tell us what the missile or  
25 projectile's path was?

1           A.     In its location here obviously it is  
2 going to go through and strike the cerebellum,  
3 probably hit the mid-brain and ultimately stop in  
4 front of the head. I think this one drifted a little  
5 bit in a right to left, but let me check on that. He  
6 has a very nice summary paragraph.

7                     Yes, it did move through the cerebellum,  
8 upward a little bit, a little bit to the left, so  
9 most of the bullet fragments were recovered up here  
10 in the left frontal area.

11           Q.     And Dr. Green, did Dr. Buckland note any  
12 features of the wound that would suggest a range that  
13 this shot was fired from?

14           A.     No, he does not. He says there's no  
15 pattern around the entry wound. There's a faint  
16 grayish color here, possibly suggesting a moderately  
17 close to close range, where a little bit of smoke  
18 might give up.

19           Q.     Define moderately close range, please?

20           A.     This is dependent on the type of weapon  
21 you have, powder chars and so on, but generally  
22 figuring somewhere around two, two and a half feet.

23           Q.     And lastly, Doctor, if you take State's  
24 Exhibit 144 and if you can demonstrate to the jury  
25 what was noted by Dr. Buckland and what you have now

1 described to them using the photographs, if you would  
2 like to come down from the stand?

3 A. What we have here is the bullet hole in  
4 the back of the head, the scaffold has been shaved  
5 and if you look closely you can see a little bit of  
6 brain discoloration, particularly around the lower  
7 half, due to the products of combustion of the  
8 burning powder. Some of it kind of travels right  
9 along behind the base of the bullet. It tends to  
10 form a vacuum back there, and it's that small  
11 fraction of the burning gases which is reasonable  
12 with this kind of material on the skin.

13 Q. Dr. Green, in your career as a forensic  
14 pathologist, have you, in fact, done examinations of  
15 close range wounds to the head caused by bullets?

16 A. Frequently.

17 Q. Does this picture purport to be a  
18 relatively close range or mid-range, to use your  
19 expression, bullet shot into the head?

20 A. Right. I don't think this is very close,  
21 it is not right up on top of it.

22 Q. Not a contact?

23 A. Definitely not a contact wound, no way  
24 this is a contact. But certainly couple of feet  
25 would be reasonable.

1 Q. And Doctor, based --

2 A. I'm sorry, maybe a little bit more. I  
3 have no information on what this particular weapon  
4 was, the bullet fragments suggest some kind of a  
5 medium caliber weapon, somewhere in the .33, .357,  
6 nine, range. There are a lot of different calibers  
7 and cartridges in that general category.

8 Q. And Doctor, are you able, having reviewed  
9 Dr. Buckland's report and the photographs, are you  
10 able to establish a cause of death in this particular  
11 young man's life?

12 A. Yes, I would agree with this diagnosis  
13 that death was due to a gunshot wound to the head.

14 Q. And the manner of death?

15 A. He concluded this was homicide.

16 Q. What do you mean by homicide, Doctor?

17 A. I'm not sure that I would use the word in  
18 the same way that he does because he's a lawyer as  
19 well as a forensic pathologist, but for my own line  
20 of reasoning I simply think of this as the act or the  
21 action by which one person takes the life of another,  
22 without getting into reasons or emotions or anything  
23 else.

24 Q. All right. Doctor, if I could return you  
25 to your autopsy reports and show you what has been

1 marked as State's Exhibits 147 and 151 and ask you if  
2 first of all, if Dr. Buckland performed an autopsy on  
3 an individual next identified as Tracey Gorringer?

4 A. Yes, he did.

5 Q. And was that also performed in the  
6 presence of a crime scene analyst at the Clark County  
7 medical examiners office?

8 A. Yes, that was in the presence of  
9 Mr. Morton and Ms. Sherry Norman, both crime scene  
10 analysts.

11 Q. Did Dr. Buckland prepare an autopsy  
12 report reflecting his findings pursuant to the  
13 autopsy of Tracey Gorringer?

14 A. Yes.

15 Q. Have you reviewed that autopsy report?

16 A. Yes, I have read through it.

17 Q. Can you describe Tracey Gorringer, based  
18 on the report?

19 A. In terms of height, weight and so on?

20 Q. Please.

21 A. Okay, similar sized, five feet eight  
22 inches, 158 pounds.

23 Q. Was an external examination done by  
24 Dr. Buckland and reported or recorded in his autopsy  
25 report?



1 A. Yes.

2 Q. Can you tell us the significant findings  
3 externally?

4 A. The significant finding in this case is  
5 similar to what we have just looked at, a gunshot  
6 wound to the back of the head.

7 Q. Did Dr. Buckland note the condition  
8 externally of the body other than the gunshot wound  
9 to the head?

10 A. Everything that he described other than  
11 that appears to have been normal.

12 Q. Now then, was an internal examination  
13 done of Tracey Gorringer?

14 A. Yes.

15 Q. Can you tell us, based on your review of  
16 the autopsy report, what the significant internal  
17 findings were?

18 A. The significant internal finding here is  
19 the gunshot wound to the head damage to the brain.

20 Q. Do you have a photograph that actually  
21 shows the bullet hole in the head?

22 A. This is very well illustrated in your  
23 Exhibit 151.

24 Q. And the other exhibit you have in front  
25 of you is what number, Doctor?

1           A.     The other is 147.

2           Q.     And does 147 purport to be projectiles  
3 that were removed from the head of Tracy Gorringer and  
4 recorded in the autopsy report by Dr. Buckland?

5           A.     In terms of his record there are  
6 fragments of a single projectile. Here we have three  
7 bullet fragments, one of which appears to be  
8 jacketing material, the other a lead core.

9           Q.     Move for the admission of 147 and 151?

10          THE COURT: Any objection.

11          MR. SGRO: No.

12          MR. CHRISTIANSEN: No, your Honor.

13          THE COURT: 147 and 151 is admitted.

14          MR. GUYMON:

15          Q.     This anything characterized by  
16 Dr. Buckland in his report as to the entry wound  
17 depicted in the photographs in front of you?

18          A.     He describes a typical entry wound with a  
19 slightly blackened margins. Again, you can see they  
20 have very nicely in Exhibit 151. I don't think he  
21 mentions anything about smoke, soot or any powder  
22 tattooing. I see nothing here and I don't see  
23 anything different in the picture.

24          Q.     Would the picture help you describe the  
25 diameter and the margins that you previously

1 indicated?

2 A. We have a ruler, the same ruler, in fact,  
3 in this photograph and the diameter to me appears to  
4 be approximately the same, approximately 5/16th inch.

5 Q. Using that photograph, can you show the  
6 jurors the external findings that were observed and  
7 noted by Dr. Buckland?

8 A. I think we can.

9 Q. Please.

10 A. Again we're looking at the back of the  
11 head. The wound is in the midline, dead center. You  
12 have the ruler there. I don't see any soot or smoke  
13 around it and the blackening again is a heat transfer  
14 effect. It has nothing to do with the powder charge,  
15 other than that tends to heat up the bullet hole a  
16 little bit.

17 Q. Doctor, can you, based on your review of  
18 Dr. Buckland's report, and looking at that  
19 photograph, are you able to make a determination as  
20 to the range in which this bullet was fired from?

21 A. Other than to say it is not a close range  
22 shot, no, I can't.

23 Q. And again close range, what do you mean?

24 A. Well, we're out beyond where any of the  
25 products of combustion and powder charge are striking

1 the skin, so we're probably out somewhere at three  
2 feet or more, it could be 50 feet, you would have the  
3 same effect.

4 Q. All right. Doctor, based on your review  
5 of Dr. Buckland's report are you able, and did he  
6 establish a cause of death --

7 A. Yes.

8 Q. -- for this particular young man?

9 A. He did.

10 Q. And the cause of death, Doctor?

11 A. It was a gunshot wound to the head.

12 Q. And the manner of death?

13 A. He specified as homicide.

14 Q. Doctor, I'll turn next to Matt Mowen and  
15 ask you if an autopsy report was done for Matthew  
16 Mowen by Dr. Buckland?

17 A. Yes, there was an autopsy report on an  
18 individual by that name.

19 Q. And was an external examination done of  
20 this particular young man?

21 A. Yes.

22 Q. Can you describe the hand in relation to  
23 his height, weight and age?

24 A. Five feet nine inches, 189 pounds, his  
25 age for you here in a second, 19.

1 Q. And can you tell us what the significant  
2 internal findings were --

3 A. Excuse me, external of Matt Mowen,  
4 significant external finding, similar is a gunshot  
5 wound to the back of the head.

6 Q. And the gunshot wound, is that depicted  
7 in State's Exhibit 134?

8 A. It is, yes.

9 Q. And based on your review of the autopsy  
10 reports, were projectiles removed from this young  
11 man's head and collected as evidence?

12 A. Two major fragments of a single  
13 projectile were recovered.

14 Q. Are those projectiles reflected in  
15 State's Exhibit 128?

16 A. We have a photograph similar to what we  
17 had before, the bullet fragments on the piece of  
18 paper and the individual's name written above it, we  
19 have two fragments, one a piece of jacketing material  
20 and the other a very distorted lead core.

21 Q. Doctor, I might ask you, have you  
22 previously seen bullet fragments such as that in your  
23 career?

24 A. Many times.

25 Q. Is that, does that commonly happen to a

1 bullet when it strikes the skull?

2 A. This particular type of bullet, yes, it  
3 does.

4 Q. Does 128 and 134 fairly and accurately  
5 depict what Dr. Buckland observed on the date in  
6 question of the autopsy?

7 A. I think they do, yes.

8 Q. Move for the admission of 128 and 134?

9 MR. SGRO: No objection.

10 THE COURT: Admitted into evidence.

11 MR. GUYMON:

12 Q. Show the jury first State's Exhibit 128  
13 and explain to them, if you would, how it is that  
14 jacket fragments like that, or why it fragments?

15 A. Well, we really ought to have a model of  
16 some kind to look at. We're dealing with a  
17 semi-jacketed, which means that the lead core is  
18 encased in a metal jacket of some kind or another.  
19 In this case I think this is an aluminum jacket,  
20 commonly what is used brass or copper.

21 This does not always go all the way over  
22 the nose. If it goes all the way over the nose,  
23 completely encases the lead core, we call this a full  
24 jacket. In this case we have a partial jacket, or a  
25 semi-jacket. It goes part way up the bullet wall and

1 maybe a little bit over the curvature, but does not  
2 meet in the middle and many times these will have a  
3 hollowed out point, which logically we call a hollow  
4 point. They are designed for that bullet to expand  
5 when it strikes a solid object.

6           If it does that, then it slows down much  
7 faster because it is present on a larger surface area  
8 through the target as it moves through it. If we  
9 take a full jacketed bullet it is likely to go all  
10 the way through and go somewhere else. In this  
11 particular bullet, and I can't tell you who  
12 manufactured it, I can guess, but I'm not going to do  
13 that. The jacket is designed to allow that lead core  
14 to expand and make it slow down. That's the whole  
15 purpose of it. The whole purpose being to transfer  
16 all of its energy to its target and not waste energy  
17 going through. There's a lot of fiction about going  
18 through and hitting somebody else. I have never in  
19 my life seen that happen.

20           Anyway, the bullet is designed to slow  
21 down and stop in the target and that's exactly what  
22 it has done here. The core has separated because the  
23 jacket, the jacket is on your right or on your left,  
24 the jacket is deformed very dramatically, which is  
25 fairly characteristic of many of the aluminum

1 jacketed bullets, there are a few of them that hold  
2 together well, like the Winchester silver tip, many  
3 of the others do something like this.

4 THE COURT: Thank you, Doctor.

5 MR. GUYMON:

6 Q. Doctor, 134, does it fairly and  
7 accurately depict, that's the next photograph,  
8 Doctor, does it depict the wound as described by  
9 Dr. Buckland, pursuant to his autopsy report?

10 A. Yes, it does.

11 Q. Can you use that particular diagram,  
12 Exhibit 134, to explain the findings of Dr. Buckland?

13 A. Right. This is similar.

14 THE COURT: Just a minute, Doctor, don't  
15 show it to the jury. Are you offering 134 and 128?

16 MR. GUYMON: Yes.

17 THE COURT: Any objection? They are  
18 admitted.

19 MR. CHRISTIANSEN: I thought they were  
20 in.

21 THE COURT: I'm way behind, go ahead.

22 THE WITNESS: Okay, we don't have a ruler  
23 in this particular one. The bullet hole is a little  
24 bit lower down on the back of the head than the  
25 others were. As a matter of fact, it is right at the



1 level base of the skull right about where I am  
2 pointing. It has kind of an oblique oval  
3 configuration here, which I think is partly due to  
4 the fact that you are pulling the head up to the  
5 photographer so he or she can get a good picture of  
6 it. Actually it would be round if the skin were  
7 relaxed.

8 Q. Doctor, based on your looking at the  
9 photograph, as well as your review of Dr. Buckland's  
10 autopsy report, are you able to tell this jury what  
11 the missile's path was?

12 A. This is a straight back to front, as a  
13 matter of fact, this went one end just under the base  
14 of the skull and cut the spinal cord in two.

15 Q. Doctor, are you able to make a  
16 determination, based on your review of Dr. Buckland's  
17 report, as to how close or far this was fired from?

18 A. Again other than to say it is not a close  
19 range shot, I can't help you. It can be from  
20 whatever distance beyond which the weapon will, with  
21 powder on it, hit the target.

22 Q. Was there any discoloration of the skin  
23 noted by Dr. Buckland?

24 A. Well, we can see the routine darkening of  
25 the wound's margins here, but you see them regardless

1 of range.

2 Q. If Dr. Buckland noted distinct dark  
3 charring at the borders, does that have any  
4 significance?

5 A. It might very well. It would be much  
6 better if I could see that thing myself rather than  
7 look at a photograph. It raises the possibility of a  
8 contact wound, although there are some of the  
9 features of a contact wound that are not here.

10 Q. By contact wound, what do you mean,  
11 Doctor?

12 A. Meaning that the bullet, the weapon is  
13 actually touching the target, right up next. It is a  
14 possibility this could be one, but to me it is  
15 equivocal, looking at the picture.

16 Q. That's fair. Doctor, are you able to  
17 form a cause of death, based on your review of  
18 Dr. Buckland's autopsy report, as well as the  
19 photograph in front of you today?

20 A. Yes.

21 Q. And what is the cause of death for this  
22 young man?

23 A. A gunshot wound to the neck.

24 Q. And the manner of death, Doctor?

25 A. Classified by Dr. Buckland as homicide.

1 Q. And lastly, have you reviewed an autopsy  
2 report prepared by Dr. Buckland for a Peter  
3 Talamentez?

4 A. Yes.

5 Q. In that report did Dr. Buckland note the  
6 age, height, and size of Peter Talamentez?

7 A. We have another young adult white male,  
8 five feet nine inches. He's a little on the slender  
9 side, 105 pounds.

10 Q. Doctor, showing you what has been marked  
11 State's Proposed Exhibits 113 and 125, I ask you if  
12 those photographs appear to depict what Dr. Buckland  
13 noted in his autopsy report?

14 A. Yes, they do.

15 Q. Will they assist you in describing to the  
16 jury both what happened to the projectile, as well as  
17 the injuries that were noted by Dr. Buckland?

18 A. I think they might.

19 Q. Move to admit State's Proposed Exhibits  
20 113 and 125?

21 MR. CHRISTIANSEN: No objection.

22 THE COURT: 113 and 125 are admitted.

23 MR. GUYMON:

24 Q. Was an external examination done of this  
25 young man by Dr. Buckland?

1           A.     Yes.

2           Q.     Can you tell us what the significant  
3 findings were by Dr. Buckland?

4           A.     Number one, a gunshot wound of the back  
5 of the head.  Additionally, there's a second small  
6 wound of the scalp, which is quite well shown in  
7 Exhibit 125.  The bullet hole is down here toward the  
8 left and the other wound is up here about in the  
9 midline.  This is a laceration caused by striking of  
10 some blunt object, or some blunt object striking the  
11 scalp.  It is not a bullet wound, it is about a half  
12 an inch long, and really a minor injury.

13          Q.     Doctor, if you will use State's Exhibit  
14 125 and show the jury both the bullet wound first,  
15 let's do that one first, if you could come down?

16          A.     All right.  Okay, the bullet wound is  
17 down here in the left side of the head, behind the  
18 left ear.  You can see a good share of it there where  
19 some of the hair has been shaved off.  It is down  
20 here, the black in the circle.

21          Q.     And next, Doctor, if you will demonstrate  
22 for the jury the laceration that you spoke of?

23          A.     Okay, the laceration is up higher here,  
24 it is horizontally oriented.  It goes through the  
25 skin into the subcutaneous tissues, but again let me

1 emphasize this is a minor injury. I can't tell you  
2 what made it or how he got it, but there it is.

3 Q. Can you describe the force that would be  
4 required in order to get an injury such as that on  
5 the back of the head?

6 A. Not a great deal. It is obviously made  
7 with some kind of a solid object.

8 Q. Describe the type of object you mean when  
9 you say solid?

10 A. A stick, a glove, gun butt or even gun  
11 muzzle is a possibility. Not a very good one, but it  
12 could happen.

13 Q. Have you seen injuries such as that in  
14 your career, Doctor?

15 A. Many times.

16 Q. Now then, Doctor, can you tell us if an  
17 internal examination was done of this particular  
18 individual?

19 A. Yes, it was.

20 Q. And what the significant findings were  
21 internally?

22 A. Internally the significant thing was the  
23 gunshot wound to the head and the damage to the  
24 brain.

25 Q. Based on your review of the autopsy

1 report prepared by Dr. Buckland, was a cause of death  
2 established?

3 A. Yes.

4 Q. What was the cause, Doctor?

5 A. It was the gunshot wound to the head.

6 Q. What was the manner?

7 A. He had classified this as a homicide.

8 Q. Now then, Doctor, were toxicology reports  
9 done for each and every one of these young men?

10 A. Yes, they were.

11 Q. What is a toxicology report?

12 A. This is a report of chemical analysis of  
13 various body fluids, whether blood or urine or  
14 stomach contents, and frequently use the fluid from  
15 the eyeball. In these cases I think we had blood in  
16 each case and in at least some of them we had urine  
17 as well.

18 Q. Doctor, is it correct to say that each  
19 one of the deceased had controlled substances in  
20 their system?

21 A. It is correct.

22 Q. Can you tell us in the order of the  
23 autopsies, starting with Jeffrey Biddle, what  
24 controlled substances he had in his system?

25 A. Well, I'm going to have to look. I can

1 tell you right offhand he had methamphetamine and  
2 amphetamine, because they all had some of that. He  
3 also had cocaine, or the breakdown product of cocaine  
4 in the blood, and these three drugs also were  
5 identified in the urine.

6 Q. Doctor, is the same true for each of the  
7 other three, that is to say each of them had  
8 methamphetamine and cocaine in their system?

9 A. I don't think so. I think we had one who  
10 had methamphetamine and amphetamine only and no  
11 cocaine.

12 Q. Would that be Tracey Gorringer?

13 A. Well, Peter Talamentez has no cocaine  
14 detected.

15 Q. All right.

16 A. Mr. Mowen has cocaine, as well as the  
17 methamphetamine and amphetamine, he also has some a  
18 metabolic breakdown product of Valium. In the urine  
19 we have the same things, and in addition two drugs  
20 called Oxazepam and Temazepam. These can be derived  
21 from the Valium as well as it breaks down in the body  
22 and the bloodstream and in the case of Gorringer, we  
23 have methamphetamine, amphetamine and the cocaine  
24 metabolite in the bloodstream. The same things are  
25 present in the urine, and in addition in the urine

1 there are evidence of marijuana.

2 Q. Does that cover all of them, Doctor?

3 A. I think that covers them all.

4 Q. Let me ask you, Doc, are you familiar  
5 with toxicology reports and controlled substances in  
6 the system?

7 A. Yes.

8 Q. Did the controlled substances in any way  
9 contribute to the cause of death or manner of death  
10 in this case?

11 A. I can't comment as to the manner, but in  
12 terms of the cause of death, we have nothing here  
13 that we would reasonably expect to cause death.

14 Q. In summary, Doctor, was the manner of  
15 death and cause of death homicide caused by a single  
16 gunshot wound to each of the victims?

17 A. In each case, yes.

18 Q. Lastly, Doctor, can you tell me, based on  
19 your review of Dr. Buckland's reports, whether or not  
20 these individuals would have sustained blood loss as  
21 a result of the single gunshot wound to each of their  
22 heads?

23 A. External blood loss, very likely would  
24 have, yes. I would expect them to. It might vary in  
25 amount from one to another, perhaps, depending on the



1 position of the head, but I would expect some  
2 external blood loss at least.

3 Q. Can you estimate the time of death, that  
4 is to say how quickly or slowly an individual might  
5 die, once they sustain an injury such as this?

6 A. You can classify these as instantaneous.

7 Q. Would there be any body movement when an  
8 individual shot in the head -- would there be body  
9 move at all based on an injury such as depicted in  
10 these autopsies?

11 A. You might. You might. You don't always,  
12 but you might have a jerk at the time of the impact,  
13 so body spasm, but following that, nothing.

14 Q. Lastly, Doctor, is there a reason why  
15 Dr. Buckland isn't here today?

16 A. Yes.

17 Q. Can you tell the jury why he isn't here?

18 MR. SGRO: Objection, relevance. We  
19 agreed --

20 THE COURT: Sustained. There's a  
21 stipulation in the record that Dr. Green could  
22 testify on behalf of Dr. Buckland and it was  
23 agreeable and stipulated that Dr. Buckland, for  
24 reasons known to the Court, cannot be here. He was  
25 excused.

1 MR. GUYMON: That's fair. Thank you,  
2 Judge, pass the witness.

3 THE COURT: Mr. Christiansen.

4 CROSS EXAMINATION

5 BY MR. CHRISTIANSEN:

6 Q. Dr. Green, would you look at, as to the  
7 fourth autopsy, Mr. Talamentez, which exhibit was it  
8 that showed the fragments taken? Did they take them  
9 back? I apologize, I just didn't catch the number.

10 A. For Mr. Talamentez, you are talking about  
11 the bullet fragment picture?

12 Q. Yes.

13 A. This is number 113.

14 Q. Okay. If I wrote it down right, the  
15 State's Exhibit 113 depicts the fragments from  
16 Mr. Talamentez; 128, from Mr. Mowen; 147, from  
17 Mr. Gorringe; and 135 for Mr. Biddle. Would you take  
18 a second and see if I'm correct?

19 A. 128 for Mr. Mowen is correct; and  
20 Mr. Biddle, 135; and for Mr. Gorringe, 153.

21 Q. I was off on one of them. Doctor, you  
22 have done about 11,000 autopsies?

23 A. Somewhere around that.

24 Q. Do all of the deaths and gunshot wounds  
25 sustained by these four individuals appear to be

1 pretty close, almost identical?

2 A. Uncommonly similar.

3 Q. Is there any evidence that you have seen  
4 that would lead you to believe the gunshot wounds  
5 came from different types of guns?

6 A. No, I don't see anything of that kind. I  
7 see a lot of similarities in the ammunition here, it  
8 is the same type, in all probability the same  
9 caliber.

10 Q. Fair enough.

11 A. And that would suggest the same weapon.  
12 It doesn't prove it.

13 Q. Fair enough. Now when Dr. Buckland did  
14 or performed these autopsies, it would be my guess  
15 that he did x-rays. Were there x-rays done?

16 A. He probably has x-rays done, yes.

17 Q. In your review of the reports prepared,  
18 did there show any broken bones in any of the  
19 decedents?

20 A. Let me look.

21 Q. Doctor, if I told you that there were no  
22 broken bones in any of the decedents, would that  
23 surprise you?

24 A. No.

25 Q. Does that comport with your recollection

1 of the reports?

2 A. Yes. There's no mention of any other  
3 types of injuries anywhere in these reports and I'm  
4 not sure that he's detailed his x-rays in each case.  
5 In fact, in this one I'm looking at right now,  
6 Mr. Gorringe, he did not. We very commonly make  
7 x-rays, especially in gunshot cases.

8 Q. Suffice it to say the only external  
9 injury noted was the blunt trauma to Mr. Talamentez  
10 head, as to the four individuals you have just  
11 described for Mr. Guymon?

12 A. That is correct.

13 Q. You talked about what would possibly be a  
14 body's reaction to a gunshot wound such as this.  
15 Mr. Guymon asked you that question, do you remember?

16 A. Yes.

17 Q. Would a body typically move around for  
18 minutes after a gunshot wound like this?

19 A. No. I would not expect it to move  
20 anything more than just a twitch, really.

21 Q. Fair enough. I want to talk to you about  
22 the amount of drugs found in the systems of the  
23 decedents. And I'm just trying to get a picture for  
24 the levels. My recollection is that Mr. Talamentez  
25 had the highest level of methamphetamine in his

1 system, that was the fourth one, number four.

2 A. Yes, I think he does have the highest  
3 level of methamphetamine here.

4 Q. Can you explain to the jury what the  
5 equivalent or how significant 3,169 nanograms per  
6 milliliter of methamphetamine? Is that a significant  
7 amount in the body?

8 A. Well, it's certainly enough to have  
9 physiological and psychological effects, if that's  
10 what you mean by significant.

11 Q. If Dr. Buckland described it as almost  
12 lethal, would that surprise you?

13 MR. GUYMON: Objection, it is not  
14 described that way in the report. Facts not in  
15 evidence.

16 MR. CHRISTIANSEN: I can ask him --

17 MR. GUYMON: We can approach.

18 MR. CHRISTIANSEN: I'll move on.

19 THE COURT: That will be stricken from  
20 the record.

21 MR. CHRISTIANSEN:

22 Q. What would you, in your expert opinion,  
23 think a lethal amount of methamphetamine in a  
24 person's blood would be in nanograms per milliliter?

25 A. The ones that I have seen, which can be

1 attributed only to that drug and only to that drug  
2 with no other things happening, have been higher than  
3 this. This is high, this is a pretty high street  
4 dose, but I would not expect this to be lethal. Some  
5 that I have seen have been off the wall, really,  
6 10,000, 15,000 nanograms.

7 Q. And I'm not trying to suggest that  
8 somehow the amount was the cause of this gentleman's  
9 death, I'm try to ascertain from you what the  
10 physiological effects of this much methamphetamine  
11 would be?

12 A. Certainly he was going to have an effect,  
13 yes, probably multiple effects.

14 Q. On a 105 pound person, is it a  
15 depressant, a stimulant? What would it do?

16 A. It is a stimulant. It does a lot of  
17 things. It sends your blood pressure up, increases  
18 your heart rate, respiratory rate, thereby indirectly  
19 at least, increases the body temperature a little  
20 bit. It has a stimulant effect on the brain, it can  
21 distort perception, it can make you feel like you are  
22 not tired, which is a bad thing. It can allow a  
23 person to go out and do things even when they  
24 otherwise should be about exhausted, because they  
25 don't recognize the symptoms of exhaustion or

1 fatigue.

2 Q. It can keep people awake?

3 A. It can certainly keep them awake. Ask  
4 truck drivers.

5 MR. CHRISTIANSEN: I don't have anything  
6 further. Thank you, Doctor.

7 THE COURT: Anything further?

8 MR. GUYMON: Just one question, Judge.

9 REDIRECT EXAMINATION

10 BY MR. GUYMON:

11 Q. Not to be admitted, but to be asked as a  
12 question, State's Proposed Exhibit 152?

13 THE COURT: Don't show it to the jury,  
14 please.

15 MR. GUYMON: Do not show it.

16 Q. It is of Tracy Gorringer and I direct your  
17 attention to the eyelids of Tracy Gorringer?

18 A. Uh-huh.

19 Q. Doctor, can you describe what is seen in  
20 the eyelids of Tracey Gorringer?

21 A. Swelling, particularly of the right upper  
22 eyelid, and to a lesser degree of the left upper  
23 eyelid, no visible change of the lower lids. The  
24 right eyelid is definitely hemorrhagic, bruised and  
25 part of the left eyelid is also.

1 Q. You say is also bruised?

2 A. Yes, there's just discoloration of about  
3 the inner third or so of the left upper lid.

4 Q. And is there any indication or do the  
5 bruises of the eyelids indicate anything to you as a  
6 doctor?

7 A. I know what they are from.

8 Q. What are they from, Doctor?

9 A. Gunshot wound.

10 Q. And what causes that?

11 A. A shock wave, the bullet doesn't have to  
12 come anywhere near the roof of the eye socket, but  
13 the roof of the eye socket is a piece of bone which  
14 in some areas is no thinner than one of these sheets  
15 of paper -- or no thicker, I'm sorry, than one of  
16 these sheets of paper. If you take the top of the  
17 dry skull off and hold it up, you can see light  
18 coming through the thin plates.

19 The bullet hits the head, it produces a  
20 hydraulic shock wave going out in front of it, and  
21 that is often sufficient to break these plates of  
22 bone and continue the shock wave into the eye socket,  
23 into the fat pad behind the eye, into the eyelids.  
24 We commonly, commonly see this phenomena, the  
25 swelling and bruising of the eyelids in gunshot



1 wounds of the head, and very often when the bullet  
2 hasn't even come close to the eyes.

3 Q. Does the heart have to still be beating  
4 in order to have bruising --

5 A. Yes.

6 Q. -- of the eyelids such as this?

7 A. Yes.

8 Q. Based on that picture, Doctor, did this  
9 particular individual continue to be alive long  
10 enough for his heart to beat?

11 A. Well, the heart will keep on beating even  
12 though the brain is suddenly dead. The two of them  
13 don't communicate real good. The heart hasn't heard  
14 about this event yet when it happens. The heart is  
15 very, very persistent. It doesn't like to give up.  
16 It doesn't like to quit and will often not quit going  
17 until it completely runs out of oxygen. It may take  
18 it five minutes.

19 Q. If the heart is still beating, is there  
20 any body movement or can there be any body movement?

21 A. Not when the brain has been damaged like  
22 that, no.

23 MR. GUYMON: I have no other questions.

24 THE COURT: Mr. Christiansen.

25 MR. CHRISTIANSEN: No.

1 THE COURT: Dr. Green, you are excused.  
2 You are admonished not to discuss your testimony with  
3 anyone until we complete the case.

4 Ladies and gentlemen, we're going to take  
5 our evening recess.

6 I want to admonish you that you must not  
7 discuss this case amongst yourselves or with any  
8 other person, or read, watch, or listen to any news  
9 communicate about this trial, whether it be  
10 television, radio, or newspaper, or form any opinion  
11 as to what the final result will be until the entire  
12 matter is submitted to you for your deliberation in  
13 the jury room.

14 You are excused until 9:00 a.m. tomorrow  
15 morning. When you do return, go to the jury room and  
16 the bailiff will come to get you. We're not going to  
17 go all day tomorrow, ladies and gentlemen, I'm going  
18 to tell you that up front. We'll go about two hours  
19 and I'll take the recess and excuse you until Monday  
20 morning.

21 So tomorrow I'll see you at 9:00.

22 MR. CHRISTIANSEN: One matter, the jurors  
23 need be admonished in terms of the notebooks.

24 THE COURT: You cannot take the notebooks  
25 home with you. You are to give the notebooks to my

1 bailiff. Leave them on the seat and my bailiff will  
2 take care of them. Thank you very much. I'll see  
3 you tomorrow morning.

4 \* \* \* \* \*

5  
6 Attest: Full, true, accurate transcript of  
7 proceedings.

8  
9 

10 LORI M. JUDD,  
11 CSR #233, RPR  
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# EXHIBIT 57

# EXHIBIT 57

COPY

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

SIKIA L. SMITH,

Defendant.

Case No. C153624

Dept. No. III

Docket No. "E"

BEFORE THE HONORABLE JOSEPH PAVLIKOWSKI, DISTRICT JUDGE

JUNE 24, 1999, 10:00 A.M.

REPORTER'S TRANSCRIPT OF TRIAL PROCEEDINGS - VOLUME XVI

APPEARANCES:

For the Plaintiff:

R. DASKAS, ESQ.

and

G. GUYMON, ESQ.

DEPUTY DISTRICT ATTORNEYS

For the Defendant:

P. CHRISTIANSEN, ESQ.

and

A. SGRO, ESQ.

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

1 LAS VEGAS, NEVADA, JUNE 24, 1999, 10:00 A.M.

2 \* \* \* \* \*

3 THE COURT: State of Nevada v. Sikia Smith.

4 The record will show the presence of  
5 Mr. Guymon, Mr. Daskas, Mr. Sgro and Mr. Christiansen.

6 Mr. Guymon?

7 MR. GUYMON: Yes, your Honor. Yesterday the issue  
8 came up because Dr. Mortillaro --

9 THE COURT: Do you want to proceed without the  
10 defendant?

11 MR. CHRISTIANSEN: Yes, your Honor. He should be  
12 here shortly.

13 THE COURT: I will make a record. Mr. Smith is  
14 not present in the courtroom at this time. I just received  
15 a call from the jail and he is going to be late being down.

16 Do you waive his appearance?

17 MR. CHRISTIANSEN: Yes, your Honor.

18 THE COURT: Mr. Guymon.

19 MR. GUYMON: Judge, yesterday at the conclusion of  
20 the day, the defense made a motion for a mistrial based on  
21 the fact that Dr. Mortillaro had been retained in the Donte  
22 Johnson case by the Special Public Defender's Office and  
23 that the State knowingly retained Dr. Mortillaro in this  
24 case.

25 Judge, I was candid with the Court when

1 I told this Court that it was yesterday morning at 5:30  
2 that I spent approximately one to two minutes speaking to  
3 Dr. Mortillaro.

4 And at that time he told me he had  
5 administered what he said I thought was tests to defendant  
6 Donte Johnson.

7 That he told me nothing more about  
8 those tests.

9 Judge, I had no idea what the purpose  
10 was for him in the Donte Johnson at the time.

11 It was my belief that he would testify  
12 in the mitigation in the penalty not in guilt.

13 I retained Dr. Mortillaro specifically  
14 for the purpose of talking about whether or not the  
15 defendant is an idiot, whether he knows right from wrong,  
16 that being the defendant, Sikia Smith.

17 I specifically gave him only materials  
18 associated with the testimony in this case and had no  
19 conversation whatsoever with him about Donte Johnson.

20 Judge, the defense took issue with the  
21 fact that I did not disclose that he had been retained by  
22 Donte Johnson's defense team.

23 Judge, I thought quite honestly it was  
24 immaterial. I stand here today and tell you that it is  
25 immaterial.

1 I tell you that it is not relevant and  
2 that there is no wrongful act on the part of the State with  
3 regards to the Brady rule.

4 I want to cite to the Court the case of  
5 Roberts v. State. It is 110 Nevada 1121.

6 It is a 1994 opinion.

7 In that case, Judge, what we have is we  
8 have a confidential informant and we have a defendant.

9 And the defense, prior to trial, had  
10 asked for all -- any and all exculpatory evidence.

11 They indicated it was their belief that  
12 the trial confidential file kept by the Las Vegas Metro-  
13 politan Police Department which is privileged information  
14 they argue they were entitled to that privileged informa-  
15 tion. And more importantly, that it was exculpatory.

16 And, of course, the Court said "no, it  
17 is not exculpatory, and, in fact, it is privileged; you are  
18 not entitled to it," and denied the defense's request.

19 The case was remanded by the Supreme  
20 Court, and the Supreme Court ordered the District Court to  
21 hold an in-camera or in-chambers meeting outside the  
22 presence of the parties to review the confidential infor-  
23 mant's file, the privileged information, the C.I. file.

24 The Court, in fact, did that. The  
25 Court made a record of the in-camera inspection, and the  
Court sealed both the C.I. file and the Court's findings.



1                   The Court waived the privilege associ-  
2     ated with the Las Vegas Metropolitan Police Department C.I.  
3     file.

4                   I will tell the Court that the Roberts  
5     case says that once the defense makes an argument that the  
6     stuff is material, then the Court has the obligation to  
7     make that inspection.

8                   Now yesterday they made an argument  
9     that it was material for the defense to know what infor-  
10    mation if anything Donte Johnson had told Dr. Mortillaro  
11    that might taint his opinions that Sikia Smith is not an  
12    idiot, number one.

13                   And number two, that he knows right  
14    from wrong.

15                   I will tell the Court that I didn't  
16    know what information if any. I didn't know if it was  
17    material.

18                   They made a showing. Now I have an  
19    obligation to bring Dr. Mortillaro forward and tell the  
20    Court.

21                   As an offer of proof, I will tell you  
22    that I subsequently talked to Dr. Mortillaro in order to  
23    have him here today.

24                   Dr. Mortillaro has indicted to me that  
25    he has not interviewed defendant Donte Johnson.

1                   He has received no information from  
2 Donte Johnson.

3                   He has not been to the jail to talk to  
4 him.

5                   He has not conducted an interview; that  
6 he has seen Donte Johnson at his office -- visually seen  
7 him, physically seen him;

8                   That it was his staff member that gave  
9 Donte Johnson an MMPI 2 test which is a 354 true false  
10 questions that Donte Johnson answered.

11                  Dr. Mortillaro indicated to me that he  
12 had no substantive conversation with Donte Johnson about  
13 the facts of this case whatsoever.

14                  More importantly, Dr. Mortillaro has  
15 indicated to me he has not reviewed Donte Johnson's answers  
16 to the MMPI test.

17                  He has not formed an opinion as to what  
18 personality, if any, Donte Johnson has.

19                  He has no information gleaned from the  
20 test because he has not looked at the test results, not  
21 rated the test, not done anything with that material  
22 whatsoever.

23                  Dr. Mortillaro has told me that he saw  
24 no conflict whatsoever because his roles were completely  
25 different.

1 In the one it was his understanding he  
2 is retained for Donte Johnson for mitigation and that in  
3 this case he's been retained for state of mind, whether he  
4 is an idiot, whether he knows right from wrong.

5 He did not see the conflict at all in  
6 him representing both sides.

7 I again tell the Court that this is not  
8 Brady material. It is not material. It is not relevant.

9 It is not even permissible testimony  
10 for these people to be aware of.

11 I ask the Court to please canvas Dr.  
12 Mortillaro in the presence of Donte Johnson's attorney.  
13 Now, whether that is Pete LaPorta who is in court today or  
14 whether it be the chief, if you will, of the Special Public  
15 Defender, Phil Cohen, or Dayvid Figler, Dayvid Figler also  
16 on that case.

17 If you want to have those parties  
18 associated with Donte Johnson who talked with Dr.  
19 Mortillaro back in chambers to inspect on the record in  
20 camera what involvement if any this Court now that they  
21 have raised the issue has to make a determination whether  
22 or not it is material, whether or not they are entitled to  
23 get into it in front of this Court.

24 Quite honestly, you can waive the  
25 privilege in order to make that determination, and if you,

1 Judge, find it is not material, that there is not a  
2 conflict, then there is no Brady violation whatsoever.

3 You make a record of that and we go  
4 forward.

5 But I stand on my conduct yesterday.  
6 I did not hide information that I had.

7 More importantly, I did not see it as  
8 being material.

9 They have now raised the issue. It now  
10 becomes the Court's obligation.

11 THE COURT: Mr. Sgro?

12 MR. SGRO: Yes, your Honor.

13 I am somewhat familiar with the Roberts  
14 case because it is one of the few cases in the State of  
15 Nevada that reversed or remanded for the violation of a  
16 discovery procedure that the State employed and that the  
17 Court had adopted.

18 In any event, there is a significant  
19 difference between the Robert decision and what has  
20 happened here. And that is as follows:

21 The similarity is we filed the discov-  
22 ery motion asking for any Brady material and the Court  
23 granted it.

24 And we litigated that some time ago.  
25 And the Court indicated that if and when any time the State

1 had any Brady materials they were to give them to us. And  
2 no one quarrels with that.

3 The distinction is in Roberts the  
4 defense had the fortune and the wherewithal to know there  
5 was, in fact, a C.I. file and they were able to articulate  
6 the need for that specific document.

7 In our case -- and in the Roberts case  
8 the Court knew about it, the State knew about it and the  
9 defendant knew about it. So everybody was on the same  
10 page; everyone had equal footing.

11 In our case, your Honor, the only one  
12 who knew that was a party to this case about Dr. Mortillaro  
13 having been retained by Donte Johnson was Mr. Guymon.

14 And he had knowledge prior to putting  
15 him on the stand and no one else did.

16 And I think that the Court going back  
17 to 9:00 o'clock yesterday morning having had that infor-  
18 mation most likely because of the appearance of impropri-  
19 ety, because of the appearance of a violation of ethical  
20 rules that Dr. Mortillaro is supposed to abide by, what he  
21 is supposed to disclose this potential to all parties  
22 involved, you may well not have even allowed him to testify  
23 at all.

24 And this was something that was set up  
25 by persons in the administration in the D.A.'s Office to

1 appropriate Dr. Mortillaro in its case because the State  
2 was actively seeking a rebuttal psychologist. And it is  
3 just one of those things that happened.

4 But the significant distinction between  
5 our case and the Roberts case is that in Roberts everyone  
6 knew about the particular piece of discovery that was  
7 sought. In our case only the State knew.

8 And I don't dispute, again, the  
9 representations made that it was a one or two-minute  
10 conversation in a parking lot and he didn't think anything  
11 about it.

12 However, the bottom line is that Dr.  
13 Mortillaro at a minimum in comporting with his own ethical  
14 rules should have made it a point to tell everybody  
15 involved in the case what was going on. And if he would  
16 have done that it is doubtful we would have ever heard from  
17 him.

18 And most likely that the State would  
19 have had to elect a different psychologist.

20 So, what we have now is the State's  
21 request to conduct an in-camera hearing relative to Brady  
22 material which really doesn't address the issue we talked  
23 about yesterday which is Mr. Christiansen's and my ability  
24 to fully confront and cross-examine Dr. Mortillaro as to  
25 what conversations he had with Donte Johnson and so on.

1                   To us, your Honor, the mere fact that  
2 this individual could accept a retainer on behalf of one of  
3 the co-defendants and at the same time advocate a position  
4 in the same case on behalf of the State of Nevada, that  
5 fact in and of itself is material because it shows he is  
6 willing to be paid by two different parties in the same  
7 case.

8                   And the argument that the State makes  
9 that Sikia's testimony was only in terms of psychological  
10 and he did no right from wrong and Donte was mitigation,  
11 that as I sit here is semantics and that goes to weight and  
12 that goes to argument, your Honor.

13                  The jurors I think will be left with a  
14 very bad taste in their mouth if they know and appreciate  
15 the fact that you have one psychologist just on both sides  
16 of the same case.

17                  Notwithstanding there is a distinction  
18 between the penalties and in the guilt phase as we lawyers  
19 can intellectually sort that stuff out. I don't think it  
20 is going to be well received that you have one person on  
21 two sides of the case.

22                  And just that fact alone in terms of  
23 our opinion it is very material and we were precluded from  
24 using it yesterday.

25                  The interview process which Dr.

1 Mortillaro engaged Mr. Johnson in now has been some issue  
2 of dispute.

3 We had representations yesterday by  
4 Donte Johnson's counsel which, in my estimation, differ  
5 somewhat than the representations made today by Mr. Guymon  
6 in terms of the content and the exchange of communications  
7 that occurred between Donte Johnson and Dr. Mortillaro.

8 We all agree that as a psychologist Dr.  
9 Mortillaro owes a duty of loyalty to Donte Johnson; that he  
10 is bound by a code of ethics in as far as his ability to  
11 review damaging information about that individual.

12 He has no such loyalty as to Sikia  
13 Smith because he was retained effectively to undermine  
14 Sikia Smith's defense, for lack of a better term.

15 It is very probably, very conceivable  
16 and certainly the jury should be entitled to an inference  
17 to be drawn that he may be hurting Sikia in an effort to  
18 help Donte, that way he could accomplish all his objec-  
19 tives.

20 He gets paid by the State to hurt  
21 Sikia, that he gets paid by the defense to help Donte. And  
22 by hurting Sikia he helps Donte. So it is a win-win  
23 situation for the psychologist.

24 I don't know that it is fair and that  
25 it would comport with our Sixth Amendment right to confront



1 and examine to simply have this Court engage Dr. Mortillaro  
2 in a dialogue as to what if anything he learned because  
3 this Court is not the trier of fact in this case that gives  
4 us the law and the rules under which we have to go with the  
5 facts to the jury.

6 And we cannot as defense counsel expect  
7 the Court to try to undermine Dr. Mortillaro's credibility.  
8 This Court has a different function than a defense counsel  
9 does.

10 This Court can certainly look at a  
11 document or engage in a dialogue and determine whether or  
12 not there was materiality in terms of Brady. I have no  
13 quarrel with that.

14 However, at that point our roles, your  
15 Honor, become very different. We need to cross-examine to  
16 undermine the credibility of the witness whether it is Dr.  
17 Mortillaro or any other person.

18 This Court does not have that function.

19 Whether this Court elects to waive any  
20 privilege or not, this Court is not within its role to  
21 undermine Dr. Mortillaro's credibility by engaging him in  
22 some sort of vigorous cross-examination to try to undermine  
23 the things that he said about Sikia Smith. That's our job  
24 and we should have the opportunity to do that.

25 And the inherent problem in the case --

1 and you have to separate the two issues, your Honor,  
2 because there is the Brady issue and there is what I said  
3 yesterday there is findings this Court I believe has to  
4 make relative to the Brady issue whether or not there was  
5 a violation.

6 It appears at this point the State's  
7 position is, Judge, make a determination as to whether or  
8 not it was material and thereafter provide the disclosure.

9 And that somewhat puts the cart before  
10 the horse because we still need a finding that at 5:30 in  
11 the morning when the State knew that that didn't have to be  
12 disclosed, we still need that finding for purposes of this  
13 record, your Honor, because we can't now accept the fact  
14 that Dr. Mortillaro was allowed to testify, therefore that  
15 obviates any need to explore it further.

16 We still need findings whether or not  
17 there was a duty to disclose that information.

18 And if there was or was not, then the  
19 Court has to provide to us a remedy accordingly.

20 Mr. Guymon's most recent suggestion  
21 about the in-camera review only solves one of the problems,  
22 and that is the Brady problem.

23 This case is still faced with the  
24 problem that we will be faced with attorney objections on  
25 behalf of Donte Johnson in as far as the privilege is

1 concerned if we try to extrapolate from Dr. Mortillaro  
2 information on cross-examination relative to the details of  
3 everything he did.

4 I want to know as Sikia Smith's lawyer  
5 every single thing he did, every single thing Donte Johnson  
6 said to him and every single thing Dr. Mortillaro said to  
7 Donte Johnson.

8 And I want to know in painstaking  
9 detail because from those comments most likely we'll be  
10 able to draw inferences how that information can be used  
11 against Sikia Smith.

12 And it is our belief, your Honor, if he  
13 is used in mitigation, he is probably going to try to  
14 comment on the fact that Donte wasn't a leader, which is  
15 the heart and soul of one of the points we are trying to  
16 make in this case, that is Sikia was not a leader and that  
17 he was in, in fact, a follower.

18 As defense counsel, we cannot force the  
19 waiver of the attorney-client privilege. That privilege  
20 belongs to the client in this case, and it is most likely  
21 going to be invoked if the position of Mr. LaPorta has not  
22 changed from yesterday to today the invocation of that  
23 privilege will be made if we attempt to ask any questions  
24 of Dr. Mortillaro in terms of what his assignment was, what  
25 he did, what he said and what Donte said to him in response

1 or what Donte revealed to him.

2 So, your Honor, whether he has tested  
3 him once or fifty times is something that we need to  
4 explore.

5 The mere fact that he was retained is  
6 extremely material to our case.

7 We have been precluded from raising  
8 that.

9 We also discussed yesterday about the  
10 need to recall Dr. Mortillaro in the event of the finding  
11 of any materiality by this Court.

12 And again, in our opinion, the fact  
13 that he accepted a retainer from two sides in the same case  
14 is material.

15 Beyond that, your Honor, our hands are  
16 tied because we have no way to go behind that because Mr.  
17 LaPorta indicates he will invoke the privilege.

18 So, I would simply suggest to the Court  
19 this: Mr. Guymon's suggestion addresses one of two prob-  
20 lems.

21 We still, therefore, have the problem  
22 of whether or not to allow Dr. Mortillaro's testimony to  
23 stand as opposed to whether it should be stricken because  
24 we cannot fully confront and cross-examine the witness  
25 pursuant to our rights under the Sixth Amendment.

1 THE COURT: Mr. Guymon?

2 MR. GUYMON: Judge, just a couple of points.

3 If Mortillaro being -- Dr. Mortillaro  
4 being retained by the defendant is relevant, that's the  
5 first question. You got to make a determination whether it  
6 is relevant.

7 If it is not relevant it is not  
8 material. There is no Brady violation, number one.

9 Number two, the fact that they argue  
10 the issue of credibility, quite honestly we argue he will  
11 work both sides because he's honest and give an honest  
12 opinion.

13 So, to suggest that somehow that's  
14 their argument and not argument for us is ludicrous.

15 There has got to be a relevancy finding  
16 before it even becomes admissible.

17 And then, more importantly, what Donte  
18 told him is hearsay. So that wouldn't come out to begin  
19 with.

20 We would object that it is hearsay and  
21 it would not be admissible just like Terrell Young's  
22 statement wasn't admissible.

23 Judge, next I will tell the Court  
24 before we ever called Dr. Mortillaro, David Figler, counsel  
25 for Donte Johnson, was in this courtroom and I walked up

1 and shook David Figler's hand and said "I guess we'll have  
2 Dr. Mortillaro in Donte Johnson's case, wouldn't we?"

3 So, they knew at that point now, they  
4 being Donte Johnson's lawyer, and nothing was said to the  
5 Court then.

6 Now, granted, I didn't say anything to  
7 defense counsel because I didn't see it was material.

8 If you, Judge, find it is not material,  
9 then it is not relevant and it never comes before this  
10 jury.

11 Lastly, Judge, the fact that they say,  
12 they meaning the defense, Dr. Mortillary may opine that  
13 Donte Johnson was the follower in penalty, Judge, he's  
14 already conceded Sikia Smith is a follower. So how does  
15 that piece of information hurt in any way in what matter  
16 they get to on that.

17 Lastly, Judge, I ask you to make a  
18 finding in chambers as to relevancy.

19 You can waive the privilege in camera  
20 as it was waived in the Roberts case and ultimately this  
21 problem if it is problem at all can be cured. Because, if  
22 you find out that it is relevant, that you find that it is  
23 material, that you find these people should know this  
24 information, they can reopen and they can inquire all they  
25 want of Dr. Mortillaro.

1                   But first, you have to find it is  
2 relevant. And I ask you to do that.

3                   MR. SGRO: Just real briefly.

4                   In the Roberts case which the State  
5 relies on for their proposition of what they want the Court  
6 to do, I am reading from the bottom of page 7 to the top of  
7 page 8.

8                   And it states as follows: "It is well  
9 settled that evidence that would enable effective cross-  
10 examination and impeachment my be material in that non-  
11 disclosure of such evidence may deprive accused of a fair  
12 trial." And it cites the Bagley case.

13                   It goes on to say down a few lines on  
14 page 8: "when the reliability of a given witness may well  
15 be determinative of guilt or innocence, non-disclosure of  
16 evidence affecting credibility falls within Brady." Okay.

17                   Now, applying that -- and I understand  
18 it is a paragraph on page 8 of the nine-page opinion --

19                   THE COURT: I read it.

20                   MR. SGRO: If you apply that to our situation,  
21 your Honor, clearly there are little to no other witnesses  
22 that affect guilt or innocence as much as Dr. Mortillaro  
23 does because he came in and said the defendant knows right  
24 from wrong.

25                   THE COURT: I will take a short recess.

1 (The following proceedings  
2 took place in chambers, were  
3 reported by the court re-  
4 porter but were not trans-  
5 cribed; thereafter, when  
6 finished with the hearing in  
7 chambers the Judge sealed  
8 this record. A short recess  
9 was taken and the following  
10 proceedings took place in  
11 open court).

12 THE COURT: This is a continuation of the matter  
13 State of Nevada v. Sikia Smith.

14 The record will show the presence of  
15 Mr. Guymon, Mr. Daskas, Mr. Sgro and Mr. Christiansen; also  
16 the presence of the defendant, Mr. Smith.

17 I met in chambers, gentlemen, with Dr.  
18 Mortillaro, Mr. Cohen, Mr. Figler and also Mr. LaPorta.

19 After my conversation and questions  
20 asked of Dr. Mortillaro, I don't think there is any  
21 material information that he possessed or received from Mr.  
22 Johnson that would be material to this case.

23 I do not find there is a violation of  
24 the Brady rules, so, therefore, we are going to proceed  
25 with this case.



1 Now, what do you want to do?

2 MR. SGRO: Your Honor, just for the record the  
3 motion for a mistrial is denied?

4 THE COURT: It is denied.

5 MR. SGRO: Okay. And also the motion to strike  
6 his testimony?

7 THE COURT: Denied.

8 MR. SGRO: The fact that Mr. Guymon knew of the  
9 information at 5:30 --

10 THE COURT: There is no violation. Wasn't  
11 material.

12 MR. SGRO: All right.

13 THE COURT: Now, it has also inquired of the  
14 attorneys while in there with Mr. Mortillaro whether or not  
15 they would invoke the privilege if he were to be called to  
16 testify in this case and all of them in unison said they  
17 would.

18 MR. SGRO: Your Honor, then strictly as a fallback  
19 position, I would at least request, ask the Court to allow  
20 us to call him to simply ask him if he was retained on the  
21 Donte Johnson matter and is that the same Donte Johnson  
22 that is a co-defendant in this case.

23 MR. GUYMON: My position if it is not material, if  
24 it is not relevant, then this jury doesn't need to know of  
25 that.

1                   If your finding is that it is not  
2 relevant, then that would be impermissible testimony.

3           THE COURT: Sustain the objection.

4           MR. SGRO: Just for the record, I would tell the  
5 Court that pursuant to the Sixth Amendment of the U.S.  
6 Constitution --

7           THE COURT: You already made that argument, Mr.  
8 Sgro. We have a jury out.

9           MR. SGRO: I understand, your Honor.

10                   Simply in the area of bias it is our  
11 position it is extremely relevant to show this jury that  
12 the credibility of this individual is significantly  
13 impacted by virtue of the fact he has been retained by co-  
14 defendant in this case.

15           THE COURT: I made a finding that it is not so we  
16 will proceed.

17                   Now, it is now 11:00 o'clock. Do you  
18 want to just excuse the jury for lunch and bring them back  
19 at 12:30 so there will be no interruptions with argument?

20           MR. CHRISTIANSEN: That's fine with us.

21           THE COURT: I think we should do it that way.

22           MR. GUYMON: Judge, I don't want --

23           THE COURT: Because I don't want to start your  
24 opening and then find it is already 12:30 and then we go  
25 with theirs and then we have to break up the argument.

1 MR. GUYMON: And I understand you are the Judge --

2 THE COURT: Thanks a lot.

3 MR. GUYMON: You asked, though, Judge, and our  
4 preference would be that we start and then we could break  
5 up the argument because otherwise these folks would be  
6 sitting for a long while.

7 THE COURT: Why don't we just do that. Why don't  
8 we take our noon recess.

9 Mr. Bailiff, excuse the jury until  
10 12:20 so I will see you at 12:20.

11 We will begin final argument at that  
12 time.

13 MR. GUYMON: Judge, can we clean up some jury  
14 instructions before you leave?

15 THE COURT: Yes.

16 MR. GUYMON: Judge, yesterday --

17 THE COURT: Yes, you were supposed to make some  
18 corrections.

19 MR. GUYMON: I did make some corrections. If I  
20 could approach the bench with a corrected copy.

21 The first one I believe is jury  
22 instruction number 52, there was a typographical error.

23 THE COURT: Quiet, please.

24 MR. GUYMON: I am giving counsel a copy of that.

25 There is what I have marked as jury

1 instruction number 45 there was a word to be stricken from  
2 that. I will give counsel a clean copy.

3 Jury instruction number 28 the word  
4 kidnaping is inserted because it was left out. I am giving  
5 them a clean copy of that as well.

6 And lastly, Judge, jury instruction  
7 number 9 had a word that was omitted. I am providing that  
8 to counsel as well.

9 THE COURT: Is that it?

10 MR. GUYMON: There is also, Judge, Mr. Daskas has  
11 one other point to make about the jury instructions.

12 I will tell the Court at the conclusion  
13 of that one other thing about the instructions.

14 MR. DASKAS: Judge, actually two points.

15 Number one, we mentioned this to the  
16 Court in chambers. Instruction number 41 was inadvertently  
17 placed in the instructions and read to the jury. And that  
18 is the second-degree felony murder instruction.

19 We discussed this matter on the record  
20 in chambers and the Court agreed that they were not  
21 entitled to that instruction; there were no facts to  
22 support that argument, and as a result this Court denied  
23 their motion to include that instruction.

24 Nevertheless, through our inadvertence,  
25 the instruction was included and read.

1                   It is our request we remove that  
2 instruction from those that are taken back to the jury for  
3 deliberation and that they be precluded from arguing the  
4 theory of second-degree felony murder when there are no  
5 facts to support it.

6                   THE COURT: I can't do it. That was given to the  
7 jury. It is a part of his case at this time.

8                   MR. DASKAS: Judge, the other point was this: Mr.  
9 Sgro, Mr. Christiansen indicated to us that they planned on  
10 using some exhibits in front of the jury for argument.

11                   Those exhibits are not demonstrative  
12 exhibits. They are books that apparently are supposed to  
13 be second, third and fourth grade level reading and math  
14 books.

15                   If they are allowed to present those to  
16 the jury, Judge, that's the same as presenting or assuming  
17 facts not in evidence.

18                   They are going to have to tell the jury  
19 that these are, in fact, elementary level books. And since  
20 there is no testimony or evidence about that, they should  
21 be precluded from introducing those or referring to those  
22 in closing argument.

23                   It is difficult from an enlarged  
24 instruction or demonstrative exhibit that we have indicted  
25 we would use in closing. That is assuming facts not in

1 evidence and it is impermissible.

2 THE COURT: Mr. Sgro?

3 MR. SGRO: Your Honor, in every closing argument  
4 that I have seen by the State and both by the defense, the  
5 most effective ones are the ones that have demonstrative  
6 exhibits.

7 I am well aware these are not admitted  
8 into evidence, but I am certainly entitled to ask them to  
9 rely upon their common sense, every-day experiences. And  
10 I am simply using the items not to read from them, not to  
11 ask that they take them back to look at them but simply as  
12 an illustrative to make a point.

13 And if I am out of line at any point in  
14 the argument, we expect the State to object and the Court  
15 to entertain the objection at the time on argument.

16 I don't see the need to preclude  
17 anything at this time because --

18 THE COURT: I can't do it at this time. You make  
19 the appropriate objection at the time they are being used.

20 Mr. LaPorta, Dr. Mortillaro can be  
21 excused.

22 MR. SGRO: Just so the record is clear, the State  
23 on a regular basis in closing argument holds up the picture  
24 of Mortillaro -- the Mona Lisa, and that's not -- their  
25 argument they should be allowed to do that.

1 THE COURT: I just agreed with you.

2 MR. CHRISTIANSEN: We didn't object to the 12:30  
3 timing, Judge, either.

4 THE COURT: Anything else

5 MR. DASKAS: No, Judge. Thank you.

6 MR. FIGLER: Your Honor, Dayvid Figler. We  
7 represent Donte Johnson. If I could be heard for a moment  
8 with regard to your earlier ruling on the motion.

9 THE COURT: Yes.

10 MR. FIGLER: Thank you, your Honor.

11 There is a ruling by this Court as to  
12 materiality of Dr. Mortillaro's communications and in  
13 relation to his testimony before this Court.

14 THE COURT: The information that he had yesterday  
15 morning when he testified.

16 MR. FIGLER: Thank you, your Honor.

17 The case of Donte Johnson, the State of  
18 Nevada v. Donte Johnson is to be heard in Department V.  
19 Because Dr. Mortillaro had been retained by the State, it  
20 may very well become an issue in the Department V case and  
21 because our hearing was held in camera and that that is  
22 sealed, however, the ruling of the Court was made part of  
23 the public record.

24 I just wanted to represent to the Court  
25 that Donte Johnson was not present during the in-camera

1 hearing. And any waiver of privilege was not given up  
2 simply because Donte Johnson was not here and because Dr.  
3 Mortillaro was retained by our office in February of 1999.

4 THE COURT: I waived the privilege, Mr. Figler.

5 MR. FIGLER: Thank you, your Honor.

6 I also wanted to represent that at  
7 present any ruling of the Court with regard to materiality  
8 of that this was not impacted by any argument of Donte  
9 Johnson's attorney because in that in-camera hearing there  
10 was no argument made one way or another with regards to the  
11 materiality.

12 THE COURT: This is true.

13 MR. FIGLER: So with regard to your Honor's ruling  
14 of material as it relates to the very specific facts  
15 present before your Honor in Mr. Smith's trial, that that  
16 would have no bearing with regard to the hearing in  
17 Department V should there be one.

18 THE COURT: That ruling has nothing to do with it.  
19 My ruling today has nothing to do with the Johnson case.  
20 Only applies to this case and Dr. Mortillaro's testimony  
21 yesterday.

22 MR. FIGLER: Because part of the record is going  
23 to be sealed I just wanted to make that representation.  
24 And I wanted to thank you for allowing me to do that.

25 THE COURT: All right. 12:20.



1 (The noon recess was taken).

2 THE COURT: State of Nevada v. Sikia Smith, case  
3 number C153624.

4 The record will show the presence of  
5 Mr. Guymon, Mr. Daskas representing the State, Mr. Sgro and  
6 Mr. Christiansen appearing with the defendant; also the  
7 presence of the defendant, Mr. Smith.

8 Ready to proceed, Mr. Guymon?

9 MR. GUYMON: Yes, your Honor.

10 THE COURT: Mr. Christiansen?

11 MR. CHRISTIANSEN: Yes, your Honor.

12 THE COURT: Miss Clerk, call the roll of the  
13 jurors.

14 (The Clerk called the roll  
15 of the jury).

16 THE COURT: The record will show the presence of  
17 the regular jurors and also the three alternates.

18 Let me once again, ladies and gentle-  
19 men, apologize for the lateness of getting started on this  
20 matter. We had so many problems to resolve this morning  
21 that it took some time to do so.

22 Those problems have been resolved so  
23 now we are in the final portion of this trial before the  
24 matter is submitted to you for your deliberation in the  
25 jury room. That's final argument.

1                   The State will begin their opening  
2 portion, Mr. Christiansen and Mr. Sgro may given an  
3 answering part, and then the State will have an opportunity  
4 to give a rebuttal argument.

5                   You will notice that the State gets an  
6 opportunity to argue twice in this case. That's because  
7 the burden is on the State to prove each and every one of  
8 the elements of the charge beyond a reasonable doubt.

9                   Mr. Guymon, are you ready to proceed or  
10 Mr. Daskas?

11                  MR. DASKAS: Ready, Judge.

12                  THE COURT: Mr. Daskas.

13                  MR. DASKAS: Somebody once asked the great  
14 baseball player, Hank Aaron, how it was he was able to hit  
15 so many home runs. And he paused and thought about it.  
16 And his response was "keep your eye on the ball."

17                  Mr. Sgro and Mr. Christiansen are  
18 certainly talented and certainly imaginative defense  
19 lawyers, and over the course of the past few days they have  
20 been successful at blurring the issues in this case.

21                  I will ask you to keep your eye on the  
22 ball.

23                  And I will remind you why it is we are  
24 all here. We are here because on August 13 and 14 of 1998,  
25 the defendant and his partners, Donte Johnson and Terrell

1 Young, decided that \$200.00 in cash, a VCR and a Nintendo  
2 had more value than the lives of four young men.

3 They decided the VCR and the Nintendo  
4 in this case meant more than the lives of Tracey Gorringer,  
5 Mat Mowen, Jeff Biddle and Peter Talamentez.

6 I will remind you as you review the  
7 evidence in this case to keep your eye on the ball and  
8 remember the facts of this case.

9 The defense really over the course of  
10 the past several days have ignored the facts of this case.  
11 But no matter how much you ignore the facts, they never  
12 cease to exist.

13 You heard testimony that Sikia Smith,  
14 Donte Johnson and Terrell Young went to the Terra Linda  
15 residence for the purpose of committing robbery.

16 Every one of the defendants knew that  
17 by the time they left that household on August 13, anybody  
18 and everybody would have to be killed.

19 We know that from Sikia Smith's own  
20 statement.

21 And let me remind you, that we are here  
22 to judge the conduct of Sikia Smith. We are not concerned  
23 about what his I.Q. was on August 13, 1998.

24 I am sure that wasn't an issue for the  
25 four young men who lost their lives.

1                   We are not here to determine what grade  
2 level Sikia Smith could read at when he was in the Terra  
3 Linda home on August 13.

4                   I am certain that he didn't read a  
5 story --

6                   MR. SGRO: Objection to what he is certain about.

7                   THE COURT: Sustained. Rephrase it.

8                   MR. DASKAS: Certainly Sikia Smith didn't read a  
9 story to the four young men who lost their lives.

10                  And so, I remind you to keep your eye  
11 on the ball. We are here to judge the conduct of Sikia  
12 Smith and to hold him accountable for his actions on that  
13 night.

14                  Despite everything you have heard in  
15 this case, despite the psychiatrist's testimony, despite  
16 all psycho babble you have heard for the past three days,  
17 this case really boils down to two simple questions: What  
18 crimes have been committed and who committed those crimes.

19                  And I want to discuss the answers to  
20 those two questions with you this afternoon.

21                  The first question, who committed these  
22 crimes, really requires no discussion. In fact, as you  
23 will recall, defense counsel in his opening statement  
24 conceded that Sikia Smith was in the residence at Terra  
25 Linda on August 13 with Donte Johnson and Terrell Young.

1                   We knew from day one of this trial that  
2 the participants were Sikia Smith, Donte Johnson and  
3 Terrell Young.

4                   But I will ask you to keep in mind that  
5 when Sikia Smith walked into this courtroom and he knew  
6 that his palm print was on the VCR that was recovered at  
7 the Everman house when he realized that you people would  
8 have his confession, identity was no longer a plausible  
9 defense for Sikia Smith.

10                  MR. SGRO: Objection, your Honor.

11                  THE COURT: This is argument.

12                  MR. GUYMON: Thank you, Judge.

13                  THE COURT: Overruled.

14                  MR. DASKAS: Mr. Smith and his lawyers argue the  
15 only thing they could argue when he left his palm print on  
16 the VCR, when he confessed to the police.

17                         He argued that he's too stupid to  
18 realize what he was doing and I will ask you to accept that  
19 defense for what it is worth. It is the only defense he  
20 could come up with.

21                         Let me talk to you about the second  
22 question. That is, what crimes have been committed.

23                         And I want to begin with Count II of  
24 the indictment, that is, the conspiracy count and it will  
25 become important in a minute.

1                   The Judge read to you yesterday and you  
2 will receive numerous instructions in this case.

3                   Count II of the indictment is charged  
4 with conspiracy and you probably have preconceived notions  
5 about what a conspiracy is.

6                   Some of you might envision a plot by  
7 the government to conceal the assassination of J.F.K. or  
8 perhaps you think of the activities going on in Area 51 and  
9 an agreement to conceal what happens there.

10                  But the legal definition of conspiracy  
11 is something much less different and much less complex.

12                  A conspiracy is an agreement or mutual  
13 understanding between two or more persons to commit crime.  
14 And it is really that simple.

15                  If there is an agreement by two people  
16 or more to commit an unlawful act, we have a conspiracy.

17                  The instruction goes on to state "to be  
18 guilty of conspiracy you must intend to commit what you aid  
19 in the commission of the crime agreed to."

20                  It does not matter whether the crime  
21 was successful or not. The agreement itself is the crime.

22                  So I will ask you, is there evidence in  
23 this case there was an agreement to commit crime, and more  
24 important, was Sikia Smith part of that agreement.

25                  When you retire to deliberate, you are

1 going to have a copy of Sikia Smith's confession from  
2 September 8. In fact, you are going to have the tape  
3 itself. And I would encourage you to play the tape and  
4 listen to the tape and review the transcribed statement of  
5 his statement.

6 And let me read to you, if I could,  
7 important portions which establishes he was a member of  
8 this conspiracy.

9 He was asked by Detective Buczek on  
10 page 2 of the statement, "Sikia, on August 14, 1998, there  
11 was a robbery that occurred over on Terra Linda. Were you  
12 involved in that robbery?" The defendant's response was  
13 "yeah."

14 Later on the same page, page 2 "who was  
15 present when the plan was being discussed to rob the  
16 occupants of Terra Linda?"

17 Sikia Smith stated in his own words  
18 "Todd, Donte, Red, myself and Lala."

19 That agreement is the conspiracy. It  
20 is that simple.

21 Later on Detective Buczek asked Sikia  
22 what was being discussed and his answer was, "we were  
23 discussing going over to the guys' house."

24 Buczek attempted to confirm what he  
25 meant by that.

1                   And the defendant responded, "Todd and  
2 Donte were talking about these guys that were supposed to  
3 have a lot of money and drugs over at the house. And they  
4 wanted the drugs."

5                   That statement by Sikia Smith is  
6 evidence that he's a member of an agreement to commit a  
7 crime. He is guilty of Count II, the conspiracy.

8                   There is no requirement that you find  
9 an express agreement between he and the other co-conspira-  
10 tors.

11                   If there is evidence to suggest he had  
12 an understanding to go to that house and commit robbery,  
13 he's guilty of the conspiracy.

14                   The defense has suggested at least in  
15 their opening statement that Sikia Smith was took stupid to  
16 realize he was part of an agreement. And they have  
17 suggested that Sikia Smith had such a low I.Q. that he  
18 couldn't have known why he was going to the Terra Linda  
19 residence.

20                   And I will ask you to recall the  
21 testimony of several witnesses in this case, several  
22 defense witnesses who testified that Sikia Smith was a drug  
23 dealer.

24                   And I will ask you to rely on your own  
25 common sense and consider the steps that somebody must take



1 to become a drug dealer.

2 Sikia Smith has to be able to acquire  
3 drugs. He has to be able to divide those drugs into  
4 quantities and establish a selling price for each quantity  
5 of the drug.

6 He has to contact potential purchasers.

7 He has to then agree with the purchaser  
8 that he, Sikia, will provide the drugs and the purchaser  
9 will pay money in exchange for the drug.

10 And he has to do this while concealing  
11 it from police activity.

12 Now, if he can agree and if he is  
13 capable, if he has the capacity to take all those steps,  
14 don't you think he's capable of understanding that he was  
15 part of an agreement to rob the occupants of the Terra  
16 Linda house?

17 That agreement that he had, that  
18 understanding that he had, establishes that he is guilty of  
19 Count II, conspiracy.

20 Certainly there was no admittance exam  
21 he had to take to join that conspiracy. I am sure Donte  
22 Johnson and Terrell Young weren't concerned about his I.Q.  
23 when they asked him to join this agreement, this plan to  
24 rob the boys at the Terra Linda household.

25 They recognized that Sikia Smith could

1 pose a threat to the four men just like Donte and Terrell  
2 could. His I.Q. was never an issue.

3 And understand that Sikia Smith's role  
4 in this conspiracy was as important as Donte Johnson's and  
5 as important as Terrell Young.

6 They needed somebody to tape the boys,  
7 and that was Terrell.

8 They needed somebody to hold the gun on  
9 the boys, and that was Donte Johnson.

10 And they needed a third person to  
11 search the house while the boys were restrained.

12 Sikia Smith's role was just as impor-  
13 tant as everybody else's role.

14 The conspiracy could not have been  
15 successful without Sikia Smith there. There would have  
16 been nobody to search the house for drugs and money. And  
17 that's the reason, that's the purpose of the conspiracy.

18 Let me address specifically, if I  
19 could, with you the notion that he is an idiot.

20 You heard a lot of testimony from  
21 various experts about the definition of the term "idiot."

22 And let me review, if I could, the  
23 legal definition, the instruction that you will receive  
24 when you deliberate.

25 Let me start with the middle of the

1 instruction. It says "all persons are presumed to be of  
2 sound mind." As you sit here and judge Sikia Smith, Sikia  
3 Smith is presumed to be sane; he is presumed to be of sound  
4 mind.

5 The burden is on the defense to  
6 establish that he is not. The burden is on the defense to  
7 present evidence to you, credible evidence that he is, to  
8 use the terminology, an idiot.

9 And I guess the task that you have as  
10 jurors is to determine who of the experts you can rely on  
11 when concluding whether he was or wasn't an idiot on August  
12 13, 1998.

13 You will recall that the defense called  
14 two expert witnesses, Dr. Sapp and Dr. Colosimo.

15 Neither doctor has ever testified on  
16 behalf of a criminal prosecution. They devote their  
17 practices and they have only testified exclusively testi-  
18 fied on behalf of criminal defendants.

19 You will recall that Dr. Sapp, who is  
20 from Wisconsin, who is not licensed in Nevada, travels from  
21 state to state and offers his services to mitigate, to  
22 mitigate, to lessen the responsibility of persons who have  
23 been convicted, not simply accused, but convicted of one or  
24 more murders.

25 You will recall that Dr. Sapp testified

1 on the stand that he had never diagnosed anybody as an  
2 idiot until this case until he met Sikia Smith.

3 You will recall that Dr. Sapp never saw  
4 the definition of the term idiot until the defense lawyer,  
5 Mr. Sgro, showed it to him on Sunday afternoon after we had  
6 already started this trial.

7 Dr. Sapp was given the play and was  
8 asked to go into the game. His conclusion was predeter-  
9 mined.

10 What does Dr. Colosimo tell us? Dr.  
11 Colosimo, like Dr. Sapp, has testified exclusively on  
12 behalf of criminal defendants. He has never testified for  
13 the prosecution in any criminal case.

14 Dr. Colosimo concluded on the witness  
15 stand that, indeed, Sikia Smith met the definition of  
16 idiot.

17 That when he was asked what that  
18 definition was, and I will quote him, he responded "it's  
19 somebody who is incompetent who can't take care of him-  
20 self."

21 And I will direct your attention to the  
22 instruction. Is there anything in this instruction that  
23 says a person who is an idiot cannot take care of himself  
24 or is incompetent? There is nothing to that effect.

25 Dr. Colosimo reached the conclusion

1 without even knowing what the definition was.

2 I submit to you that both Dr. Sapp and  
3 Dr. Colosimo's testimony is incredible.

4 Dr. Colosimo, incidentally, is the same  
5 person who testified in front of you people that Sikia  
6 Smith is a crack baby. Although he acknowledged on cross-  
7 examination that when he spoke to Sikia Smith's mother, she  
8 denied ever using drugs during her pregnancy.

9 They are inconsistent. A crack baby by  
10 definition is a child born addicted to crack because his  
11 mother ingested it while she was pregnant with him.

12 Dr. Colosimo, the defense expert, the  
13 defense witness, told us that Sikia's mom denied ever using  
14 drugs during pregnancy. He is not a crack-addicted baby.

15 Let me contrast what you heard from the  
16 defense experts with what you heard from the witnesses  
17 called by the State. That is Dr. Bittker and Dr.  
18 Mortillaro.

19 Both Dr. Bittker and Dr. Mortillaro are  
20 licensed to practice psychology and psychiatry in the State  
21 of Nevada.

22 In fact, Dr. Bittker has a practice in  
23 Reno and Dr. Mortillaro has a practice in Nevada, Las  
24 Vegas.

25 Both witnesses told you that they were

1 familiar with the term the definition of idiot for a number  
2 of years.

3 Both witnesses told you Sikia Smith  
4 does not meet the definition, and both were able to tell  
5 you exactly what that definition is: "a person destitute of  
6 mind at birth or a person of such weak and feeble mind at  
7 birth that he doesn't know right from wrong or can't  
8 control himself if he does."

9 You will recall that Dr. Mortillaro is  
10 the president of the Board of Psychologists in the State of  
11 Nevada which Dr. Colosimo, the defense expert, is a member.

12 But perhaps most importantly what you  
13 can be aware of from all four experts, both the defense and  
14 the State, is that they all agreed Sikia Smith received a  
15 score of 73 from his I.Q. test.

16 And nobody can dispute that according  
17 to the DSM 4, the book you heard so much about, 73 is  
18 intellectual functioning albeit low, it is, nevertheless,  
19 intellectual functioning.

20 There was no dispute that the score of  
21 73 does not fall within the range of mild mental retarda-  
22 tion.

23 He is a person who is capable of  
24 learning, of reading, of writing, of entering into agree-  
25 ments, conspiracy.

1                   And you will recall from the test  
2 questions that we showed you with one of the experts.

3                   He was able to multiply, add, subtract,  
4 spell, read, write. But the defense would have you believe  
5 that because he can't compound interest at six and a half  
6 percent for two years on a 30-year loan that he is not  
7 responsible for his actions in this case. That I would  
8 submit is incredible as well.

9                   What Dr. Sapp, the defense expert did  
10 tell us was that defendant understands it is wrong to tape  
11 people up.

12                   He agrees with the raw score of 73 on  
13 the I.Q. test, and he told us Dr. Sapp that when he  
14 interviewed Sikia Smith the defendant acknowledged he was  
15 at the Terra Linda house to get drugs.

16                   Dr. Colosimo was the other defense  
17 expert who testified about the effects of PCP.

18                   Dr. Colosimo admitted on cross-  
19 examination that the defendant told Dr. Colosimo when he  
20 interviewed him that he was "in control on August 13."

21                   The defendant reported that to Dr.  
22 Colosimo that he smoked no more than usual, not unlike any  
23 other high.

24                   And the defendant told Dr. Colosimo  
25 that his PCP on August 13 was not a big deal as it relates

1 to this case.

2 He was able to recall the events of  
3 August 13. When he was interviewed on September 8 by  
4 Detective Buczek and that if he was so high on PCP on the  
5 night this crime occurred, he wouldn't be able to recall  
6 the events.

7 He was able to recall to LaShaune  
8 Wright the day after it happened the events of the night in  
9 question.

10 He had short-term memory and he had  
11 long-term memory, Dr. Bittker told us that would be  
12 diminished if he was so high on PCP to not know right from  
13 wrong.

14 Dr. Sapp made another interesting point  
15 when he testified, the defense expert. He suggested to you  
16 people that the defendant is not what we could call street  
17 smart because he got caught.

18 I would like you to think about that.  
19 The prisons are full of street-smart people who got caught  
20 committing crimes.

21 To suggest that somebody who gets  
22 caught is not street smart and so the person is not  
23 responsible is a ridiculous notion.

24 If that's the case, we better open the  
25 flood gates and let everybody out of prison.



1                   There is a reason we have television  
2 shows called America's Dumbest Criminals because these  
3 people aren't the most intelligent people in the world.

4                   Nobody is suggesting Sikia Smith will  
5 ever be an astrophysicist or that he will ever get a  
6 college degree.

7                   But, he certainly knows right from  
8 wrong and he certainly knows it is wrong to rob people, to  
9 duct tape people and to execute people.

10                  I will ask you if you recall LaShaun  
11 Wright's testimony, the defense witness in this case.

12                  And here is what LaShaun Wright told  
13 us. "Sikia is street smart. Sikia writes her letters.  
14 Sikia can protect himself on the streets. Sikia knows his  
15 enemies and he recognizes his friends."

16                  She told us when he uses PCP or what  
17 she called sherm, he still recognizes his friends.

18                  He has never hurt her when he smokes  
19 PCP and he's never hurt his friends.

20                  She told us that when he left on August  
21 13 at 11:00 p.m. with Donte Johnson and Terrell Young he  
22 was in control.

23                  He kissed her goodbye and he told her  
24 he would see her later.

25                  He was acting no different than any

1 other time he was using drugs.

2 Keep in mind, that is the testimony of  
3 a witness called by the defense.

4 In fact, in response to defense  
5 counsel's question, LaShaun Wright said Sikia Smith was  
6 smart.

7 Now, the defense I am sure is going to  
8 attempt to mitigate or to lessen Sikia Smith's statement  
9 for his part in the conspiracy on August 13.

10 They will suggest that he was at the  
11 house but he certainly didn't know what was going on and  
12 that he certainly didn't participate in the robbery.

13 Now, to be sure, you are going to  
14 receive an instruction that I will call the mere presence  
15 instruction. And let me read to you the mere presence  
16 instruction.

17 "Mere presence at the scene of a crime  
18 and acknowledge that a crime is being committed are not  
19 sufficient to establish that the defendant aided and  
20 abetted the crime unless you find beyond a reasonable doubt  
21 that the defendant is a participant and not merely a  
22 knowing spectator."

23 So the issue is whether Sikia Smith  
24 participated in the events at Terra Linda or whether he  
25 simply stood by and watched whether he was a spectator, if

1 you will.

2 I will ask you to recall the confession  
3 of Sikia Smith on September 8. And I will ask you to play  
4 the tape in your deliberations.

5 At page 6 Sikia Smith states "Red tied  
6 both of them up and then we searched through the house for  
7 the drugs and the money and we didn't find anything."

8 Later at page 6 Detective Buczek asked  
9 Sikia Smith whether anybody else arrived at the home once  
10 they had entered. And Sikia Smith said "yes, it was  
11 another guy came to the door. He had some beer in his hand  
12 and we also brought him in, tied him up."

13 Later on at page 7 he was asked, "what  
14 did you and Donte do?" Sikia's answer, "we were looking  
15 through the house."

16 All of those statements indicate that  
17 he was a participant in the crimes at Terra Linda; that his  
18 role was to search the house for drugs and money, the  
19 purpose and object of the conspiracy.

20 His role was as important as Donte's  
21 role, was as important as Terrell Young's role. He  
22 certainly was a participant in the conspiracy.

23 To use the words of Sikia Smith, he  
24 tore the place apart.

25 He bragged to LaShaun Wright that he

1 found some pills in a hamper. That's how thorough Sikia  
2 Smith was in his participation in this conspiracy.

3 And so, I guess the ultimate question  
4 is can we rely on the statement that he gave to Detective  
5 Buczek. What assurances do we have that he wasn't coerced  
6 into that statement; that he wasn't forced to say something  
7 he wouldn't have otherwise said?

8 You will recall the great lengths  
9 defense counsel went to in attempting to establish that  
10 there was something sinister about that twenty-four-minute  
11 period before the tape recorder was turned on.

12 They suggested to you that Detective  
13 Buczek told Sikia Smith what to say; that he simply  
14 rehearsed his answers and then turned on the record button.

15 And I will respond this way. If the  
16 defendant is as stupid as the defense would have you  
17 believe, how could he learn in twenty-four minutes the  
18 entire story about what happened on August 13, and how  
19 could he recount it on the tape recorder minutes later?

20 I submit to you that it is because he  
21 is not as stupid as defense would have you believe.

22 We learned something else when LaShaun  
23 Wright took the stand.

24 And keep in mind, LaShaun Wright was  
25 the girlfriend of Sikia Smith who the defense called to the

1 stand.

2 LaShaun Wright told us that she was  
3 with Sikia, that he left the apartment at 11:00 o'clock on  
4 August the 13th in the evening; that he was with Donte  
5 Johnson and Terrell Young.

6 That she gave him his pager -- her  
7 pager and said "call me back."

8 You will recall that she told you she  
9 paged him throughout the night and he never returned the  
10 call.

11 About 1:00 o'clock the next day, some  
12 fourteen hours later, Sikia Smith returned and he was  
13 carrying a VCR and a Nintendo play station, the two items  
14 taken from the Terra Linda residence.

15 LaShaun Wright told you that she asked  
16 Sikia where he had been. And he said "I will tell you  
17 later."

18 Minutes later Donte Johnson and Terrell  
19 Young come walking through the door.

20 And LaShaun Wright told us Donte  
21 Johnson paid Sikia Smith \$20.00 for that VCR.

22 I will ask you people, if Donte Johnson  
23 is the leader, if Donte Johnson is to use defense counsel's  
24 words is a scary, intimidating, gun-toting leader of Sikia  
25 Smith, why would he have to pay Sikia Smith for that VCR?

1 Why wouldn't he just take the VCR from Sikia Smith?

2 Is it because Donte is not the scary  
3 leader they want you to believe? Perhaps Sikia is not the  
4 follower after all.

5 LaShaun Wright's testimony assures you  
6 that Detective Buczek did nothing sinister during that  
7 twenty-four-minute conversation.

8 Sikia Smith simply told Detective  
9 Buczek what Sikia Smith already knew. He committed the  
10 robbery at Terra Linda with his partners, his co-conspira-  
11 tors, Donte Johnson and Terrell Young.

12 And I will ask you to recall how we  
13 learned the information from LaShaun Wright.

14 Was it the questions asked by defense  
15 counsel on direct examination or was it the questions asked  
16 by the State on cross-examination?

17 Perhaps the only thing sinister about  
18 this event is what they failed to ask LaShaun Wright.

19 What they didn't want you to know was  
20 what LaShaun Wright knew.

21 Defense never asked LaShaun Wright  
22 whether she saw Sikia on August 13 leave with Donte and  
23 Terrell. They didn't ask her what time he returned. They  
24 didn't ask LaShaun Wright anything about a VCR.

25 They didn't ask LaShaun Wright whether

1 Donte had to pay Sikia Smith for that VCR.

2 The only thing sinister is what they  
3 failed to ask LaShaun Wright on direct examination.

4 MR. SGRO: Objection.

5 THE COURT: Sustained.

6 MR. SGRO: Move to strike.

7 THE COURT: It will be stricken from the record  
8 and the jury is admonished to disregard that last state-  
9 ment.

10 MR. DASKAS: The defendant certainly agreed to rob  
11 someone on August 13. He had the ability to read, to  
12 write, to do arithmetic.

13 I don't know about you, but I don't  
14 think I can answer half of the questions --

15 MR. SGRO: Objection.

16 THE COURT: Sustained.

17 MR. DASKAS: I am certain most people couldn't  
18 answer half the questions he was administered --

19 MR. CHRISTIANSEN: Judge, objection to what Mr.  
20 Daskas is certain of.

21 THE COURT: I will permit it.

22 MR. DASKAS: You saw the questions, some of the  
23 questions on the test that was administered to Sikia Smith.  
24 And I will leave it to you, to your determination to  
25 conclude whether those establish Sikia Smith is or isn't

1 responsible for the crime he committed on August 13.

2 There is an important consequence of  
3 finding a conspiracy. And that consequence is delineated  
4 in instruction number 13.

5 The instruction tells us when two or  
6 more persons join together in a common design to commit an  
7 unlawful act, each is responsible criminally for the act of  
8 his confederates.

9 In contemplation of law, the act of one  
10 is the act of all.

11 What does that tell us in this case?  
12 That you have to decide.

13 It tells us when Sikia Smith agreed  
14 with Donte Johnson and Terrell Young to rob the occupants  
15 of the Terra Linda house, Sikia Smith is responsible for  
16 the actions of Terrell Young and he is responsible for the  
17 actions of Donte Johnson.

18 And in the eyes of the law --

19 MR. CHRISTIANSEN: Objection. That is a misstate-  
20 ment of the law. If he wants to read the rest of the  
21 instruction in light of the instruction that's fine.

22 THE COURT: Mr. Daskas?

23 MR. DASKAS: "Every conspirator is legally  
24 responsible for an act of a co-conspirator that follows as  
25 one of the probable and natural consequences of the object



1 of the conspiracy even if it was not intended as part of  
2 the original plan and even if he was not present at the  
3 time of the commission of such act. In the eyes of the law  
4 the acts of Donte Johnson and the acts of Terrell Young are  
5 imputed to Sikia Smith."

6 It doesn't matter that Sikia Smith  
7 didn't pull the trigger that killed the four young men at  
8 Terra Linda. In the eyes of the law Sikia Smith is  
9 responsible.

10 It doesn't matter that Sikia Smith  
11 didn't tape up all of those boys. In the eyes of the law  
12 Sikia Smith is responsible for the actions of Terrell Young  
13 and Donte Johnson.

14 If you and I agree to rob a 7-Eleven  
15 and I am the get-away driver, and you go inside and you  
16 steal money from the clerk, I am responsible for your  
17 actions.

18 The law recognizes that dangerous  
19 things happen when people get together and commit crimes.

20 And the law recognizes that people  
21 should be held accountable for their partner's actions.

22 In the eyes of the law the act of one  
23 is the act of all.

24 The actions of Terrell Young and Donte  
25 Johnson are imputed to Sikia Smith.

1                   The application of this instruction  
2 will become much more important when we are deciding the  
3 remaining counts in this case.

4                   We have talked about Count II, the  
5 conspiracy. Let me get to Count I, burglary.

6                   Burglary in its simplest form is  
7 entering a building, a house, an apartment with the intent  
8 to commit a felony.

9                   If you find in this case that Sikia  
10 Smith entered the Terra Linda residence with the intent to  
11 commit robbery or larceny or murder, he is guilty of  
12 burglary.

13                   I will ask you to rely on his state-  
14 ment. He told Detective Buczek that he agreed with Donte  
15 Johnson and Terrell Young to go to the Terra Linda house to  
16 steal money and to steal drugs.

17                   That is a larceny, that is a robbery.  
18 Either theory he is guilty of burglary.

19                   His entering the house with the intent  
20 to steal is burglary.

21                   Count III through VI charges robbery  
22 with use of a deadly weapon.

23                   And robbery in its simplest form is  
24 taking property by force or by fear.

25                   What is the evidence in this case? We

1 know that \$200.00, a VCR and a Nintendo were taken from the  
2 boys at Terra Linda. Property was taken.

3 The only question is whether force or  
4 fear was used to take that property. And that's a ridicu-  
5 lous question.

6 They used the ultimate amount of force  
7 and fear to steal those items when they duct taped the  
8 boys, when they methodically executed each victim in this  
9 case they used force.

10 It is of no consequence that Sikia  
11 Smith didn't pull that trigger. In the eyes of the law the  
12 act of one is the act of all.

13 He is responsible for the force and  
14 fear that Donte Johnson used, that Terrell Young used when  
15 they taped up and shot those boys at Terra Linda.

16 Count VII through X charged kidnaping  
17 with use of a deadly weapon.

18 And of course, you will see there are  
19 four crimes for each of these charges because each victim  
20 is named in a separate charge.

21 Kidnaping is simply seizing or confin-  
22 ing victims for the purpose of committing robbery.

23 Again, it is a ridiculous question to  
24 ask whether these boys were confined or seized for the  
25 purpose of committing robbery.

1                   They were taped up, they were brought  
2 from outside to the inside of the house and taped up.

3                   When one of the boys was moved from a  
4 chair down to the floor where he was taped up and we know  
5 that the fourth victim was led to the back dining room  
6 where he was taped up. That movement, that confinement of  
7 all of the victims was kidnaping with use of a deadly  
8 weapon.

9                   And that brings us to the murder count.  
10 Counts XI through XIV, murder with use of a deadly weapon.

11                  There are actually two ways that the  
12 State can prove first-degree murder with use of a deadly  
13 weapon.

14                  One way is what we will call premedi-  
15 tated murder. And the second theory of murder is what we  
16 call felony murder. And I am sure you have all heard of  
17 the felony murder rule.

18                  Let me start with what we will call  
19 premeditated murder.

20                  You will find the instruction at number  
21 32 of the instructions that you can take back when you  
22 retire to deliberate.

23                  "Any kind of wilful, deliberate and  
24 premeditated killing with malice aforethought is murder of  
25 the first degree." That's one type of murder. That's

1 premeditated murder.

2 Instruction number 37 defines the other  
3 type of murder. And that's the felony murder rule.

4 The felony murder rule holds as  
5 follows:

6 "There is a kind of murder which  
7 carries with it conclusive evidence of premeditation and  
8 malice aforethought."

9 I mentioned a moment ago that preme-  
10 ditated murder has the elements of premeditation and malice  
11 aforethought. You have felony murder, though, those  
12 elements are presumed to exist. You don't need to find  
13 those as separate elements.

14 Murder committed in the perpetration of  
15 robbery or kidnaping is deemed to be murder of the first  
16 degree. And here is the important part, was whether the  
17 killing was intentional or unintentional or accidental.

18 If you find that Sikia Smith was part  
19 of a robbery, that he went to the Terra Linda house for the  
20 purpose of committing robbery and that somebody died during  
21 the commission of the robbery, whether intentional, whether  
22 it is unintentional or whether accidental, Sikia Smith is  
23 responsible for those murders.

24 Let me back up to the first theory,  
25 premeditated murder.

1                   And I should tell you also, some of you  
2 can find that the murders were premeditated and some of you  
3 can find that the murder is felony murder. You do not have  
4 to be unanimous in your decision. So as long as some of  
5 you find it is premeditated and the rest of you find it is  
6 felony murder, he is guilty either way of first-degree  
7 murder with use of a deadly weapon.

8                   Let me talk about the premeditated  
9 murder. Most people have a preconceived notion about  
10 premeditation. And perhaps you envision a suspect or a  
11 criminal deciding to kill somebody one day and perhaps you  
12 think that the person planned how best to commit the  
13 murder. Perhaps picks the day of the week, the exact hours  
14 and the circumstances under which he wants to kill his  
15 victim.

16                   Well, the legal definition of premedi-  
17 tation is something entirely different. And you will have  
18 that instruction which is number 36.

19                   Premeditation is a design, a determina-  
20 tion to kill formed in the mind, and here is the important  
21 part, at any moment before or at the time of the killing.

22                   Premeditation need not be for a day, an  
23 hour or even minute. It may be as instantaneous as  
24 successive thoughts of the mind.

25                   If you find that the decision to kill

1 the four boys in this case occurred either before or at the  
2 time of the killing, there is premeditation.

3 What does the evidence show in this  
4 case? Sikia Smith's statement at page 10.

5 He was asked what was being discussed  
6 at Todd's house, Todd Armstrong's house before the boys  
7 were killed, before Sikia, Donte and Terrell drove to their  
8 house. And Sikia Smith acknowledged they made two trips to  
9 Todd Armstrong -- from Todd's house on the Everman to the  
10 Terra Linda house. I apologize -- before the crimes  
11 occurred.

12 He was asked which of those times was  
13 it that you were saying it was first discussed that the  
14 people in the house would have to be killed, and Sikia  
15 Smith said "the first time."

16 Question by Detective Buczek, "the very  
17 first time?" And the answer "yeah."

18 "And who brought that up," Detective  
19 Buczek asked Sikia. He answered "Todd brought that up."

20 "What did he say exactly?" And Sikia  
21 Smith's answer was "he said that if he were to go over here  
22 and do what we were going to do that they would have to be  
23 killed because they knew who Donte was."

24 The decision to kill the occupants of  
25 the Terra Linda household occurred before they ever drove

1 over to the house on August 13. That is premeditation.

2 It doesn't matter that Donte Johnson  
3 pulled the trigger.

4 It doesn't matter if the killings were  
5 the result of somebody else's actions. In the eyes of the  
6 law the act of one is the act of all.

7 And when Donte Johnson pulled the  
8 trigger, his actions are imputed to Sikia Smith.

9 Sikia Smith is as responsible as his  
10 partners in this case.

11 And we talk to you about the second  
12 kind of murder, felony murder. Because both theories are  
13 present.

14 There is premeditated murder and there  
15 is felony murder.

16 The overwhelming evidence in this case  
17 is that Sikia Smith agreed to commit robbery, agreed to go  
18 with his partners to steal dope and to steal money from the  
19 boys at Terra Linda.

20 Because four killings occurred during  
21 the perpetration of the robbery, Sikia Smith is responsi-  
22 ble. It is that simple.

23 Once you find the felony of robbery,  
24 the killings that resulted fall into place like dominos.

25 That's the felony murder rule.



1                   And finally if there is any doubt in  
2 anybody's mind about whether he's responsible for the  
3 murder, I will simply direct your attention to instruction  
4 number 20.

5                   Instruction number 20 provides as  
6 follows: "Where the purpose of the conspiracy is to  
7 knowingly commit a dangerous felony, each member runs the  
8 risk of having the venture end in homicide. Even if he has  
9 forbidden the others to make use of deadly force, hence  
10 each are guilty of murder. If one of them then commits a  
11 homicide in the perpetration of the agreed upon robbery."

12                   The dangerous felony in this case that  
13 Sikia Smith agreed to be a part of was robbery.

14                   When he joined that plan, that conspir-  
15 acy to commit robbery he ran the risk that death would  
16 result. Instruction number 20 tells us that.

17                   He is responsible for the murders even  
18 if Sikia Smith forbid Donte Johnson and Terrell Young from  
19 killing anybody.

20                   The law recognizes that bad things  
21 happen when people get together and agree to commit a  
22 crime.

23                   Sikia Smith is responsible for those  
24 murders simply because he joined the conspiracy and the  
25 purpose of it was to commit a dangerous felony.

1                    Perhaps you think this treatment of  
2       Sikia Smith might be unfair that if he forbid Donte and  
3       Terrell from using deadly force and there is no evidence to  
4       suggest that he did but perhaps you think he shouldn't be  
5       held responsible. And I will answer your concerns this  
6       way.

7                    Is it any more harsh than Sikia Smith's  
8       actions in this case? Is it any more harsh than Sikia  
9       Smith driving to that house knowing that when he left the  
10      Terra Linda house on August 14 anybody and everybody in  
11      that house was going to be killed?

12                   Is it any more harsh than when Sikia  
13      Smith tells Detective Buczek some of the victims were  
14      wiggling around as Sikia Smith stood by and ransacked that  
15      house to satisfy his craving for drugs

16                   Sikia Smith is as responsible as Donte  
17      Johnson and Terrell Young.

18                   You can set aside every witness in this  
19      case that Mr. Guymon and I have called and rely only on the  
20      testimony of the defense witnesses and you can still  
21      convict Sikia Smith.

22                   I recall the testimony of LaShaun  
23      Wright who told you that Sikia left his apartment at 11:00  
24      p.m. on August 13; that he wasn't stumbling; that he kissed  
25      her goodbye, that he said he would see her later.

1                   And then fourteen hours later LaShaun  
2 told you people that Sikia Smith came back to the house,  
3 the apartment holding a VCR and a Nintendo.

4                   Couple that with Dr. Colisimo's  
5 testimony, the defense witness, told you that PCP, accord-  
6 ing to Sikia Smith, was not a big deal in this case and  
7 that he was no higher than any other day.

8                   Couple that with the other defense  
9 expert, Dr. Sapp and Dr. Colisimo's who told us that they  
10 accepted the I.Q. score of 73 and that score of 73 is not  
11 mild mental retardation; it is within the range of  
12 intellectual function, you can convict Sikia Smith based on  
13 the defense witnesses alone.

14                  I would ask you to recall the testimony  
15 of LaShaun Wright and remember the questions that the  
16 defense failed to ask LaShaun Wright.

17                  MR. SGRO: Objection.

18                  THE COURT: Sustained.

19                  MR. DASKAS: We have heard excuse after excuse  
20 after excuse in this case.

21                  First, the defense has blamed the  
22 police -- they told Sikia Smith what to say during that  
23 twenty-four minutes before the tape was turned on.

24                  Then the defense was "let's blame the  
25 victims." Let's impugn the character of the victims

1 because they had controlled substance in their system.

2 Then the defense says "let's blame  
3 drugs. Let's blame PCP."

4 "Sikia Smith was so high on dope that  
5 he couldn't know what he was doing that night."

6 And I will ask you to remember this:  
7 the testimony was that Donte Johnson and Terrell Young also  
8 smoked PCP with Sikia Smith that night.

9 If Sikia Smith isn't responsible --

10 MR. SGRO: Objection.

11 THE COURT: Sustained.

12 MR. DASKAS: Then the defense was "let's blame the  
13 defendant's mom. She wasn't there when he was a kid. She  
14 was a prostitute when he was growing up.

15 "She smoked crack during his child-  
16 hood." Excuse, after excuse, after excuse.

17 I think I have a novel idea. Let's  
18 blame the defendant in this case. Let's blame the man who  
19 agreed to rob the boys at Terra Linda.

20 Let's blame the man who drove by the  
21 Terra Linda household to make sure somebody was home so  
22 that he could rob those people.

23 Let's blame the guy who agreed to do  
24 the robbery knowing that anybody and everybody at the Terra  
25 Linda household was going to be killed by the time he left.

1                   Let's blame the man who ransacked the  
2 house, who tore the place apart, to use his words; who  
3 found the bag of pills in the hamper and bragged about it  
4 to LaShaun.

5                   Let's blame the guy who showed up the  
6 next day at LaShaun's with a VCR and a Nintendo; who left  
7 his palm print for you people on that VCR.

8                   Let's blame the guy who denied any  
9 involvement when he first talked to the police on August  
10 26th, 1998.

11                   Let's blame the man who has tried to  
12 blame anybody and everything else for his actions in this  
13 case; the man who has pointed the finger at everybody  
14 except himself.

15                   The defense in this case, the idiot  
16 defense is just another excuse like the drug excuse, like  
17 the mother excuse, like the PCP excuse.

18                   Don't allow Sikia Smith to hide behind  
19 the tests he took eight months after the murders, a test  
20 that he knew you people would receive, a test that he was  
21 motivated to do poorly on.

22                   Don't allow him to hide behind his I.Q.  
23 Hold him responsible for the conspiracy, the burglary, the  
24 robberies, the kidnappings and the murders.

25                   Don't let him hide behind the score on

1 an I.Q. test.

2 Thank you.

3 THE COURT: Thank you, Mr. Daskas.

4 Mr. Christiansen, you first?

5 MR. CHRISTIANSEN: Yes, Judge.

6 THE COURT: Mr. Christiansen.

7 MR. CHRISTIANSEN: Good afternoon.

8 First of all, I will point out that it  
9 was almost two weeks I told the Judge.

10 Second, evidently it is somehow  
11 ridiculous in the prosecution's mind to put a defense on.

12 Sikia was at one point called stupid.  
13 At one point he was called blaming everybody but himself.

14 And it wasn't dissimilar that I heard  
15 a question I asked Dr. Bittker "is Sikia just another dumb  
16 black kid?" Jails are full of them. Hold him accountable.

17 Isn't the question we are here to  
18 decide or you are here to decide whether you were going to  
19 hold a mentally retarded kid accountable for the actions of  
20 other people?

21 MR. GUYMON: Judge, I am going to object.

22 THE COURT: No evidence to that suggesting he is  
23 mentally retarded.

24 MR. CHRISTIANSEN: As I recall the evidence of the  
25 various doctors, they classified Sikia as being mildly

1 mentally retarded. It is my recollection. You can use  
2 your own.

3 Just for purposes of clarification,  
4 there is an instruction that talks about that. It is  
5 instruction 59 that says what we are doing, Mr. Daskas, Mr.  
6 Guymon, Mr. Sgro and myself, is argument of counsel and  
7 that what we say isn't evidence. But what was evidence and  
8 what you should consider is what people came up here and  
9 talked about or stipulations that we entered into.

10 So, I would ask you to do that and try  
11 to take our points and apply it to the facts as you folks  
12 got to see them for the last nine days.

13 It is a hard thing that we are calling  
14 on you folks to do.

15 We talked on voir dire about being hard  
16 to sit in judgment. Our job is almost over. We are here  
17 arguing. Now your job is just beginning.

18 And it is a hard job. It is a job you  
19 have to undertake free from sympathy, free from bias and  
20 free from prejudice.

21 I don't think anybody in this courtroom  
22 feels anything but disgust about these four victims and how  
23 their lives ended.

24 As a parent, I know I don't. It is a  
25 tragedy.

1 But, is that what you are here to do?  
2 You all promised you could set that aside, take the  
3 sympathy that every human being should feel and put it  
4 aside and look at the law of Nevada and apply it to this  
5 case, the stuff that came out of here.

6 It is a tough job, but I am going to  
7 ask you to do it. I am going to hold you to your words and  
8 your promises to everybody and request that you do that.

9 The law is a little different, I would  
10 submit, than what you have been given so far.

11 The facts in this case, and I think Mr.  
12 Sgro told you what the case is about in opening argument,  
13 is a mentally retarded, easily influenced and manipulated,  
14 foolish follower.

15 And now I ask you to sit here today  
16 some nine or seven days later if that isn't in fact what  
17 the evidence has borne out.

18 And contrary to the position of the  
19 State and their talented lawyers.

20 Now, I will tell you, the State gets to  
21 talk last in this case. Mr. Guymon may be one of the best  
22 speakers there is.

23 You are going to hear an impassioned  
24 plea to punish that young man for what Donte did.

25 Don't let the passion overrule what you



1 promised all of us you could do.

2 What did the evidence bear out? Did  
3 any of the doctors call Sikia a leader? State's doctors,  
4 defense doctors?

5 Mr. Daskas suggested he was a leader  
6 because he sold, according to LaShaun, a VCR. Show me the  
7 witness that called him a leader. Look for it. Not there.

8 What did LaShaun come in and testify  
9 to. LaShaun or LaShauna, which she goes by, Ms. Wright.  
10 You guys remember she was the young African-American girl  
11 that came up here and was noticeably nervous.

12 She didn't want to get up and tell  
13 everybody her boyfriend is not bright. Slow. And you got  
14 to take where the opinion is coming from.

15 Did Ms. Wright strike you as a genius  
16 or as somebody of high intellect?

17 And what did she say about Sikia? She  
18 said Sikia couldn't get along without her.

19 He got along when she was with him. I  
20 think that's exactly what she said.

21 That he couldn't figure out how to  
22 leave a tip when they would eat someplace; that he had  
23 kids but that he was basically a loner and a follower.

24 And who bore that out? The State bore  
25 that exact thing out before we even made the decision to

1 put LaShaun up here. That was Ace Hart.

2 You remember the young man that was so  
3 scared of Donte he left Everman? That was the young man  
4 that got up here and said "yeah, I remember Sikia. He went  
5 by "Bug," and LaShaun introduced me to him.

6 And he did not say he met Sikia through  
7 either Donte or Red. That's significant.

8 He also when asked to characterize by  
9 Mr. Sgro, and I guess there has been some argument,  
10 implications that we only asked the notorious questions,  
11 but asked a real simple question that the State failed to  
12 ask. Mr. Hart said "oh, yeah, you know, I did tell the  
13 police and it is my position today that Sikia is quiet,  
14 that he's never talked to me even though I have met him and  
15 seen him. He sits in a corner by himself and listens to  
16 music and he's not violent, not capable of violence."  
17 That's what the kid reluctantly said to our questions.  
18 That was the State's witness.

19 Then we had Ann Alexander, Sikia's  
20 mother, who if you think it was hard for LaShaun to  
21 testify, what do you think it was like for her?

22 Ann was -- she came up and she talked  
23 about the type of life that kid was born into.

24 It is a little offensive that Dr.  
25 Mortillaro said it doesn't matter. It is a little offen-

1 sive that the expert or the gentleman, the expert that  
2 calls himself an expert and everything Dr. Bittker devoted  
3 two lines in his report to that. Okay.

4 And it is offensive because other  
5 doctors found that important and necessary in evaluating  
6 how that kid's mind works. And that's the question.

7 All of you were asked by psychologists,  
8 psychiatrists without exception. Everybody said they could  
9 listen to it, thought it was a science, maybe not an exact  
10 science, but certainly not psycho babble. Certainly not  
11 that.

12 What did Ann testify to? That she was  
13 on crack, PCP, marijuana and alcohol both before Sikia came  
14 into this world and right through until he was eight and  
15 the State came and took him away.

16 You had doctors talk about the model-  
17 ing. That's how you learn right from wrong, the modeling,  
18 how you see, who tells you what's right and wrong. Where  
19 was that in that kid's life?

20 What kind of picture did Ann draw for  
21 you?

22 And for the State to argue that she is  
23 disingenuous because at one point she hedged what she had  
24 done in her past with Dr. Colosimo really not very candid.  
25 Can you imagine any of you raising your children in that

1 particular environment and then wanting to go back and  
2 visit it? Wanting to sit and tell fourteen strangers n a  
3 courtroom full of people that you were a crack head  
4 prostitute for the first eight years of your son's life?  
5 That your son watched you do that, solicit yourself, sell  
6 your body for your next high? And that is the role model  
7 he sought.

8 Mr. Daskas suggested that somehow those  
9 facts shouldn't be believed because she didn't really come  
10 completely clean with Dr. Colosimo.

11 There is a jury instruction number 56  
12 that calls for your common sense. It says all you folks  
13 are supposed to take your own life experiences as you bring  
14 them uniquely to this courtroom and apply them to the  
15 facts.

16 I would submit that common sense,  
17 common sense demands that you accept what she said in here  
18 as the truth. The truth.

19 What has the State conceded is the  
20 truth of this case? Stipulation. We had a stipulation  
21 that was read to you. Mr. Guymon read it. There was one  
22 gun used at Terra Linda.

23 One type of shell casing, .380 Winn  
24 head stamped shell casing. One gun was used.

25 There were two guns present, and this

1 kid didn't have either one of them. They conceded that.

2 They conceded until argument just a few  
3 minutes ago that Sikia didn't tie anybody up. He didn't  
4 tape a soul.

5 MR. GUYMON: Judge, I am going to object. That's  
6 not what the evidence is. He said "and we brought the  
7 third one in and we taped him up."

8 THE COURT: That's the evidence from the stand.

9 MR. CHRISTIANSEN: You folks listen to the tape,  
10 listen to the tape and listen to how it comes out.

11 Use your common sense again. Imagine  
12 the scenario no matter how unbelievable to all of you it  
13 seems that Sikia is searching the house according to the  
14 prosecution. The other person comes in, Mr. Talamentez.

15 Sikia stops searching the house if you  
16 are going to buy this argument now, comes out and then  
17 conducts some duct taping when he was -- no evidence he  
18 ever done it before, no evidence he ever had duct tape in  
19 his hands, no evidence he's ever had a gun, that doesn't  
20 make sense.

21 So, they have conceded Sikia didn't  
22 shoot anybody, didn't have a gun, didn't tie anybody up.  
23 But they still want you to convict him of the same thing  
24 that Donte did.

25 Let's talk about this group as the

1 State has tried to paint it. The three dastardly villains  
2 if you want to use that language.

3 Is that what the evidence showed that  
4 there were three of these guys running round all the time  
5 together? Think about it. Is that what the evidence  
6 showed?

7 Or, did the evidence show that at the  
8 Everman address Deko and Red lived, didn't pay rent, sold  
9 drugs, scared Ace Hart out, kept their clothes and with  
10 Deko was eventually found there. That's what the evidence  
11 showed.

12 Was there any of Sikia's shoes at the  
13 Everman address?

14 Was there any of Sikia's clothes?  
15 Anything? To show that Sikia was there?

16 Because the only thing that I heard  
17 that was evidence of Sikia was a palm print on a VCR who  
18 the State I think just endorsed LaShaun saying that the  
19 exchange took place at the Fremont Street address where she  
20 lived with Sikia.

21 They didn't put one iota of evidence on  
22 that Sikia was ever at Everman.

23 And is that important? Of course it is  
24 important. It is important because Sikia is not one of the  
25 three people always together, Donte and Red, Donte who I