

IN THE SUPREME COURT OF THE STATE OF NEVADA

THE STATE OF NEVADA,

Appellant,

vs.

TATIANA LEIBEL,

Respondent,

_____ /

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Case No. 2014-CR-00062
2014-CR-00062BD

RECORD ON APPEAL

VOLUME 9

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TATIANA LEIBEL
INMATE #1137908
FLORENCE MCCLURE WOMEN'S CORRECTIONAL CENTER
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LAS VEGAS, NEVADA 89115

IN PROPER PERSON

THE STATE OF NEVADA

DOUGLAS COUNTY DISTRICT ATTORNEY

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BOBBIE R. WILLIAMS
CLERK

BY [Signature] DEPUTY

In The Matter Of:

State of Nevada vs

Tatiana Leibel, aka Tatiana Kosyrkina - 14-CR-0062

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2 Dept. No. I
3 DA 14-343G
4
5 IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF
6 NEVADA IN AND FOR THE COUNTY OF DOUGLAS
7 THE HONORABLE NATHAN TOD YOUNG, DISTRICT JUDGE
8 -oOo-
9 STATE OF NEVADA,)
10 Plaintiff,)
11 vs.)
12 TATIANA LEIBEL, a.k.a.)
13 TATIANA KOSYRKINA,)
14 Defendant.)
15 ***ROUGH DRAFT** TRANSCRIPT OF PROCEEDINGS
16 JURY TRIAL
17 THURSDAY, JANUARY 29, 2015
18 MINDEN, NEVADA
19 For the State: Thomas Gregory,
20 Deputy District Attorney
21 For the Defendant: Kristine L. Brown, Esq.
22 Jamie Henry, Esq.
23 The Defendant: Tatiana Leibel, a.k.a.
24 Tatiana Kosyrkina
25 Reported by: Capitol Reporters
Nicole Alexander, Nevada CCR #446
(775) 882-5322

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1 MINDEN, NEVADA, THURSDAY, JANUARY 29, 2015, A.M. SESSION
2 -oOo-
3 JOEY LEAR,
4 having been first duly sworn, was
5 examined and testified as follows:
6 THE COURT: Come on up and have a seat up
7 here, please. There's some water there, if you'd like.
8 THE WITNESS: Thank you, sir.
9 THE COURT: Mr. Gregory?
10 MR. GREGORY: Good morning, sir.
11 THE WITNESS: Good morning.
12 DIRECT EXAMINATION
13 BY MR. GREGORY:
14 Q State your name and spell your last name.
15 A Joey Lear: L-e-a-r.
16 Q And what were you doing for a living back in
17 February 23rd, 2014?
18 A I was assigned as a forensic investigator for
19 the Washoe County Crime Lab.
20 Q And in that capacity, did you visit a crime
21 scene on that date located at 452 Kent Way in Zephyr
22 Cove, Nevada?
23 A Yes.
24 Q And as part of your job that day, were you

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1 tasked with measuring and diagramming the living room?
2 A. Yes.
3 Q. Can you tell me just generally how do you go
4 about measuring and diagramming a crime scene?
5 A. Once we have been requested to do a diagram,
6 I ask to be informed of the locations of all items of
7 evidence to make sure that I set my diagram parameters to
8 be large enough to not miss any items of evidence, and I
9 start large, and I begin with exterior measurements, and
10 I work my way through each room systematically to take
11 enough accurate measurements to draw up that scene and
12 also locate items of evidence within that scene.
13 Q. What types of instruments do you use to take
14 the measurements?
15 A. I use a distometer, which is a laser
16 measuring device commonly used in forensics. I will also
17 use just a hand-held tape measure for smaller
18 measurements.
19 Q. And the first instrument you mentioned?
20 A. Yes.
21 Q. What is the accuracy of an instrument like
22 that?
23 A. We, as a lab, we quality assurance measure
24 them quarterly, and then every scene that we use them, we

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1 do a quality assurance measurement on scene prior to
2 using the device every time, and we are accurate within
3 less than half of an inch.
4 Q. And in this particular case, did you test the
5 instrument before using it to measure the crime scene?
6 A. I did. I tested it against a standard tape
7 measure at the distance of two feet.
8 Q. And what was the accuracy rate?
9 A. Less than half of an inch.
10 Q. So you indicated that you start by on the
11 outer walls, and then you kind of move in?
12 A. Yes.
13 Q. Is that what you did in this case?
14 A. Yes.
15 THE COURT: Are these new numbers?
16 THE CLERK: Yes. 125 and 126.
17 MR. GREGORY: Showing 125 and 126 to the
18 defense.
19 MS. BROWN: Thank you.
20 MR. GREGORY: May I approach the witness,
21 Your Honor?
22 THE COURT: Yes.
23 Q. (BY MR. GREGORY:) Sir, I'm handing you
24 Exhibits 125 and 126. Can you take a look at those,

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1 please.
2 A. Yes.
3 Q. What are those?
4 A. These are copies of my field notes I used
5 that day to document my work on scene.
6 Q. Is that a way for you to keep track of the
7 measurements as you're taking them on scene?
8 A. Yes.
9 Q. And you indicated they are field notes. What
10 do you ultimately do with those notes?
11 A. Once back at the lab, I use these notes to
12 use a computer-aided drafting program. We use Crime
13 Zone, which is widely used in the forensic field to
14 reconstruct crimes scenes and also major accident scenes,
15 and I use these notes to input that to create the
16 diagram.
17 Q. Have those notes that you have in front of
18 you, have they been altered in any kind of way?
19 A. No.
20 Q. They appear to be accurate?
21 A. Yes.
22 MR. GREGORY: Your Honor, I'd move for
23 admission.
24 MS. BROWN: No objection.

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1 THE COURT: 25 and -- 26, 125 --
2 MR. GREGORY: 125. Yes, thank you, Your
3 Honor.
4 THE COURT: And no objection to either,
5 Ms. Brown?
6 MS. BROWN: No, Your Honor.
7 THE COURT: They're both admitted.
8 MR. GREGORY: I'm publishing 125.
9 THE COURT: Would you like the light to dim a
10 little bit there?
11 Q. (BY MR. GREGORY:) Thank you. I just kind of
12 want to give the jury an idea of what your work was out
13 there on the scene. So all of these notations are your
14 measurements of the various walls and furniture within
15 that living room?
16 A. Yes.
17 Q. And up in the right-hand corner, you
18 indicated you tested the laser device beforehand to make
19 sure it was accurate?
20 A. Yes.
21 Q. Do your notes represent that?
22 A. Yes. In the upper right-hand corner, I write
23 the word "disto," which is my abbreviation for
24 distometer, and I reported that the disto read one foot

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1 11 and 31-32nds of an inch at the distance of two feet
2 against the tape measure.
3 THE COURT: Sir, one moment.
4 THE INTERPRETER: Your Honor, this is the
5 interpreter speaking. May the witness be instructed when
6 quoting numbers to do so particularly slowly.
7 THE COURT: Would you please do that, sir.
8 THE WITNESS: Yes, sir.
9 THE COURT: It's difficult to translate when
10 you speak very rapidly, and sometimes when we're looking
11 at numbers, we tend to say them fairly quickly.
12 THE WITNESS: Okay.
13 THE COURT: So I'm going to ask you to slow
14 down, please.
15 THE WITNESS: Yes, sir.
16 THE INTERPRETER: If the witness would repeat
17 the last measurement, please.
18 THE WITNESS: At two feet on the tape
19 measure, the distometer read one foot 11 and 31-32nds of
20 an inch.
21 Q. (BY MR. GREGORY:) And that accuracy rate
22 meets with the standards of Washoe County FIS?
23 A. Yes, sir.
24 Q. Now publishing 126. Again, more notations.

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1 Thank you. Return 125 and 126 to the clerk. Sir, I'm
2 handing you Exhibit Numbers 27 through 35. And can I ask
3 you, did you take some photographs on scene of the
4 measurements that were being taken?
5 A. Yes, I did.
6 Q. Go ahead and please look at those exhibits
7 and let me know what they are generally.
8 A. These are photographs that I took in relation
9 to defects that were noted in the love seat on scene, and
10 these series of photographs are documenting measurements
11 and angles for trajectory analysis.
12 Q. Do those photographs accurately depict the
13 way that those measurements looked as you were taking
14 them?
15 A. Yes.
16 MR. GREGORY: Your Honor, I'd move for
17 admission of Exhibits 27 through 35.
18 THE COURT: Ms. Brown?
19 MS. BROWN: No -- May I voir dire?
20 THE COURT: Yes.
21 VOIR DIRE EXAMINATION
22 BY MS. BROWN:
23 Q. Were all of those photographs taken by you?
24 A. Yes.

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1 Q. And were all of the photographs at the scene
2 taken by you?
3 A. I took a series of photographs. I believe
4 they were all additional photographs taken by Douglas
5 County personnel.
6 Q. But the ones that were taken by the Washoe
7 County Crime Lab, you took?
8 A. Correct. All by me.
9 MS. BROWN: Thank you.
10 THE COURT: Any objection?
11 MS. BROWN: No, Your Honor.
12 THE COURT: Exhibits 27, 28, 29, 30, 31, 32,
13 33, 34, and 35 are all admitted.
14 Q. (BY MR. GREGORY:) Looking first at Exhibit
15 27, what does that photograph depict?
16 A. This photograph depicts a defect at the rear
17 of the couch, and there is a trajectory rod that has been
18 placed through that defect. And this particular
19 photograph shows the height of that trajectory rod as
20 it's coming out of the back of the couch.
21 Q. Now, is the defect, the bullet defect into
22 the sheetrock also visible in this photograph?
23 A. It is visible just above the baseboard.
24 Q. Where I'm pointing to it, is that accurate?

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1 A. That is correct.
2 Q. Okay. And so when you stuck the rod through
3 the couch, this is where it hit the wall initially;
4 correct?
5 A. Correct.
6 Q. Displaying Exhibit Number 28. What does
7 photograph depict?
8 A. This photograph depicts that same trajectory
9 rod coming out of the back of the defect of the couch,
10 now lining up with the defect in the sheetrock above the
11 baseboard and appropriate documentation of the
12 measurement of height as well.
13 Q. So when you say lining up with the defect,
14 where I'm pointing, is that the rod going into the defect
15 in the wall?
16 A. Yes.
17 Q. Now, between those two exhibits and the first
18 exhibit, the rod hit farther up the wall; correct?
19 A. Yes.
20 Q. What was done to that rod and/or the couch to
21 make it line up with that defect?
22 A. In the first photograph, there was no weight
23 of a person placed on the couch. We were informed that
24 medical personnel had removed the deceased from the seat

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1 of a reclined position in the couch to the floor to
2 render aid. The first photograph, there's no weight on
3 the couch. In the second photograph, we simulated as
4 best as we could by having a person sit in the seat and
5 simulate the weight and the compression on the couch,
6 then lines up the trajectory rod with the defect on the
7 wall.
8 Q. Now, to do that, was the couch itself moved
9 at all, the base of the couch?
10 A. The couch was not moved, just the weight of a
11 person added.
12 Q. While you were on scene, did you move the
13 couch at all?
14 A. No, sir.
15 Q. How about did you observe anybody else moving
16 the couch?
17 A. No.
18 MR. GREGORY: Publishing Exhibit 29. That
19 does not look good on there. I'm going to show this to
20 the witness, and then I might ask that it be published to
21 the jury.
22 THE COURT: Too much glare off of that light?
23 Is that what that is?
24 MR. GREGORY: I don't know. All I know is it

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1 doesn't look very good up on the screen.
2 THE COURT: All right, sir.
3 Q. (BY MR. GREGORY:) All right. Take a look at
4 Exhibit Number 29. What is that?
5 A. This is a close-up view showing the
6 trajectory rod in contact with the defect on the
7 sheetrock and an appropriate view of the angle finder
8 placed on top of that trajectory rod.
9 Q: And what was the angle? If you need to refer
10 to your notes --
11 A. Yeah, I would have to. Based on the
12 photograph, 19 degrees.
13 THE INTERPRETER: I'm sorry. 19?
14 THE WITNESS: Nineteen degrees.
15 THE INTERPRETER: Degrees?
16 THE WITNESS: Yes.
17 THE COURT: Can I see the exhibits, please.
18 Q. (BY MR. GREGORY:) Would your notes
19 accurately reflect that angle?
20 A. I would have to refer to my notes to clarify.
21 Q. Would the angle be something you put in your
22 notes?
23 A. The angle would only be documented in the
24 photograph.

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1 Q. Okay. So you're saying that the photograph
2 shows the 19-degree angle?
3 A. Yes.
4 Q. Okay. Thank you. Showing you Exhibit 30.
5 What does that photograph show?
6 A. This is a view from the front of the love
7 seat where the trajectory rod was placed in and showing
8 the height of the trajectory rod.
9 Q. Exhibit Number 31. Does what does that show?
10 A. This is a closer-up view with the angle
11 finder placed on the trajectory rod with the height
12 measurement in the background.
13 Q. And Number 32?
14 A. A closer-up view to show the angle found at
15 that measurement.
16 Q. Is the photograph clear enough for you on the
17 projector to tell us what the angle reading was?
18 A. It appears to be there's a little glare on
19 the screen.
20 Q. Let me show it to you.
21 A. Okay. Twenty-four degrees.
22 Q. Thank you. And Exhibit Number 33?
23 A. This is also additional view of the front of
24 the couch showing distance out away from the defect in

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1 the first defect in the couch.
2 THE COURT: Mr. Gregory, there's the lights
3 that on the -- If you adjust that, you may impact that
4 glare a little bit. I don't know if it will help you or
5 not. Apparently, it won't.
6 Q. (BY MR. GREGORY:) Okay. And Exhibit
7 Number 34?
8 A. Another view of the defect in the front of
9 the love seat. This view is depicting a height
10 measurement farther out away from the defect.
11 MR. GREGORY: And, Your Honor, given the
12 glare, I would ask that I be allowed to show the jurors
13 these photographs.
14 THE COURT: You may do that, sir. I'm going
15 to suggest that why don't you hand them in a group so
16 that you don't -- so that they can pay attention to your
17 examination of this witness. So once you get done with
18 all of the photographs, I'll give you a moment to hand
19 them, pass them around, and you can pause for a minute.
20 MR. GREGORY: Thank you.
21 THE COURT: But I'd prefer that they not be
22 looking at a photograph while you're trying to get them
23 to listen to you.
24 MR. GREGORY: I appreciate that. Thank you.

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1 THE COURT: Or more importantly, to the
2 witness.
3 THE CLERK: 127.
4 Q. (BY MR. GREGORY:) Showing you what's been
5 marked as 127. What is that?
6 A. This is a diagram that I produced based off
7 of the field notes and measurements taken on scene.
8 Q. So that's you taking your field notes, going
9 back to the office --
10 A. Correct.
11 Q. -- and generating this diagram?
12 A. Yes.
13 Q. And you used those measurements, you plugged
14 the measurements into the program, or how do you do it?
15 A. We use a computer-aided drafting program
16 referred to as Crime Zone, and point by point, I begin to
17 enter my measurements until you can see a final product
18 documenting items of evidence located in the scene.
19 Q. Is that diagram accurate?
20 A. It is a graphic representation of the crime
21 scene based on accurate measurements.
22 MR. GREGORY: Your Honor, if I could pause
23 there and have them look at the photographs, then we're
24 going to be getting into a different subject matter with

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1 this witness.
2 THE COURT: Before we do that, are you going
3 to offer 127?
4 MR. GREGORY: Thank you, Your Honor. Yes.
5 I'd move for State's Exhibit 127.
6 THE COURT: Ms. Brown?
7 MS. BROWN: No objection, Your Honor.
8 THE COURT: Then 127 is admitted. We'll pass
9 for a moment, and you may circulate those amongst the
10 jury.
11 MR. GREGORY: I'm going to release
12 Mr. Garren. He's out in the hallway.
13 MS. BROWN: Yes.
14 THE COURT: I already did it. He doesn't
15 need to. I already did it.
16 MR. GREGORY: Thank you. It's done. I
17 misunderstood.
18 THE COURT: Mr. Gregory, you may proceed.
19 MR. GREGORY: Thank you, Your Honor. I'm
20 going to return all of the exhibits back to the clerk.
21 THE COURT: Thank you.
22 Q. (BY MR. GREGORY:) Mr. Lear, were you also
23 involved in this case to the extent of looking for
24 fingerprints on the rifle in question?

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1 A. Yes.
2 Q. And what is your training and experience in
3 regard to lifting fingerprints off of items?
4 A. I have several classes. I took a public
5 agency training council phase one crime scene
6 investigator. I have the Washoe County Crime Lab 40-hour
7 crime scene investigator class, and as part of my time as
8 a forensic investigator in the crime lab, you go through
9 a formal training program on the documentation,
10 collection and identification of latent fingerprints, and
11 I've done that in detention, patrol, and in the crime lab
12 in my experience as a deputy.
13 Q. So did you attempt to obtain fingerprints off
14 of the rifle in question?
15 A. Yes, I did.
16 Q. How did you go about doing that?
17 A. That particular rifle was approved for super
18 glue, and that's a method used in forensic investigations
19 where we have a chamber, and super glue is heated and
20 adheres to any residue or possible perspiration or latent
21 fingerprints left behind on the item. In that particular
22 case, there was one fingerprint identified of possible
23 value on the rifle.
24 Q. Where was that fingerprint located?

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1 A. On the top portion of the cylinder after
2 applying a black powder, I observed one possible print of
3 value that I attempted three lifts off the cylinder.
4 Q. Were you successful in pulling a print off of
5 the weapon?
6 A. I was.
7 Q. And so that singular print, you said it was
8 on the cylinder. Is that a part that rotates --
9 A. Correct.
10 Q. -- on the gun? Thank you. And would you
11 have attempted to print the entire gun or just areas of
12 the gun, or?
13 A. We processed the entire weapon for any
14 possible prints of value. That was the only one that I
15 located after the super gluing and gluing and application
16 of black powder.
17 Q. So you look on the trigger?
18 A. Correct.
19 Q. And on the hammer, the caulking of the gun?
20 A. Correct.
21 Q. And on the barrel of the gun?
22 A. Correct.
23 Q. And no prints in those areas?
24 A. Correct.

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1 Q. All right. Just one other question going
2 back to the crime scene. About how long were you on
3 scene documenting and diagramming and measuring?
4 A. Approximately three and a half hours.
5 MR. GREGORY: Thank you. Nothing further.
6 THE COURT: Ms. Brown or Ms. Henry?
7
8 CROSS-EXAMINATION
9 BY MS. BROWN:
10 Q. Going back to the prints, you said that there
11 was one print that you tried to lift three times?
12 A. Yes.
13 Q. What do you mean by that?
14 A. When we apply powder to latent fingerprints,
15 there are times when you attempt a first lift, and what
16 is removed is a lot of what we refer to as noise and the
17 background, and so you always follow up with additional
18 attempts at that same lift. And sometimes the second and
19 third lift of that fingerprint actually provides the
20 cleanest view for a fingerprint identifier to work with.
21 You submit every lift you attempt so that all of the
22 evidence is collected.
23 Q. And when you talk about usable prints, what
24 do you mean by that?

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1 A. That there are points of minutia or points of
2 identification located within those fingerprints that
3 could be used by a certified latent fingerprint examiner
4 to ID the fingerprint.
5 Q. And is it unusual not to find usable latent
6 prints on items?
7 A. Depending on the surface, yes.
8 Q. It's unusual?
9 A. I'm sorry. Can you ask the question again?
10 Q. Is it unusual not to find usable latent
11 prints?
12 A. No, it's not unusual. I'm sorry. I was
13 confused at the initial question.
14 Q. That's okay. So usable latent prints are the
15 exception to find? Is that --
16 A. I can't -- It depends on the item that you're
17 attempting to fingerprint. I can't say specifically that
18 that's the exception.
19 Q. Is there anything else you look for when
20 you're taking attempting to lift prints off any item?
21 A. In terms of evidence?
22 Q. Yes.
23 A. There may be items that are submitted for
24 also biological testing, and if any of those items are

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1 identified, those would be noted.
2 Q. So on a gun say, for example, a gun such as
3 this, it would not be unusual not to find usable prints;
4 is that correct? Too many negatives?
5 A. There's too many negatives in that question.
6 I don't want to answer it incorrectly. If you could
7 rephrase it for me, please.
8 Q. In referring to something like a firearm, is
9 it usual not to find usable latent prints?
10 A. It can be depending on the surface of the
11 firearm.
12 Q. And what about the surface would cause you
13 not to find usable latent prints?
14 A. For example, a lot of our handguns that get
15 submitted have a textured rubberized frame, and on a
16 firearm like that, you are unlikely to be able to recover
17 a latent fingerprint because of the surface is not
18 conducive with the perspiration from the fingerprint
19 being left behind on that hard rubberized material.
20 Q. What about, for example, the oils or
21 something used in cleaning a gun? Would that affect --
22 A. Those could have an effect.
23 Q. By making it more likely or less likely to
24 have a fingerprint?

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1 A. With the oils, it would more likely that you
2 might have a smudge or extra residue left behind on the
3 firearm.
4 Q. Before going through the super glue process,
5 do you do kind of a visual examination?
6 A. Yes.
7 Q. And what are you looking for in the visual
8 examination?
9 A. Any latent impressions that might be of
10 value.
11 Q. And in your visual examination, could you see
12 any other possible prints that could have been evaluated?
13 A. I would have to refer to my notes to be
14 specific on that, and I believe it's documented in my
15 report.
16 Q. Your report refers to three latent lift
17 cards, and those were the same three you were talking
18 about?
19 A. Correct. I'm referring to my notes page on
20 the processing of that gun, which I do have a copy with
21 me on the desk if you do not.
22 MS. BROWN: May I see a copy of that,
23 Mr. Gregory?
24 MR. GREGORY: Your Honor, could I bring the

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1 witness -- He brought some things with him today, or is
2 it better have him come get what he needs?
3 THE COURT: You can walk up to the witness.
4 That's okay, sir. But if the witness is going to review
5 something, I want to know exactly what he's looking at.
6 THE WITNESS: Okay.
7 THE COURT: So if you review an item, I want
8 you to tell me what, and I want you to tell Ms. Brown and
9 Mr. Gregory.
10 THE WITNESS: I'm currently look at the lab
11 report that I generated in relation to the processing of
12 the firearm.
13 THE COURT: Ms. Brown, do you want to
14 approach and see what he's looking at so that both of you
15 can see it? Is that the only thing you need from this
16 pile?
17 THE WITNESS: Yes, Your Honor.
18 THE COURT: Thank you, Mr. Gregory.
19 THE WITNESS: And then within here, I have
20 notes on processing the gun, and that's what I was
21 talking to you about.
22 THE COURT: Thank you, Mr. Gregory.
23 MS. BROWN: Okay. Thank you.
24 THE COURT: I don't want him to testify from

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1 these notes unless you know that he's doing that, so --
2 MR. GREGORY: I'll take them back.
3 THE COURT: Thank you, sir. Ms. Brown, your
4 next question.
5 Q. (BY MS. BROWN:) How long can latent prints
6 stay on a surface?
7 A. Depends on the weather conditions and the
8 surrounding environmental factors in relation to that
9 item.
10 Q. So a long period of time? A short period of
11 time?
12 A. It can be for a long period of time. Yes.
13 Q. And going back now to February 23rd, what is
14 your background and training to qualify to be a forensic
15 investigator?
16 A. I graduated with a Nevada POST Category 1
17 POST certificate in 2007. I have eight years of
18 experience working as a deputy sheriff including the
19 detention facility, the patrol division, and one year
20 experience of working as a forensic investigator.
21 Like I mentioned earlier, I have several
22 classes: The Public Agency Training Council, Phase One,
23 crime scene investigator, 40-hour Washoe County Crime Lab
24 Crime Scene Investigator, and then the formal training

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1 program that you go through in the crime lab covering all
2 areas of crime scene investigation.
3 Q. Are you a member of any professional
4 organizations?
5 A. I am. I am a Certified Crime Scene
6 Investigator through the International Association of
7 Identification.
8 Q. Who went with you when you went to 452 Kent
9 Way?
10 A. Investigator Margritier and Sergeant Michael
11 Lyford.
12 Q. And when you arrived there, what time was it?
13 A. Approximately 5:00 p.m.
14 Q. And who else was present when you arrived?
15 A. There were multiple investigators from
16 Douglas County, including Investigator Garren and also
17 Captain Milby.
18 Q. They were inside the residence?
19 A. Yes.
20 Q. Was Evidence Technician Barden inside of the
21 residence?
22 A. Yes.
23 THE COURT: Ms. Brown, would you turn your
24 microphone back on, please. Thank you, ma'am.

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1 Q. (BY MS. BROWN:) Do you know the evidence
2 volunteer Schrambra? Was she there?
3 A. I am not familiar.
4 Q. Excuse me?
5 A. I'm not familiar, ma'am.
6 Q. Was Deputy Marshall there?
7 A. I recall there being a deputy on scene. I do
8 not know his name.
9 Q. Was Investigator Chrzanowski there?
10 A. I don't recall.
11 Q. And Deputy Schemenauer, or Investigator
12 Schemenauer?
13 A. Yes.
14 Q. So there are numerous people already present
15 at the scene when you arrived?
16 A. That's correct.
17 Q. And when you arrived at the scene, were they
18 already starting to collect evidence?
19 A. They had identified items of evidence by
20 placards within the crime scene.
21 Q. And was that later collected by them?
22 A. Yes.
23 Q. Generally under the protocol of Washoe
24 County, when you respond to a crime scene like that, is

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1 it generally your protocol to collect the evidence?
2 A. It depends on the nature of the request from
3 the outside agency. In certain cases, we collect
4 evidence if they're requesting it. In this particular
5 case, they requested documentation for the diagramming of
6 the items of evidence located and also documentation of
7 the couch and any trajectory analysis.
8 Q. So while you were there doing the
9 measurements, there were other Douglas County deputies
10 there or investigators collecting evidence?
11 A. Correct.
12 Q. How long were you at the scene?
13 A. Approximately three and a half hours.
14 Q. And during the time you were at the scene,
15 were other people coming and going out of the residence?
16 A. I was primarily in the upstairs living room
17 and kitchen area, and the -- there was not any additional
18 personnel that I recall arriving while I was on scene.
19 Q. And within your forensic division, is it
20 appropriate protocol to have numerous people on scene
21 while you're trying to document evidence?
22 A. Depends on the nature of the scene and how
23 many people you need to process it.
24 Q. And so while you're doing your work and

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1 there's other individuals present, does that interfere
2 with anything you're doing?
3 A. In this case, there was no interference in my
4 work.
5 Q. Did do you know how many people were present
6 in the residence before you arrived on the scene?
7 A. I do not know.
8 Q. Prior to doing any of your documentation,
9 were you advised that one of the paramedics had moved the
10 coffee table in the living room?
11 A. I was not advised of that.
12 Q. When you're doing measurements such as this,
13 is that type of information helpful?
14 A. It can be. It depends on the nature of the
15 scene.
16 Q. And were you advised that numerous people
17 including paramedics had been looking around the scene
18 earlier?
19 A. Yes.
20 Q. And viewing the bullet hole behind the couch?
21 A. No, I was not advised of that.
22 Q. So in doing measurements and the trajectory,
23 it would be important to know if things had been moved or
24 hadn't?

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1 A. Correct.
2 Q. Now, the sofa, was the back of it broken when
3 you saw it?
4 A. What do you mean, broken?
5 Q. The back of the sofa, you can lift up off the
6 rails?
7 A. Okay.
8 Q. When we were allowed to view it last week --
9 MR. GREGORY: Objection, Your Honor.
10 Introducing evidence.
11 THE COURT: Sustained.
12 Q. (BY MS. BROWN:) There was no issue with the
13 couch?
14 A. Not to my knowledge.
15 Q. You didn't notice the ability to maneuver the
16 back of that couch?
17 A. Could you be more specific?
18 Q. Move the back seat up off a rail?
19 A. I did not attempt any movements of that
20 nature with the couch while on scene.
21 Q. Were you advised that Ms. Leibel had reported
22 removing her husband off of that couch?
23 A. I was advised that the subject had been moved
24 off the couch upon medical personnel's arrival on the

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1 scene.
2 Q. And was there any report to you that the
3 couch had fallen forward during the movement of
4 Mr. Leibel?
5 A. No.
6 Q. Now, when you come in and start diagramming
7 the scene, then you're taking the items as they are in
8 place; is that correct?
9 A. That's correct.
10 THE COURT: Are those new numbers, ma'am?
11 THE CLERK: 128, 129, 130. That's it.
12 THE COURT: That's it?
13 MS. BROWN: 110.
14 THE COURT: Ms. Brown, you just marked some
15 new exhibits. Would you show those to Mr. Gregory,
16 please.
17 Q. (BY MS. BROWN:) I'm sorry. First I'm going
18 to show you Exhibits 115 -- sorry. 110 through 115.
19 Would you look at those and see if you recognize those?
20 A. Yes, I do recognize these as my photographs.
21 Q. And are those fair and accurate
22 representations of the scene on February 23rd?
23 A. Yes.
24 Q. And then Exhibits 128, 129, and 130?

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1 A. Yes, additional photographs that I took.
2 Q. Okay. And are those fair and accurate
3 representations of the scene?
4 A. Yes.
5 MS. BROWN: Thank you. Showing you
6 exhibit --
7 THE COURT: No. You're not going to show
8 anything until they're admitted. Okay?
9 MS. BROWN: And, Your Honor --
10 THE COURT: So lets start with that.
11 MS. BROWN: Start with that. I'd offer
12 Exhibit 110 through 115.
13 MR. GREGORY: No objection.
14 THE COURT: 110 through 115 are admitted.
15 MS. BROWN: And Exhibits 128 through 130.
16 MR. GREGORY: No objection.
17 THE COURT: 128, 129, and 130 are admitted.
18 Thank you, ma'am. You may go ahead.
19 Q. (BY MS. BROWN:) Thank you. And showing you
20 Exhibit 110, can you tell me what's shown in that
21 photograph?
22 A. This is a view of the living room including a
23 center coffee table, a love seat with a firearm, and a
24 number one placard depicted next to it, and some

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1 blankets, and an additional recliner in the corner.
2 Q. Okay. And when you first arrived at 453
3 Kent, is this the way the furniture was set up?
4 A. Yes.
5 Q. And this would have been towards the right of
6 the couch if you were standing looking at it?
7 A. Correct.
8 Q. And Exhibit 111?
9 A. Yes.
10 Q. Is this the same view with some of the items
11 removed?
12 A. This is a closer-up view later on. Yes.
13 Q. Okay. And so the coffee table and recliner
14 that was over here have been removed?
15 A. You can still see the blanket in the corner
16 hanging off the recliner. The coffee table, I had to
17 move in order to -- after I diagrammed the scene, I had
18 to be able to document in photographs and put myself down
19 in a very small space to be able to document with
20 photographs.
21 Q. Okay. So that coffee table had to be moved
22 to access behind the couch?
23 A. That's correct.
24 Q. In Exhibit 112, what's shown in this

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1 photograph?
2 A. This is a view to the rear of the love seat.
3 Q. And what perspective would this be looking
4 from? Looking over? Around? Where are you documenting?
5 A. Standing next to the couch showing the view
6 behind on the wall.
7 Q. So to the right of the couch looking more
8 towards behind it?
9 A. Correct.
10 Q. And in your notes, you had that the couch in
11 the upright position?
12 A. Correct.
13 Q. Has a distance of seven inches from the wall?
14 A. I don't recall from memory.
15 MS. BROWN: May I get a copy of that exhibit,
16 the diagram?
17 THE COURT: Ms. Brown, somehow, we end up --
18 it's -- there's not a light over your table. If you want
19 Mr. Sedden to keep turn the lights up for you at any
20 time, just let us know. I'm been trying to get the
21 lights to go up and down as we display things for you and
22 Mr. Gregory, but your table is a little darker. Somehow
23 there's a light over his. But at any time you need the
24 lights on, you let us know.

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1 MS. BROWN: Thank you, Your Honor.
2 THE COURT: Yes, ma'am. Would you, for the
3 record, tell us what exhibit you have just displayed to
4 the jury.
5 Q. (BY MS. BROWN:) Yes, Your Honor. Exhibit
6 126. And it notes in the reclined position at, that's
7 the top of the couch is seven inches from the wall?
8 A. That's correct. The upper left portion that
9 you're looking at, which I marked with the number one.
10 Q. And the one in the upright position would be
11 eight inches from the wall?
12 A. Yes
13 Q. So this is a couch that -- it's a recliner
14 that doesn't lean back. It scoots forward; is that
15 correct?
16 A. Correct. Yes. It rotates in order to
17 recline. Yes.
18 Q. And then it was noted the bottom frame of the
19 couch again in the reclined position would be one foot
20 eight and a half inches from the wall?
21 A. Correct.
22 Q. And in the upright position, it's one foot
23 three inches from the wall. Is that correct?
24 A. Yes.

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1 Q. And on both of these documents --
2 THE COURT: Now, you just displayed another
3 exhibit. Would you please, for the record --
4 Q. (BY MS. BROWN:) On Exhibit Number 125 and
5 Exhibit Number 126 --
6 THE COURT: Thank you.
7 Q. -- there is a notation that this is
8 supervised. What does that mean?
9 A. One of our crime lab policies is while you
10 are completing the year-long formal training program, any
11 casework that you do, there's another certified forensic
12 investigator that has to sign off and validate the work
13 that you do. In this case, I'm required to write
14 "supervised" on my notes, and then there's a cosigner on
15 my report of the investigator that supervised the case
16 work.
17 Q. And so it would be Marci Margarita?
18 A. Marci Margritier.
19 Q. Sorry. Is the one that's supervising you?
20 A. Correct.
21 Q. So you're in a first year of --
22 A. I was actually at this point almost completed
23 with the formal program.
24 Q. Okay. And in Exhibit Number 113, this is

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1 looking from the right-hand side of the couch through to
2 the left-hand side of the couch; is that correct?
3 A. That is correct.
4 Q. And it appears at this point that the
5 right-hand side of the couch is not visible.
6 A. The far corner of it is not visible.
7 Correct.
8 Q. That the back is not visible?
9 A. Well, you're looking at the back portion of
10 the left-hand side of the couch, and then there's a break
11 in the couch, and that next piece over would be the
12 right-hand side of the couch, as it's a dual love seat.
13 Q. And the right-hand side of the couch is the
14 one that's reclined; is that correct?
15 A. Correct. Well, this view is not depicting
16 any reclining, so I don't want to confuse anyone. So
17 I'll let you ask that question again so I can answer
18 appropriately.
19 Q. So the couch was unreclined at some point?
20 The right-hand side of the couch was unreclined at some
21 point?
22 A. While we were processing the scene?
23 Q. Yes.
24 A. Yes.

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1 Q. So if both of them were unreclined, wouldn't
2 they be equal distance then?
3 A. It depends on how the couch functions.
4 Q. And in Exhibit 114, again, that's looking at
5 the left-hand side of the couch?
6 A. Correct.
7 Q. And the right-hand side of the couch has been
8 moved forward?
9 THE INTERPRETER: I'm sorry. Is what?
10 Q. (BY MS. BROWN:) I'm sorry. Yeah. The right
11 side of the couch has been unreclined?
12 A. Yes.
13 Q. And in Exhibit 115, this is looking at the
14 trajectory?
15 A. Showing a distance away from the defect in
16 the front of the couch with a trajectory rod in place.
17 Q. Is that trajectory rod going through to
18 another location?
19 A. Yes. It goes through the corresponding
20 defect on the back of the love seat that you saw in the
21 other views.
22 Q. And what about the wall?
23 A. In this view, the wall is not depicted.
24 Q. But was it in place at the time?

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1 A. Yes.
2 THE COURT: That question is ambiguous. Was
3 the wall in place, or is your question was the rod --
4 Q. (BY MS. BROWN:) Was the trajectory rod in
5 place with the wall at this point?
6 A. Was it in place with the wall? The
7 trajectory rod was through the couch all the way to the
8 wall. Yes. I can't tell you based on this photograph
9 where the other end of that trajectory rod is touching
10 because it's not depicted in the view.
11 Q. And in Exhibit Number 130, who is this
12 individual?
13 A. That is my supervisor, Sergeant Mike Lyford.
14 Q. And in this photograph, the trajectory rod is
15 in place?
16 A. That's correct.
17 Q. And why is he positioned on the couch?
18 A. We had to use a person for a specific reason
19 on the scene. It was reported that the victim in the
20 case was seated in a similar position reclined, and when
21 we began the documentation for the trajectory, we showed
22 photographs without any weight or compression on the
23 couch with no one in the couch, and those photographs
24 depict the trajectory rod hitting the wall clearly higher

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1 above the defect.
2 When you compress the couch with the person
3 and the weight as reported how it occurred, that
4 compression of the couch affects the trajectory rod being
5 able to line up with the defect in the front, the rear of
6 the couch, and the corresponding defect above the
7 baseboard on the wall. So we had a specific purpose, and
8 we had no choice but to use a person to be on the couch
9 in these photographs.
10 Q. And are you aware of the injuries that were
11 -- they were -- The attempt was made to find the
12 trajectory for using this method? Do you know which
13 injury you were looking for?
14 A. No, I do not.
15 Q. Okay. And you said there was a suggestion
16 that Mr. Leibel had been sitting on the couch. Is that
17 correct?
18 A. Correct.
19 Q. And he was -- Why would you put a person in
20 this position at the center of a couch where you're
21 almost on the brink between both seats?
22 A. Our best attempt without injuring our
23 supervisor and having him lay on top of a trajectory rod.
24 And like I said, the purpose was to try to add some

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1 weight to simulate where that couch would be and where
2 those defects would be in relation to having that
3 compression.
4 Q. But the weight -- location of the weight on
5 the couch, if it were on, for example, over in this
6 corner, wouldn't have the same effect on moving the
7 trajectory rod.
8 A. Could be different. Yes.
9 Q. And so you don't know that this was a
10 position that had ever been reported Mr. Leibel was in,
11 is that correct, other than on the couch somewhere?
12 A. It was reported that he was sitting in the
13 reclined position. That's all that we knew.
14 Q. Sitting in a reclined position?
15 A. That's what was reported.
16 Q. And is this couch reclined at this point?
17 A. It appears to be partially reclined, yes, as
18 evidenced by Sergeant Lyford's leg being up in the air.
19 Q. So you had to recline the couch to some
20 degree and put weight on it in an undocumented location
21 to get this trajectory?
22 A. That's why we documented both the before
23 photographs and after so that you can see both sides.
24 Yes.

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1 Q. So without it being in an upright position
2 without weight on it, you couldn't make it go in -- The
3 trajectory rod would not match up with the hole?
4 A. With the corresponding defect on the
5 sheetrock.
6 Q. On the sheetrock.
7 A. That's correct.
8 Q. When you partially reclined it, so you
9 changed its position, and you put an unknown weight in an
10 unknown location to basically make it fit?
11 A. We simulate it the best that we could.
12 Q. The best you could?
13 A. Yes. And like I said, it was for a very
14 specific reason.
15 Q. Do you know had the Washoe County, or excuse
16 me, Douglas County Sheriff's Office completed their
17 evidence collection at this point?
18 A. At which point?
19 Q. At the point Exhibit 129 was taken?
20 A. In terms of the evidence collection of items
21 on that scene?
22 Q. Yes.
23 A. I am not familiar.
24 Q. You didn't take any trace evidence in this

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1 case, did you?
2 A. No, I did not.
3 Q. And so you don't know if there was trace
4 evidence on the couch that had or had not been collected?
5 A. We had not collected any. Correct.
6 Q. And this individual is sitting basically over
7 where a suspected bullet hole is in the couch?
8 A. Correct.
9 Q. Did you examine the hole in the drywall
10 itself, the wall?
11 A. How do you mean, examine?
12 Q. View it? Look at it?
13 A. I viewed it. Yes.
14 Q. And does it appear to be actually a
15 conglomeration of two or three, four different holes
16 overlapping?
17 A. I would just refer to it as a defect in the
18 wall.
19 Q. And at the time you were doing the trajectory
20 measurements, that wall was intact other than the defect?
21 A. Correct.
22 Q. The piece of it hadn't been cut out to see
23 what was behind it?
24 A. Correct.

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1 Q. And you couldn't see it at that point what
2 was behind it?
3 A. Correct.
4 Q. This hole was larger than the trajectory rods
5 that were being it put in it?
6 A. The hole was what?
7 Q. Larger than the trajectory rods being
8 inserted into it?
9 A. That's correct.
10 Q. And so there was some wiggle room there?
11 A. That's correct.
12 Q. And in actuality, you couldn't see where
13 behind the wall to have an endpoint with that trajectory
14 rod?
15 A. Correct.
16 MS. BROWN: Sorry, Your Honor.
17 THE COURT: No, ma'am. You take your time.
18 MS. BROWN: Thank you. I have nothing
19 further.
20 THE COURT: Mr. Gregory?
21 MR. GREGORY: No questions, Your Honor.
22 THE COURT: All right, Mr. Lear. Thank you
23 for your appearance today. You may step down.
24 THE COURT: Could we have the lights back up,

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1 please. Your next witness, Mr. Gregory.
2 MR. GREGORY: Jennifer Naranjo.
3 THE COURT: I want to make sure that all of
4 the exhibits are returned to the clerk, please. Jennifer
5 Naranjo? Is that correct?
6 MR. GREGORY: Yes.
7 THE COURT: I've noted several people going
8 in and out of the courtroom. I just want to remind
9 counsel keep an eye back in the courtroom and make sure
10 none of your witnesses on the other side appear, having
11 invoked the rule of exclusion.
12 Ma'am, if you'd come forward, step in front
13 of the clerk, raise your right hand, please.
14
15 JENNIFER NARANJO,
16 having been first duly sworn, was
17 examined and testified as follows:
18
19 THE COURT: If you'd come up and have a seat
20 up here, please. There's some water there if you'd like.
21 THE WITNESS: Thank you.
22 THE COURT: Mr. Gregory.
23 MR. GREGORY: Good morning.
24 THE WITNESS: Good morning.

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1 DIRECT EXAMINATION
2 BY MR. GREGORY:
3 Q. Can you please state and spell your last
4 name.
5 A. My name is Jennifer Naranjo: N-a-r-a-n-j-o.
6 Q. What do you do for a living?
7 A. I'm a criminalist at the Washoe County
8 Sheriff's Office Crime Lab.
9 Q. How long have you been so employed?
10 A. I've been employed for approximately over
11 nine years.
12 Q. And what specifically do you do within that
13 division?
14 A. I'm a DNA analyst and a primary exam analyst
15 in the crime lab, and my role is to look at evidence that
16 are submitted in cases for initially, I can do screening,
17 which is my role as a primary exam analyst for biological
18 evidence. And as a DNA analyst, I then process those
19 samples and generate DNA profiles, which I then make
20 comparisons to if I can.
21 Q. What is your training and experience in those
22 two areas?
23 A. I have a Bachelor's of Science degree in
24 environmental science and management from New Mexico

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1 Highlands University.
2 THE COURT: Ma'am.
3 THE WITNESS: Yes.
4 THE COURT: I'm going to ask you to slow
5 down, please.
6 THE WITNESS: Okay.
7 THE COURT: I know that you have a lot of
8 information to present, but this is all being
9 interpreted, and it is very difficult for the
10 interpreters to keep up with you.
11 THE WITNESS: Okay. Absolutely.
12 THE COURT: Thank you, ma'am.
13 MR. GREGORY: You were telling us about your
14 training and experience in those two areas.
15 THE WITNESS: Yes. I have 30 graduate credit
16 hours from the University of Nevada-Reno in the field of
17 DNA analysis and molecular biology. In addition to that,
18 I have completed a seven-month training program at Washoe
19 County Crime Lab under the direct supervision of three
20 qualified DNA analysts, and that is required prior to
21 doing any type of casework. During that time, I
22 processed numerous samples which would be similar to what
23 I would expect to see in casework.
24 Additionally, I wrote numerous reports that

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1 would be similar to what I would expect to be writing as
2 an analyst. Additional type of education that I've
3 obtained, we have to do eight hours of continuous
4 education every year, and also we take classes from the
5 manufacturers that provide our kits for our analysis as
6 well as the companies that provide our equipment.
7 Q. (BY MR. GREGORY:) Are the methods that you
8 employ accepted in the scientific community?
9 A. Yes, they are.
10 Q. Were you asked to process a rifle in this
11 case?
12 A. Yes, I was.
13 Q. And did you both -- did you do -- Tell us
14 what you did with the rifle.
15 A. Okay. May I refer to my report?
16 Q. If that will help you refresh your
17 recollection.
18 A. Yes, please.
19 Q. You did two reports in this case. Would you
20 like to see both of them?
21 A. Yes.
22 THE COURT: Ma'am, do you need the report to
23 refresh your recollection?
24 THE WITNESS: I do.

1 THE COURT: And by reviewing the report,
2 would it refresh your recollection?
3 THE WITNESS: Yes, it will.
4 THE COURT: Are you going to mark those as
5 exhibits?
6 (Whereupon, Exhibit Nos. 131-132 were marked for
7 identification.)
8 THE CLERK: 131, 132.
9 THE COURT: Thank you, ma'am.
10 Q. (BY MR. GREGORY:) I'm showing you 131 and
11 132. Are those your reports?
12 A. Yes, they are.
13 Q. Take a moment to look at those reports and
14 let me know if it refreshes your recollection.
15 A. Okay.
16 Q. So tell us first what you did with the gun.
17 What was the first step?
18 A. So the initial screening of the rifle would
19 include I would take the rifle and use illuminated
20 magnification to look over the entire front and back on
21 both sides of the rifle to determine if there was any
22 biological fluids present, and then at that point, I
23 would do any testing if necessary. For this particular
24 case, I found none of that, so what I did was --

1 Q. When you say "None of that," so none of what?
2 A. No biological staining.
3 THE COURT: Wait. You're a little fast.
4 Please slow down. And, Mr. Gregory, do you intend to
5 offer these reports?
6 MR. GREGORY: No, Your Honor.
7 THE COURT: Because if you don't, then I'm
8 going to ask you to withdraw them from the witness.
9 MR. GREGORY: Yes.
10 THE COURT: Because I don't want her to
11 testify from them if she's just using them to refresh her
12 recollection.
13 MR. GREGORY: And, ma'am, if you need them
14 again to refresh your recollection, just let me know.
15 THE WITNESS: Okay.
16 THE COURT: Mr. Gregory, thank you.
17 Q. (BY MR. GREGORY:) And, Your Honor, I'm going
18 to hold onto these during her testimony.
19 So you said no indication of biological
20 evidence. What do you mean by that?
21 A. There was no blood observed on the rifle.
22 Q. And then what was your next step?
23 A. The request was to swab the trigger and
24 hammer of the rifle. Therefore, I swabbed those together

1 with one wet, one dry swab, and I swabbed them as A-1
2 life. I just gave them a designation. Additionally, I
3 swabbed the strap of the rifle on both sides, front and
4 back of that, as A-2 Rifle, and then those were forwarded
5 onto the DNA section, which I processed for DNA analysis.
6 Q. So just briefly, what does "swabbing" mean?
7 Tell us what you're doing when you're swabbing.
8 A. Okay. So I would take two sterile swabs.
9 One would be wet and would be would be dry, and I would
10 take those on the hammer area, and I swab first with the
11 wet followed by the dry, and then go to the trigger and
12 do the same, one wet, one dry. Those would go into a
13 box, and of course they would be labeled A-1 rifle. And
14 I would then collect a water control that is associated
15 with the same water that I used to collect the possible
16 DNA that may be on the item.
17 Q. So the areas swabbed again were the strap,
18 the leather strap; correct?
19 A. Correct, as A-2.
20 Q. And then the hammer and the trigger?
21 A. Correct, as A-1.
22 Q. And then what did you do with items A-1 and
23 A-2?
24 A. Those were processed through the entire DNA

1 process for -- I would need to refer to my report. I
2 don't want to confuse item one and item two, please.
3 Q. Handing you both of those exhibits back, 131
4 and 132. So in reference to A-1, and A-1 is the swab
5 from the hammer and the trigger. Did you perform an
6 analysis of those swabs?
7 A. I did. So I initially took half of each swab
8 and carried those through to DNA. That is our protocol.
9 When I processed it through the State, the point where I
10 would determine if there's any DNA present for Item A-1,
11 I determined that it was insufficient to move forward, so
12 I had to stop and request to utilize the other half.
13 For Item A-2, I was able to process that
14 through the whole entire DNA process, and I determined
15 after completing the process that there were at least
16 four individuals who their DNA would be associated with
17 that, and that I could make no conclusions for that mixed
18 DNA profile due to a low level of DNA as well as the
19 number of contributors. So I have no conclusions for
20 that.
21 Q. So that's on the strap?
22 A. That is on the strap.
23 Q. And then going back to the trigger and the
24 hammer, you found that there was low levels of DNA on

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1 that as well?
2 A. So for the trigger and the hammer, which is
3 A-1, I had to go back and take the over half of the
4 sample and combine them together to get a sufficient
5 amount of DNA to attempt to get a profile. At that
6 point, I was able to generate a profile that was too low
7 to make any conclusions, so due to a low level of DNA, I
8 could offer no conclusions on that item.
9 MR. GREGORY: Thank you. I have nothing
10 further.
11 THE COURT: Ms. Brown?
12 MR. GREGORY: Your Honor, I'm going to return
13 the exhibit to the clerk.
14 THE COURT: Thank you, sir.
15 MS. BROWN: Ms. Brown or Ms. Henry?
16
17 CROSS-EXAMINATION
18 BY MS. HENRY:
19 Q. Ms. Naranjo, you indicated that you have a
20 Bachelor's of Science in environmental science. Was that
21 right?
22 A. Yes, ma'am.
23 Q. And then beyond that, did you say you had 30
24 graduate credit hours in DNA analysis?

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1 A. Correct.
2 Q. And that 30 hours is your training for what
3 you're doing now?
4 A. No. That's from the University of Nevada-
5 Reno.
6 Q. Right. But is that -- That's for the
7 specific field and what you do now in your employ?
8 A. It's related to the field. Yes.
9 Q. Okay. And then beyond those 30 hours, you
10 then have a seven-month training program?
11 A. That is correct.
12 Q. And you said that you have written numerous
13 reports. Are you talking about reports like you wrote in
14 this instance?
15 A. Yes. During my training, we are required to
16 write a minimum of 20 reports that we have to utilize the
17 information that was previously generated and reports
18 written, and then our reports have to basically be the
19 same near identical to what the previous analyst wrote to
20 demonstrate that we can in fact get the same results and
21 give a report that is correct.
22 Q. And do you belong to any professional
23 organizations?
24 A. I do not.

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1 Q. And have you ever published anything in your
2 field?
3 A. No.
4 Q. So I just want to make sure that I'm clear.
5 You took -- You originally took a DNA reference sample
6 from Mr. Leibel, correct, or a DNA reference sample was
7 given to you?
8 A. That's correct.
9 Q. For Mr. Leibel; right?
10 A. Correct.
11 Q. And a DNA reference sample was also given to
12 you for Mrs. Leibel?
13 A. That's correct.
14 Q. And then the trigger and the hammer of the
15 rifle were both swabbed together for possible residual
16 DNA for any person that handled the gun --
17 A. That's correct.
18 Q. -- correct? And both sides of the strap of
19 the rifle were swabbed for the possible residual DNA from
20 a person that handled the gun?
21 A. That's correct. Yes.
22 Q. And then a portion of the trigger and hammer
23 were swabbed for the reference samples for Mr. and
24 Mrs. Leibel as well; correct?

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1 A. No.
2 Q. So -- I'm sorry. A portion of the trigger
3 and the hamper were also swabbed alongside the strap;
4 correct?
5 A. The initial -- so A-1 was the trigger and the
6 hammer swabbed together. A-2 was the front and back of
7 the strap swabbed together.
8 Q. Okay. And then at that point, is that when
9 -- because you said you also did DNA profiles. Is that
10 the point when the DNA profiles are created?
11 A. The DNA profiles are not created. They are
12 either on the item or they're not. So the DNA exists
13 there. I collect it, what possible DNA, moved it through
14 the DNA process, and that could -- you know, that's
15 extracting the DNA from the cells, finding out how much
16 DNA is there, and then finally generating the profile.
17 Q. Okay. And then with regard to the DNA from
18 the strap of the rifle, you said that there was a low
19 level of DNA. Is that correct?
20 A. No. On the strap of the rifle, that was the
21 item that was both a low level and a mixture that I could
22 make no conclusions from.
23 Q. So there was a low level of DNA?
24 A. There is.

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1 Q. Okay. And you couldn't make any conclusions
2 with regard to whose DNA was on the strap of the rifle?
3 A. That's correct.
4 Q. And then the same with regard to the DNA from
5 the trigger and the hammer. You also determined that
6 there was a low level of DNA present there as well?
7 A. That's correct.
8 Q. And because of that, you couldn't match that
9 to any -- you couldn't match to Mr. Leibel or
10 Mrs. Leibel?
11 A. That's correct. I could make no comparisons.
12 MS. HENRY: No further questions.
13 THE COURT: Mr. Gregory?
14 MR. GREGORY: Nothing further.
15 THE COURT: Ma'am, thank you for your
16 appearance today. You're excused. Mr. Gregory, we find
17 ourselves at the morning break, so we're going to take a
18 15-minute break.
19 Ladies and Gentlemen, we'll take a 15-minute
20 recess. And during this recess, you are admonished not
21 to talk or converse among yourselves or with anyone else
22 on any subject connected with this trial or read, watch,
23 or listen to any report of or commentary on the trial or
24 any person connected with this trial by any medium of

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1 information including, without limitation: Newspaper,
2 television, radio or Internet.
3 You're not to form or express any opinion on
4 any subject connected with the trial until the case is
5 finally submitted to you. Thank you. We're in recess.
6 We'll be back at a quarter till. So give you a chance to
7 take a bit of a break. Thank you very much.
8 (Recess was taken.)
9 THE COURT: We're back in session in 14DI62,
10 State of Nevada versus Tatiana Leibel. Mr. Gregory is
11 here. Ms. Brown and Ms. Henry here. Ms. Liebel is here.
12 The interpreters are here. Please bring the jury in.
13 Thank you, Ladies and Gentlemen. Have a seat
14 please. Relax. Counsel stipulate to the presence of the
15 jury?
16 MR. GREGORY: Yes, Your Honor.
17 MS. HENRY: Yes, Your Honor.
18 THE COURT: Thank you. Your next witness,
19 please.
20 MR. GREGORY: Kevin Byrne.
21 THE COURT: Come on up, sir. If you'd pause
22 about right there and sworn.
23
24

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1 KEVIN BYRNE,
2 having been first duly sworn, was
3 examined and testified as follows:
4
5 THE COURT: Come on up and have a seat
6 please, sir. There's some water there, if you'd like.
7 THE WITNESS: Thank you.
8
9 DIRECT EXAMINATION
10 BY MR. GREGORY:
11 Q. Sir, please state your name and spell your
12 last name.
13 A. Kevin Byrne: B-y-r-n-e.
14 Q. What do you do for a living, Mr. Byrne?
15 A. I'm a latent fingerprint analyst at the
16 Washoe County Sheriff's Office.
17 Q. How long have you been so employed?
18 A. Nearly seven years.
19 Q. What does a latent fingerprint analyst do?
20 A. A latent fingerprint examiner is basically a
21 person who takes fingerprints from a crime scene and
22 compares them to known fingerprints to determine if they
23 came from the same source.
24 Q. What training and experience do you have that

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1 enable you to be an analyst?
2 A. Specialized training in latent comparison,
3 crime scene investigation, latent print processing.
4 Q. Do you have any certification for fingerprint
5 analyst?
6 A. Yeah. I'm certified as a latent fingerprint
7 examiner through the IAI, which is the International
8 Association for Identification.
9 Q. Thank you. And is the methodology that
10 you've been employed or that you use, is it accepted
11 within your scientific community?
12 A. Yeah, for fingerprint examinations, we use a
13 methodology called Ace V. It's an industry standard we
14 use on all of the fingerprint identification.
15 Q. In this particular case, were you given for
16 analysis a fingerprint that had been pulled off of a
17 rifle in question?
18 A. Yes.
19 Q. And did you have an opportunity to analyze
20 that fingerprint and compare it to other known
21 fingerprints?
22 A. Yes, I did.
23 Q. Tell us a little bit about how you go about
24 conducting your analysis.

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1 A. Basically, what we do when we have a latent
2 print that we don't know the source of, we compare levels
3 of detail within that fingerprint to details within our
4 known fingerprints to determine if there are any
5 corresponding areas.
6 Q. So in this particular case, you took the
7 unknown fingerprint, which was from the rifle; correct?
8 A. Correct.
9 Q. And then you compared it to many other known
10 fingerprints?
11 A. Yes, I did.
12 Q. And were there many fingerprints that were
13 submitted to you to compare to the unknown print?
14 A. Yes. I compared it to several subjects in
15 this case.
16 Q. Did you receive a fingerprint from Tatiana
17 Leibel?
18 A. Yes.
19 Q. Harry Leibel?
20 A. Yes.
21 Q. Deborah Schrambra?
22 A. Yes.
23 Q. John Barden?
24 A. Yes.

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1 Q. John Milby?
2 A. Yes.
3 Q. Jeff Schemenauer?
4 A. Yes.
5 Q. Brian Hubkey?
6 A. Yes.
7 Q. Ed Garren?
8 A. Yes.
9 Q. Bernadette Smith?
10 A. Yes.
11 Q. Geoff Marshal?
12 A. Yes.
13 Q. Steven Haley?
14 A. Yes.
15 Q. Brandon Williamson?
16 A. Yes.
17 Q. Justin Reddig?
18 A. Yes.
19 Q. Nick Robidart?
20 A. Yes.
21 Q. Fred Parson?
22 A. Yes.
23 Q. Jim Ante?
24 A. Yes.

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1 Q. And Chris Lucas?
2 A. Yes.
3 Q. Did you have an opportunity to compare those
4 known prints with the unknown prints that were found on
5 the rifle?
6 A. Yes, I did.
7 Q. What did your analysis reveal?
8 A. I determined --
9 MS. HENRY: Objection, Your Honor. We
10 would object.
11 THE COURT: What's your objection?
12 MS. HENRY: We don't believe that there's a
13 chain of custody on this.
14 THE COURT: Do you have a response?
15 MR. GREGORY: Your Honor, I believe a few of
16 these witnesses have already testified that they did
17 provide latent prints. I believe the defense also talked
18 about and asked whether Miss Leibel had provided prints,
19 and the pathologist who will be testifying will talk
20 about getting the prints off of Mr. Leibel. So I believe
21 the foundation is there for this testimony.
22 MS. HENRY: I believe that only two of the
23 paramedics, Your Honor, have testified that they have the
24 exclusion, the prints taken for the exclusionary purpose.

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1 I don't believe that there's a chain of custody on
2 anybody else that was just mentioned.
3 THE COURT: The objection is sustained.
4 Q. (BY MR. GREGORY:) Did you -- If I could go
5 through the ones that are known. You did say you
6 received one from Tatiana Leibel?
7 A. Yes.
8 Q. And what was your conclusion with regarding
9 that?
10 A. I determined that she was not the source of
11 the latent impression.
12 Q. Okay. And how about Harry Leibel?
13 A. I determined he was not the source of the
14 latent impression.
15 Q. And how about Chris Lucas?
16 A. I determined that he was not the source of
17 the latent impression.
18 Q. And how about Justin Reddick?
19 A. I determined he was not the source of the
20 latent impression.
21 MR. GREGORY: Thank you. Nothing further.
22 THE COURT: Questions?
23 MS. HENRY: No questions.
24 THE COURT: You're excused, sir. Thank you

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1 for your appearance today.
2 THE WITNESS: Thank you.
3 MR. GREGORY: The State calls Justin Leibel.
4 THE COURT: If you would pause there, sir.
5 Raise your right hand.
6
7 JUSTIN LEIBEL,
8 having been first duly sworn, was
9 examined and testified as follows:
10
11 THE COURT: Come on up, sir. You've been in
12 the room, so you've seen several people testify. You
13 know how to do it. There's some water for you, there.
14 THE WITNESS: Thank you so much.
15
16 DIRECT EXAMINATION
17 BY MR. GREGORY:
18 Q. Sir, please state your full name and spell
19 your last name.
20 A. Yes. My name is Justin Leibel: L-e-i-b-e-l.
21 Q. And are you familiar with Harry Leibel?
22 A. Yes.
23 Q. How so?
24 A. He is my father.

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1 Q. And are you familiar with Tatiana Leibel?
2 A. I am.
3 Q. And how is it that you know her?
4 A. She married my father ten -- 11, ten and a
5 half years ago.
6 Q. And was there ever a time where you lived
7 here in Lake Tahoe?
8 A. I did. I lived here in August of 2005 to
9 February 2006; about six months.
10 Q. Did you actually live with your father and
11 Ms. Leibel during that time?
12 A. No, I did not. I lived on the California
13 side near in Al Tahoe.
14 Q. And while you were here, did you have --
15 Tell me the level of contact you had with your father.
16 A. If not daily, every other day. I was there
17 most Shabbats, I mean most Fridays, weekends most of the
18 time.
19 Q. Moz Shabbat. What is that?
20 A. Shabbats. It's Friday nights for the Jewish
21 religion, like a Sabbath.
22 THE COURT: There's two different words.
23 It's most Shabbats.
24 Q. (BY MR. GREGORY:) Thank you. Your father

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1 was of the Jewish religion?
2 A. Yes.
3 Q. Describe your father's personality.
4 A. Flamboyant, outgoing, friendly, willing to
5 give advice, usually spiritual advice. He voiced his
6 opinions. Very open demeanor.
7 Q. What did you know of your father's health?
8 A. He had cancer in 2004, colon cancer, and had
9 survived that. It was due to smoking, but he continued
10 to smoke after.
11 Q. He was a cancer survivor?
12 A. He was a cancer survivor, yes.
13 Q. Focusing on about the last five years, about
14 how often would you see your father?
15 A. I wouldn't see him often. I'd see him once a
16 year when I did not live in Lake Tahoe. But before he
17 moved up to Lake Tahoe in 2004, I'd see him every
18 weekend, every other weekend usually.
19 Q. And after you moved to down to the Southern
20 California area, how often would you communicate with
21 him?
22 A. Communication a lot. Every month, I would
23 talk to him two or three times.
24 Q. And Ms. Leibel, Tatiana, did you ever have

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1 conversations with her?
2 A. Yes, of course.
3 Q. What language would you use?
4 A. English. English. Very clear.
5 Q. Did you ever have any problems communicating
6 with her in the English language?
7 A. No. It's broken English, but it's very --
8 for me, it's understandable.
9 Q. When was the last time you actually saw your
10 father?
11 A. January, a month before this happened.
12 Q. Where did you see him?
13 A. I stayed at his house.
14 Q. Was Miss Leibel there during your stay?
15 A. Yes, she was.
16 Q. And you had contact with her then?
17 A. Yes, I did.
18 Q. How was your father's demeanor during that
19 stay?
20 A. It was normal.
21 Q. Did you and your father have any plans to do
22 anything together?
23 A. Yes. I have a passion for cars. He was
24 talking to me about doing some future endeavors with

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1 muscle car era vehicles, and I recently got a motorcycle,
2 so when I got some more experience, we'd wanted to go
3 riding together. And then of course the graduate -- I
4 just graduated from Cal State Long Beach. He was looking
5 forward to that in May.
6 Q. When was the last time you spoke to your
7 father on the phone or through some other means?
8 A. February 10th. I drilled that date in my
9 head. I spoke to him over the phone.
10 Q. About 13 days prior to his death?
11 A. Yeah.
12 Q. How did he sound?
13 A. Normal. Just normal. There was nothing out
14 of the ordinary.
15 Q. Anything that he said that concerned you?
16 A. I couldn't -- not off the top of my head.
17 There was nothing that was out of the ordinary.
18 Q. Are you aware of -- Well, tell me about your
19 father and guns.
20 A. He was a gun fanatic, and he was very
21 meticulous how he handled his guns. We used to go
22 shooting all the time at the ranges near Carson City, and
23 he just was passionate about different type of weapons,
24 unusual weapons. And every time we got back, he would

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1 usually clean the guns. Actually, all the time clean the
2 guns that same afternoon. Very meticulous. He had a
3 place for everything.
4 Q. Are you familiar with whether he'd keep
5 firearms at the residence?
6 A. He did.
7 Q. Do you have an approximate number?
8 A. I'm sure he never showed me all of them, but
9 he had guns in a clock, he had guns by the bed, he had
10 guns on the rifle rack that we've seen in pictures. He
11 kept guns kind of everywhere.
12 Q. Did he have both long guns and handguns?
13 A. Yes.
14 Q. Did you ever go shooting with him?
15 A. Yes. Yes.
16 Q. And did Miss Leibel ever go shooting with
17 you?
18 A. She did go with us.
19 Q. Did she shoot the guns?
20 A. She would.
21 Q. How was she at shooting the guns?
22 A. Pretty good. I wouldn't say she's a sniper,
23 but she was a good aim. The targets were fairly close,
24 so all of us were pretty accurate.

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1 Q. Do you recall when the last time it was that
2 you went shooting with your dad?
3 A. It would have to be the summer of 2013.
4 Q. And did Tatiana go with you as well --
5 A. Yes.
6 Q. -- at that time? Are you familiar with a
7 rifle that's called a Circuit Judge?
8 A. Yes.
9 Q. How are you familiar with that rifle?
10 A. That was one of his favorite guns. He had a
11 lot of favorite guns, but he showed me that one, and it
12 was very unique, very rare gun that is kind of a custom
13 gun, but easily attainable, I guess.
14 THE INTERPRETER: I'm sorry.
15 THE WITNESS: Easily attainable.
16 Q. (BY MR. GREGORY:) Did you ever shoot that
17 gun?
18 A. I have not shot that gun.
19 Q. So when you went out in the summer of 2013,
20 that wasn't a gun that --
21 A. No, not --
22 Q. -- was used?
23 A. -- that gun.
24 Q. When did you learn of your father's death?

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1 A. I found out Tuesday, the 25th, at 9:11 in the
2 morning. My sister called me.
3 Q. Sorry for your loss.
4 A. Thank you.
5 Q. Being around your father there at the
6 residence, especially when you were living up here in
7 Tahoe, did your father have any manner in which he would
8 relax?
9 A. Yes. Every time he watched TV, he'd usually
10 recline and put his hands behind his head in a reclining
11 fashion to watch TV. He loved relaxing that way.
12 MR. GREGORY: Thank you. I have nothing
13 further.
14 THE COURT: Ms. Brown? Ms. Henry?
15
16 CROSS-EXAMINATION
17 BY MS. HENRY:
18 Q. Did you interview with the sheriff's office
19 in this case?
20 A. I did.
21 Q. And I think didn't you say that your dad was
22 also worried about money, that you had spoken with him
23 and he was worried about money?
24 A. I do recall that.

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1 Q. And you said -- You know and you reported to
2 the officer that you knew that Tatiana was in school in
3 Reno; correct?
4 A. Yes. UNR.
5 Q. At UNR, and that she was in Reno a lot
6 because of school?
7 A. Yes. She would frequently leave.
8 Q. And you also told the officers that you felt
9 like Harry did not want to be alone?
10 A. I don't recall that.
11 Q. If I showed you the police report, would
12 that --
13 A. That might help, yeah.
14 Q. -- refresh your recollection?
15 THE COURT: For the record, would you tell us
16 all what you're showing him.
17 MS. HENRY: Yes, Your Honor. I'm showing
18 Mr. Leibel a police report where he was interviewed.
19 THE COURT: Okay.
20 MS. HENRY: And the pages are not numbered in
21 this report.
22 THE WITNESS: I was referring to his
23 marriage. He didn't want to be alone. That's why he was
24 married.

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1 Q. (BY MS. HENRY:) Okay. So you said in your
2 report, "Justin said he felt Harry did not want to be
3 alone."
4 A. Yeah.
5 Q. You said that and you just read that;
6 correct?
7 A. Yes.
8 Q. And then you also just read in your report,
9 you said, "Justin said he felt Harry would rather be with
10 someone than be alone in his condition."
11 A. In regards to marriage. Yes.
12 Q. "In his condition." You said that, right?
13 A. Yes.
14 Q. And his condition was he had previously had
15 colon cancer. And you just said that; correct?
16 A. Yes.
17 Q. I believe you also stated in your report that
18 he you had to use the restroom all the time?
19 A. Yeah, very frequent.
20 Q. That he had kidney stones?
21 A. In the past, yes.
22 Q. And that those were painful for him?
23 A. Very, yes.
24 Q. And that he needed help?

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1 A. Yes, I'm sure he had help or needed help.
2 Q. And I believe you also said in your report
3 that Tatiana was also warm and hospitable to you;
4 correct?
5 A. Yes.
6 Q. Okay. And you just testified that you
7 really, in the last five years, you hadn't really seen
8 him often?
9 A. Correct. Yeah, because of the distance. I
10 came up once a year.
11 Q. So you saw him once a year?
12 A. Physically, yes.
13 Q. And you maybe talked to him two to three
14 times a month?
15 A. Yes.
16 MS. HENRY: Nothing further nor me.
17 THE COURT: Thank you. Mr. Gregory, anything
18 else?
19
20 REDIRECT EXAMINATION
21 BY MR. GREGORY:
22 Q. Thank you. You were asked ant your father's
23 concerns for money. What were the concerns that you he
24 voiced to you?

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1 A. He was a little nervous of certain things
2 were happening, and he had vented to me a while back, and
3 then kind of stopped talking to me about it.
4 MS. HENRY: Objection, Your Honor. Hearsay.
5 MR. GREGORY: Your Honor --
6 THE COURT: Overruled.
7 MR. GREGORY: You can go ahead and answer the
8 question.
9 THE WITNESS: He did.
10 Q. (BY MR. GREGORY:) Thank you. You said he
11 vented to you about some things. Can you be more
12 specific?
13 A. Yeah. He was just frustrated that he was --
14 MS. HENRY: Objection, Your Honor. Hearsay.
15 He's asking him what he said, and those are specific
16 comments that he said.
17 MR. GREGORY: And, Your Honor, in response,
18 they asked him for what Mr. Leibel said. I should now be
19 able to give context to the question.
20 THE COURT: I agree. Go ahead. Overruled.
21 THE WITNESS: I'm sorry. Repeat the
22 question.
23 Q. (BY MR. GREGORY:) You indicated your father
24 had vented to you about some things regarding the

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1 finances. Can you be more specific?
2 A. He had specifically told me he was spending
3 money for Lana. He kind of vented to me about Lana, but
4 he didn't really go into very much detail. I think he
5 was just upset at the moment, so after that, he never
6 really brought it up, and I asked him in the future, like
7 "How are things going with that?" And he said, "They're
8 going okay." So he didn't really answer anything.
9 Q. Who is Lana?
10 A. Lana is Tatiana's oldest daughter.
11 Q. And you mentioned Tatiana going to UNR. Did
12 she graduate from UNR?
13 A. She did.
14 MR. GREGORY: Thank you. I have nothing
15 further.
16 MS. HENRY: No further questions.
17 THE COURT: Sir, thank you for being here.
18 Mr. Gregory?
19 MR. GREGORY: Your Honor, my next witness,
20 who is Dr. Kubiczek, is on a tight schedule. He is
21 scheduled to be here at 1:00 o'clock. So I propose
22 taking your lunch recess now instead of later.
23 THE COURT: You don't have another witness?
24 MR. GREGORY: And he will be here actually

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1 earlier, you know, if you want to start up again at 12:30
2 or something. That would be fine also.
3 THE COURT: Do you have any other witnesses
4 that you can put on?
5 MR. GREGORY: I do not.
6 THE COURT: Well, if we take a break now,
7 we'll start early. I don't want to lose an hour here.
8 So we will take a break, but we have one of the jurors
9 has an issue that has come up, and what we're going to do
10 is take the break and try to accommodate that and see if
11 we can get back to work here soon. We'll start at 12:30.
12 I'm going to ask all of the jurors to be prepared to go
13 forward at 12:30. So we'll take a recess until then.
14 Ladies and Gentlemen of the Jury, we'll take
15 a recess until 12:30. During this recess, you're
16 admonished not to talk or converse among yourselves or
17 with anyone else on any subject connected with this
18 trial. You're not to read, watch, or listen to any
19 report of or commentary on the trial or any person
20 connected with this trial by any medium of information
21 including, without limitation, newspaper, television,
22 radio, or Internet. You're not to form or express any
23 opinion on any subject connected with the trial until the
24 case is finally submitted to you. I'm going to ask all

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1 of the jurors to go ahead and take your break.
2 Ms. Martin, I believe you have an issue, and
3 I'd ask you to stay for just a minute. Okay? The rest
4 of the jurors are excused. Just wait there.
5 Have a seat everyone, please.
6 Ms. Martin, I'm advised that your mother is
7 ill.
8 MS. MARTIN: My mother is 95. She lives at
9 Emeritus. Should I tell everybody?
10 THE COURT: It's your business if you want to
11 tell anyone.
12 MS. MARTIN: She lives at Emeritus. She
13 developed a cold the other day, very common as an older
14 person. I saw her this morning. Well, I saw her last
15 night after the trial. I've been going at lunch and
16 breakfast. She barely ate yesterday. I kind of forced
17 her to eat, and then she vomited. But I think she's just
18 dehydrated. I truly think that's probably what it is.
19 To me, my mother was much sicker last year.
20 So I really think that they're going to take her to the
21 hospital in front and hydrate her, and I think she's
22 going to be okay. I truly do. And I know my mother
23 would not want me not to be here, but I do want to be
24 able to go see that she's okay. My husband is retired.

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1 He's up skiing. I left him several messages to get to
2 the hospital. And unless they tell me my mom is going to
3 pass today, you know --
4 THE COURT: Ma'am, I want you to have
5 opportunity. You're going to go to the hospital. Is it
6 in the ER here or in Carson City?
7 MS. MARTIN: Yeah, it's right here right in
8 front of Emeritus in Gardnerville.
9 THE COURT: Go ahead and take care of your
10 mother. If some other issue comes up that you want to
11 advise me of, please feel free to do that.
12 MS. MARTIN: I think I'll be back at 12:30,
13 to be honest with you.
14 THE COURT: All right. Well, I want you to
15 give you the chance to do that.
16 MS. MARTIN: Thank you.
17 THE COURT: So please go take care of your
18 mother. My mother is about the same age, and just about
19 two weeks ago, he was in the ER kind of in the same
20 situation.
21 MS. MARTIN: Exactly. It just goes around.
22 THE COURT: Feel free to let me know if you
23 need something, okay.
24 MS. MARTIN: Thank you. And I just call like

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1 the court line.
2 THE COURT: You can do that. Mr. Seddon will
3 give you a number to call to reach us. Okay.
4 MS. MARTIN: Okay. Thank you.
5 THE COURT: Thank you, ma'am. Ms. Martin is
6 gone. I've also received a note from another one of the
7 jurors. Apparently, one of the jurors had some
8 difficulty hearing the testimony of findings of
9 fingerprints. The testimony was that neither Ms. Leibel
10 or Mr. Leibel -- there were no fingerprints that could be
11 identified to match either one of them. This juror
12 simply could not hear that testimony.
13 My suggestion is that we can either read it
14 back, or we can simply make a statement to the jurors
15 that the testimony was that there were no prints
16 associated with either of them discovered either on the
17 weapon, or I think it was only on the weapons that we
18 were looking at, or we can not respond to it.
19 And so, Mr. Gregory, I'd ask for your
20 suggestion as to how you want deal with that issue.
21 MR. GREGORY: Well, I would recommend
22 responding. We have somebody that couldn't hear
23 something that is important. It would be fine with me if
24 you did that by either documenting that or a read back.

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1 Either of those is fine with me. I don't know which
2 would be more convenient for the Court.
3 THE COURT: You say, "Documenting it." Would
4 it be --
5 MR. GREGORY: Or telling him.
6 THE COURT: -- acceptable to you to have me
7 simply state what I just stated?
8 MR. GREGORY: Yes.
9 THE COURT: Thank you, sir. Ms. Brown?
10 MS. BROWN: That would be fine, Your Honor,
11 to just state it.
12 THE COURT: It's my intention then that I
13 will simply state that that's what the testimony was, but
14 the jurors are entitled -- I would add that the jurors
15 are entitled to use their own memories of what the
16 testimony was. And I will remind all of them that if
17 they cannot hear something, they need to advise me. Is
18 there anything that you would object to about that
19 process, Mr. Gregory?
20 MR. GREGORY: No, Your Honor.
21 THE COURT: Anything that you would object
22 to, Ms. Brown or Ms. Henry?
23 MS. BROWN: No, Your Honor.
24 THE COURT: Okay. Then we're in recess until

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1 12:15.
2 MS. BROWN: There is one other issue. Juror
3 number 12 is -- she has the blue folder with a lot of
4 papers in it that she carries in out of the out
5 courtroom. I don't know if it's her personal things
6 she's working on in the back or if she's taking her notes
7 out of the courtroom, but --
8 THE COURT: I'll remind them that they cannot
9 do that. If you feel that we need to ask Ms. Stugart if
10 she is taking notes out of the courtroom, I'll ask if you
11 think that that needs to be done. They were all told to
12 leave their notebooks. And actually, the bailiffs have
13 been watching to see if they're taking any notebooks that
14 they've been writing in out.
15 MS. BROWN: She brings it out of the jury
16 room with her and takes it back in, so I don't know what
17 it is.
18 THE COURT: Okay. I'll remind them not to do
19 that.
20 MS. BROWN: Thank you.
21 THE COURT: Are you satisfied with that
22 response?
23 MS. BROWN: Yes.
24 THE COURT: Mr. Gregory?

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1 MR. GREGORY: Yes, Your Honor.
2 THE COURT: Ms. Henry?
3 MS. HENRY: Your Honor, I also just had a
4 question regarding the -- I guess the call logs that
5 Mr. Gregory gave the jurors. I don't know that those
6 were ever collected from the jurors, and I wasn't sure if
7 that was the process to collect them, or if they're
8 supposed to still have them at this point.
9 THE COURT: Well, I don't think that they
10 were ever returned. We can collect them because I told
11 them that they'll be looking at the originals. They
12 don't seem to be thumbing through them now, so we can
13 collect them. They were simply demonstrative so that
14 they can follow along with the testimony. So we'll ask
15 to collect them.
16 MS. HENRY: Thank you, Your Honor.
17 THE COURT: Okay. Are you okay with that,
18 Mr. Gregory?
19 MR. GREGORY: Yes.
20 THE COURT: We're in recess until 12:30.
21 (Recess was taken.)
22 THE COURT: We're back in session in case
23 14DI62, State of Nevada versus Tatiana Leibel.
24 Mr. Gregory is here. Ms. Brown, Ms. Henry are here.

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1 Ms. Leibel is here, the translators are here, and let's
2 bring the jury in unless you have something you want to
3 discuss beforehand.
4 MR. GREGORY: No, Your Honor.
5 MS. BROWN: No, Your Honor.
6 THE COURT: Thank you, folks. Have a seat,
7 please. Counsel stipulate to the presence of the jury?
8 MS. BROWN: Yes, Your Honor.
9 MR. GREGORY: Yes, Your Honor.
10 THE COURT: Thank you. Just before we broke
11 for lunch, I received a note in one of the jurors
12 indicating that that juror was not able to hear the
13 testimony regarding the finding of fingerprints for
14 either Mr. Leibel or Ms. Leibel on the weapon. I've
15 discussed that question with counsel for both sides, and
16 the response to the question is that the testimony was
17 that there were no discovered prints from either
18 Miss Leibel or Mr. Leibel.
19 I would again remind you that it is your
20 memories, your notes, and your memories that matter as
21 oppose to the Court's. And if your memory's -- if any of
22 the juror's memories of that testimony differs from what
23 you've just been told, you'll be free to discuss that at
24 the time that you deliberate. Until then, that's the

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1 answer that the parties have agreed to provide you. The
2 note that I received will be handed to the clerk, who
3 will keep custody of it and make it part of the court
4 file. Having addressed that, Mr. Gregory.
5 MR. GREGORY: Your Honor, the State calls Jim
6 Halsey.
7 THE COURT: Come on up. Sir, if you would
8 please, face the clerk. Raise your right hand.
9
10 JAMES HALSEY,
11 having been first duly sworn, was
12 examined and testified as follows:
13 THE COURT: Thank you, sir. Come on up.
14 Have a seat in the witness stand. And have some water,
15 if you'd like.
16 THE WITNESS: Okay. Thank you, sir.
17 THE COURT: Mr. Gregory, Your Honor witness.
18
19 DIRECT EXAMINATION
20 BY MR. GREGORY:
21 Q. Thank you. Sir, please state your name and
22 spell your last name.
23 A. My name is James Halsey. Last name is
24 spelled: H-a-l-s-e-y.

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1 Q. What do you do for a living?
2 A. I'm a sergeant with the Douglas County
3 Sheriff's Office currently signed to the investigations
4 division.
5 Q. How long have you been with the sheriff's
6 office?
7 A. Twenty years.
8 Q. So as far as ranking within the
9 investigations division, Captain Milby already testified.
10 Would you be just under Captain Milby?
11 A. Yes, sir. He's my boss, and I'm the
12 supervisor of investigators.
13 Q. Okay. Regarding the case at hand, did you
14 have occasion to go to 452 Kent Way here in Douglas
15 County, Nevada, on February 24th, 2014?
16 A. Yes, I did, sir.
17 Q. And that was the day after the incident;
18 correct?
19 A. Yes, sir.
20 Q. What was your purpose in going to the
21 residence on that day?
22 A. My purpose was to supervise the investigators
23 who were there executing a search warrant and to assist
24 them in that search.

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1 Q. And specifically, did you play a role with
2 ceasing firearms in the residence?
3 A. Yes, sir.
4 Q. And can you tell us generally, you aren't
5 responsible for seizing the firearm that is used;
6 correct?
7 A. That is correct, sir.
8 Q. You were involved with other firearms?
9 A. Yes, sir. Other firearms were still in the
10 residence.
11 Q. Can you just generally tell us about how many
12 other firearms there were and what types they were.
13 A. Yes, sir. There were six rifles. Well, five
14 rifles and a shotgun that were mounted on a rack in the
15 living room along the east wall, so I collected those. I
16 also searched a safe that was in the garage. I was given
17 information that there was a safe in the garage, that
18 there were possibly firearms in there, so I went to
19 search that. The safe was locked, so I had to use a pair
20 of bolt cutters to open it. I re-secured it afterward,
21 but inside that safe, I found 12 firearms, 11 of which
22 were handguns, one of which was a survival rifle.
23 Q. Thank you. And were you also tasked with
24 trying to retrieve shotgun pellets from the sheetrock?

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1 A. Yes, sir.
2 Q. Who assisted you with that?
3 A. Our evidence tech, John Barton.
4 Q. Can you describe the process that you
5 employed.
6 A. Yes, sir. This was in the living room.
7 There's a short pony wall, a short wall like this that
8 separates the dining -- formal dining room area from the
9 already living room, and the couch where this incident
10 was reported to have occurred backed up against that
11 wall.
12 Behind that couch in the wall was a defect.
13 It was a hole in the wall, a small hole, and lined up
14 with an area that it's believed the projectile, the
15 projectile passed through the couch into the wall and
16 then ultimately or possibly inside there because on the
17 other side of the wall, there was no exit. There was no
18 hole or anything, which made us believe something entered
19 the wall but did not exit. So I cut out a around that
20 defect hole, I cut out an proximate five-by-six-inch
21 rectangle of the drywall and looked inside the wall.
22 Inside there --
23 Q. If you could just stop there for a moment.
24 A. Yes, sir.

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1 Q. I'm going to show you some exhibits.
2 MR. GREGORY: May I approach the witness,
3 Your Honor?
4 THE COURT: You may, sir.
5 Q. (BY MR. GREGORY:) Sir, I'm showing you
6 Exhibits 35 through 39. Can you just take a look at
7 those for a moment. Generally speaking, what do those
8 photographs show?
9 A. Well, the first two photographs show the
10 defect hole that was originally seen.
11 THE COURT: Why don't we start by having you
12 talk about a specific exhibit. Tell us what number it
13 is.
14 THE WITNESS: Yes, sir.
15 THE COURT: And then I think Mr. Gregory is
16 going to more specific questions as opposed to what they
17 depict.
18 MR. GREGORY: So if you could look at Exhibit
19 Number 35 first.
20 THE COURT: And that has been admitted
21 already, sir.
22 MR. GREGORY: May I check, Your Honor? Has
23 35 through 39?
24 THE CLERK: Yes. Just 35.

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1 THE COURT: Only 35 was admitted.
2 Q. (BY MR. GREGORY:) Okay. So if you could
3 then look at 36 through 39. And I'm just asking you
4 first generally, what do those photographs depict?
5 A. It depicts a hole in the wall and then after
6 I cut it out and what I examined inside of that.
7 Q. Does it document your efforts to retrieve the
8 pellets out of the wall?
9 A. Yes, sir.
10 Q. And does it accurately document that?
11 A. Yes, sir.
12 MR. GREGORY: Your Honor, I'd move for
13 admission of Exhibits 36 through 39.
14 THE COURT: Each of them independently
15 accurately document that effort; is that correct?
16 THE WITNESS: In sequence or no?
17 THE COURT: They may be in sequence. I don't
18 know. You can talk about that later. Do each of them
19 independently document your effort?
20 THE WITNESS: Yes, sir.
21 THE COURT: Do you have an objection to these
22 exhibits?
23 MS. BROWN: No, Your Honor.
24 THE COURT: Then they are admitted.

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1 Thirty-six, 37, 38, and 39 are admitted.
2 (Exhibit Nos. 36-39 were admitted into evidence.)
3 THE COURT: Thirty-five is already admitted.
4 MR. GREGORY: Thank you.
5 THE COURT: You can proceed with your
6 examination.
7 Q. (BY MR. GREGORY:) Thank you. This is
8 Exhibit 35. Is this the defect in the sheetrock that you
9 were talking about?
10 A. Yes, sir.
11 THE COURT: Mr. Seddon, would you take the
12 lights down.
13 Q. (BY MR. GREGORY:) And this was directly
14 behind the couch in the living room?
15 A. Yes, sir.
16 Q. Exhibit Number 36, what is depicted there?
17 A. That is a closer shot of that same defect
18 hole with a ruler next to it and showing the direction of
19 the bullet hole.
20 Q. You testified you cut the hole. Then what
21 did you do?
22 A. Then I looked inside of the wall, the hollow
23 space between the wall.
24 Q. And what did you observe?

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1 A. I observed two pellets initially laying on
2 the sill plate down at the base of the wall just to the
3 interior of that.
4 Q. Show you Exhibit Number 37. What does
5 photograph depict?
6 A. Those are those two bullets that were laying
7 inside of there.
8 Q. I'm using my pen to point. Is this one of
9 the pellets?
10 A. Yes, sir.
11 Q. Is this the other one?
12 A. Yes, sir.
13 Q. What did you do upon observing those?
14 A. Collected them as evidence.
15 Q. Are you familiar with ammunition?
16 A. Yes, sir.
17 Q. Were those pellets consistent with shotgun
18 ammunition?
19 A. Yes, sir, with triple F ought.
20 Q. Showing you Exhibit 38. What did you do
21 after you retrieved those two?
22 A. I examined -- the dining room is raised
23 higher than the living area, so there's the end of the
24 floor joist from that dining room are -- you can see them

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1 inside of that wall when I cut out that space. So I
2 looked to see if those pellets had struck something to
3 cause them to fall inside the wall. At the end of one of
4 those floor joists, I saw a defect, basically a chip in
5 the wood that made me believe that's where they struck,
6 and so I examined that area further.
7 Q. And what did you find there?
8 A. Inside there, I found, embedded in the wood,
9 another object that appeared to be another pellet.
10 Q. Show you Exhibit 38. What does that
11 photograph depict?
12 A. That's the initial view of what I saw when I
13 looked at it inside of there.
14 Q. What I'm pointing to, is that what you
15 thought might be another pellet?
16 A. Yes, sir.
17 Q. What did you do after making that
18 observation?
19 A. I dug it out with a pocket knife and
20 collected it.
21 Q. And when you did so, what was it?
22 A. It was in fact another object similar to the
23 other two that I'd already collected.
24 Q. How did you proceed next?

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1 A. I looked further, and it appeared there was
2 another object that was buried even further into the wood
3 deeper than that third object.
4 Q. And I'll show you Exhibit Number 39. What
5 does that photograph depict?
6 A. That is that fourth object that I saw inside
7 of there.
8 Q. And again, I'm using any pen. Am I pointing
9 to the object you're talking about?
10 A. Yes, sir.
11 Q. What did you do then?
12 A. I dug that out and collected it also.
13 Q. And was it consistent with the other pellets?
14 A. Yes, sir.
15 MR. GREGORY: Thank you, I have nothing
16 further.
17 THE COURT: Ms. Henry? Ms. Brown?
18 MS. BROWN: Thank you, Your Honor. May I
19 have those, Tom? Thank you.
20
21 CROSS-EXAMINATION
22 BY MS. BROWN:
23 Q. And showing you again Exhibit 35, and this is
24 the defect in the wall?

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1 A. Yes, ma'am.
2 Q. And you cut out a rectangle at some point
3 around this?
4 A. Correct. Yes, ma'am.
5 Q. And this would be the rectangle you cut out?
6 A. Correct. The outer -- the white area that's
7 cut out there, the drywall, and then inside there is the
8 end of that floor joist.
9 Q. And based on this photograph, you can't see
10 where that hole was in relation to the piece of wall that
11 you cut out?
12 A. That's correct.
13 Q. Now, you said this was the first pellet; is
14 that correct?
15 A. No, ma'am. I said that's a pellet.
16 Q. A pellet. Sorry?
17 A. An object that -- do you want me to -- That
18 was an object I saw inside the wood, but the first two
19 pellets, I looked down inside the wall. Inside, there's
20 a space between this drywall and the end of that joist,
21 and inside, I saw two pellets laying on the sill at the
22 base of that.
23 Q. Okay. So this would be -- The object I'm
24 pointing to that's kind of silvery towards the left of

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1 the floor joist would be one of the pellets?
2 A. Yes, ma'am. That would be number three.
3 Q. And then showing you Exhibit Number 39,
4 there's another silver object, it looks like, next to a
5 nail?
6 A. Correct.
7 Q. And was that the last?
8 A. Yes, ma'am.
9 Q. So those -- The pellets shown in Exhibit
10 Number 38 and the pellets shown in Exhibit 39 are
11 actually -- are in different locations; is that correct?
12 A. They're in different locations in the fact of
13 39 is buried deeper in the wood, but they're in that same
14 location where you see 38 there. Thirty-nine is just
15 behind it deeper in the wood. And you see that area that
16 you're pointing to right there, that's a nail that's
17 adjacent to it that I dug out.
18 Q. So this nail is where in this picture? I'm
19 sorry. The nail in 39 is where in 38?
20 A. The nail was dug out because I was digging
21 through trying to find the other pellet, so I would --
22 not knowing where it exactly it was in 38, I could not
23 tell you, ma'am.
24 Q. As to Exhibit Number 38, did you make any

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1 measurements from the floor to where this was located,
2 this pellet was located?
3 A. No, ma'am.
4 Q. And the same when you removed the pellet from
5 Number 39?
6 A. That's correct. No, ma'am.
7 Q. And these are just taken from different
8 angles, but sorry, Exhibit Number 38 and Exhibit
9 Number 39 are actually the same location just different
10 angles from outside that cutout space?
11 A. Yes, ma'am.
12 MS. BROWN: Thank you. I have no further
13 questions.
14 THE COURT: Redirect?
15 MR. GREGORY: Nothing further, Your Honor.
16 THE COURT: Sergeant Halsey, thank you for
17 being here, sir.
18 THE WITNESS: Thank you, sir.
19 THE COURT: You're excused.
20 MR. GREGORY: The State calls Dr. Kubiczek.
21 THE COURT: Come on up, sir. If you could
22 pause right there and face the clerk, raise your right
23 hand, please.
24

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1 PIOTR KUBICZK,
2 having been first duly sworn, was
3 examined and testified as follows:
4
5 THE COURT: Come on up and have a seat up
6 here, sir. There's some water if you need it.
7 THE WITNESS: Thank you.
8 THE COURT: Sir, I see that you brought a
9 folder with some papers in it. I'm going to ask that you
10 do not open that folder and do not refer to your papers
11 unless you're directed to do so by me.
12 THE WITNESS: Okay.
13 MR. GREGORY: Good afternoon, sir.
14 THE WITNESS: Good afternoon.
15
16 DIRECT EXAMINATION
17 BY MR. GREGORY:
18 Q. Can you please state your full name and spell
19 your last name.
20 A. My name is Dr. Piotr: P-i-o-t-r. Kubiczek:
21 K-u-b-i-c-z-k.
22 Q. What do you do for a living?
23 A. I'm a forensic pathologist medical examiner
24 at Washoe County Office of Coronary Medical Examiners.

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1 Q. And do you perform autopsies?
2 A. Yes, I do.
3 Q. Did you perform an autopsy on Harry Leibel?
4 A. Yes.
5 Q. Let's talk a little bit about your medical
6 experience, if you could go through your medical training
7 for us.
8 A. First, I completed my medical education at
9 Medical University of Warsaw, Poland. Then I proceeded
10 with my postgraduate education. I completed my pathology
11 residency at Ball Memorial Hospital, Muncie, Indiana.
12 And then after that, I completed one year of fellowship
13 in forensic pathology at Montgomery County Office of
14 Coronary in Dayton, Ohio. Then I qualified and passed
15 Board examinations in anatomic pathology and forensic
16 pathology.
17 Q. What certifications do you have?
18 A. I'm a Board certified in anatomic pathology
19 and forensic pathology.
20 Q. What does a forensic pathologist do?
21 A. Let's start from the beginning. Pathology is
22 a medical science which is preoccupied with studying
23 disease processes, pathology processes in human bodies.
24 Then forensic pathology, it's a subspecialty of pathology

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1 which applies the knowledge of natural diseases and
2 pathologic processes and injuries at the court of law.
3 Q. Thank you. Approximately how many autopsies
4 have you performed?
5 A. So far, I have performed more than 3,200
6 autopsies.
7 Q. Can you describe for me the difference
8 between cause of death and manner of death.
9 A. Cause of death is the reason or injury that
10 actually causes disease and death. It could be gunshot
11 wound. It could be heart attack. It could be some sort
12 of infection, pneumonia. So this is cause of death.
13 Manner of death describes how the person died.
14 In our State of Nevada, we have the following
15 manners of death: Natural, suicide, accident, homicide,
16 and undetermined manner of death. Manner of death was
17 actually invented in the United States in 1910, and the
18 main purpose of mention of manner of death was for
19 statistical purposes because it's much easier to
20 categorize deaths using manner of death such as natural
21 death versus homicides versus suicides, and this can be
22 done -- this information can be used for other studies
23 and could be used for morbidity, mortality studies, could
24 be also used for government projects to provide money for

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1 certain grounds to study or address issues, for example,
2 with suicides or certain types of diseases.
3 Q. How do pathologists go about determining
4 cause of death?
5 A. Cause of death is autopsy dependent, meaning
6 we perform the full autopsy as a postmortem examination
7 to determine cause of death. In most of the cases, we
8 are able to determine lesion or injury that caused the
9 decedent's death.
10 Q. If a pathologist was going to determine
11 manner of death, what would that involve?
12 A. Manner of death is again how a person died,
13 and this is investigation-dependent subject. This is
14 subject that is determined based on investigation of
15 circumstances of death. So of course we establish the
16 cause of death through the autopsy, but how the person
17 died, the term manner of death, we have to request
18 investigative agencies, sheriff's office, police
19 departments, to perform full investigations. In
20 difficult cases, very extensive investigations performed
21 with additional ancillary studies such as ballistics
22 studies, for example, a weapon used.
23 Q. If I understood correctly, when you're
24 talking at manner of death, you consider the autopsy plus

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1 the investigation. Would that be accurate?
2 A. Yes.
3 Q. And in the State of Nevada, who determines
4 manner of death?
5 A. Actually, in our state, medical examiners and
6 coroners are able to determine the cause of death. It
7 depends on, basically, jurisdiction. In Washoe County
8 where I work, medical examiners establish cause and
9 manner of death. In other counties, actually coroners
10 establish the manner of death.
11 Q. And in Douglas County?
12 A. This is sheriff office of coroner establishes
13 this manner of death.
14 Q. So your function in this case was to
15 establish the cause of death; correct?
16 A. Yes.
17 Q. And, Doctor, have you been qualified as an
18 expert in other district courts here in the State of
19 Nevada?
20 A. Yes.
21 MR. GREGORY: Your Honor, I'd ask that you
22 make a finding that Dr. Kubiczek is a qualified
23 pathologist qualified to render opinions in the case
24 regarding cause of death.

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1 THE COURT: Any objection?
2 MS. BROWN: No objection, Your Honor.
3 THE COURT: I'll make that finding. It
4 appears that he has the qualifications. The Court so
5 finds.
6 Q. (BY MR. GREGORY:) You indicated you
7 performed the autopsy on Harry Leibel. Do you recall
8 when you that occurred?
9 A. Yes. This was February 24th, 2014 at 11:10
10 a.m.
11 Q. Where was that autopsy performed?
12 A. The autopsy was performed at our autopsy
13 suite at Washoe County Office of Medical Examiner Coroner
14 at 10 Pyramid Avenue. Reno, Nevada.
15 Q. In conducting that autopsy, did you follow
16 the protocol of methodologies that you've been trained
17 in?
18 A. Yes.
19 THE COURT: Doctor, I'm going to ask you to
20 speak up a little bit for me if you would please, sir.
21 Thank you.
22 MR. GREGORY: May I have Exhibits 40 through
23 55.
24 THE COURT: Forty through 55 he has? Okay.

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1 Before we go any further, Mr. Gregory, we've discussed
2 this issue before.
3 Ms. Brown, are you anticipating -- you'll
4 have to tell me what it is -- to which of these are you
5 anticipating an objection to any of these?
6 MS. BROWN: No. Any photos?
7 THE COURT: Yes.
8 MS. BROWN: No, no photos.
9 THE COURT: Thank you. Then you may proceed.
10 Q. (BY MR. GREGORY:) Doctor, during the course
11 of the autopsy, were photographs taken along the way?
12 A. Yes.
13 Q. Would those photographs help you in your
14 testimony before the jury today?
15 A. Yes.
16 Q. Show you Exhibits 40 through 55. If you
17 could just take a moment to look through those, please.
18 Doctor, are those all photographs that were taken during
19 Harry Leibel's autopsy?
20 A. Yes.
21 Q. And do they accurately depict what you
22 observed during the course of the autopsy?
23 A. Yes.
24 MR. GREGORY: I'd move for their admission,

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1 Your Honor. And again, that's Exhibits 40 through 55.
2 MS. BROWN: No objection.
3 THE COURT: Forty through 55 are admitted.
4 (Exhibit Nos. 40-55 were was admitted
5 into evidence.)
6 Q. (BY MR. GREGORY:) I'll take those, Doctor.
7 Doctor, did you obtain the general characteristics of a
8 height and weight of Mr. Leibel?
9 A. Yes.
10 Q. What were those?
11 A. He was 170 pounds, 67 inches. That's five
12 feet seven inches tall, and his appearance was consistent
13 with age of 65 years.
14 Q. Now, there are some exhibits that were left
15 up here that I'm going to return. They are exhibits from
16 the former witness, Exhibits 35, 37, 36, 39, and 38.
17 THE COURT: Thank you. Ms. Brown, would you
18 make sure your microphone is working. How about the one
19 on your lapel?
20 MS. BROWN: Is working or not working?
21 THE COURT: Working. I'd like it to work.
22 You can turn it off if you're having a conversation, but
23 it was reported to me that you weren't picking up very
24 well in the last witness, and I want to make sure that we

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1 can hear you.
2 MS. BROWN: Works good out on the sidewalk.
3 THE COURT: Pardon?
4 MS. BROWN: I said it works good out on the
5 sidewalk.
6 THE COURT: How about tapping it for me?
7 Thank you, ma'am.
8 Q. (BY MR. GREGORY:) Doctor, showing you
9 Exhibit 40. It will be on the monitor there. What does
10 that does that photograph depict?
11 A. This is a photograph of decedent's face.
12 This called identification photograph. We can see also
13 our case number for this particular decedent, so it was
14 14-0548VOU. VOU indicates data scan. And so we see on
15 the bottom of the picture, there's a scale with the case
16 number and then, for identification purposes, decedent's
17 face.
18 Q. Doctor, did you observe any injuries to the
19 right side of Harry Leibel's torso?
20 A. Yes.
21 Q. Can you describe where you saw the injury?
22 A. There was an entrance gunshot wound present
23 on the right lateral aspect of the chest, the middle
24 axillary line.

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1 Q. And during the autopsy, is the subject
2 cleaned up before you actually begin the autopsy?
3 A. Yes.
4 Q. Let me show you Exhibit Number 41. What does
5 that photograph depict?
6 A. This photograph shows decedent's right aspect
7 of his body, and then again we can see here the scale
8 with the case number identifying this decedent. And
9 also, on the right lateral aspect of the chest, we can
10 see an entrance wound right above the scale.
11 Q. And can you give further description as far
12 as measurements go of where that injury was located on
13 Mr. Leibel.
14 A. This injury was more than 90 inches below the
15 apex of the scalp, and it was quarter inch in diameter.
16 It had circumferential abrasion. It did not have
17 circumferential searing on the area or burning
18 surrounding this wound.
19 Q. What is the significance?
20 THE INTERPRETER: Your Honor, I cannot hear
21 the witness. Can you please --
22 THE COURT: Ma'am, I'm sorry.
23 THE INTERPRETER: The interpreter cannot hear
24 the witness. Can you please advise the witness to speak

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1 up a little?
2 THE COURT: Again, could you speak up a
3 little bit more. And perhaps, sir, I know that you want
4 to address the jury. There is a microphone in front of
5 you, and perhaps if you could face the microphone,
6 everyone could hear you a little better. Thank you.
7 THE WITNESS: Sorry.
8 THE COURT: No. You're doing fine, sir.
9 Thank you.
10 MR. GREGORY: Does this microphone work?
11 THE COURT: Yes.
12 MR. GREGORY: I could give the doctor my
13 microphone, if that would help.
14 THE COURT: Well, let's try this. We'll see
15 how it works. Thank you, sir.
16 Q. (BY MR. GREGORY:) So, Doctor, you indicated
17 that -- you were starting to describe where on
18 Mr. Leibel's body the defect was.
19 A. Yes. The defect that we can see here in the
20 central part of this photograph right above the scale is
21 the entrance gunshot wound of the chest. It is round,
22 quarter-inch in diameter, and has circumferential
23 abrasion, but there is no circumferential searing,
24 meaning burning around the edges. There is no soot, no

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1 gunpowder particles or gunpowder stippling present on the
2 skin surface.
3 Q. What is stippling?
4 A. Surrounding the wound.
5 Q. I'm sorry, Doctor. What is stippling?
6 A. Let me explain this. When the firearm is
7 fired, it's not only the bullet that leaves the barrel of
8 the gun. You have also hot causes and unburned gunpowder
9 particles. A certain distance between the gun barrel and
10 the skin surface, those unburned gunpowder particles can
11 travel and hit the skin surface surrounding the entrance
12 gunshot wound.
13 Q. Doctor, what --
14 A. Now --
15 Q. -- if I could interrupt you. Sorry for doing
16 that. I need to be quiet and let you finish, but what
17 does the lack of stippling, sooting and searing, why was
18 that significant to you?
19 A. Lack of searing or soot on the skin surface,
20 especially searing, indicates that this is not a contact
21 gunshot wound. Lack of gunpowder stippling or those
22 abrasions caused by unburned gunpowder particles that I
23 mentioned before, presence of those on the skin surface
24 is called intermediate range of fire. Intermediate

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1 range. So lack of gunpowder stippling, searing, this
2 indicates, especially searing, indicates it's not a
3 contact gunshot wound.
4 Of course, decedent was wearing clothing that
5 could have stopped the gunpowder particles, unburned
6 gunpowder particles from reaching the skin surface, so
7 this is why I called this undetermined cause of death,
8 undetermined range gunshot wound, meaning that it is not
9 a contact range, but I cannot say this was intermediate
10 range or distant range gunshot wound because detecting
11 unburned gunpowder particles and gunpowder residue in
12 general on clothing is done by different investigating
13 agency. Those are ballistics experts who can determine
14 the true range of fire.
15 Q. Doctor, while we're talking about sooting and
16 stippling and searing, did you see any of those three
17 things on Mr. Leibel's right arm?
18 A. No, I didn't see that. I mean, could you --
19 Sorry. Could you be specific? You said left arm?
20 Q. On his right arm.
21 A. On his right arm. No, I didn't see that.
22 Q. Showing you Exhibit Number 42, what does that
23 photograph depict?
24 A. This is up- close photograph of the entrance

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1 gunshot wound. We can see it is round. We have
2 circumferential abrasion, and we do not see, again,
3 searing or burns around the edges of the wound, and we do
4 not see any gunpowder stippling or soot or gunpowder
5 particles on the skin surface surrounding the wound.
6 Q. Showing you Exhibit Number 43. What is that
7 a photograph of, Doctor?
8 A. This is a photograph representing decedent's
9 open chest. On the right side of the photograph, there
10 will be decedent's head. On the left side of decedent's
11 -- of the left side of this photograph, there will be
12 decedent's abdomen, and in the middle, we see open chest
13 cavity after all organs were removed from this cavity.
14 This includes both lungs and heart.
15 This photograph represents a defect, a tissue
16 defect that exists in the right lateral aspect of
17 decedent's chest. This corresponds, of course, to
18 entrance gunshot wound, which we saw before on the skin
19 surface. This is how this wound entrance wound looks
20 from inside the open chest. We can see there is a large
21 tissue defect that encompasses lateral aspect of right
22 ribs, number five and six.
23 Q. Thank you, Doctor. Next, showing you Exhibit
24 44. What does that photograph show, Doctor?

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1 A. This photograph represents a posterior or the
2 back aspect of decedent's right lung. The projectile,
3 when it traveled through the body, perforated the right
4 aspect of the chest, right lung, right dome of diaphragm.
5 Diaphragm is a muscular membrane that divides the chest
6 from the abdomen. Then perforated the pulmonary trunk --
7 That's a large vessel that provides blood into the lungs
8 from the heart -- and then perforated the left lung, then
9 perforated left upper aspect of the chest, and then
10 perforated the tissues of the left arm, and it exited
11 from the exit wound in the left arm.

12 So this is left lung, posterior aspect of the
13 left lung, and we can see here in the middle aspect of
14 the lung, there is a defect, bloody defect, which you see
15 is dark red here. This is the area where the bullet
16 perforated right lung.

17 Q. And is that significant to you to show the
18 path of travel of the projectiles through the body?

19 A. Yes. This is very important to see the
20 damage done by the projectile.

21 Q. You mentioned it also perforated the
22 pulmonary trunk. Where is the pulmonary trunk in
23 reference to the lungs?

24 A. Pulmonary trunk, it's a large vessel, artery

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1 that connects the right ventricle of the heart with both
2 lungs, so it's actually sitting very close to the heart,
3 and it's the dividing going to the right and left
4 pulmonary artery. So it is very, very close to lungs.

5 Q. Showing you Exhibit 45. What does that
6 photograph show?

7 A. As I mentioned before, the wound pathway of
8 the bullet traveled through the liver, so we can see that
9 this photograph represents liver. And actually, the
10 defect tissue, defect is situated on the upper aspect of
11 the liver. Right. Yes, that's it. That's the area
12 where the bullet perforated the liver. It caused, of
13 course, the laceration of the tissue and loss of blood in
14 this area, there was about 100 milliliters of liquid
15 blood in the decedent's abdomen.

16 Now, the wound pathway through the chest
17 caused 600 milliliters of liquid blood in the right chest
18 cavity and about 800 milliliters of liquid blood in left
19 chest cavity, and there was about 50 milliliters of
20 liquid blood around the heart.

21 Q. Where is the liver in the body?

22 A. The liver is on the right side of our
23 abdomen. It's actually, most of the time, it's sitting
24 covered by ribcage, so it's sitting on the right upper

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1 aspect of our abdomen, and it should be actually sitting
2 underneath the 12th rib.

3 Q. And how a person sits affects where the liver
4 is?

5 A. Yes, of course. The liver can move.

6 Q. Showing you Exhibit Number 46. What is that?

7 A. This is a photograph representing posterior
8 back aspect of decedent's left lung, and we can see here
9 there is tissue defect kind of closer to the top of the
10 photograph. Yeah, that's it. This is the tissue defect
11 caused by the bullet traveling through this area of the
12 left lung.

13 Q. Exhibit 47.

14 A. This is again a photograph representing left
15 aspect of the chest after the organs such as lungs and
16 heart were moved, and you can see here in the corner
17 there is a defect, tissue defect in the first intercostal
18 space. Intercostal space is the space between ribs, and
19 first one is between first and second rib. So here you
20 can see tissue defect corresponds to the wound pathway of
21 the bullet that already exited the left lung and now went
22 through the left aspect of the chest into the left arm.

23 Q. So whereabouts then on his body is that
24 defect?

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1 A. It's left upper aspect of the chest.

2 Q. Exhibit Number 48?

3 THE COURT: Before we go any further,
4 Mr. Gregory, I know that you're trying to help the jury,
5 but the record should reflect what you've been doing is
6 taking a pen and pointing at certain parts of the
7 pictures. Doctor, I know that you've seen that. So what
8 I'm going to ask that you do -- I know that you and
9 Mr. Gregory have gone over these photographs before.

10 What I'm going to ask you to do is if he
11 points at anything that you're not talking about, it's
12 important that you say so. His use of the pen is to
13 assist the jury in understanding your testimony, but I
14 want you to examine where he's looking and where he's
15 pointing the pen and make sure that the area that he's
16 pointing the pen at is where you're testifying about.
17 And I think that you've been doing that, but I want the
18 record to be clear that that's what you're doing. Will
19 you agree to do that, sir?

20 THE WITNESS: Yes, I will. I can come up
21 there and point myself.

22 THE COURT: Well, that's another way to do
23 this, and there hasn't been an objection to this manner,
24 but I just want the record to be clear that Mr. Gregory

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1 is not testifying. That is, the doctor is testifying,
2 and he's, Mr. Gregory, is simply trying to point out what
3 you're talking about. Okay? So let's go on.
4 Q. So, Doctor, this is Exhibit 48. What does
5 that photograph depict?
6 A. This photograph is up-close representation of
7 this tissue defect in the first intercostal space on the
8 left side. Again, we can see it's round with some ragged
9 edges, and it's in the first intercostal space between
10 the first and second left rib, and this defect was
11 created by a bullet comes out from the left lung going
12 into the -- through the left aspect of the chest and
13 going to into the left arm.
14 Q. Exhibit Number 49. What does that photograph
15 show?
16 A. This photograph represents decedent's left
17 arm and left aspect of his chest, and of course you can
18 see also his head and face. Now, on the anterior aspect
19 of his left arm, you can see a dark red defect surrounded
20 by purple irregular area. This defect is the exit
21 gunshot wound.
22 Q. Doctor, am I pointing out directly where the
23 exit wound was?
24 A. Yes.

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1 Q. And by an exit wound, what do you mean by
2 that?
3 A. Exit wound is a wound created by exiting
4 projectile or a fragment of projectile.
5 Q. Were there any other exit wounds found on
6 Mr. Leibel's body?
7 A. In reference to this particular gunshot
8 wound, no.
9 Q. Exhibit Number 50. What does that
10 photograph?
11 A. This is up-close photograph of the exit
12 gunshot wound on the anterior aspect of the left arm.
13 You can see they're irregular red tissue defect
14 surrounded by purple area. This is like bruising.
15 Q. Doctor, did you, during the course of the
16 autopsy, locate any projectiles inside of the decedent?
17 A. Yes.
18 Q. Approximately how many?
19 A. Six fragments of projectile.
20 Q. Do you recall where those were found?
21 A. Yes.
22 Q. Can you please tell the jury.
23 A. One fragment of projectile was found next to
24 the entrance gunshot wound. Then one fragment of the

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1 projectile was found in the right lung. Then one
2 fragment of projectile was found in the left lung, and
3 then there were two fragments of projectile found in the
4 left arm, and then there was one fragment of projectile
5 found in the sleeve of the decedent's robe.
6 Q. Which sleeve? His right sleeve or his left
7 sleeve?
8 A. Left sleeve.
9 Q. Consistent with where the exit wound was?
10 A. Yes.
11 MR. GREGORY: May I approach the witness,
12 Your Honor?
13 THE COURT: You may, sir.
14 Q. (BY MR. GREGORY:) Sir, I'm showing you
15 Exhibits 133 through 136. If you could look at those to
16 yourself, please. Were x-rays taken of Mr. Leibel during
17 the course of the autopsy?
18 A. Yes.
19 Q. Do those photographs accurately depict the x-
20 x-rays that you observed?
21 A. Yes.
22 MR. GREGORY: Your Honor, I'd move for
23 admission of those four exhibits?
24 MS. BROWN: No objection.

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1 THE COURT: 133, 134, 135, and 136 are
2 admitted.
3 (Exhibit Nos. 133-136 were admitted into evidence.)
4 Q. (BY MR. GREGORY:) We'll see how these
5 project. Exhibit Number 133, Doctor, can you see that
6 good enough up there, or would you rather see the actual
7 photograph?
8 A. No, that's good.
9 Q. It's okay? All right. Tell us what that is.
10 A. It's an x-ray of the right side of decedent's
11 chest and right arm, and you can see here that there are
12 some smaller regular metallic fragments present within
13 the left lateral aspect of the wall of the chest.
14 Q. May I try to point to them to --
15 A. Yes, please. Yes, those are the fragments of
16 the projectile.
17 Q. And I'll point to another one.
18 A. Yes. It's another fragment, smaller fragment
19 of the projectile.
20 Q. And I ask you to look at the actual exhibit
21 and just ask if there are any other projectiles that you
22 can see in this particular exhibit.
23 A. Yes, there is one more irregular fragment of
24 metallic projectile present within the right lung, and

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1 they're also very small fragments of metallic projectile
2 present in the midchest.
3 Q. Exhibit 134. What does that x-ray show?
4 A. This x-ray shows decedent's chest, and we can
5 see here lots of irregular light gray objects present
6 within the right aspect of the chest and left aspect of
7 the chest and parts of the left arm on the left side.
8 Q. I'm going to attempt to point out the ones on
9 the left arm. Am I in the right location?
10 A. Yes.
11 Q. Okay. And as far as in the chest cavity,
12 would that be a projectile?
13 A. Yes, this is fragment of a projectile.
14 Q. And how about here?
15 A. No. This is part of clotting.
16 Q. And what about this right here?
17 A. Yes, this is fragment of projectile present
18 in the lung on the left side.
19 Q. And there seems to be a lot of little
20 pinpoints around this area. What would those be?
21 A. Those are very small, basically insignificant
22 fragments of projectile present within the mediastinum
23 central part of the chest.
24 THE COURT: We're going to pause for a

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1 minute. Mr. Gregory, you're free to do this as you wish,
2 but I want to point out to you that as you mark things
3 like that, the record that we're establishing will never
4 show what you're talking about.
5 If you would like, sir, you may have the
6 witness actually mark something on your exhibit either
7 with Sharpey or a pen, circle it in some fashion, and
8 identify if so there that there's a permanent record of
9 what you're talking about.
10 MR. GREGORY: Thank you. I think I'll take
11 you up on that suggestion.
12 THE COURT: Because if you don't do that,
13 there is no record of what you're talking about.
14 MR. GREGORY: If I could just finish here,
15 and thenally ask the witness to do that.
16 THE COURT: Okay.
17 Q. (BY MR. GREGORY:) Let's look at these two
18 other exhibits first, Doctor. Exhibit Number 136. What
19 is that?
20 A. This is an x-ray of the decedent's left arm,
21 and we can see that there is, of course, left humerus.
22 That's the bone in the left arm. And this occupies the
23 central and right side of the central and right side of
24 this picture, and then there are lots of small irregular

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1 white, light tan objects present along the left humerus
2 or the left bone on the left arm, and those are
3 fragments, metallic fragments of the projectile that
4 passed through there. And those fragments can be visible
5 in the central part of this photograph.
6 Q. From that x-ray, would you be able to show us
7 -- a few moments ago, we looked at autopsy photographs of
8 where the projectiles went into the right arm. Would you
9 be able from this x-ray to indicate where that was in
10 relationship to these projectiles?
11 A. I mean, it would be very difficult to
12 pinpoint the exact area of exit, but --
13 Q. And next, I'll show you Exhibit Number 135.
14 What is that?
15 A. It's a photograph of the right lung, and you
16 can see in central part lots of small fragments of
17 metallic projectile.
18 Q. What is this needle-shaped object down in the
19 lower left-hand corner?
20 A. We use metallic objects like needles to
21 orient us which side is left and which side is right, and
22 this x-ray was taken for the purpose of looking for
23 larger fragments of metallic projectile to verify we
24 removed all of the significant, ballistically significant

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1 fragments of the metallic projectile.
2 MR. GREGORY: Your Honor, do you have a
3 marking pen, or Madame Clerk?
4 THE COURT: I can get you one. I don't know
5 if we have a -- I'd like you to use some kind of
6 permanent pen. There's a Sharpey up here that the clerk
7 has. Blue is fine.
8 Q. (BY MR. GREGORY:) I'll take it. Okay,
9 Doctor. I'm going to show you Exhibit Number 133. This
10 was the first x-ray that we looked at. If you could just
11 circle with the --
12 THE COURT: One moment. Ms. Brown or
13 Ms. Henry, you're welcome to come up and watch what the
14 doctor does.
15 Q. (BY MR. GREGORY:) If you could circle with
16 Sharpey objects you identify as being projectiles. On
17 that exhibit, there's two areas that you circled.
18 A. There's a third area which has all of those
19 very small metallic --
20 THE INTERPRETER: Your Honor, I cannot hear
21 what the witness is saying.
22 THE COURT: A little bit louder, please. He
23 says there is a third area which has a very small
24 projectile.

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1 THE WITNESS: Very small fragments of
2 projectile.
3 THE COURT: Thank you. The record will
4 reflect that the doctor is marking these exhibits with a
5 blue Sharpey.
6 Q. (BY MR. GREGORY:) Exhibit Number 134, I
7 would ask you to do the same thing.
8 A. Here I marked on this exhibit four areas with
9 fragments of metallic projectile.
10 Q. Thank you. Exhibit 136?
11 A. On this photograph, I marked also one big
12 area with fragments of metallic projectile.
13 Q. Exhibit 135.
14 A. Here I marked three main areas with metallic
15 projectile.
16 Q. Thank you. Doctor, based upon your
17 assessment of that particular gunshot, can you tell us
18 the path of travel of the projectiles through
19 Mr. Leibel's body?
20 A. Yes. The wound trajectory, wound trajectory
21 side of decedent's body from -- it was from decedent's
22 right to left, back to front, and upwards.
23 Q. Can you, after looking at these exhibits and
24 conducting your autopsy, do you have an opinion regarding

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1 the position of the arm at the time of the shot, the left
2 arm?
3 A. Yes. Most likely, it was elevated.
4 Q. Why do you say that?
5 A. Because first, based on the x-rays, we can
6 see the wound pathway going through the right aspect of
7 the chest, right lung, liver, and pulmonary trunk, left
8 lung, entering then into the left upper aspect of the
9 chest, and then exiting from the anterior aspect of the
10 left arm some distance from the axilla.
11 Q. Can you demonstrate with your left arm, when
12 you say "elevated," give us -- demonstrate that for us.
13 A. This way.
14 Q. Thank you.
15 A. So I present the left arm elevated.
16 Q. Let the record reflect the witness had his
17 left arm elevated with his elbow up to even with his ear.
18 A. Yes. But this is, of course, one of the
19 possibilities.
20 Q. Okay. Did you observe any other gunshots on
21 Mr. Leibel?
22 A. Yes.
23 Q. Where was that?
24 A. I observed perforating complex shotgun wound

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1 of the left wrist and anterior aspect of the left
2 shoulder.
3 Q. Showing you Exhibit Number 51. What does
4 that photograph?
5 A. That photograph represents dorsal aspect, the
6 back aspect of the decedent's left hand. In the central
7 part, you can see an irregular tissue tearing laceration
8 that is surrounded by soot. This is the entrance shotgun
9 wound.
10 Q. If I could stop you there because I think
11 that's important. I'm going to point out what I think
12 you're telling me as being the entrance wound.
13 A. Yes, that is correct.
14 Q. Okay. And I'm going to have you go ahead and
15 circle that with the pen.
16 A. So on this exhibit, I've circled the entrance
17 shotgun wound.
18 Q. Can you kind of demonstrate on your hand
19 whereabouts that would be?
20 A. It's the back of the hand, left hand, and I'm
21 pointing here in the more or less central part of the
22 back of my left hand.
23 Q. What other observations did you make
24 regarding the entrance wound?

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1 A. It is an irregular tissue defect, and again,
2 it's surrounded by soot. It's dark residue present near
3 the entrance of shotgun wound, which you can see here
4 between 6:00 and 12:00 o'clock location.
5 Q. And what is looks like there's an object at
6 the top. What is that?
7 A. Actually, here on the upper part of the
8 wrist, left wrist, this is left wrist, you can see a
9 wadding, ballistic wadding, sticking out of exit shotgun
10 wound. So the central part is an entrance gunshot wound,
11 and right there on the top of decedent's left wrist,
12 there will be an exit shotgun wound with piece of the
13 plastic wadding sticking out of it.
14 Q. The plastic wadding would be from the shotgun
15 shell itself?
16 A. Yes.
17 THE COURT: Mr. Gregory, would you return the
18 exhibit to the witness and let him mark what he's
19 referring to and circle it and put a W next to that, the
20 W standing for wadding.
21 THE WITNESS: So I circled an area of the
22 exit shotgun wound with the piece of the wadding sticking
23 out of it, and I marked it with letter W.
24 Q. (BY MR. GREGORY:) And would you then put it

1 back up so it can be displayed?
2 MR. GREGORY: Yes.
3 THE COURT: Thank you. Thank you, sir.
4 Proceed with your examination.
5 Q. (BY MR. GREGORY:) Exhibit Number 52. What
6 does that picture show us?
7 A. This is a raised wound of the anterior aspect
8 of decedent's left shoulder. So this photograph
9 represents decedent's left shoulder, and this is the
10 central part of the photograph. Then of course you can,
11 on top of the picture, you can see parts of the
12 decedent's head, and then in the central part of this
13 photograph, you can see all of the area of the gray
14 wound, and this is the part of the perforating complex
15 shotgun wound of the wrist and left shoulder.
16 Q. In looking at that wound, are you able to
17 tell which way the bullet was traveling or the
18 projectiles were traveling?
19 A. Actually, up close, we can observe tissue
20 pattern inside this wound indicating that the projectile
21 or projectiles traveled from front to back without much
22 of indication left to right, and they also traveled
23 upwards.
24 Q. I'm going to ask you to, with arrows and your

1 And I'm not convinced that the projector is really
2 demonstrating that good enough, so I would ask to public
3 this to the jurors.
4 THE COURT: They'll get the opportunity to
5 see them at the close of the case. Do you have other
6 questions of this witness?
7 MR. GREGORY: I do. Thank you.
8 THE COURT: I'm going to ask you to go on
9 with your examination. They can examine those at the
10 close of the case. I don't want to pause the case right
11 now. We've got about another hour left with the jury
12 today, and I'm going to take a very brief break right now
13 because I am going to keep them here for another hour,
14 and so I'm going to give them a break just for a few
15 minutes, and I'd like you all to just understand that we
16 are going to make this kind of a short break, so I'm
17 going to ask you to try to take a break and be back in
18 your chairs close 2:00 o'clock as you can. And that's
19 about eight or nine minutes. If you need a little bit
20 more time, you can let me know, but let's try make good
21 use of the time we have today. So you are excused for
22 the moment.
23 While you are on this recess, though,
24 however, Ladies and Gentlemen, we're going to take about

1 blue pen, indicate the direction of travel.
2 A. The photograph, I indicated the direction of
3 travel of the projectiles.
4 Q. Displaying Exhibit 52 and then Exhibit 53.
5 Is that a close-up of the same wound?
6 A. Yes. This is a close-up photograph of this
7 wound, graze wound created by projectiles that exited
8 from the left wrist and traveled to graze the anterior
9 aspect of left shoulder.
10 Q. Showing you Exhibit 54. What does that
11 photograph show?
12 A. This is photograph that shows parts of our
13 measurement of length of right arm. The length was
14 measured from the decedent's right armpit all the way to
15 the top of decedent's left third finger.
16 Q. And Exhibit 55?
17 A. This is up-close photograph of decedent's
18 right hand while we were measuring the distance between
19 the decedent's right armpit and the tip of the right
20 third finger, and the distance is about between 24, 25
21 inches.
22 MR. GREGORY: Your Honor, I would ask that
23 the jury have an opportunity to see these photos at this
24 point. They're important to be able to see them clearly.

1 a nine-minute break. And during the recess, you are
2 admonished not to talk or converse among yourselves or
3 with anyone else on any subject connected with this trial
4 or read, watch, or listen to any report of or commentary
5 on the trial or any person connected with this trial by
6 any medium of information, including, without limitation,
7 newspapers, television, video or Internet. You're not to
8 form or express any opinion on any subject connected with
9 the trial until the case is finally submitted to you.
10 Thank you. We'll take a brief break.
11 Ms. Brown, as you're probably aware,
12 Ms. Holsen is listening in on us, and she was the one who
13 gave me an e-mail that she couldn't hear you. So it may
14 be that the jury isn't saying they couldn't hear and I
15 could hear you, but maybe you just weren't picking up.
16 MS. BROWN: Okay. And maybe I had it off
17 because I turned it off, walked outside and talked to
18 Tatiana.
19 THE COURT: Thank you. We're in recess.
20 Record this, please. While we are on recess, please
21 don't discuss your testimony with anyone other than the
22 three attorneys. Thank you very much, sir.
23 THE WITNESS: Thank you.
24 (Recess was taken.)

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1 THE COURT: We are back in session in case
2 14DI062. Mr. Gregory is present, Ms. Brown and Ms. Henry
3 are present. Ms. Leibel is present. The interpreters
4 are present, and the witness is still on the stand. I do
5 want to let you know that when we break at 3:00, I intend
6 to give you a longer break. Okay? So just for your
7 benefit. Let's bring the jury in.

8 Please have a seat. Thank you. Will you
9 stipulate to the presence of the jury?

10 MR. GREGORY: Yes, Your Honor.

11 MS. BROWN: Yes, Your Honor.

12 THE COURT: Thank you. Would you continue
13 with your examination, please.

14 MR. GREGORY: I will, Your Honor. My
15 microphone went out on me, so I'm going to use this one,
16 if that's okay.

17 THE COURT: The little handheld one --

18 MR. GREGORY: Yes.

19 THE COURT: -- or the one that you wear on
20 your lapel? Do we charge those with a battery, or do we
21 plug them in and charge them? We'll find out. We will
22 investigate that. Thank you, Mr. Gregory.

23
24

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1 CONTINUED DIRECT EXAMINATION
2 BY MR. GREGORY:

3 Q. Thank you. Doctor, during the course of your
4 testimony just a little bit ago, you talked about there
5 being some blood inside Mr. Leibel's chest cavity. Can
6 you further articulate that?

7 A. So during my internal examination of the
8 decedent's body, I found that he had 600 milliliters of
9 liquid blood in his right chest cavity and 800
10 milliliters of liquid blood in left chest cavity, and he
11 had a hundred milliliters of liquid blood in his abdomen,
12 and he had about 50 milliliters of liquid blood in
13 pericardial sac. It's a sac that surrounds the heart.
14 This hemorrhage or this bleeding came from the injuries
15 inflicted by the projectile passing through those organs
16 and the chest and abdomen.

17 Q. Doctor, what is rigor mortis?

18 A. Rigor mortis is postmortem change. It's
19 basically stiffness of muscles that develops after death.
20 It first appears within about two hours after death, but
21 again, this depends on especially the temperature of the
22 body and the temperature of the environment. If the
23 temperature of the environment or the body is elevated
24 significantly, then the rigor mortis may start earlier.

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1 The rigor mortis starts with the muscles of
2 the jaw, then muscles of the face, then muscles of upper
3 extremities and it continues to fully develop. It's
4 fully developed after six to about six to 12 hours after
5 death, and when the decomposition changes start, it
6 disappears about 36 to 48 hours after death. Of course,
7 again, rigor mortis setting in may be accelerated by the
8 environmental factors such as temperature, higher
9 temperature of the body or the environment, and can be
10 slowed down, the setting of the rigor mortis can be
11 slowed down by colder temperatures such as temperatures
12 in the cooler.

13 Q. What happens to the body's muscles
14 immediately upon death?

15 A. In order to -- They basically become
16 contracted. They are contracted. And to alleviate this
17 contraction, we need a special molecule, which is carrier
18 of energy, it's called ATP, and this molecule after death
19 is not produced anymore. This molecule causes the
20 muscles to relax. So we have live person. We can
21 contract the muscles and relax muscles without any
22 problem because we have big supply of those
23 energy-carrying molecules that help our muscles to relax.
24 After death, those molecules get exhausted, and they are

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1 not produced anymore after death, so the muscles stay
2 contracted. This is why we observe increasing stiffness
3 of the muscles because there's not enough of this
4 energy-carrying molecule causing muscles to relax. So
5 this is how the rigor mortis or stiffness after death
6 develops.

7 Q. Would you expect to see rigor mortis 15
8 minutes after death?

9 A. Well, there is a situation which is called
10 cadaveric spasm. This is rigor mortis that sets in right
11 after death, but to see that, we need some criteria or
12 some conditions that help this condition to develop.
13 This abrupt spontaneous stiffness of muscles after death
14 occurs in situations where there is a very high
15 temperature of environment or the body or the decedent,
16 before dying, was performing very exhausting extensive
17 activities, exercises.

18 And what's most very important, this is very
19 rare condition, this cadaveric spasm. The literature,
20 major authors in forensic pathology literature quote that
21 they saw cadaveric spasm maybe twice in their 30-year
22 long career. So it's very, very rare, rare condition.
23 It may occur, but we have to have certain conditions for
24 the cadaveric spasm to develop. Again, very high

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1 temperature of the body or very high temperature of the
2 environment, and/or very intensive activity that the
3 decedent was performing before dying.
4 Q. When you say extremely high temperatures, how
5 high?
6 A. Let's say you could see this more often in
7 Las Vegas where the temperatures maybe 125, or in cars,
8 you can see temperatures of 140 degrees Fahrenheit, so in
9 this setting, you may actually expect sometimes to see
10 cadaveric spasm. Not here in middle of winter, for
11 example. It becomes very, very rare phenomenon.
12 Q. What about 75 to 80 degrees? Would that be
13 that type of extreme temperature?
14 A. No.
15 Q. And would somebody sitting in a couch be the
16 type of physical exertion that might occasion the
17 cadaveric spasm?
18 A. No.
19 Q. In the absence of cadaveric spasm, would you
20 expect to see rigor mortis 15 minutes after death?
21 A. No, rather not.
22 MR. GREGORY: Nothing further.
23 MS. BROWN: Good afternoon, Doctor.
24 THE WITNESS: Good afternoon.

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1 CROSS-EXAMINATION
2 BY MS. BROWN:
3 Q. Now, when you performed the autopsy on
4 Mr. Leibel, it was the following day after his death; is
5 that correct?
6 A. Yes.
7 Q. So it was 24 hours later that you were
8 observing his condition; is that correct?
9 A. Yes.
10 Q. And at the conclusion of your examination,
11 you've prepared a report; is that correct?
12 A. Yes.
13 Q. And that was dated on August 21st?
14 A. I don't have the report from front of me, so
15 I don't remember that exact date.
16 Q. I'm handing you a document labeled MEK
17 0548DOU. Do you recognize that document?
18 A. Yes.
19 Q. And is that the autopsy protocol you
20 prepared?
21 A. Yes. This first two pages, those are the
22 cover page and investigation report from our office. And
23 the first page, that's the beginning of my autopsy
24 report, and the date I signed was August 21st, 2014.

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1 Q. So this was the date that you concluded the
2 report?
3 A. Yes. It's the date when I completed the
4 report. Yes.
5 Q. Before you performed the autopsy on
6 Mr. Leibel, did you review any photographs or written
7 reports in the case?
8 A. Before completion of my report?
9 Q. No, before the autopsy, were you provided any
10 information concerning the case?
11 A. Yes.
12 Q. And what type of information were you
13 provided?
14 A. It was just general information about the
15 case, how the decedent was found at his residence.
16 That's it.
17 Q. And was anybody else present during the
18 autopsy?
19 A. Yes.
20 Q. Who was that?
21 A. It was FIS technician, Mrs. Marci Margritier,
22 and then there was sheriff deputy from Douglas County was
23 Jeff.
24 Q. Schemenauer?

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1 A. Schemenauer. Right.
2 Q. Did he also provide you a verbal synopsis
3 concerning the case?
4 A. Yes.
5 Q. And it was indicated to you that the
6 sheriff's department suspected homicide?
7 A. I don't remember that.
8 Q. They requested a homicide protocol in the
9 case?
10 A. Yes. It was highly suspicion case, so in
11 those cases, you perform homicide protocols.
12 Q. Excuse me?
13 A. Yeah.
14 Q. When you begin your autopsy or at the
15 beginning, you noted that there was a broken body bag
16 seal. Was that broken by a member of your -- Mr. Leibel
17 was present and arrived in a body bag; is that correct?
18 A. Yes.
19 Q. And then there was a broken body bag seal.
20 Was that done by someone in your office?
21 A. It was my office. Right.
22 Q. And before you did the autopsy, that's when
23 you did the x-rays?
24 A. Yes.

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1 Q. Were the x-rays were done?
2 A. They were done.
3 Q. So and Mr. Leibel was still closed?
4 A. Yes.
5 Q. When that was completed? And I'm showing you
6 Exhibit Number 134. Did you previously identify
7 something that may be an object of clothing?
8 A. Yes.
9 Q. And where was that?
10 A. Object of clothing.
11 Q. Just put a C by it.
12 A. Would you rephrase the question? I have not
13 -- I identified on this photograph fragments of metallic
14 projectiles.
15 Q. And you were asked about the fragment to the
16 left?
17 A. Yes. It's an object on the right upper
18 aspect of the chest, which is round, and there's another
19 one very similar, same object on the left aspect of the
20 body, and I'm indicating those by arrows.
21 Q. And those were not --
22 A. Those are not fragments of metallic
23 projectiles.
24 Q. Okay. Did you say they were?

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1 A. Most likely, they're a part of clothing.
2 Q. And your initial examination, did you notice
3 anything else? Get these marked.
4 THE COURT: 130?
5 THE CLERK: 137.
6 (Whereupon, Exhibit No. 137 was marked
7 for identification.)
8 THE COURT: Did you show those to
9 Mr. Gregory?
10 MS. BROWN: I'm sorry.
11 THE COURT: Would you, please.
12 Q. (BY MS. BROWN:) Showing you what's been
13 marked as Exhibit 137. Do you recognize what's shown in
14 that photo?
15 A. Yes.
16 Q. And is that a photograph of Mr. Leibel?
17 A. It's a photograph of decedent's body, and he
18 was brought to our office, and he was still wearing some
19 clothing, and he's still in the body bag.
20 Q. Okay. And on his hands, there are --
21 THE COURT: Why don't we get it admitted
22 first.
23 MS. BROWN: Why don't we. I'd offer Exhibit
24 137.

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1 MR. GREGORY: No objection.
2 THE COURT: 137 is admitted.
3 (Exhibit No. 137 was admitted into evidence.)
4 Q. (BY MS. BROWN:) Just put in up here and we
5 can talk. Showing you what's been marked Exhibit 137 for
6 identification or admitted as Exhibit 137. On
7 Mr. Leibel's hands, there appears to be some kind of bag?
8 A. Yes.
9 Q. And did he arrive in that condition?
10 A. Yes.
11 Q. Do you know why his hands were placed in
12 those bags?
13 A. They're always placed in cases when we have
14 gunshot wounds. The paper bags protect the hands and so
15 the gunshot residue can be collected afterwards.
16 Q. Was any gunshot residue testing done during
17 the autopsy?
18 A. I don't know. This is done by other
19 investigating agency.
20 Q. But the hands were in bagged and unbagged at
21 some point?
22 A. Yes.
23 Q. I'm showing you what's been marked as Exhibit
24 138. Do you recognize that?

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1 A. I can't see very well.
2 THE COURT: Well, we'll get the lights
3 back up for you.
4 THE WITNESS: Yes.
5 Q. (BY MS. BROWN:) Do you recognize what that's
6 a photograph of?
7 A. This is photograph of the body bag when he
8 was brought.
9 Q. And was any object discovered in the body
10 bag?
11 A. Yes.
12 Q. And what was that?
13 A. It was a fragment of the plastic wadding.
14 THE INTERPRETER: I'm sorry. This is the
15 interpreter speaking. Fragment of?
16 THE COURT: Fragment of the plastic wadding.
17 Now, are you going to introduce that photograph?
18 MS. BROWN: Once he identifies it.
19 THE COURT: Okay.
20 Q. (BY MS. BROWN:) And is does this photograph
21 include that plastic wadding?
22 THE COURT: Well, now, that's testifying from
23 the photograph. So before you ask that question, let's
24 see if we can get it admitted.

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1 MS. BROWN: Your Honor, I'd offer Exhibit
2 138.
3 MR. GREGORY: No objection.
4 THE COURT: Then 138 is admitted, and you now
5 may ask that question, ma'am.
6 (Exhibit No. 138 was admitted into evidence.)
7 Q. (BY MS. BROWN:) And is that a photograph of
8 the plastic wadding that was located in the back?
9 A. There was a plastic object like transparent
10 present on this part of the body bag.
11 Q. Okay. And you noted in your autopsy protocol
12 that there was a piece of plastic wadding found in the
13 body bag; is that correct?
14 A. That is correct.
15 Q. And you noted in your report that at this
16 point, Mr. Leibel was in full rigor mortis; is that
17 correct?
18 A. That is correct.
19 Q. And again, this was 24 hours since his death?
20 A. Yes.
21 Q. And on the timeframe of rigor mortis, you
22 said generally around two hours. This is a rather large
23 timeframe when rigor mortis can either start or cease;
24 isn't that correct?

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1 A. Could you repeat the question?
2 Q. The timeframe in which rigor mortis either
3 develops or ceases is a very large timeframe?
4 A. Yes, it is a very large timeframe, and it's
5 approximation.
6 Q. And as to the cadaveric spasms, you listed
7 several considerations or several conditions that you
8 believe had to exist in order for cadaveric spasms to
9 occur: the heat, and extreme exercise?
10 A. It's not I believe this, but this is
11 information that is presented by the forensic pathology
12 literature.
13 Q. And is there another condition where there's
14 traumatic injury that can cause cadaveric spasms?
15 A. If it is associated with exertion, extreme
16 exertion, yes, it may be associated cadaveric spasm, but
17 again, we have to understand the mechanisms of it.
18 Q. And when we spoke back I believe it was like
19 December 23rd, and at that time, you even brought out an
20 example of people from the plane wreck in Southeast Asia
21 that were being brought out of the ocean with cadaveric
22 spasms; is that correct?
23 A. No, I don't recall giving that information.
24 Q. Now, you'd noted multiple gunshot wounds on

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1 Mr. Leibel, but two distinct -- from two distinct
2 injuries; is that correct? Sorry. We talked about an
3 entrance wound, an exit wound, and then another wound on
4 his shoulder. Was that a pattern, so that would be
5 consistent with one shot?
6 A. Yes. I mean, there are two gunshot wounds on
7 the decedent's body.
8 Q. Okay. I was going to ask you about the other
9 one too. And then the other one is on the right hands
10 underneath the armpit; is that correct?
11 A. That's the entrance gunshot wound.
12 Q. And that wound to the trunk would not have
13 been immediately fatal; is that correct?
14 A. No. It would take few minutes for a person
15 to die.
16 Q. And the gunshot wound to the left wrist and
17 shoulder was not in and of itself fatal in any way?
18 A. It was not immediately fatal, but if left
19 untreated, it would cause death by loss of blood or shock
20 or infection.
21 Q. And in discussing the wound to the right side
22 of the chest, you called it a middle -- you stated it was
23 in the middle axillary line. What's that?
24 A. It's basically the left or right aspect of

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1 the chest. It can be -- We can draw imaginary lines that
2 serve to orient the injuries or other findings better.
3 And so the line starts from the armpit and continues down
4 the middle of the side aspect of the chest. That's the
5 middle line. And then you have anterior line, which is
6 frontal to the middle axillary line, and then you have
7 posterior line, which is in the back of the middle line.
8 And those are just imaginary lines used for better
9 orientation of position of the injury or other findings
10 on decedent's body.
11 Q. And so being on the middle axillary line
12 means it's basically in the middle of that zone
13 underneath the armpit?
14 A. Yes, as we saw it on the photograph.
15 Q. And when you give the wound path is from back
16 to front, it doesn't mean somewhere in the back coming
17 out the front. It means the entrance wound was more back
18 from the exit wound; is that correct?
19 A. Yes, that indicates just how the bullet
20 traveled inside the decedent's body.
21 Q. But back-to-front does not mean the wound
22 itself, entrance wound itself was anywhere towards the
23 back of the body?
24 A. I mean, this way closer to the -- it is, you

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1 know -- Could you rephrase the question?
2 Q. Yes. Most people, when they think of back to
3 front, they're thinking it's back here and this is front.
4 A. Yes.
5 Q. Okay. This wound is on the midaxillary line,
6 so it's right midline there?
7 A. Yes.
8 Q. It's not on the back. It's not --
9 A. Yes.
10 Q. -- on the front. So the path the bullet took
11 was this the entrance wound was more towards back than
12 the exit wound?
13 A. Yes.
14 Q. Is that correct?
15 A. Yes.
16 Q. And in discussing this injury -- and I'm
17 showing you Exhibit 134 -- and these two with the arrows
18 are the two that you noted as not fragments. Possibly --
19 A. That's correct.
20 Q. -- pieces of clothing?
21 A. Piece of clothing or KG pods. They can also
22 leave this type of picture. But anyway, they are not
23 fragments of projectile.
24 Q. And then this larger circle or kind of

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1 oblique circle in the center was very small fragments?
2 A. Yes, very small fragments.
3 Q. And then the one to the right of this and to
4 the left of that center fragment, there appears to be
5 larger fragments?
6 A. Yes.
7 Q. So this projectile was breaking up as it went
8 through the body?
9 A. Yes, that is correct.
10 Q. So it wasn't a single bullet that was going
11 through the body. It was eventually just fragments that
12 were going; is that correct?
13 A. Yes. The term is called "shower."
14 Q. And showing you Exhibit 136, again, this is
15 showing the left arm?
16 A. Yes.
17 Q. And again, there's multiple fragments?
18 A. Yes. They're very small.
19 Q. And this was taken --
20 A. Fragments, yes.
21 Q. And this was taken -- very small -- taken
22 with Mr. Leibel's still had clothing on?
23 A. Yes.
24 Q. And at least one of those fragments, we don't

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1 know which one, was inside the clothing actually?
2 A. The largest one. This one which is the most
3 towards the bottom, this one. Yes, this is the one that
4 was sitting in decedent's left sleeve robe sleeve.
5 Q. And you stated you felt it was most likely
6 that Mr. Leibel had his left arm up or extended when this
7 -- when he received these injuries; is that correct?
8 A. Yes.
9 Q. Thank you. But it could have happened in
10 another manner; correct?
11 A. It's possible.
12 Q. That even if his arm was down when those
13 fragments or a larger fragment hit the bone, it could
14 have sent those fragments down the arm?
15 A. Well, it is possible but rather unlikely
16 because when you have a projectile or fragment of
17 projectile and we saw the projectile was basically
18 falling apart as it travels through the body, when this
19 projectile hits the bone, either it breaks the bone or it
20 doesn't, then it will leave some area at the point of the
21 impact full of very small, very minute fragments of
22 metallic fragments. And when you look at the x-ray that
23 we just saw --
24 Q. Let me ask you this.

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1 MR. GREGORY: Your Honor, he was answering
2 the question.
3 THE COURT: I think he already answered the
4 question. You can follow up.
5 Q. (BY MS. BROWN:) Thank you, Your Honor. The
6 question was, this is a possibility; correct?
7 A. Yes, it is possible.
8 Q. And a larger fragment could hit a bone and
9 produce those smaller fragments in the arm?
10 A. The larger fragment, when it hits the bone,
11 it can break it or not, but there will be some evidence
12 that the projectile, fragment projectile hit the bone in
13 certain point and --
14 Q. Thank you.
15 A. -- I don't see that here.
16 Q. And on the wrist and shoulder injury, on the
17 wrist injury, you gave no estimate of range?
18 A. No.
19 Q. On the internal examination, there were
20 surgery scars present on the abdomen?
21 A. Yes.
22 Q. And were you aware Mr. Leibel had a history
23 of cancer of the bladder?
24 A. No.

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1 Q. Were you aware he had any history of cancer
2 at all?
3 A. No.
4 Q. You also indicated that the lumen contained
5 50 milligrams of like tan, thick, chunky fluid?
6 A. How much?
7 Q. I'm sorry. 500.
8 A. Yes, 500.
9 Q. And what is the lumen?
10 A. Lumen refers basically to inside of the
11 stomach.
12 Q. In examining the liver, did you see any signs
13 of liver disease?
14 A. Well, he had status post cholecystectomy.
15 His gallbladder was removed. So one of the scars present
16 on his abdomen corresponds to surgery involving removal
17 of gallbladder.
18 Q. Did you see any signs of liver disease?
19 A. Not really.
20 Q. Were there any microscopic slides taken of
21 any of the tissues or organs?
22 A. No.
23 Q. And there were kidney stone present?
24 A. Yes, there were kidney stones in the right

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1 kidney.
2 Q. And was Mr. Leibel's blood submitted for
3 toxicology?
4 A. Yes.
5 Q. And did you get a report back on that?
6 A. Yes.
7 Q. And what were the results?
8 A. Peripheral blood showed presence of marijuana
9 metabolites.
10 JUROR NO. 14: Your Honor, I got a problem.
11 His last answer to the question, what was in the blood.
12 I didn't hear that real good.
13 THE COURT: Would you repeat your answer
14 please, sir.
15 THE WITNESS: Yes, Your Honor. Peripheral
16 blood that was tested showed presence of marijuana
17 metabolites.
18 THE COURT: Did you get that, sir?
19 JUROR NO. 14: Yes, sir. Sorry.
20 THE COURT: No apology is necessary. I
21 encourage all of you if you cannot hear, you let me know.
22 We'll make certain that you do.
23 Q. (BY MS. BROWN:) And showing you again
24 Exhibit 54, what's shown in that photograph?

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1 A. Exhibit 54 shows partial measurements of
2 decedent's left arm. Right arm. Sorry.
3 Q. And Exhibit Number 55 is a continuation of
4 that photograph?
5 A. Yes. This shows the up-close photograph of
6 right decedent's right hand and the scale and the
7 measurement tape.
8 Q. And in that photograph, it shows his middle
9 finger extending to 24 inches?
10 A. Yes, it was 24 inches.
11 Q. And this was taken, the photographs were
12 taken when Mr. Leibel was in full rigor mortis?
13 A. Yes.
14 Q. And one of the symptoms of full rigor mortis
15 is the muscles contracting; is that correct?
16 A. Yes, he had the rigor mortis before measuring
17 hand or arm.
18 Q. And does that photograph -- Let me take this
19 up.
20 THE COURT: For the record, you're displaying
21 exhibit --
22 MS. BROWN: Number 54.
23 THE COURT: Thank you, ma'am.
24 Q. (BY MS. BROWN:) And we had discussed

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1 previously we met back in December, that is distinct arch
2 in the wrist here, and then you go from Exhibit 54 into
3 Exhibit 55, you can also see the curving of the fingers.
4 And you couldn't say how much that would affect his
5 reach; is that correct?
6 A. Yes. It's why I give between 24, 25 inches.
7 It's approximation in length.
8 Q. An approximation?
9 A. Yes.
10 Q. Just so we can try this, if this is my arm
11 flat against there, what would the reach, or can you
12 position it here? Oops. I lost that again?
13 THE COURT: It's quite all right.
14 THE WITNESS: Measure going to armpit, and
15 tried to measure distance between the armpit and tip of
16 the third right finger in this case, so it would be 25
17 and a quarter of an inch in length.
18 THE COURT: The record will reflect that the
19 doctor is measuring Ms. Brown's arm length from
20 apparently -- I can't see where he started. Apparently,
21 her armpit to the tip of one of her fingers.
22 MS. BROWN: Middle finger.
23 THE COURT: Middle finger. Thank you.
24 Q. (BY MS. BROWN:) And if my hand is arched and

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1 fingers curled back, do I lose some --
2 A. Yes, of course.
3 Q. How many?
4 A. This way?
5 Q. Yes.
6 A. About three-quarters of the inch.
7 Q. What was it before?
8 A. Twenty-four and a quarter. But of course
9 everybody is different.
10 Q. In talking about the length of an arm, you
11 aren't talking about a person's actual reach, are you?
12 A. No.
13 Q. Okay. So just by the -- if I'm standing here
14 with my microphone on my -- Sorry. Okay. And so
15 standing here with my arms straight down at my side, that
16 would be my the length of my arms?
17 A. You mean how measured? Because there are
18 different measurements and different definitions like
19 wingspan or arm reach or length of the right and left
20 arm. Sometimes you have different. Sometimes --
21 Q. Okay. Well, let's do my right arm then. So
22 at this natural position, this would be kind of viewed as
23 the length of my arm?
24 A. Length of the arm measured. I don't

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1 understand the question.
2 Q. This is as far as I can reach with my arm
3 like this.
4 A. Yes.
5 Q. And if I, for example, just dropped that
6 shoulder, I can gain more reach; is that correct?
7 A. Yes, of course.
8 Q. So in a flexible body, you can get more reach
9 past where your arm naturally falls.
10 A. Yes.
11 Q. And if I want to reach for something over
12 there, I'm not defined by the end of my fingers here; is
13 that correct? This wouldn't be the farthest I could
14 reach. I have my arm extended out to the left-hand side.
15 A. You can change positions of the body and this
16 way extend.
17 Q. Yeah, like bend at the waist.
18 A. Yes.
19 Q. Is that correct?
20 A. Yes.
21 Q. So I can gain some additional reach with
22 movement of a flexible body; is that correct?
23 A. Yes.
24 Q. Do you recall what the levels of the

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1 marijuana were?
2 A. No.
3 Q. And would reviewing the report refresh your
4 memory?
5 A. Yes, but I'm not a forensic toxicologist,
6 so --
7 THE COURT: Sir, please just listen to the
8 question and answer only the question.
9 THE WITNESS: I'm sorry. Of course.
10 Q. (BY MS. BROWN:) Would reviewing your report
11 refresh your recollection of the toxicology report that
12 came back?
13 A. Yes.
14 THE COURT: And I assume that Mr. Gregory has
15 a copy of that report.
16 MR. GREGORY: I do, Your Honor.
17 MS. BROWN: Yes, Your Honor.
18 THE COURT: And so you understand that he's
19 reviewing what?
20 MS. BROWN: The case information, the first
21 page is entitled case information in the case number
22 140548DOU.
23 THE COURT: Thank you, ma'am.
24 Q. (BY MS. BROWN:) And it's been -- you've

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1 previously identified that same document as containing
2 your autopsy protocol.
3 A. Yes.
4 Q. And what were the results of the testing,
5 blood testing that was done? What's the active THC
6 level?
7 A. Peripheral blood showed presence of delta
8 90C, which was 20 nanograms per milliliter. Delta 9
9 carboxy C, which was 31 nanograms per millimeter.
10 THE INTERPRETER: Your Honor --
11 THE COURT: Wait a minute. You have to go a
12 little bit slower for our interpreters, please.
13 MS. BROWN: They get messed up on numbers.
14 THE COURT: Would you repeat that, please,
15 sir.
16 THE WITNESS: Yes. So peripheral blood
17 showed presence of delta nine THC that was 20 nanograms
18 per milliliter. Then there was delta nine carboxy THC.
19 It was 31 nanograms per millimeter, and then liver tissue
20 showed presence of delta nine carboxy THC, which was 580
21 nanograms per gram.
22 Q. (BY MS. BROWN:) And that was the only
23 narcotic that was found present in the blood?
24 A. Yes. There was only one.

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1 MS. BROWN: Thank you. I have no further
2 questions.
3 THE COURT: Mr. Gregory.
4 MR. GREGORY: Thank you, Your Honor.
5 THE COURT: I think both of those are
6 working.
7
8 REDIRECT EXAMINATION
9 BY MR. GREGORY:
10 Q. Doctor, did Harry Leibel die from kidney
11 stones?
12 A. No.
13 Q. Did he die from liver disease?
14 A. No.
15 Q. How about cancer?
16 A. No.
17 Q. How about marijuana?
18 A. No.
19 Q. What did he die from?
20 A. He died from multiple gunshot wounds.
21 Q. And, Doctor, if the bullet projectiles were
22 going up into Mr. Leibel's left arm and his arm was down
23 and the projectile hit a bone causing the projectiles to
24 go down into his arm, what would you expect to see in the

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1 x-rays?
2 A. First of all, you may see fracture of the
3 bone in this area, but if it's not present, at least
4 you're going to see some debris present next to this bone
5 next to the site of the impact on the bone. And here, we
6 don't see that.
7 Q. And that is why it's your opinion that his
8 arm was in the up position when he was shot?
9 A. Yes.
10 MR. GREGORY: Thank you. Nothing further.
11 MS. BROWN: Nothing further.
12 THE COURT: Doctor, thank you for your
13 presence today. You are excused, sir.
14 Well, I don't think it behooves us to try to
15 take six minutes of someone else's testimony before we
16 release the jury, so we will let you go for the evening.
17 And I'd ask that you be back and we'll start promptly at
18 9:00 o'clock tomorrow morning. Yesterday, you were
19 provided, for your convenience, copies of one of the
20 exhibits. I'm going to ask that you not take those with
21 you and that you leave them with Mr. Seddon as you leave
22 the room so that we can collect those. Don't take them
23 with you. Don't do anything else with them. We'll
24 collect them all back. See you at 9:00 o'clock in the

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1 morning.
2 During this recess, you're admonished not to
3 talk or converse among yourselves or with anyone else on
4 any subject connected with this trial. You're not to
5 read, watch, or listen to any report of or commentary on
6 the trial or any person connected with this trial by any
7 medium of information including, without limitation,
8 newspapers, television, radio, or Internet. You're not
9 to form or express any opinion on any subject connected
10 with the trial until the case is finally submitted to
11 you. I thank you for your attention today. You are
12 excused. We will be in recess.
13 I want to give -- You've got a very short
14 break earlier. I know you need to do some organizing
15 before we start the next process, so my suggestion is to
16 give you -- if I give you 20 minutes, is that enough time
17 for everybody to have a break? Do you need longer than
18 that, Mr. Gregory?
19 MR. GREGORY: Thirty would be appreciated.
20 THE COURT: Can we still get done by 5:00,
21 approximately?
22 MR. GREGORY: From my standpoint, yes.
23 THE COURT: Ms. Brown?
24 MS. BROWN: I believe so.

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1 THE COURT: Then I'm going to give you 30
2 minutes. It may be that you can have some discussions
3 and resolve some of this too. I don't know. You're
4 certainly not obligated to do that in any fashion. We
5 are in recess for 30 minutes, which puts us back in this
6 room in our chairs at 25 minutes after the hour. And I
7 want to remind you, the interpreters are leaving at 5:00
8 o'clock. That means that they're in a car at 5:02.
9 Thank you.
10 (Recess was taken.)
11 THE COURT: We're back in session in case
12 14DI26, State of Nevada versus Leibel. Mr. Gregory is
13 present representing the State. Ms. Henry and Ms. Brown
14 are here representing Miss Leibel, who is here together
15 with the interpreters. We're here outside the presence
16 of the jury in order to hear a Motion in Limine. I'll
17 take evidence regarding that motion unless there's been
18 some agreement reached. It's your motion, ma'am.
19 MS. BROWN: Your Honor, I would just ask that
20 there be an offer of proof by Mr. Noedel concerning this
21 matter.
22 THE COURT: Well, Mr. Noedel doesn't make
23 offers of proof. The State might. And I don't know
24 whether they want to do that or not. And so again, it's

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1 a your motion. I don't know if you've talked to
2 Mr. Gregory about him doing that, agreeing on how you'll
3 proceed. Mr. Gregory?
4 MR. GREGORY: No, we have not spoken about
5 that.
6 THE COURT: Well, it's your motion, ma'am.
7 Call any witnesses.
8 MS. BROWN: Yes, I'll call Mr. Noedel.
9 THE COURT: Is Mr. Noedel here?
10 THE WITNESS: Yes.
11 THE COURT: Come forward, sir. If you would
12 pause about right there, turn and face the clerk.
13
14 MATTHEW NOEDEL,
15 having been first duly sworn, was
16 examined and testified as follows:
17
18 THE COURT: Come on up and have a seat on the
19 stand there, sir. And it looks like somebody left their
20 cup, but clean cups and fresh water are there for you if
21 you'd like to have that.
22 THE WITNESS: I prepared this one, sir.
23 THE COURT: Go ahead.
24

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1 DIRECT EXAMINATION
2 BY MS. BROWN:
3 Q. Thank you, Your Honor. Could you state your
4 name and spell your last name, please.
5 A. Matthew Noedel: N-o-e-d-e-l.
6 Q. And what is your occupation?
7 A. I'm a forensic consultant for my own company
8 called Noedel Scientific.
9 Q. Are you also an employee of the Washoe County
10 Crime Lab?
11 A. Yes, a contract basis.
12 Q. And what do you mean by, "on a contract
13 basis"?
14 A. One of my contracts through my business as
15 Noedel Scientific was to help train and work on backlog
16 cases at the Washoe County Crime Laboratory, specifically
17 training new examiners in the firearm tool marking and
18 also working on backlog cases as time permitted.
19 Q. And you give an address in "Pollyup,"
20 Washington?
21 A. Yes, Puyallup, Washington.
22 Q. And is that where your business is located?
23 A. That's correct.
24 Q. Are you physically present at the crime lab

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1 when you're training or doing work on a contract, or is
2 that performed in another way?
3 A. I'm physically present. I come to Reno about
4 once a -- one week out of every month for about the last
5 four years.
6 Q. And you submitted a report in this case,
7 excuse me, if I can just find a copy here. Showing you
8 what's been marked as Exhibit 139. Do you recognize
9 that?
10 A. Yes, I do.
11 Q. And what is that?
12 A. This looks like a copy might of my
13 reconstruction report from this event.
14 Q. And when you prepared this report, was it
15 done under your own private company or under Washoe
16 County Crime Lab?
17 A. It was prepared as a part of my own company,
18 Noedel Scientific.
19 Q. Now, as part of this report, you said you did
20 examine some documents, photographs, pictures, things
21 like that?
22 A. Yes, I did.
23 Q. What did you examine?
24 A. I examined all of the available crime scene

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1 photographs, the available autopsy photographs, the
2 autopsy report, some of the police reports that were
3 available about the event, other forensic reports
4 initiated by people who were at the crime scene, so
5 laboratory reports.
6 Q. Five people that were at the crime scene?
7 A. Yes, from people at the crime scene.
8 Q. Oh, from people at the crime scene?
9 A. Sorry.
10 Q. Did you have a chance to speak with one of
11 the crime scene investigators, Joey Lear?
12 A. Yes, I did.
13 Q. And when did you speak with him?
14 A. About three weeks ago, I spoke with him via
15 the phone.
16 Q. That was prior to preparing your report?
17 A. Yes, it was prior to my report.
18 Q. And in your report, you reached a conclusion
19 the physical evidence including the length of the rifle,
20 the length of Mr. Leibel's, Harry Leibel's arm, the
21 distance of each shot, the angle of each shot --
22 THE COURT: Ma'am, please slow down. It's
23 okay, but it's going to be difficult. Thank you. You
24 may start over, if you'd like.

1 Q. (BY MS. BROWN:) The orientation required for
2 each shot, the re-caulking of the hammer after the second
3 shot best supports that Harry Leibel did not shoot
4 himself during this event. Is that your conclusion?
5 A. That is one of my conclusions. Yes.
6 Q. Do you have other conclusions?
7 A. Other bullet points that are in that
8 document.
9 Q. This is your -- the enunciation of your main
10 conclusion?
11 A. I would agree.
12 Q. So your strongest opinion is this best
13 supports that Harry Leibel did not shoot himself during
14 this event?
15 A. That's correct.
16 Q. And in preparing, were you aware -- Did you
17 receive any reports that made you aware that prior to the
18 measurements being taken by Mr. Leibel (sic), there had
19 been paramedics wandering around examining the scene?
20 A. Measurements taken by Mr. Leibel?
21 Q. I'm sorry. Mr. Leer.
22 A. Yes, the record reflects that paramedics had
23 gone into the house as well as police officers.
24 Q. And were you aware from those reports that

1 paramedics were looking around the couch to see a bullet
2 defect behind the couch?
3 A. I was not aware of that specific detail.
4 Q. Did you receive a report by Investigator
5 Chrzanowski stating that one of the paramedics saw the
6 defect in the wall after the patrol officers had moved
7 the couch?
8 A. I don't recall that specifically, but that
9 may be one of the documents that I received.
10 Q. Did you receive a report reflecting the
11 coffee table had been moved prior to the diagramming?
12 A. I don't recall reading that.
13 Q. I'm showing you Exhibits 125 and 126. Were
14 those documents you received in reference to this?
15 A. Yes.
16 Q. And you received those from the Washoe County
17 Crime Lab?
18 A. That is correct.
19 Q. And as part of your report, on page eight of
20 26 is a diagram of the crime scene?
21 A. I believe that to be accurate. Yes.
22 Q. And that was a copy of a report you received
23 from the Washoe County Crime Lab; is that correct?
24 A. That is correct.

1 Q. And that document noted that it was not done
2 to scale?
3 A. That is correct.
4 THE COURT: That it is not done to scale?
5 Q. (BY MS. BROWN:) Not done to scale.
6 Now, in your -- Sorry. Concerning the
7 trajectory that was created concerning the second shot --
8 A. Yes.
9 Q. You determined that at the time of the second
10 shot, the recliner was neither sitting upright or lying
11 flat all the way approximately in the middle position?
12 THE COURT: Slow down.
13 THE WITNESS: Yes. I believe that fits with
14 the bullet path analysis.
15 Q. (BY MS. BROWN:) And so the basis of your
16 conclusion was based on what?
17 A. It was based on the documentation that was
18 provided by the crime scene processors who actually
19 connected the entry position in the couch, the exit
20 position of the couch, and then the reentry into the
21 fixed wall behind it.
22 In order to connect that as a single bullet
23 path trajectory, the couch had to be reclined a certain
24 amount. When the seat is upright, that path moves, and

1 the trajectory rod will not meet the hole in the wall, or
2 if the couch is reclined all the way flat, the trajectory
3 rod points too far down. It doesn't meet with the hole
4 that's fixed in the wall. It's the fixed position of the
5 trajectory that enables us to reposition that bullet path
6 along those lines.
7 Q. And there was no indication in the written
8 notes what degree of reclining they had in that?
9 A. No.
10 Q. So you determined that for your purposes by
11 it has to be in the middle position based on their
12 photographs; is that correct?
13 A. Two different things. I had an opportunity
14 to examine the couch myself. They documented very well
15 the position of the hole in the wall, and they also
16 documented how far over the couch was within the room.
17 Part of my analysis of the couch also involved going back
18 to the house itself and seeing what the spatial
19 relationship is on that wall. The hole in the wall was
20 still present where they cut all out the projectiles from
21 that impact. So my reconstruction of the angle was based
22 on the position of the hole that they documented that's
23 still in the wall and the alignment, knowing that the
24 projectiles that came out on that bullet path had to

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1 follow essentially a straight line. And so the bullets
2 cannot make a u-turn in midair, so if the couch is seated
3 all the way forward, the hole should have been higher op
4 the wall, but it wasn't. The hole was low on the wall,
5 approximately ten inches off the ground. They have
6 photographs depicting a ruler straight onto where that
7 defect is. So part of trajectory analysis can be solved
8 practically, which is what we did when we examined the
9 couch by inserting a rod. You can even do it
10 mathematically by calculating the distance.
11 Q. Let me interrupt you a second. When did you
12 observe the couch?
13 A. Approximately four to six weeks ago.
14 Q. And where was it at?
15 A. It was here in this building.
16 Q. In a room?
17 A. Yes, in an examination room downstairs.
18 Q. So you didn't examine the couch in the house?
19 A. No. I was not at the house the day of the
20 event.
21 Q. But, I mean, they didn't take the couch to
22 your house?
23 A. No.
24 Q. I'm showing you what's been marked as

1 A. Correct.
2 Q. And for purposes of following this
3 trajectory, if it relates to the second shot, that would
4 be an incorrect position?
5 A. Yes. The person pictured in that image is
6 not in an appropriate position for the second shot that
7 occurred.
8 Q. So to put a person in that position to load
9 the couch with weight to make the trajectory rod line up
10 with the hole in the wall behind it is based on false
11 information?
12 A. Yes. If they are relying on that trajectory
13 rod based on having that individual sit there, then that
14 is probably -- that is not a good way to try to establish
15 the trajectory. The better data is in other photographs
16 that come in along with this photo.
17 Q. But Joey Lear testified this morning that
18 that was the way they managed to get that trajectory rod
19 to line up with the hole, is was for this individual to
20 be sitting in this position to make the -- otherwise,
21 they couldn't line up the trajectory rod with the hole.
22 A. I was not aware of that.
23 Q. So would that change anything concerning your
24 trajectory?

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1 Exhibits 129 and 130. Were these documents you received?
2 A. Yes.
3 Q. And that now, it was explained to us this
4 morning by Mr. Lear that the only way or the way they
5 were able to achieve this trajectory and getting rod to
6 actually enter the hole in the wall was when they put
7 this person in this position on a somewhat reclined
8 couch?
9 THE COURT: And you're pointing to exhibit --
10 MS. BROWN: Number 129.
11 THE COURT: Thank you.
12 THE WITNESS: Yes, that's my understanding,
13 is that one of the reasons for establishing the sergeant
14 in that photograph was to put a load on the couch. One
15 of the difficulties that they relayed to me later was
16 that while they could measure the trajectories, they
17 weren't sure what loading the couch, actually putting
18 weight on the springs would do the movement of that. So
19 they positioned a person.
20 Q. A person whose weight they didn't know?
21 A. I assume they did not know his weight.
22 Q. And they positioned them in the middle
23 portion almost onto the right-hand cushion; is that
24 correct?

1 A. No.
2 Q. So without this person in this position, then
3 this rod does not line up with the hole?
4 A. I disagree.
5 MR. GREGORY: And, Your Honor, this
6 mischaracterizes Mr. Lear's statement. With that
7 particular photo, he testified he could not tell you
8 whether the rod behind the couch married up with the hole
9 in the wall. He specifically stated that looking at that
10 same photo.
11 THE COURT: I think he -- I think at first he
12 said that it did, and then he said he could not see where
13 the rod went behind.
14 MR. GREGORY: That photo doesn't show that.
15 THE COURT: That the photo doesn't show where
16 the rod goes.
17 MS. BROWN: But his testimony was this person
18 was in this position on the couch to weight the couch so
19 they could eventually get it to line up with the hole
20 behind the couch.
21 THE COURT: I would agree that he did say
22 that.
23 THE WITNESS: And that if that was his
24 process while he was working on the scene, that's fine.

1 That's not the information that I relied on in order to
2 establish the trajectory through that couch.
3 Bullet path analysis requires that you have
4 multiple points along the line. We know the position of
5 the couch. If Mr. Lear's measurements are accurate, and
6 we did this in the exercise for the reconstruction
7 report, we can reposition the couch. We know where the
8 hole in the wall is. We then take a straight trajectory
9 rod independent of any of these photos and insert it in
10 the entry hole, fish it through exit hole, and position
11 it back in the reentry of the reconstructed bullet path.
12 Q. (BY MS. BROWN:) When you went to the house
13 to see the area on the wall where the defect had been,
14 that area had been cut out; correct?
15 A. Correct.
16 Q. And there was -- Did you take the piece of
17 wall with you to put back in that hole?
18 A. No, I did not.
19 Q. And behind that, there's no measurement that
20 shows where that hole in that piece of wall that was
21 taken out is in relation to that wall cut?
22 A. There is now. It's a measurement that I took
23 when I went back out to the house. By using some of the
24 original scene photographs, I was able to match the wood

1 grain on a countertop that was still there. It has a
2 pattern to it that was captured. And so we know by
3 taking the new measurements and actually dents in the
4 carpet were still present where the feet of the couch
5 once sat because it's a heavy piece of furniture, so we
6 do --
7 Q. Wait. Let me stop you a minute. You were
8 measuring off just the divots in the carpet where from
9 where the couch used to be?
10 A. I did record the divots, and I recorded, as I
11 said, the grain of the wood, the pattern in the wood.
12 And I could see -- measure from the corner of the room,
13 which we do have accurate measurements from the Lear
14 diagram, measure the corner of the room to establish that
15 in fact, the position of the hole in the wall is accurate
16 as it's drawn in the Lear diagram. I confirmed that for
17 myself.
18 Q. And when they took that piece of wall out,
19 there was no documentation of measurements of where those
20 -- the shots hit behind that; is that correct?
21 A. Just the photograph. Nothing with a ruler or
22 a scale, as I recall.
23 Q. And so there's no way to correlate where
24 those pellets hit with an exact measurement?

1 A. If by "exact measurement" you mean within --
2 we're talking in terms of error, you can get very close
3 because the group of the size of the pellets that went
4 through have to hit the wall behind them. There's
5 actually a stud that goes right through, so there is a
6 two-by-four. So we can have accuracy to within
7 approximately an inch and a half based on knowing that
8 that stud was hit, and the stud was behind the bullet
9 path. So within an area of about an inch and a half, we
10 know where the terminus of that second shot went. But
11 exact, not -- I wouldn't say we could get much closer
12 than about an inch and a half position.
13 Q. And when they took the original trajectories,
14 there was -- they didn't have that opening; correct?
15 They were using the hole?
16 A. Correct. They were using the actual bullet
17 hole as it was positioned in through the drywall.
18 Q. And with that hole in the wall, that's
19 multiple holes, looks like overlapping; is that correct?
20 A. Correct. We call it a scalloped edge, so
21 it's a hole that has slight hemispherical perimeters
22 because the projectiles that cause it was four pellets of
23 sphere -- four spherical pellets, and they had just begun
24 to separate and create what's called a scalloped edge.

1 Q. And so that hole with the scalloped edges is
2 larger than the trajectory rod, so there's wiggle room in
3 this?
4 A. Yes.
5 Q. And the couch is basically a moveable object
6 that you can pick up and put at an angle and still line
7 up trajectory rods, right?
8 A. Yes.
9 Q. And so without knowing for sure where that
10 the couch was when the actual shot happened, you could
11 not do an actual trajectory?
12 A. You can estimate the trajectory if the couch
13 was in its same relative position. If the couch is
14 inordinately out of position, then you can't do a
15 trajectory. In other words, part of what we do with a
16 bullet path analysis is we always add plus or minus five
17 degrees. So we always want to incorporate there is a
18 measurement error. There's always going to be some
19 error.
20 In reality, moving the terminus point in the
21 drywall by one inch changes the angles by a half a degree
22 or so, but we want to incorporate that because the couch
23 could have been moved and put back. But if the hole
24 through the couch continued into the wall, there's only

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1 so many places that it can be. We can move the couch out
2 from the wall farther and change the vertical trajectory
3 some, but we're not going to change it that much unless
4 the couch were, say, in the middle of the room where we
5 move it, 12, 14 feet away from the wall. That can
6 dramatically change the trajectories. If the couch was
7 in reasonable position from when the shot was delivered,
8 we can estimate those horizontal and vertical
9 trajectories easily within plus or minus five degrees.
10 Q. But if the couch was in a different position,
11 and I'm not saying it moved this way, but if it was
12 angled even some, that would change the trajectory?
13 A. Yes. Yes.
14 THE COURT: I want the record to be clear
15 what you're talking about, and I apologize for doing this
16 to you, Ms. Brown, but when you refer to "angle," you
17 mean one end of the couch being moved forward or back.
18 MS. BROWN: Correct.
19 THE COURT: Thank you. And the witness has
20 used the phrase "inordinately" moved, and I have no idea
21 what that means. And the witness also said something
22 about reasonable movement, I believe, and I don't know
23 what that means. And I'm just going to let you know that
24 the Court is not guided by that, by those terms. So one

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1 of you will have to help me with that.
2 Q. (BY MS. BROWN:) Could you explain what you
3 mean by inordinately moved.
4 A. Yes. In assessing this bullet path, what has
5 to happen is the pellets have to reach a fixed wall.
6 That fixed point in the wall is not movable without
7 moving the entire residence, so the path connecting the
8 entrance and exit of the couch has to marry with that
9 hole in the wall. So as we move the couch, we have to
10 pivot, essentially. We have to end at that hole. So you
11 can only move so far before you can no longer stay in
12 that fixed hole, but that has to happen. We have to hit
13 that hole.
14 So by the limits of the couch movement are
15 dictated by the entry position, the exit position, and
16 the reentry into a fixed point. So if we imagine hanging
17 the couch on that trajectory rod to where we can't pull
18 the rod out of the wall, any twist or rotation that lets
19 that rod stay fixed in the wall with the end of the
20 trajectory is conceivable, is possible.
21 Q. Now, concerning your photographs of the
22 measurement of Mr. Leibel's arm --
23 A. Yes.
24 Q. -- taken from the autopsy, and those would be

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1 Exhibits 14 and 15 in your report, your conclusion
2 concerning those in your report, you referred several
3 times to, "If he could even reach the trigger." Is that
4 correct?
5 A. That is correct.
6 Q. And because those photographs show a
7 measurement of about I believe we came up with 24 to 25
8 inches.
9 A. Yes.
10 Q. And you can see in those photographs that
11 there is an actual arch in the arm.
12 A. Correct.
13 Q. And Dr. Kubiczek today acknowledged that you
14 could get an additional half to three-quarters of an inch
15 straightening that arm out.
16 A. Okay.
17 Q. And also, the length of that arm does not
18 determine how far you can actually reach; is that
19 correct?
20 A. The length of your arm does dictate how far
21 you can reach because you can't reach farther than you can
22 reach. That measurement has error in the documentation.
23 There's a natural curvature where your forearm comes down
24 to meet your wrist. We all have that. And then there

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1 also appears to be some canted appearance to the wrist.
2 Q. Yes.
3 A. The other consideration with that photograph
4 is that the end of the tape measure is actually tucked
5 into the armpit. So we're actually measuring from a
6 deeper spot than the external surface that we would have
7 to measure.
8 So what becomes important from a
9 reconstruction perspective is how do we translate the
10 two-dimensional information from the photograph into the
11 three-dimensional world. When we do it absolutely and
12 simply measure, compare the measurements of the gun, the
13 length of the gun from the muzzle to the trigger and we
14 add the distances that we know that are indicated because
15 there is a standoff distance based on the gunshot residue
16 patterns on the robe, we combine that information, we
17 know about how far the gun has to be away from the front
18 of the robe. Then when we compare that to the length of
19 the arm, we see that absolutely speaking, as we compare
20 those two photographs, his fingers can't reach the
21 trigger. It can't be reached.
22 Now, in reconstruction though, I have to keep
23 in my head that these are two-dimensional images of a
24 three-dimensional life. Life has twisting, contortions.

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1 I don't know what Mr. Leibel's ability to twist, contort,
2 stretch. What I do know is that the distance to reach
3 the trigger and operate this firearm is just at or just
4 beyond his maximum reach based on that data, based on
5 that picture.
6 Q. Based on that picture?
7 A. Yes.
8 Q. And also in figure number 13, you have the
9 green setoff marked at three inches, and that's taking
10 the distance away from the body?
11 A. From the robe.
12 Q. From the robe. And actually, in your
13 ballistics report, you had a range of two to six inches;
14 is that correct?
15 A. Correct.
16 Q. So the closest could have been two inches?
17 A. Could have been as close as two or as far as
18 six.
19 Q. And as to how far a person is able to reach,
20 we went through with Dr. Kubiczek, you can drop your
21 shoulders and gain additional reach in your arms?
22 A. Correct.
23 Q. And you also have flexibility, so it's not
24 putting something straight under your body and --

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1 A. Correct. It's a baseline measurement that
2 gives us an idea of the kinds of distances we're working
3 with, and then we, from a reconstruction perspective,
4 then we consider who has to happen similar to the couch.
5 What has to happen is the entry site is
6 known. We can't move that. So it's not just a matter of
7 being able to move your body and stretch your arm. It's
8 a function of being able to operate a firearm and
9 maintain the path, the bullet path that's indicated, and
10 reach the distances.
11 Q. Showing you what's been marked as Exhibit
12 128.
13 A. Okay.
14 Q. Do you recognize that as a photograph of the
15 couch?
16 A. Yes.
17 Q. And one of your conclusions then was that
18 Mr. Leibel's shoulder had to be basically right below
19 that, the hole in the left-hand side of the couch in
20 order to receive the injuries he received. Is that
21 correct?
22 A. That's correct.
23 Q. And if Joey Lear testified that the way they
24 were able to line up the trajectory was to put human

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1 weight in the center of the couch, that would alter, I
2 mean, that wouldn't in any way replicate that trajectory,
3 right?
4 A. It's irrelevant to me because the trajectory
5 can be measured on its own. I would need to know more
6 information about why they didn't position -- did they
7 know of the wounds, first of all, when they were doing
8 the trajectory assessment, and there was a lot of blood
9 on the seat of that couch. Were they toward the center
10 simply to weight it without sitting in blood. So I would
11 want to know more of the factors like that. There's no
12 question that the other image that shows the sergeant
13 sitting on the couch in the center is not an accurate
14 representation of how the second shot occurred.
15 Q. Okay. But if that was an accurate
16 representation of how they were able to line up the
17 trajectory rods was by putting weight on the couch in
18 that location, then anything other than that location
19 would change the -- shift the weight on the couch?
20 A. It would change the load on the couch for
21 sure. But again, one thing has to happen. The hole has
22 to come in the outside out the back and into the fixed
23 position. However you load the couch, wherever you put
24 weights or people, that has to happen.

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1 Q. But in order to get the rod that's through
2 the couch to line up with the hole in the wall, they had
3 to put weight in a certain location, and if that weight
4 wasn't in that location, then their trajectory
5 measurements were wrong.
6 A. That's confusing to me because I was able to
7 establish the trajectory without weighting the couch, so
8 I'm not sure what they were trying to establish.
9 Q. So your trajectory may be different from
10 their trajectory?
11 A. Perhaps.
12 Q. And so relying on the same information, you
13 can get to two different conclusions?
14 A. No.
15 Q. Okay. You also testified or noted that the
16 presence of fiber in that bullet hole could have shown
17 that his shoulder was very close because of the transfer
18 of fibers; is that correct?
19 A. Yes.
20 Q. Do you know if those fibers were ever
21 collected into evidence?
22 A. I'm not aware of those having been collected.
23 Q. And do you know if they were ever tested?
24 A. I do not.

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1 Q. So we don't know where those fibers came
2 from; correct?
3 A. Correct. There is no analysis of the fibers.
4 THE COURT: Which hole are you talking about?
5 Q. (BY MS. BROWN:) The hole in the front of the
6 couch. I'm referring again to your report, Exhibit 139
7 to figure 13 on page 20 of 26.
8 A. Yes.
9 Q. And you wrote this photograph or diagram
10 represented the approximate orientation Mr. Leibel would
11 have had to achieve to get a self-inflicted wound with
12 this pattern or the path through the body; is that
13 correct?
14 A. That is correct.
15 Q. And there's other ways he could do that; is
16 that correct?
17 A. Other ways that he can self-inflict this
18 wound?
19 Q. He does not need to be laying down on the
20 couch; correct?
21 A. No, he does not have to be laying on the
22 couch.
23 Q. So he doesn't have to be in any type of
24 reclined position?

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1 A. He does not have -- Correct. He does not
2 have to be reclined. He could be standing --
3 Q. He could be standing?
4 A. -- and deliver this.
5 Q. And he could be leaning over to the side
6 sitting on the couch; is that correct?
7 A. Yes, yes. There's a number of positions he
8 can achieve as long as the path is maintained in this
9 orientation.
10 Q. So this stating it represents the approximate
11 orientation is misleading because there's numerous
12 positions he could be in to basically just orient the
13 entry into the right chest with the path across the body;
14 is that correct?
15 A. Yes. You could take that diagram and rotate
16 it as if he were standing. As long as the relative
17 position of the rifle maintains that position, any
18 position that he can reach and maintain that angle and
19 have his arm up is a position that can occur for the
20 first shot.
21 Q. And in figure 16 on page 23, again, you're
22 talking this would be the proximate orientation that
23 Mr. Leibel would have to achieve to get a self-inflicted
24 second shot?

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1 A. Correct.
2 Q. Correct? And in fact, your earlier
3 description is he would have to be slouched down low on
4 the couch to line up the shoulder with that bullet hole
5 in the front of the couch?
6 A. He does.
7 Q. And this is not a slumped individual?
8 A. I think I would need you to clarify what is a
9 slumped individual. That's a representation of a model
10 that would show how he would have to angle that shot in
11 order for the shot to go through his hand, eclipse his
12 shoulder, and continue on the path through the couch and
13 into the wall.
14 Q. But this is --
15 A. There is no couch in that diagram on purpose.
16 The reason there's no couch in there is because it's hard
17 to position him in a two-dimensional image of what the
18 three-dimensional representation is. But this is the
19 approximate orientation of the rifle, his hand, the wound
20 to his shoulder, and then you take that diagram and set
21 it on that couch, and you have the entire path of the
22 second bullet identified.
23 Q. But his legs are not locked in that position?
24 A. No.

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1 Q. The only thing that's locked in position
2 would be his shoulder relative to that hole in the couch;
3 is that correct?
4 A. Correct. Because he has no wounds to his
5 legs or feet, I can't accurately position his legs or
6 feet. There's no way to do that.
7 THE COURT: Are you telling me he then could
8 just be sitting up?
9 THE WITNESS: No, he cannot. For the second
10 shot -- because it's more complicated than that specific
11 diagram. That diagram shows the relationship of the
12 rifle, the position of the rifle aligned with the wound
13 through his hand into the top of his shoulder.
14 To complete that, there's a diagram later in
15 the report, I believe. We would have to apply that
16 general orientation of rifle, hand and shoulder to the
17 elements of the couch and identify -- that's how you can
18 achieve the slumped or what's called a slumped nature.
19 He has to be low enough for the hole in the couch to
20 eclipse his shoulder, so his shoulder has to be just at
21 the bullet hole in the couch.
22 Q. And showing you what's been marked as Exhibit
23 33, do you recognize that photograph?
24 A. Yes, I do.

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1 Q. And what is that?
2 A. This is a photograph that was with the
3 initial set of crime scene response, and it's a picture
4 of them laying a ruler next to a trajectory rod.
5 Q. And this was when they were working on the
6 trajectory?
7 A. Correct.
8 Q. And they had moved the coffee table out of
9 the corner by the left-hand side of the couch to get in
10 that position; is that correct?
11 A. That is correct.
12 Q. And showing you what's been marked as Exhibit
13 104 for identification, do you recognize the couch in
14 that photo?
15 A. I do.
16 Q. Is that our couch?
17 A. That is the couch. Yes.
18 Q. And Exhibit Number 105.
19 A. Yes, another perspective.
20 Q. And is that -- Could either of those be a
21 possible?
22 THE COURT: Wait, wait. Are you going to
23 offer those for purposes of this hearing?
24 MS. BROWN: For purposes of this hearing.

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1 THE COURT: And anything admitted right now
2 is for purposes of this hearing only. Do you have an
3 objection to those, Mr. Gregory?
4 MR. GREGORY: No, Your Honor.
5 THE COURT: Well, can I get their numbers and
6 know which ones you're offering.
7 MS. BROWN: I have 104 and 105.
8 THE COURT: 104 and 105 are admitted for
9 purposes of this hearing. If you want to use them at
10 trial, you'll need to readmit them then.
11 (Exhibit Nos. 1-4-105 were admitted into evidence.)
12 Q. (BY MS. BROWN:) Yes. And that could be a
13 possible position to achieve the first shot?
14 A. I disagree.
15 Q. On?
16 A. That this is a possible position for the
17 first shot.
18 Q. Why?
19 A. First --
20 MR. GREGORY: Your Honor, this seems to be
21 getting far afield of the Motion in Limine and more into
22 questions she might have for him on cross-examination,
23 but it really doesn't go to the Higgs' requirements.
24 THE COURT: She's testing methodology. The

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1 objection is overruled. I want to know, is that 104?
2 THE WITNESS: Yes. It's specifically, as I
3 look at 104, it's a better perspective photo to evaluate
4 than 105. My concern with the image depicted by the
5 person in 104, first I would want to know how long that
6 individual's arm is, based on the similar types of
7 measurements that we have in the photographs from the
8 autopsy. In other words, are we dealing with an
9 individual who has, at least photographically, a similar
10 arm length if we were to record and take the same picture
11 that we took at the autopsy, take a picture of his arm,
12 the ruler next to it. So I'm concerned about the length
13 of his arm.
14 The second problem I have with this is
15 knowing the track of the bullet, the angle that the
16 fragments pushed through the body. This angle is much
17 too severe relative to the appearance of the images in
18 the x-rays and the fragments.
19 Q. So a person could lean out a little further
20 and reduce that angle and still have?
21 A. If he were to stand up and lean left or yes,
22 if he leaned -- if he took the butt of the gun, either
23 took the butt of the gun up in the air to shallow this
24 angle -- I measured this angle to be about 45 degrees. I

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1 measured the angle in the x-ray to be approximately 20
2 degrees. So he's too steep by about 25 degrees.
3 Q. And so like I said, if you move that gun out
4 a ways, you would reduce that angle.
5 A. Correct. If we change this picture, we can
6 achieve the angle, and he can sit forward. The other
7 problem with this picture is his left arm is down. And
8 what happened to -- what actually happened is the
9 fragments pushed all the way through into the muscle of
10 his left arm for this bullet, because --
11 Q. Are you a pathologist?
12 A. No.
13 MS. BROWN: Okay. Thank you.
14 MR. GREGORY: Your Honor, he's trying to
15 answer the question.
16 THE COURT: I understand. Why don't you let
17 him finish that answer because it's going to come out on
18 cross anyway, and I need to hear the answer.
19 THE WITNESS: With this bullet, this is a
20 specialty design of bullet that's designed to fragment on
21 impact. I'm not a pathologist, but I study bullet
22 performance. That's a big part of what my business is
23 and what I do in shooting reconstruction. I teach
24 shooting reconstruction. I shoot gelatin. I've shot

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1 extreme Shock brand of ammo in gelatin and hooked at how
2 it performs.
3 What I anticipate is that in this bullet
4 performance, because it's fragmenting, it's not going to
5 take a deflection of what I measured to be approximately
6 137 degrees downward. There's no reason for these small
7 fragments to do that near the end of their path when
8 they're almost out of energy. So the angle is too steep,
9 and the arm, the left arm is in the wrong position. And
10 that's what I don't like about that picture.
11 THE COURT: Thank you.
12 Q. (BY MS. BROWN:) So if Dr. Kubiczek testified
13 it is a possibility that they deflected off of both, you
14 disagree with Dr. Kubiczek?
15 A. If that's what he testified, I'd disagree.
16 Q. And showing you Exhibit 102.
17 THE COURT: Are you going to object to 102?
18 MR. GREGORY: No, Your Honor.
19 THE COURT: For purposes of this hearing, are
20 you going to offer it?
21 MS. BROWN: Yes.
22 THE COURT: All right. 102 is admitted for
23 purposes of this hearing.
24 (Exhibit No. 102 was admitted into evidence.)

1 CROSS-EXAMINATION
2 BY MR. GREGORY:
3 Q. Mr. Noedel, what is reconstruction?
4 A. Reconstruction is -- in forensic
5 reconstruction --
6 THE COURT: Would you pause, please. Please.
7 Go ahead.
8 Q. Go ahead. You were talking about
9 reconstruction.
10 THE COURT: If you're okay, go ahead.
11 THE WITNESS: I'm okay. Reconstruction in
12 terms of shooting reconstruction, which is the primary
13 area that I work in, involves using physical evidence to
14 test and try to answer specific questions about a
15 shooting event, something that involves a discharge of a
16 firearm.
17 So in performing a reconstruction, it's never
18 -- it never -- the analysis never plays out like a movie.
19 That's a common misconception about reconstruction is
20 that I can sit here and tell you and what happened from
21 the time they got up that morning until the time
22 everything ended. What reconstruction can do is it can
23 take specific questions and address them using the
24 physical evidence that's available. And so that's the

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1 THE COURT: Go ahead, sir.
2 THE WITNESS: 102 is a much better image, and
3 in my opinion, a much more accurate image. The only
4 difference that I see between my diagram and the
5 photograph that you've taken as 102 is you've had the
6 model cover his eyes with his hand, but I see that you
7 have maintained the required trajectory, and he has
8 slumped down the required amount to have it eclipse his
9 shoulder. The other difference between my diagram is I
10 did not raise the individual's right knee. You have
11 raised the right knee.
12 Q. (BY MS. BROWN:) Which would help raise the
13 firearm; is that correct?
14 A. It could support the firearm, but we don't
15 have physical evidence to determine whether the knee was
16 up or down.
17 Q. Correct. So you can't put it down, and you
18 can't say it's up?
19 A. Correct.
20 MS. BROWN: Thank you. I have nothing
21 further.
22 THE COURT: Mr. Gregory?
23
24

1 process that is used to do reconstruction. You have to
2 evaluate questions of the event and measure it against
3 the available physical evidence.
4 Q. Are you certified to do reconstruction?
5 A. Yes, I am.
6 Q. In what way?
7 A. The International Association For
8 Identification offers a certification. It's a written
9 and practical examination. I think there are currently
10 17 people in the United States that carry that
11 certification, and that's the one I carry for
12 reconstruction. I also have certifications in firearm
13 and tool mark analysis as well.
14 Q. Is reconstruction accepted in your industry?
15 A. Yes, it is. Reconstruction is the subject of
16 numerous textbooks. It's a common goal even if it's not
17 formally called reconstruction, it's what's being done
18 all the time when we try to determine how far a gun was
19 away from a target or what two elements, which came
20 first. Was one object overlying another. The subject is
21 covered in textbooks, it's taught in classes, and it is
22 in fact an association called the Association For Crime
23 Scene Reconstruction. I'm past president of that
24 organization. It's a group of about 300 or so law

1 enforcement, private practitioners like myself, all of
2 whom attend crime scenes and try to piece together the
3 elements based on the physical evidence.
4 We have our 25th anniversary conference
5 coming up in two weeks. I'll be teaching at that
6 conference on shooting topics. But to give you an idea
7 of how robust the field is, that organization has been
8 around for 25 years come next February. So it is a very
9 well-established branch of forensic science.
10 THE COURT: What is the certification you
11 have that only 17 people have?
12 THE WITNESS: The International Association
13 for Identification offers four levels of crime scene
14 reconstruction. They offer basic scene reconstruction,
15 which covers things like how to collect physical evidence
16 at a scene. They offer advanced crime scene
17 reconstruction, which involves things like how to measure
18 trajectories and bullet path analysis. They offer a
19 third one that's like a senior supervisory supervise
20 crime scenes.
21 Their fourth certification is crime scene
22 reconstruction. How do you piece together the physical
23 elements from a scene and sequence them, test them. It's
24 a way of thinking. It's a way to apply the scientific

1 couch; correct?
2 A. I did.
3 Q. And you had an opportunity to view all of the
4 measurements that were taken from the crime scene;
5 correct?
6 A. Yes.
7 Q. And Joey Leer testified that those
8 measurements are accurate to within one half inch. Is
9 that a suitable degree of error for your profession?
10 A. Oh, absolutely.
11 Q. In this case, we also know the wounds. And
12 you took those into consideration as well?
13 A. Yes.
14 Q. So you have the wounds, the couch, the
15 firearm, and the measurements?
16 A. Correct.
17 Q. Is that data sufficient for you to
18 reconstruct the scene?
19 A. That's a part of the data, yes. There's more
20 data than that, but certainly, that is a great basis from
21 which to start for reconstruction.
22 Q. What other data did you utilize?
23 A. Performance of this relatively unusual round
24 of ammunition, the fact that this particular firearm is a

1 method and have viable, reliable, producible results that
2 form the basis of a reconstruction. You have to have
3 physical evidence in order to test. That's why things
4 like was a person mad will never show up in a true
5 reconstruction because we can't test that.
6 THE COURT: That's not my question. The
7 question is I asked you what 17 people -- what
8 certification you had that only 17 people have. So which
9 one is it?
10 THE WITNESS: It's the IAI Crime Scene
11 Reconstruction.
12 THE COURT: Which is the fourth category that
13 you mentioned?
14 THE WITNESS: Yes.
15 THE COURT: So out of hundreds of people who
16 practice crime scene reconstruction, 17 people have this
17 certification?
18 THE WITNESS: Correct.
19 THE COURT: Go ahead, Mr. Gregory.
20 Q. (BY MR. GREGORY:) In this particular case,
21 the firearm was taken into evidence. Have you had an
22 opportunity to shoot that firearm?
23 A. Yes, I have.
24 Q. And you had an opportunity to observe the

1 long-gun revolver, it's a relatively unique firearm, has
2 unique properties, one called cylinder gap which are
3 gases that can escape that need to be considered in
4 context, that the firearm can in fact handle single
5 projectiles or shotgun projectiles, multiple projectiles,
6 is a feature of this. The appearance and deposition of
7 the blood itself helps answer some questions about where
8 was an individual who was bleeding, helps piece together
9 whichever questions you're trying to answer.
10 THE INTERPRETER: Your Honor --
11 THE COURT: Yes.
12 THE WITNESS: This is the interpreter
13 speaking. The interpreter didn't hear the appearance and
14 the composition of the blood or deposition of the blood?
15 Deposition of the blood. So depending on what question
16 it is you're addressing, all of those features may come
17 into play in assessing the data.
18 Q. (BY MR. GREGORY:) Given the data that you
19 had available and even taking into consideration some of
20 the information given to you in examination today, are
21 you confident in the opinions you've rendered?
22 A. Yes, I am.
23 Q. And if you didn't have sufficient data in
24 this case, what would you have done?

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1 A. If you don't have sufficient data, then you
2 can't answer those questions. The only questions that
3 can even be addressed are ones that have data. If you
4 pose a question to me for which there is no data, then it
5 does not enter into the reconstruction. It can't be
6 tested.
7 MR. GREGORY: Thank you. Nothing further.
8 THE COURT: Ms. Brown?
9 MS. BROWN: Nothing further, Your Honor.
10 THE COURT: You can stand down, sir. We'll
11 be in recess.
12 (Recess was taken.)
13 THE COURT: All three counsel are here, and
14 the defendant is here together with the interpreters.
15 Would you care to make argument, Ms. Brown?
16 MS. BROWN: Your Honor, one issue that
17 Mr. Gregory had brought up in his response was that the
18 reasonable scientific certainty standard did not apply to
19 anything outside of medical evidence, medical causation.
20 I had cited Yeghiazarian: Y-e-g-h-i-a-z-a-r-i-a-n.
21 THE COURT: I have a copy of that opinion on
22 the bench, ma'am.
23 MS. BROWN: And in that case, they were
24 discussing Dr. John E. Baker, who was listed as a doctor

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1 with the initials P.E. after it for professional
2 engineer, there was not a medical doctor. And relying on
3 the Hallmark standard, the Court in that case said -- and
4 it was looking at it under the reliability of the
5 methodology and the opinion of -- that Dr. Baker was able
6 to calculate to a reasonable degree of scientific
7 certainty the vehicle's starting positions, the braking,
8 therefore, it wasn't an abuse of discretion to allow him
9 to testify.
10 So I think by implication, that case does,
11 under the Hallmark case standard, adopt a reasonable
12 degree of scientific certainty as it relates to
13 scientific evidence under the reliability standard that
14 they had previously enunciated.
15 Other than that, I would say Your Honor, I
16 think I do think based on the testimony of Joey Lear,
17 that that couch -- to achieve the trajectory they
18 achieved at the crime scene was the only way they could
19 do that was by placing a weighted body in the center of
20 the couch and lining up the trajectory from the couch
21 with the hole in the wall. So I think that calls into
22 question any other -- reliability of any other trajectory
23 pattern, and the absolute statements relating to the
24 length of Mr. Leibel's arm compared to the gun, it being

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1 out of his reach, the approximate positions that are
2 shown as being basically the only positions he could have
3 been in are misleading, and therefore, I don't think
4 their testimony is reliable and should be admissible.
5 THE COURT: Let me ask you this, Ms. Brown.
6 Do you see a distinction between the admissibility of the
7 witness's testimony and the admissibility of the
8 witness's report? In other words, clearly, he testified
9 that he drew -- that he created some diagrams, and some
10 of your questioning resulted in his response that yes,
11 there could be other positions which tends to indicate
12 that the diagrams that he's drawn are not exclusive of
13 any other position of Mr. Leibel. So if he accepts that
14 there may be other positions available and if the Court
15 were to rule that therefore those diagrams are not
16 helpful, does that necessarily exclude his entire
17 testimony?
18 MS. BROWN: Your Honor, I'd still say that
19 based on the differences in the trajectory from the crime
20 scene people who are doing it at the scene and his
21 reconstruction of that, that does not have the weight on
22 the couch in his statement is so definite that this body
23 has to be slumped down on the couch, his shoulder in a
24 certain position over towards the left side of the couch

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1 to achieve a trajectory at the crime scene by putting
2 somebody in the middle of the couch to make a half or
3 somewhat reclined couch laying back and appropriately
4 line up a trajectory hole with the -- or the trajectory
5 rod with the hole with the defect in the wall just calls
6 into question the whole methodology or the reliability of
7 the methodology that was used in the situation.
8 THE COURT: Well, I don't think you have
9 answered my question. It was a really good statement,
10 but I don't think it addressed the point that I raised.
11 And so --
12 MS. BROWN: You're talking about the diagram?
13 THE COURT: I'm talking about his diagrams
14 because his testimony was that he did some measurements
15 of his own, not necessarily relying only on Mr. Lear's
16 testimony or anything like that.
17 So what I want to ask you is if his diagrams
18 are excluded, or even, you know, parts of his report,
19 does that mean that he can't testify and still render an
20 opinion? Because he's already -- you know, it seems to
21 me there's a very real issue here between his -- between
22 rejecting his ability to testify and allowing you,
23 through cross-examination, to contest his methodology,
24 and particularly contest his results. And clearly, you

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1 have the right to do. Clearly, you have a strategy with
2 which you would do so.
3 And cross-examination is the tool by which
4 you would address the State's proposition that they
5 intend to present through this witness, but does it
6 inially exclude his testimony? And if in fact he's
7 recognized in some of the drawings that he's created are
8 not conclusive, does it not -- Is it not sufficient to
9 say you can't use those drawings then if they're just
10 made-up drawings of hypotheticals, and that there could
11 be other positioning, and there could be other ways that
12 Mr. Leibel was positioned. Since you didn't draw them
13 all, what if we exclude those drawings, and then you have
14 the opportunity to cross examine this witness regarding
15 all of the potentialities which you have raised.
16 MS. BROWN: And, Your Honor, if we made it
17 past the first hurdle of whether or not the standard
18 should be with a reasonable degree of scientific
19 certainty as to his opinion, then yes, that testimony can
20 come in.
21 THE COURT: He wasn't asked that. Nobody
22 asked him that during this hearing. And I would agree
23 with you that the decision that you refer to does refer
24 to that standard, so he testified that his conclusion

1 broader standard than Daubert, and the Supreme Court has
2 specifically told us that we're not going to be limited
3 by Daubert.
4 MR. GREGORY: Yes.
5 THE COURT: That in Nevada, we look a little
6 broader. But I would also say that Ms. Brown is right,
7 that in that particular opinion she's addressing, and it
8 is, for the court reporter's benefit, it's:
9 Y-e-g-h-i-a-z-a-r-i-a-n, Yeghiazarian. It's not how I
10 pronounce it, but I spelled it for her because if I just
11 pronounce it, she wouldn't have any idea.
12 The Supreme Court clearly says that the
13 record indicates that the witness in that case,
14 Dr. Baker, was able to calculate to a reasonable degree
15 of scientific certainty, and therefore, we can't say that
16 there was an abuse. Now, that doesn't necessarily say
17 that that's the standard. It doesn't say that the Court
18 has to require the witness to testify to that, but it's
19 the threshold that the Court, in Yeghiazarian, found.
20 And therefore, the Supreme Court found that there wasn't
21 an abuse of discretion because it reaches that threshold.
22 The Court hasn't set a lower threshold would necessarily
23 exclude the testimony. I think that's the argument that
24 you're about to make.

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1 rose to that standard.
2 MS. BROWN: But he testified that this best
3 supports that Harry Leibel liable did not shoot himself
4 during this event.
5 THE COURT: Well, you asked him if that's
6 what he wrote in his report. No one asked him if that
7 was the standard to which he was testifying.
8 MS. BROWN: I asked if that's the strongest
9 statement you can make concerning that.
10 THE COURT: I don't recall that. Sorry.
11 I'll look at the transcript. I know -- and I wrote down
12 that you did indicate that that was the standard that he
13 used in his report, but assuming the State gets past
14 that.
15 MS. BROWN: Then yes, taking the diagrams out
16 would be -- that part of the report would be acceptable.
17 THE COURT: Let me hear from Mr. Gregory.
18 MR. GREGORY: Well, I can't read Higgs and
19 Hallmark to indicate that expert testimony should be more
20 restrictive. I read those cases to suggest that the
21 Supreme Court thinks that expert testimony should be
22 given more than, say, under the Daubert standard or other
23 standards.
24 THE COURT: I think I agree with you. It's a

1 MR. GREGORY: It is. Yeghiazarian does not
2 stand for the proposition that the defense wants it to.
3 I agree with your assessment of what you just said
4 exactly. And I think if Yhegazarian meant to do that,
5 then, like I'd indicated in my brief, it would be a
6 landmark case overruling or at least significantly
7 changing Higgs and Hallmark, and that case doesn't talk
8 anything about that. So there's no indication to me the
9 Supreme Court is looking to backtrack off of Higgs and
10 Hallmark. So I can't read Higgs and Yhegazarian that
11 way. I just don't think it stands for that proposition,
12 and that wasn't really what that case turned on.
13 THE COURT: So talk to me about the
14 difficulty of some of these drawing or computer-aided
15 depictions.
16 MR. GREGORY: Reconstruction, as Mr. Noedel
17 indicated, is not an absolute. He is not saying this is
18 how it had to happen.
19 THE COURT: So then why include those? Why
20 subject the jury to that?
21 MR. GREGORY: Because it's useful to the jury
22 to help them understand how to connect physical evidence,
23 wounds, firearms, couches, statements. It helps the jury
24 understand and combine all of that information into a

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1 usable thought process, not just giving measurements.
2 It's not helpful to give the jury measurements without
3 telling them, having an expert explain how do those
4 measurements -- how can we use those measurements.
5 THE COURT: My concern though is that they're
6 subject to couple of problems. One, speculative
7 testimony is not admissible. And I know that you would
8 agree with that. So when the witness says, clearly
9 testified yeah, that's one way. It could have been some
10 other way. I just did this because it seemed like it was
11 a way to depict one of the ways, then we're -- it seems
12 like it's speculative because he's acknowledged there
13 could be other ways. So he's chosen one of the many
14 ways. That's one issue.
15 And two, even if you're going to say well,
16 it's more likely that it's that way, but it could be some
17 other way, don't we run the risk of it being more
18 prejudicial than probative then? And that's the other
19 concern I have. And it seems to me that if this
20 testimony is going to be presented, that the best way to
21 present it is without diagrams and pictures that the
22 witness acknowledges may not be right so that he could
23 testify without presenting to the jury things that he
24 acknowledges may not be correct. Help me with that.

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1 MR. GREGORY: Yes.
2 THE COURT: And tell me if you disagree
3 that's okay.
4 MR. GREGORY: I disagree that's speculative.
5 Here's a guy whose qualifications are spotless. He's one
6 of 17 guys that have these qualifications. He's not just
7 sitting here speculating, Your Honor. He's basing it on
8 data. And yes, from that data, there can be other ways
9 that Mr. Leibel could have been positioned, and he's
10 acknowledging that.
11 THE COURT: Other conclusions reached.
12 MR. GREGORY: But there are some really good
13 definite absolutes in this case which are the
14 measurements, the trajectory, the path of every -- you
15 know, the wounds through the body, the arm being up. All
16 of this testimony that's already been covered that's come
17 in, and I should say there's been no testimony that the
18 couch has been moved. At least I haven't heard that;
19 that the couch was moved prior to Joey Lear doing his
20 measurements. I haven't heard that.
21 The other thing I heard from Mr. Noedel is
22 this idea that when they put Sergeant Lyford on that
23 couch to load it up, he's acknowledging maybe that's not
24 the best, but that didn't impact his decision. He still

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1 felt like he had enough data, which included looking at
2 the couch itself, going to the house itself, handling the
3 gun, and going through all of that. So I didn't take it
4 that that changed his opinion. In fact, and I asked him
5 how confident he was in his opinion even with that
6 information.
7 THE COURT: I'm not addressing that with you.
8 I'm talking to you about the diagrams contained in here.
9 Now, we already have an issue where I told you I'm not
10 going to allow diagrams of a skeleton shooting anybody,
11 but if he's able to testify without these diagrams that
12 may or may not be accurate as to how the body was
13 positioned and he gets to testify, but he's simply not
14 able to use diagrams that are based on it could have
15 happened this way. And that's my concern.
16 MR. GREGORY: Well, I didn't take his
17 testimony to be that these diagrams are inaccurate. In
18 fact, he builds into the diagrams a rate of error, as you
19 can see with the cones that he put on and even in his
20 testimony. I did understand Your Honor's concern
21 regarding the figures that were used, and he has put
22 different figures into the diagrams, giving two options.
23 One is with a female, which we have in this case. The
24 other is that a more neutral-type figure, but not a

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1 skeleton-like figure.
2 THE COURT: I think it should be asexual.
3 MR. GREGORY: And I have to tell you that's
4 what he and I did understand what you were saying with
5 those. He was making every attempt with those photos to
6 make it neutral. Understanding what your concerns were,
7 though, he has even a different --
8 THE COURT: I don't presume bad intent, sir.
9 I understand that. I appreciate that.
10 MR. GREGORY: Okay.
11 THE COURT: I'm not presuming that it was
12 intended to be ghoulish.
13 MR. GREGORY: Thank you.
14 THE COURT: Anything else; sir?
15 MR. GREGORY: No.
16 THE COURT: All right. Having listened to
17 the expert, I think Mr. Noedel does possess the
18 qualifications necessary to be an expert witness.
19 Two, under Hallmark, would his testimony
20 provide the jurors with some assistance? And I think his
21 testimony would assist the jury, and the scope is going
22 to be limited because I'm not going to allow him to
23 present -- I'm not going to allow the State to present
24 evidence of diagrams that he's created where he's

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1 acknowledged that they're a mere possibility and that
2 there are other things that could have happened. So the
3 diagrams won't come in.
4 He can testify as to his belief as to what
5 the scene looked like, and he'll be subject to
6 cross-examination. I think that that is designed -- that
7 answer is designed to weigh the probativeness of
8 Mr. Noedel's testimony versus the prejudice that could be
9 created by the presentation of those diagrams.
10 MR. GREGORY: And, Your Honor, would that --
11 and I understand -- I want to understand what you're
12 saying.
13 THE COURT: Yes, sir. I want you to.
14 MR. GREGORY: So the photographs that
15 Ms. Brown offered, those don't come in either because
16 they're also inaccurate.
17 THE COURT: Well, they were admitted only for
18 the purpose of this hearing. I don't know that she'll
19 try to admit them. If she does, you know, I think that
20 he's going to testify that he believes that it happened a
21 certain way, and she'll be able to cross-examine him and
22 suggest other ways that it could have happen, and he may
23 acknowledge those, or he may not. He has acknowledged
24 some of them today. So we'll see what he does tomorrow,

1 THE COURT: Response?
2 MS. BROWN: I'm sorry. I was did distracted.
3 THE COURT: Ms. Henry was talking too much.
4 MS. BROWN: Well, I was talking to her,
5 actually.
6 THE COURT: So here's what Mr. Gregory has
7 said. Because I've excluded diagrams that Mr. Noedel has
8 created about what could have happened -- now, he may
9 have some, and if he's got diagrams that he would say.
10 "This is what happened," those aren't excluded. That's
11 his opinion. But if it's simply speculation that this
12 could have happened, they're excluded. The objection
13 was, as to your photographs, as to what could have
14 happened based on the same theory. Do you have a
15 response to that?
16 MS. BROWN: Not to strike them for purposes
17 of this hearing, but not to admit them for purposes of
18 trial.
19 THE COURT: Right.
20 MS. BROWN: I would not be offering them at
21 trial at this point.
22 THE COURT: Well, I guess that matter is
23 resolved. I appreciate your arguments, and I think
24 that's how we'll handle this. Mr. Noedel will be allowed

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1 I presume.
2 MR. GREGORY: Well, it would help in knowing
3 just so I don't do something improper in front of the
4 jury. The way that sounds to me is you're allowing the
5 defense to show him ways they think it happened, and then
6 show those to the jury, but the State is not allowed to
7 do that. So I'm trying to figure out what I can do with
8 Mr. Noedel, if I can't offer the diagrams. Will we be
9 able to demonstrate?
10 THE COURT: Yes. He you can engage in engage
11 in physical demonstration.
12 MR. GREGORY: Okay.
13 THE COURT: He certainly can. And I think
14 that the defense photographs may be subject to objections
15 based on speculation just as the State's witness is going
16 to be subject to objections based on speculation. Could
17 this have happened, could this have happened. That's
18 speculation.
19 MR. GREGORY: Since this is a Motion in
20 Limine, I feel it could be really helpful to know going
21 into tomorrow with whether those photographs are
22 admissible or not. So I'm moving in limine, given your
23 order regarding Mr. Noedel, I'm now going to move in
24 limine to strike those photographs.

1 to testify. He will be allowed to present. My only goal
2 was just to keep out those -- or my only ruling is just
3 to keep out those diagrams at this point.
4 That having been said, we are in recess. The
5 Court wants to, on the record, indicate that it greatly
6 appreciates Ms. Brodskaya's assistance in translating.
7 She is leaving, and there will be a different translator
8 here taking her place tomorrow. Ms. Brodskaya will
9 continue to be here, but on that note, thank you so much
10 for your assistance --
11 THE INTERPRETER: Thank you, Your Honor.
12 THE COURT: -- to the court.
13 THE INTERPRETER: My please.
14 THE COURT: Come back to Douglas County any
15 time. We are in recess.
16 (WHEREUPON, the proceedings concluded at 4:56 p.m.)
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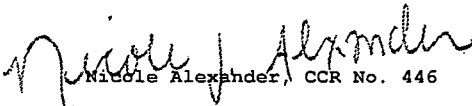
1 STATE OF NEVADA)
2)
3 COUNTY OF DOUGLAS)
4

5 I, Nicole Alexander, Certified Shorthand
6 Reporter of the Ninth Judicial District Court of the
7 State of Nevada, in and for the County of Douglas, do
8 hereby certify:

9 That I was present in Department No. I of the
10 above-entitled Court and took stenotype notes of the
11 proceedings entitled herein, and thereafter transcribed
12 the same into typewriting as herein appears;

13 That the foregoing ***ROUGH DRAFT***
14 transcript is a full, true and correct transcription of
15 my stenotype notes of said proceedings.

16 DATED: At Carson City, Nevada, this 5th day
17 of June, 2015.

18 
19 Nicole Alexander, CCR No. 446
20
21
22
23
24

Carson City, NV.

Page 24167

1 Nicole Alexander
2 Capitol Reporters
3 208 N. Curry Street
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5 IN THE NINTH JUDICIAL DISTRICT COURT
6 IN AND FOR THE COUNTY OF DOUGLAS, STATE OF NEVADA

7 THE STATE OF NEVADA,
8 Plaintiff,

9 v. Case No. 14-CR-0062
DA 14-343G
Dept. No. I

10 TATIANA LEIBEL, a.k.a.,
11 TATIANA KOSYRKINA,
12 Defendant.

13 AFFIRMATION

14 Pursuant to NRS 239B.030

15 The undersigned does hereby affirm that the
16 following document DOES NOT contain the social security
17 number of any person:

22 NICOLE ALEXANDER June 5, 2015
23
24

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