

IN THE SUPREME COURT OF THE STATE OF NEVADA

THE STATE OF NEVADA,

Appellant,

vs.

TATIANA LEIBEL,

Respondent,

_____ /

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Clerk of Supreme Court

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

RECORD ON APPEAL

VOLUME 11A

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PAGES 1388-1478

TATIANA LEIBEL
INMATE #1137908
FLORENCE MCCLURE WOMEN'S CORRECTIONAL CENTER
4370 SMILEY ROAD
LAS VEGAS, NEVADA 89115

IN PROPER PERSON

THE STATE OF NEVADA

DOUGLAS COUNTY DISTRICT ATTORNEY

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2015 JUN 18 AM 11:30

BOBBIE R. WILLIAMS
CLERK

BY

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[Signature]
In The Matter Of:

State of Nevada vs

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

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Trial - Wednesday

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1 CASE NO. 14-CR-0062
2 DEPT. NO. 1
3 IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
4 IN AND FOR THE COUNTY OF DOUGLAS
5 BEFORE THE HONORABLE DISTRICT COURT JUDGE, NATHAN TOD YOUNG
6
7 THE STATE OF NEVADA,
8 Plaintiff,
9 vs.
10 TATIANA LEIBEL,
11 Defendant.

12
13 TRANSCRIPT OF PROCEEDINGS
14 TRIAL
15 WEDNESDAY, FEBRUARY 4, 2015
16

17 APPEARANCES:
18 For the State: TOM GREGORY
19 Chief Deputy District Attorney
Minden, Nevada
20 For the Defendant: KRIS BROWN
21 Attorney at Law
Minden, Nevada
22 JAMIE HENRY
23 Attorney at Law
24 Reported By: Kathy Jackson CSR
Nevada CCR #402

1 WEDNESDAY, FEBRUARY 4, 2015, MINDEN, NEVADA
2 -oOo-
3 THE COURT: We are in session in 14CR62, State of
4 Nevada versus Tatiana Leibel. Mr. Gregory is here for the
5 State. Ms. Henry and Ms. Brown are here, with Ms. Leibel is
6 also here. Our interpreter is here.
7 Before we get going too far today, I know that I
8 talked with the attorneys about maybe trying to give this to
9 the jury today and doing closings today, and I don't think we
10 can do that. I reassessed it. I think that it makes more
11 sense for us to take whatever witness that we're going to
12 have.
13 Ms. Brown, is this your last witness?
14 MS. BROWN: Yes, Your Honor.
15 THE COURT: And do you expect any rebuttal, sir?
16 MR. GREGORY: Yes, Your Honor.
17 THE COURT: Okay. So then I think -- and you're
18 prepared to do that today?
19 MR. GREGORY: Yes.
20 THE COURT: Then I think we'll take those
21 witnesses, and I'll release the jury. My intention is to
22 settle the jury instructions with you today though, okay? So
23 I'm going to ask that you be prepared to do that. We'll have
24 the instructions settled when we bring the jury back

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1 tomorrow. I'm anticipating we may not have anymore
2 witnesses. Is that fair?
3 MS. BROWN: Yes.
4 MR. GREGORY: Yes, I do.
5 THE COURT: I didn't hear the question, but I
6 probably don't need to hear it.
7 MS. BROWN: I was asking who the witness is, but
8 I made the mistake of asking who the witness is.
9 THE COURT: Oh, okay. I imagine Mr. Gregory does
10 know who the witness is.
11 MR. GREGORY: I do.
12 THE COURT: And it would be my intention tomorrow
13 morning to begin by reading the instructions and having
14 closing argument. If the parties are going to request that
15 instructions be read before argument, does anybody make that
16 request? Ms. Brown is nodding her head.
17 MS. BROWN: Yes, Your Honor.
18 THE COURT: Mr. Gregory?
19 MR. GREGORY: Yes.
20 THE COURT: It seems to me, you know, the rules
21 that I'm supposed to ask you if you agree to that, it seems
22 it's always the best order of business to have the
23 instructions read and then have argument so that the last
24 thing that they hear is your argument as opposed to me

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1 reading the instructions. So that will be the -- that will
2 be the order of business unless there are any questions or
3 concerns.

4 MR. GREGORY: No, Your Honor.

5 MS. BROWN: Your Honor, I just didn't bring my
6 files up with other witness information in it so depending on
7 who this next witness is, we may need a break so I can go to
8 my car.

9 THE COURT: Well, Ms. Brown if you need a break,
10 I'll give you a break, and we'll work around that, and we'll
11 go forward.

12 MS. BROWN: I mean, it's just out in the parking
13 lot, not to my office or anything.

14 THE COURT: Okay. Why don't we bring the jury
15 in.

16 MR. GREGORY: Your Honor, there was the matter of
17 the State would like to move to limit Dr. Omalu's testimony.
18 I think we should make a record of that.

19 THE COURT: I agree with that, and let me start
20 by saying when counsel met with me informally yesterday
21 morning to discuss a concern that the State had regarding the
22 doctor's testimony, Ms. Brown had presented me with a couple
23 of -- a couple of sets of pictures of case studies, and I
24 advised that I thought that the photographs connected with

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1 those case studies were either irrelevant or were prejudicial
2 to the probative. Do you have those? Do you want to make
3 them part of the record?

4 MS. BROWN: That's what I was going to do, Your
5 Honor.

6 MR. GREGORY: I have a copy. We can make photo
7 copies.

8 MS. BROWN: Do you want to mark them as an
9 exhibit?

10 THE COURT: Yeah, that would be fine.

11 So for the record, I've got Exhibit 147. The --
12 it consists of five pages of photographs.

13 Ms. Brown, do you want to make a statement about
14 these?

15 MS. BROWN: Your Honor, Dr. Omalu had submitted
16 those to me. They are photographs that he uses as part of a
17 class in atypical suicide, and he offered them as possibly
18 helpful in explaining that topic to the jury here. I did
19 show them -- I think I e-mailed them to Mr. Gregory several
20 weeks ago, and then we discussed them in chambers yesterday
21 concerning your concerns, and I have no issue with not
22 offering them as exhibits.

23 THE COURT: If you're not offering them, then I
24 don't need to say anything further. So 147 is not offered

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1 and won't be admitted and put with the other exhibits that
2 aren't offered.

3 Anything else that you want to take care of
4 before we bring the jury in?

5 MR. GREGORY: No, Your Honor.

6 THE COURT: Ms. Brown?

7 MS. BROWN: No, Your Honor.

8 MS. HENRY: No.

9 THE COURT: Let's bring the jury in, please.

10 Good afternoon, ladies and gentlemen. Please

11 have a seat. Make yourselves comfortable. Before we begin,
12 I have a couple of statements to you. One, as you can tell
13 probably, my voice is a little different today. I was quite
14 sick last night and don't feel great today but certainly well
15 enough to be here with you.

16 If you can't hear me at some point, I really want
17 you to let me know, okay? I'll speak up. I'll shout at you
18 if I need. I won't shout at you. I'll shout so you can
19 hear, but you'll probably see me sucking on some cough drops
20 and that sort of thing.

21 Next, I want to talk to you about the course of
22 the trial and where I think we are so that you can make plans
23 for your lives. I anticipate that we'll go a good bit this
24 afternoon, but I don't think that the case will be submitted

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1 to you today.

2 After the evidence is all concluded, the
3 attorneys meet with me and we do -- we go through a process
4 called settling the jury instructions. Some of the
5 instructions that I will give you before you retire to
6 deliberate are what we call stock instructions. In other
7 words, they are instructions that I may give in every trial.
8 Some of them I would give in every criminal trial, and some
9 of them are peculiar to this case, and the attorneys are
10 allowed to object or to suggest different instructions to me
11 if they think some other instruction would be more beneficial
12 to your understanding of the law.

13 Given that, we go through a process and it
14 usually takes us at least an hour and often a good bit more
15 time than that. So once the evidence is concluded, which we
16 anticipate it will be concluded today, I'm going to release
17 you, and I'm going to meet with the attorneys and we will
18 settle the instructions.

19 Now, I understand that you may think this is
20 something that could have been done earlier, but actually the
21 instructions really can't be finally settled on until all of
22 the evidence is in so that the attorneys can present any
23 argument regarding instructions they object to or that they
24 want me to give you. Some of it is based on the evidence, so

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1 it's just part of the normal process that we do this once the
2 evidence is concluded.
3 So I'll be meeting with the attorneys once we're
4 done today, and then I anticipate that tomorrow morning, I
5 will instruct you, and the attorneys will argue their cases,
6 and the case will probably be submitted to you then. We
7 could push through tonight and get to that point, but I think
8 that you probably would not have the case submitted to you
9 until some time around 5:00 or later, and it seems to me
10 that's not fair to the State. It's not fair to Ms. Leibel,
11 and it's not fair to you to make you go back and start a
12 deliberation at that hour. So now you kind of have a roadmap
13 of where we'll be going and what the timeframes are.
14 Any comment that you want to make on that,
15 Mr. Gregory?
16 MR. GREGORY: No, Your Honor.
17 THE COURT: Ms. Brown, or, Ms. Henry?
18 MS. BROWN: No, Your Honor.
19 MS. HENRY: No.
20 THE COURT: Will counsel stipulate to the
21 presence of the jury while I made those comments?
22 MR. GREGORY: Yes, Your Honor.
23 MS. BROWN: Yes, Your Honor.
24 THE COURT: Thank you. And please excuse me for

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1 for sniffing and blowing my nose and such up here.
2 Ms. Brown, your witness.
3 MS. BROWN: The defense would call Dr. Bennet
4 Omalu.
5 THE COURT: Doctor, if you would come in right in
6 front of the clerk and raise your right hand.
7
8 DR. BENNET OMALU,
9 called as a witness on behalf of the
10 Defendant having been first duly sworn,
11 was examined and testified as follows:
12
13 THE COURT: If you would come up, please, and
14 have a seat. You can help yourself to some water if you
15 want. Sir, if you want to place your coat back over here.
16 You don't have to put it on the floor.
17 THE WITNESS: That's fine. Thank you.
18 THE COURT: Ms. Brown?
19 DIRECT EXAMINATION
20 BY MS. BROWN:
21 Q. Could you state your name, and spell your last
22 name, please.
23 A. My name Bennet Omalu, B-e-n-n-e-t Omalu,
24 O-m-a-l-u.

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1 Q. I'm going to give you a second to get that water
2 because it can be complicated.
3 THE COURT: We never thought it was but a couple
4 of witnesses have had trouble with it.
5 MS. BROWN: I'm always spilling it.
6 THE WITNESS: Okay.
7 Q. (BY MS. BROWN:) How are you currently employed?
8 A. I'm a medical examiner San Joaquin County in
9 California, president of Bennet Omalu Pathology, my
10 consulting company, and I'm also an assistant clinical
11 professor of pathology at University of California Davis
12 Medical Center. I'm also a staff physician at San Joaquin
13 General Hospital and a Contra Costa Regional Hospital.
14 THE INTERPRETER: A contractor?
15 THE COURT: Contra Costa Hospital.
16 Q. (BY MS. BROWN:) Sorry, could you repeat that
17 last.
18 A. Contra Costa Regional Hospital.
19 Q. And as part of your duties as chief medical
20 examiner at San Joaquin County, do you perform autopsies?
21 A. Yes, ma'am.
22 Q. Can you briefly describe your medical or
23 educational background?
24 A. I went to medical school in Nigeria in West

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1 Africa. It's a seven-year medical school curriculum
2 fashioned after the British, six years of training and one
3 year of clinical internship.
4 During clinical internship, I worked as physician
5 but under supervision in the department of internal medicine,
6 general surgery, obstetrics and could not /TKPWAOEUL and
7 pediatrics. I performed surgeries and delivered over 400
8 babies, completed that, went to a university hospital in
9 Nigeria to work as an emergency room physician for five
10 years.
11 Again, I worked as a physician attending to live
12 patients. While I was doing that, I secured a world health
13 of physician scholarship to come to the United States in
14 1994. I went to the University of Washington in Seattle,
15 Washington. I was a visiting research scholar for eight
16 months.
17 I moved from Seattle to New York to Columbia
18 University at Harlem Hospital Center until 1995 to do a
19 five-year residency training program focused in anatomic and
20 clinical pathology.
21 Because of my special scholarship, five years or
22 regents and four years for me, I completed residency training
23 in anatomic and clinical pathology in four years.
24 I then moved to Pittsburgh Pennsylvania to the

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1 University of Pittsburgh in 1999 to do a one-year fellowship
2 training in forensic pathology. Upon completing that, I
3 again went to the University of Pittsburgh, Pittsburgh,
4 Pennsylvania to complete a two-year fellowship training in
5 neuropathology.
6 I completed that, went to the graduate school of
7 Public Health University of Pittsburgh, Pittsburgh,
8 Pennsylvania to do a three-year masters in public health a
9 peeled /KWROPL /OLG I. I completed that, went to Carnegie
10 Mellon University in Tepper, T-e-p-e-r School of Business
11 to do a three-year masters in business administration with a
12 focus in medical management.
13 After completing my training, I sat for five
14 board certification examination in five subspecialties of
15 medicine which I passed, some boards certified in five
16 subspecialties atomic pathology clinical pathology, forensic
17 pathology, neuropathology and medical management.
18 In addition to that, I hold a masters in public
19 health in pathology and a masters in business administration.
20 I was certified in 2008 by the American Association of
21 Physician Leadership as a certified physician executive.
22 After my training on board certifications, I
23 worked as an academic pathologist. I was associated
24 professor of pathology at University of Pittsburgh,

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1 Pittsburgh, Pennsylvania. As professor of physiology
2 University of Pittsburgh, Pittsburgh, Pennsylvania, visited
3 professor of University of West Virginia University,
4 associate professor of pathology at University of California
5 at Davis. I became a full professor in to 2012, stepped down
6 after one year because the work was getting too much for me.
7 I published extensively in the medical
8 literature. I published two books and I published several
9 books chapters medical experts. I've been invited twice to
10 advise the United States congressional judicial committee on
11 matters relating to traumatic brain injury.
12 Q. Thank you. And you stated at present, you also
13 have private business in modern pathology?
14 A. Yes.
15 Q. And who do you consult with?
16 A. I consult with government agencies, a variety of
17 state, numerous counties across the country, nongovernmental
18 agencies and nonprofit organizations, corporations, attorneys
19 working for families, working for the state, for different
20 counties.
21 I have also consulted with the United States
22 Government of matters relating to death, causation of death,
23 mechanisms of death, matters relating to injuries.
24 Q. And have you consulted with prosecutors or law

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1 enforcement in cases?
2 A. Yes, I have worked for all sides for law
3 enforcement, for district attorneys. I also work for
4 difference attorneys in both criminal and civil matters.
5 Q. And do you have any professional associations or
6 memberships pertinent to today's testimony?
7 A. Yes, I belong to about 18 professional
8 organizations.
9 Q. Could you tell us the number of autopsies you
10 have performed?
11 A. My first autopsy was in 1984 while I was in
12 medical. School since then, I've performed over 8,000
13 autopsies.
14 Q. 8,000?
15 A. Yes, ma'am, and I have examined over 10,000
16 brains.
17 Q. And have you been the attending physician or
18 present deaths?
19 A. Yes, I have witnessed and attended to hundreds of
20 deaths of people dying, from new born child who is several
21 hours old to the 99-year-old grandma and grandpa, and I've
22 satisfied 1,000's of deaths.
23 Q. Have you previously given testimony in your
24 forensic pathology?

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1 A. Yes. I have retained as an expert witness and
2 testified in court and in depositions over 600 times. I
3 testify on the average about 60 times a year.
4 Q. Are there specific jurisdictions that you testify
5 in or numerous?
6 A. I testify across the United States from Olympia
7 in Washington State to Buffalo, New York to Florida, all
8 across the United States.
9 Q. And in those cases, you have been certified as an
10 expert in the field of forensic pathology?
11 A. Forensic pathology, neuropathology, all my
12 specialties, yes.
13 Q. Have you testified both as a prosecution and a
14 defense witness?
15 A. Yes.
16 Q. And have you testified as well in civil matters?
17 A. Yes.
18 Q. Has any of your testimony involved atypical
19 suicide?
20 A. Yes. I have performed over 100 autopsies in
21 about 15 years I've been doing this in cases relating to what
22 we call an atypical suicide.
23 Q. What is forensic pathology?
24 A. Forensic pathology is a subspecialty of medicine

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1 that deals with the study of injuries, how do human beings
2 sustain injuries and how could injuries result in death or
3 result in any type of impairment of the human function.
4 Forensic pathology also deals with the phenomenon of death,
5 why do people die and how do people die, what causes death.
6 Q. And in studying -- testifying concerning forensic
7 pathology as it relates to criminal cases, what do --
8 criminal cases where there's a criminal charge, what would
9 you be testifying concerning?
10 A. Could you repeat the question again.
11 Q. I'm sorry, for example, criminal cases when
12 you're doing autopsies?
13 A. Yes, ma'am.
14 Q. Or preparing to testify, what are you looking for
15 in those situations?
16 A. When I perform an autopsy on any case, I come in
17 as independent participant, and I apply established and
18 generally accepted methods of medicine and science to
19 generate evidence, medical evidence upon which I base my
20 opinions or conclusions on.
21 When I say emphasize independent participant in
22 the investigation of death, my opinions and conclusions
23 should not be based on what law enforcement thinks or what
24 any other party thinks. I need to perform a scientific

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1 method of autopsy on tissue analysis to generate scientific
2 evidence and build on the scientific evidence, I would make
3 my conclusions and provide my opinions.
4 Q. If -- also as a forensic pathologist in looking,
5 do you determine cause of death?
6 A. Yes.
7 Q. And do you determine manner of death?
8 A. Yes, ma'am.
9 Q. In looking at manner of death, what then would
10 you look at?
11 A. In looking at manner of death, you would
12 establish the forensic scenario, forensic scenario,
13 modalities of death over the centuries, scientists that can
14 be found established that human beings die within specific
15 circumstances. So that investigation report usually
16 generated by the medical examiner or the coroner's office
17 would summarize a circumstances surrounding the death.
18 Then based on the circumstances, I would then
19 come determine the type of autopsy to perform because there
20 are different types of autopsies. When I'm performing the
21 autopsy, I keep a clear mind, and objective non-bias mind. I
22 don't have any presumptions.
23 At the end of the autopsy, I have my preliminary
24 findings. Then I perform additional tissue analysis,

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1 additional scientific analysis to generate more evidence to
2 help me develop scientific opinion. For example, I would
3 take microscopic sections of the tissues and organs and
4 examine them microscopically. I would also take samples of
5 the body fluids and perform toxicology analysis.
6 When all of the results come back, I would put
7 them together, analyze them and then derive -- make a
8 diagnosis, derive a cause of death with a reasonable degree
9 of medical certainty. What does that mean? If you apply all
10 of the scientific matters and you still cannot determine a
11 cause of death with a reasonable degree of medical certainty
12 and that means greater than 90 percent certainty, I would
13 make the cause and manner on the time.
14 Cause of death simply means the disease or trauma
15 that resulted in death. Manner of death would comprise five
16 categories of death in relation to the cause of death. Those
17 five categories are natural death, accidental death, suicide,
18 homicide or undetermined, and this classification will be
19 based on the evidence no matter what any other party or law
20 enforcement or the family or defendant will think. My
21 opinion will be limited to the science, not to any other
22 proposition or assumption.
23 Q. And in forensic science or forensic pathology,
24 does that involve both true sciences and applied sciences?

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1 A. Yes.
2 Q. Could you explain the difference between those
3 two?
4 A. There are two types of science. There's the
5 absolute science, and there's the applied science. The
6 absolute sciences are like mathematics and physics. They are
7 absolutes. What does that mean? One plus one is always two
8 no matter what. If you don't agree with it, you can only be
9 wrong. It is either white or black. Two times two is four.
10 Even if you don't agree with it, there's something wrong with
11 you.
12 Physics is like that too. Physics, if you have
13 light, light is light. If you're traveling at a speed of
14 70 miles an hour, there is only one speed of 70 miles an
15 hour. There is no other speed that is not 70 miles an hour.
16 They are absolutes.
17 But when you're dealing with the applied
18 sciences, like mets and like forensic sciences, they are not
19 absolutes. We all are human beings, but we are not all of
20 the same height. We are not all the same color, but it does
21 not stop us from being all human beings.
22 Q. Okay.
23 A. So the applied science, it's you can make
24 absolute assumptions. You can provide an opinion based on

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1 one piece of evidence. We as scientists recognize in
2 medicine which is an applied science. You must always
3 concede the weakness of the applied science. If the evidence
4 is inadequate or insufficient, you do not make a conclusion.

5 In the field of science gives us that
6 opportunity, category of manner of death that is called
7 anatomic. Meaning that given the weaknesses of forensic
8 science, given the weaknesses of medical science, you can do
9 everything you can do, and yet there is inadequate evidence.
10 You must respect that, and conclude that your case is
11 undetermined. You do not ignore that because of what you
12 feel or believe and go against the science.

13 Q. Thank you. Do you currently teach pathology at
14 UC Davis?

15 A. Yes, ma'am.

16 Q. And do you include in that curriculum subject of
17 atypical suicides?

18 A. Yes, it's very important when I teach other
19 doctors, medical students forensic pathology.

20 Q. Could you explain what atypical suicide is?

21 A. Atypical suicide is a suicide that looks
22 irregular. Frequently a suicide that would resemble a
23 homicide. A suicide is an irrational act that could only be
24 explained by the irrational mind. We as normal people can

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1 never explain the irrationality of suicide.

2 So there are certain types of suicide that would
3 resemble a homicide and if you're not well trained and
4 experienced, you can erroneously interpret it to be a
5 suicide. You can erroneously interpret atypical suicide to
6 be a homicide, and I can give you for the most strangest
7 cases that I've had in my experience.

8 There was a case of an elderly man. At autopsy,
9 I found three bullets inside his head and everybody around
10 me, I remember, oh, it must be a homicide. A man cannot
11 shoot himself three times in the head but no, that was an
12 atypical suicide. He actually shot himself three times in
13 the head.

14 Q. Could you give us other examples of atypical
15 suicide?

16 A. There was another atypical suicide, a woman that
17 shot herself in the chest with her 22 caliber gun on the
18 dining table. She left the gun on the dining table and
19 walked to the living room and sat in the sofa and died, and
20 at the scene everybody said this must be a homicide. Nobody
21 could shoot herself in the chest and walk almost 20 yards.
22 At the end of the autopsy, based on the science, it was a
23 suicide and not a homicide.

24 I have had another case of a man who shot himself

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1 with a rifle and in the head and set the house on fire. At
2 the end of the autopsy, we confirmed that it was a suicide,
3 atypical suicide and not a homicide.

4 And then another very interesting case I had was
5 a young man about 27 years old. He was in his boat, and he
6 hung a big slab of concrete around his neck and fell into the
7 river and got submerged. At the scene, everybody assumed it
8 was a homicide. There was no way he could have done that and
9 submerged himself. At the end of the autopsy, it was a
10 suicide.

11 So this case is suicide, atypical that resembles
12 homicide and the medical literature that the cases of
13 atypical suicide were erroneously classified as homicides and
14 prosecuted.

15 Q. So it's also important then for law enforcement
16 to be aware of atypical suicide?

17 A. Yes, ma'am, most definitely.

18 Q. Why is it important to know about?

19 A. It's important -- like I had said, I testified
20 across the country. I have actually testified in cases that
21 were ruled homicides and later changed to suicides. Even
22 just yesterday when the District Attorney in San Joaquin
23 County, there was a case of a baby that was ruled a homicide.
24 I reviewed it and just yesterday about 9:00 a.m. in the

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1 morning, I did analysis and I said to the D.A. we cannot move
2 ahead. There is not great evidence to make this a homicide.

3 In fact, tissue analysis reveals that it was an accident.

4 There was another case in September of last year,
5 a retired fire serviceman in my county was found dead in a
6 park. At the scene, it was assumed it was a homicide because
7 the gun was not close to him, that somebody must have shot
8 him. At the end, I came to the scene. It turned out that he
9 shot himself but somebody stole the gun because it was a park
10 visited by drug addicts. So it's important to know about
11 atypical suicide so that you don't make erroneous conclusions
12 or misinterpret a case as a homicide when actually it is an
13 atypical suicide.

14 Q. In dealing with suicides, is the use of a rifle
15 in a suicide, does that automatically rule it out as suicide?

16 A. No, that is another assumption what we make that
17 people cannot use rifles to kill themselves, that is
18 inaccurate. It is erroneous. If you read the literature,
19 from my case, I published a case of suicide. I looked at
20 suicides in Pittsburgh, Pennsylvania over ten years. People
21 frequently commit suicide with rifles, and sometimes they
22 commit suicide in very complex mechanisms that you and I as
23 rational people would never understand, but you must
24 recognize that it's a category of suicides called atypical

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1 suicide that would resemble homicide and frequently
2 misinterpreted as homicides.
3 Q. And you previously talked about an individual
4 that shot himself three times in the head so more than one
5 shot does not necessarily rule out suicide?
6 A. No. In spite of what we hear on TV, when
7 somebody is shot, he dies immediately. Death, as an expert
8 of death, death almost never a cause instantaneously. Even
9 when you shoot yourself in the head, it takes you minutes to
10 die. People who shoot themselves in the chest or even if
11 you're shot in the chest, you don't die immediately because
12 the mechanism of death is bleeding. You need time to bleed
13 out, and the human brain has a reserve of about five to
14 45 minutes.
15 I have personally seen a case where an individual
16 was shot by cops. This was in Pittsburgh, Pennsylvania, and
17 he was able to run down a flight of two stairs and run for
18 about 50 more yards before he fell, and the bullet passed
19 through his heart.
20 There's a famous case, again, in our forensic
21 textbook of a man that was shot in his heart in a rural area.
22 He was able to run out to the road and run again for one mile
23 before he finally dropped and died.
24 So people frequently when they are shot in the

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1 chest or even in the head can live longer for three to five
2 minutes sometimes. There have been a documented case of a
3 15-year-old girl who fell into a swimming pool. It was a
4 cold swimming pool. She was pulled out 45 minutes later and
5 she survived.
6 Q. And even in a case where there are two shots
7 fired and possibly like a rifle -- the rifle is left cocked,
8 would that necessarily rule out suicide?
9 A. Could you repeat that again, sorry.
10 Q. In a case involving a rifle where there's two
11 shots and at the end the rifle is left with the hammer back
12 or cocked, would that necessarily rule out suicide?
13 A. No, ma'am, it doesn't rule out a suicide. All it
14 simply means is that a rifle was fired twice and cocked. It
15 has no direct relationship to whether this was suicide or
16 not.
17 Q. And does adrenaline play any role in the
18 activities that take place once somebody has received a fatal
19 injury?
20 A. Yes, not just adrenaline. When somebody is shot,
21 whenever you go as a human being, you identify any impending
22 danger, there's a part of your brain called the locus
23 coeruleus, l-o-c-u-s c-o-e-r-u-l-e-u-s. It's a part of your
24 brain. It is in the lower part of the brain stem that

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1 releases no adrenaline that almost puts you into a zombie,
2 and you can assume superhuman ability. You can be shot and
3 assuming you wanted to get to your door to alert people, you
4 will get to the door and alert people. Assuming you're hell
5 bent, suicide is an irrational act, a person is hell bent in
6 killing himself. Even if you put handcuffs on his hand and
7 hold him, he could bring up all superhuman ways to take that
8 gun and to shoot himself with his handcuffed behind him.
9 Q. Can assumptions made early on in an investigation
10 of a suspicious death affect the investigation?
11 A. Not for me because of my broad experience and
12 training but when I've been called upon by different counties
13 to review cases, I have noticed a pattern whereby a
14 pathologist walks with law enforcement. We are not law
15 enforcement, but I've noticed a pattern where pathologists
16 corroborate with law enforcement. And law enforcement makes
17 an assumption at the scene, convey their assumption to the
18 pathologist, even before the autopsy is done, it influences
19 the pathologist to look for findings. Remember, medicine is
20 not an absolute science.
21 Q. Yes.
22 A. To support what law enforcement told him. So,
23 yes, an assumption made before the autopsy by law enforcement
24 should not be conveyed to the pathologist because, remember,

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1 the pathologist should be independent, and law enforcement
2 should not be present while the autopsy is being done because
3 that destroys the independence of a pathologist who is
4 performing the autopsy. That should be independent of what
5 law enforcement believes.
6 Q. And were you asked to review materials in State
7 versus Tatiana Leibel?
8 A. Yes, ma'am.
9 Q. And did that include the autopsy, toxicology
10 reports, crime lab reports and police reports?
11 A. Yes, ma'am, autopsy pictures and scene pictures,
12 yes, ma'am.
13 Q. And I'm showing you now what's been admitted as
14 Exhibit 1. Are you familiar with that photograph?
15 A. Yes, ma'am.
16 Q. And is this the photograph of Mr. Leibel at the
17 scene?
18 A. Yes, ma'am.
19 Q. You're aware there were various reports made at
20 the scene by paramedics concerning Mr. Leibel's condition; is
21 that correct?
22 A. Yes, ma'am.
23 Q. Some of those opinions included his complexion
24 and he was pale, ash and gray, blue light to jaundice. Are

1 familiar with those?

2 A. Yes, ma'am.

3 Q. In those type of opinions from paramedics, would
4 that lead to any conclusion on your part?

5 A. No. If I'm doing a case like I had said earlier,
6 I should not and would not base my opinion on what someone
7 else said. There's a rule in -- we as doctors, we have
8 standards of factors set by the government and the agents
9 that monitor what we do.

10 As a rule of forensic pathology that when you are
11 investigating a death as a forensic pathologist, you are
12 responsible for that case. Even if it goes wrong, you're
13 responsible and because you are responsible, you should not
14 be basing your opinion on some of the party, like a
15 paramedic. Yes, you need to be aware of what they said in
16 the medical reports or what that doctor said but at the end
17 of the day, the autopsy is the gold standard, and this is the
18 established standard of medicine all over the world. So I
19 would only rely or base my opinion on what the paramedics
20 said, no.

21 Q. And the paramedics described what they thought
22 appeared to be rigor mortis in his left hand. Are you
23 familiar with that?

24 A. Yes, ma'am.

1 Q. Could you describe what rigor mortis is?

2 A. Rigor mortis is a first modern event. It is
3 changes of the body following death. If I may explain the
4 science?

5 Q. Yes, please.

6 A. There are two parts in the human muscle called
7 actin myosin, a-c-t-i-n m-y-o-s-i-n. Actin Myosin are like a
8 man and woman that are in love. They can't keep away from
9 each other. So what the human body does, there is another
10 protein called ATP for adenosine triphosphate. ATP is like
11 the policeman of the body. It has so much energy. So the
12 ATP comes in-between them and keeps them apart. ATP is
13 generated from the food we eat.

14 So when you die, your body has a reserve of ATP
15 that will keep the actin myosin apart. Depending on the
16 activity of your muscles and depending on the temperature of
17 other factors, you could suffer immediate depletion of your
18 ATP beginning the moment you die to about 12 hours later for
19 most human beings. After 12 hours of death, you would have
20 rigor mortis all over your body. But soon after your death,
21 the small joints and muscles of the extremities immediately
22 after death lose ATP sooner.

23 So from the moment of death to about 12 hours
24 later, you will begin to have rigor mortis, depletion of ATP

1 and the actin myosin will bind together. Once they bind
2 together, the muscle becomes rigid so it becomes typically on
3 the small joints of the fingers and toes, and many times it
4 begins on one side. It begins on one side, even the TMJ,
5 temporomandibular joint, because it's a small joint.

6 A good example, if you have a marathon runner who
7 is running, his body is active under the sun, and then he
8 suffers a heart attacks and dies before paramedics will get to
9 him, he is in rigor. Why, because he was physically active
10 and depleting his ATP.

11 So in a case like after I started this case, it
12 was not unusual based on the over 8,000 cases I have done for
13 a paramedic to describe that when he got to the scene, he or
14 she got to the scene, there was rigor mortis in the small
15 joints of the fingers and hand and maybe the wrist because
16 the wrist is made up of many small joints, okay, on one side.
17 And on the side, he said -- he or she said there was rigor
18 mortis, but the side Mr. Leibel had the gunshot wound.

19 Q. What effect would a gunshot wound have?

20 A. That gunshot wound was a close -- loose contact
21 or close gunshot -- close range gunshot wound. So the fire
22 ball behind the bullet must have touched the hand, and that
23 temperature sometimes is about 100 degrees of Fahrenheit that
24 would warm up the hand, and the heat of the fire would

1 deplete the ATP, and there would be immediate onset, so it
2 was not unusual when I read the reports that when the
3 paramedics got to the scene minutes after death that there
4 was rigor mortis only on the small joints of the fingers and
5 the hand and in the hand that received a loose contact wound.

6 Q. And you said rigor can start almost immediately?

7 A. Yes, it could start almost immediately. In some
8 literature, it is called cadaveric spasm.

9 Q. And what is cadaveric spasm?

10 A. Its terminology some exotic doctor decades ago
11 just to get some recognition for himself, he named rigor
12 mortis that starts immediately after death. He says rigor
13 mortis immediately after death, and typically it's in the
14 small joints of the fingers, could be on one side. Even with
15 rigor mortis, one is fully formed. It's not symmetrical.
16 It's not equal on both sides. It's usually greater on one
17 side, and these are some of the things we still don't know in
18 medicine. There's so many things we don't know in medicine,
19 but we respect it and take it as fact.

20 Q. The paramedics also described lack of electrical
21 activity in the heart after measuring by EKG. If a person is
22 dead, would you expect to see electrical activity in the
23 heart?

24 A. No, no. When a person is dead, there is no

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1 electrical activity in the brain or in the heart. A good
2 example, I've done hundreds of person who died. My father
3 died on May 5th, last year, and in the hospital when did we
4 know he was dead? You're watching the EKG, then suddenly it
5 goes flat. He was dead, and that is flat. He's dead.

6 But if you suffer a cardiac arrest, like a heart
7 attack, a heart attack you fall down on the ground because
8 actually while you fall down on the ground from a heart
9 attack is the brain notices blood is not coming to it, so it
10 makes you fall. So you lie flat on the ground so gravity
11 pulls blood to the brain. So although you're on the ground,
12 not responsive, but you're not dead.

13 If we monitor the EKG, you have an irregular EKG,
14 which is called an arrhythmia, so you could have that for
15 minutes, sometimes up to hours, that is why you need
16 defibrillator to shock that person and shock the person again
17 so that is not death.

18 Once you die, the definition of death is complete
19 cessation of all bodily functions. So it is not medically
20 physical -- it is not possible for somebody to die and still
21 have electrical activity, that is a no no.

22 Q. And so lack of electrical activity is actually
23 indicative of death?

24 A. It's the definition of death. A lack of

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1 that.

2 Q. I think one of the paramedics described the blood
3 as being gel like?

4 A. Yes, thank you so much. Viscid it means gel
5 like. It's part of the injury process. Blood has moved into
6 the tissues. The proteins in the blood are not reacting with
7 the proteins in tissues and are becoming more viscous, and
8 there's a reason for that. Assuming you cut your skin, if we
9 don't have that process, you continue to bleed. So the
10 gelling actually controls when you apply pressure, it
11 actually stimulates and encourages the protein interaction.

12 Q. And blood begins this process as soon as it hits
13 the air; is that correct?

14 A. As soon as it extricates, you know, this is
15 science, some of this is very exotic, but we're dealing with
16 sub cell analysis. The moment it leaves the vessels, it
17 begins within seconds, within seconds, one second divided
18 into 1,000 times.

19 Q. And once if blood is outside the body, does
20 temperature affect the rate at which it would -- its
21 appearance would change?

22 A. Yes, yes. The warmer the room, the weaker and
23 then if, you know, you have some drugs in your system,
24 including alcohol, you're take something medications, if

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1 electrical activity of the brain and the heart.

2 Q. And if you have some electrical activity in the
3 heart, you should be doing something to try to revive this
4 person?

5 A. Yes.

6 Q. Paramedics also gave a description that the blood
7 appeared to be coagulated around the chest wound and pooling
8 around the injury?

9 A. No, no, I wouldn't use the word coagulate.

10 Remember, the human blood contains thousands of proteins, and
11 the human blood is meant to stay within the blood vessels,
12 and there's a reason for that. Once the human blood comes
13 outside the blood vessel, maybe from trauma, the proteins in
14 the blood react with the proteins in the tissues.

15 A good example is what we call tissue, thrombin
16 blaster. So what happens, once you have injury, blood goes
17 into the tissue within minutes. The proteins, like the
18 thrombin, t-h-r-o-m-b-i-n will react with the tissue to blast
19 and make the blood more viscous. I wouldn't use the words
20 coagulate. It is all part of the injury process.

21 Again, once you have blood excrete into the
22 tissues, you could try it at home, wait a minute, it starts
23 looking like it's caked or scabbing. When you use the word
24 coagulate, it's more specific for clotting. I wouldn't use

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1 you're suffering from certain diseases, like Mr. Leibel had
2 liver disease, it will all affect the weight of all changes.
3 It's more factorial. That is why you cannot be absolute just
4 because you see one thing, you make assumption from that, no,
5 no.

6 Q. Okay. And if these observations were made, even
7 in this group, would that -- would you -- would that lead you
8 to any conclusion that Mr. Leibel had been deceased at any
9 period of time prior to the paramedics arriving?

10 A. No, no, no, the presence of what you just told
11 me, the rigor on one side and the small and blood, viscous
12 blood outside, actually, maybe the parts of -- some part of
13 the body may still be warm, that actually indicates somebody
14 who has just died. It doesn't exclude a wrong person of --
15 and autopsy was done in this case, the autopsy indicated --
16 it does not indicate Mr. Leibel had been dead for a long time
17 before he was taken to the refrigerator, no, we don't have
18 evidence of that.

19 Q. And there's reporting that Mr. Leibel was on the
20 couch or when he passed away and then was pulled from the
21 couch by Ms. Leibel at the instructions of paramedics or at
22 the instruction of 911. Would that movement affect any
23 anything within this interpretation?

24 A. Yes. Like I had said earlier, Mr. Leibel, before

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1 anyone else got to the scene was moved, like he should have.
2 To resuscitate people, you need to lie them on the floor.
3 Now what that does is once the body has been moved for
4 whatever reason, you need to be extremely careful about the
5 interpretations because the body is no longer as it was when
6 the injury was sustained. So assuming you find blood or
7 other fluids, based on the fact that you cannot make any
8 assumption, why, because the body has been moved.
9 Q. Okay. Have you had a chance to recall -- review
10 the autopsy protocol in this case?
11 A. Yes, ma'am.
12 Q. And you've had a chance to review the
13 photographs?
14 A. Yes, ma'am.
15 Q. And the x-rays?
16 A. Yes, ma'am.
17 Q. What is an autopsy?
18 A. An autopsy is systematic examination of the human
19 body.
20 Q. And are there specific protocols that are
21 followed?
22 A. Yes, ma'am, different types of autopsies, and
23 there are so many other analysis you can perform depending on
24 what type of cases it is.

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1 Q. And you said when you -- you perform an autopsy,
2 you don't look at facts of the case. You look at what is in
3 front of you; is that correct?
4 A. You look at circumstances surrounding the death
5 and what does that mean. Where was this individual found.
6 It was found at home. What was -- if he was witnessed to
7 shot himself, somebody was present, that is all we need.
8 Now, once we start going, okay, law enforcement
9 believes that one of the instances, he jumped down and hit
10 his head and then ran out again and shot him again, then
11 you're moving away from your area of expertise.
12 Q. Okay.
13 A. That is outside the autopsy.
14 Q. And would be -- if you were being provided that
15 type of information through seeing photographs or information
16 from officers, could that affect your view of the autopsy?
17 A. No. After the autopsy, like now, assuming I did
18 an autopsy and a law enforcement come and ask me questions,
19 your autopsy findings, are they consistent with this
20 proposition? I'll say yes or no. What we believe is a
21 homicide, does the autopsy support a homicide? I'll say yes
22 or no. If your autopsy does not support the homicide, end of
23 story, let's go home.
24 Q. Okay. But this would be a review afterwards?

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1 A. At the end, afterwards, after the toxicology is
2 back, the microscope is back, we reviewed the folders of the
3 medical records at the end.
4 Q. And about going into the autopsy, you don't want
5 these type of details concerning what police officers think
6 happened?
7 A. No, and it's a matter of protocol and my office,
8 we do not request for police reports before we do an autopsy.
9 Q. And could a pathologist change their position or
10 their method of doing an autopsy if they had a belief that
11 law enforcement thought this was a specific type of case,
12 like a homicide?
13 A. Yes. Like I said earlier, if law enforcement
14 comes a pathologist, and I've seen this many times in my
15 experience, that would be labeled as a homicide. Especially,
16 this is a doctor hired by the same county who has hired, who
17 is paid, you don't want to bite the finger, unless it is a
18 prominent pathologist who has his confidence.
19 My experience from cases I've reviewed and
20 advised counties, it influences that pathologist no matter
21 how much you want to deny it and also if the police is
22 present with the pathologist, watching him do it and telling
23 him, there's no way no matter how we want to deny it, we are
24 human beings, it will influence your opinion. In fact, it

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1 will influence your autopsy and may make you do things
2 subconsciously that you should not do or subconsciously avoid
3 to do things you should do to prove law enforcement wrong.
4 Q. And in reviewing the photographs and information
5 in Mr. Leibel's autopsy, were you able to make any
6 determinations concerning your opinion of the distances of
7 the shots were fired at?
8 A. Yes, I have opinions. The autopsy said
9 Mr. Leibel died as a result of multiple gunshot wounds. I
10 strongly disagree with that. Mr. Leibel, Harry died as a
11 result of a single gunshot wound. And this is an example of
12 the bias I have told you earlier, stating that Harry died as
13 a result of multiple gunshot wounds subconsciously is to
14 support the allegation as a homicide.
15 Q. Okay. So your opinion then is that the chest
16 injury was the fatal shot?
17 A. The chest injury was the single and only fatal
18 shot. It was only one, so the cause of death is not multiple
19 gunshot wounds. The cause of death is a gunshot wound of the
20 chest.
21 Q. Okay. And this injury to the hand and wrist that
22 subsequently caused an injury to the shoulder with shotgun --
23 a shotgun pellet, this would be not involved in a cause of
24 death?

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1 A. That's a nonfatal wound. It's a survivable
2 wound. Not every injury would kill you. So that should not
3 be considered in the cause of death. That was not what
4 killed him, no.
5 Q. Okay. And in this injury, it basically started
6 at the back of the hand or at the base of the wrist, were you
7 able to make any determination as to the distance that wound
8 was made at?
9 A. Yes.
10 Q. And what was that?
11 A. It was a loose contact to close range and by
12 close range, I'm looking at maybe one or two inches to the
13 muzzle actually touching the skin because there are large
14 amounts of soot accentrical, and there are born artifacts,
15 the ball of fire behind a bullet. So this muzzle was -- the
16 hand was in intimate contact with the muzzle, and the wound
17 on the chest too was a contact wound.
18 But you if you notice in the autopsy, it says it
19 was not a contact wound, that there was no soot but if you
20 look at the pictures of the autopsy, there is soot.
21 Q. Okay. I want to start with the wrist injury. A
22 previous witness circled, showing on this, I guess, it's the
23 wadding from the shotgun shell. This is the wound you're
24 talking about?

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1 THE COURT: Would you identify that exhibit for
2 the record, please.
3 MS. BROWN: I'm sorry, Your Honor.
4 Q. This would be Exhibit Number 51. Exhibit Number
5 51, that circled injury, is that the injury you saw soot and
6 other items on?
7 A. Yes, ma'am. If you can lower -- dim the light, I
8 will show you the soot.
9 Q. If you would. I don't believe we have a pointer.
10 THE WITNESS: Could I use this?
11 THE COURT: I don't think you can actually draw
12 on that one, but you can walk up to where Ms. Brown is, and I
13 think that you can display up there, can't he?
14 MS. BROWN: Yes, Ms. Henry can assist us in audio
15 visual.
16 THE COURT: Sir, you may.
17 THE WITNESS: So where I have circled the
18 circumference of the soot deposits and if you notice, it is
19 eccentric, telling you the muzzle was closer to one side and
20 if you notice around the emergence of the wound here are born
21 artifacts, the ball of fire that were in the bullet. Even
22 here, you can see the accentuation of the soot in a pinpoint
23 fashion. So this is a typical pattern of wound you would see
24 in a muzzle of the gun that is touching the skin in a loose

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1 fashion on close range of about half an inch, one inch to two
2 inches at most.
3 Q. Do you want to stay up here because we're going
4 to look at these other.
5 THE COURT: Mr. Brown, what I've asked Mr. Seddon
6 to do is get a Sharpie of a different color than blue.
7 MS. BROWN: Okay.
8 THE COURT: So there is a permanent record of
9 what this witness is testifying to. What you've just
10 displayed the jury can see, now it's been taken off, and they
11 won't have that to take back to the jury room with them, so
12 I'm going to ask the witness to actually use -- there's some
13 writing on this exhibit with the blue that was done by
14 another witness. And so, Seddon will be back in just a
15 moment with a different color marker, and we'll have him
16 repeat this so that there's a permanent record of his
17 testimony.
18 MS. BROWN: Your Honor, we do have a green
19 Sharpie.
20 THE COURT: Green will do. Thank you.
21 Q. (BY MS. BROWN:) Just on the actual photo itself,
22 you can explain what you were saying?
23 A. This is the circumference of the eccentric soot
24 and this is an accentuation of the soot giving you the

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1 punctate soot stippling and then the margins of the wound you
2 have the born artifacts of the wound, and you notice it's all
3 eccentric. So you have the soot. The soot is stippling and
4 the bond so this is what you want to see -- what you see in
5 the loose contact or very close range muzzle. The hand was
6 in intimate in tactical association with the muzzle of the
7 rifle.
8 THE COURT: Ms. Brown, put that back up there.
9 The record will reflect that the first example
10 that the doctor gave was the outer green circle and when you
11 mentioned his second example was the green circle that's in
12 about the middle and in his final example was a green outline
13 of the wound itself. Is that accurate, doctor?
14 THE WITNESS: Yes, Your Honor.
15 THE COURT: Thank you. Now the record is clear
16 as to what --
17 MS. BROWN: Thank you, Your Honor.
18 THE COURT: -- we're talking about.
19 Do you agree with that, Mr. Gregory?
20 MR. GREGORY: Yes, Your Honor.
21 THE COURT: Thank you.
22 Q. (BY MS. BROWN:) I'm now putting up Exhibit 41,
23 which would be the 45 wound to the chest area. And then
24 Exhibit Number 42 would be a close-up of that same injury?

1 A. That's a close-up, Your Honor. Can I come down
2 to --
3 THE COURT: You may, sir.
4 THE WITNESS: Thank you.
5 THE COURT: This witness will only use a green
6 Sharpie if he makes any marks on this.
7 THE WITNESS: So, again, this is an entrance
8 wound which was describing the autopsy report of not having
9 soot, but you can see a gate, an eccentric marginal soot and
10 then an artifact of the wound margins.
11 And in this one, you will actually see splaying
12 of the wound margin, indicating the bowl of gas coming behind
13 the bullet. So, actually, this one, I examined the autopsy
14 report, Harry was wearing a thick winter housecoat, winter
15 housecoat and a t-shirt.
16 So if you have the muzzle contacting his body,
17 that will be about one, two or three inches of clothing
18 between the between the muzzle and the skin. So although it
19 is a contact wound on the clothing, you will see eccentric
20 soot because the clothing will take some of the soot from the
21 skin but remember, the autopsy said there was no soot.
22 Q. Go ahead and have a seat.
23 THE COURT: Now, before he goes any further, I
24 want you to identify each of the marks he made on this

1 margins.
2 THE COURT: The splaying of the margins of the
3 wounds.
4 Would you agree with me that's what he's marked,
5 Mr. Gregory?
6 MR. GREGORY: Yes, Your Honor.
7 THE COURT: Would you agree, Ms. Brown?
8 MS. BROWN: Yes, Your Honor.
9 THE COURT: Okay. Thank you.
10 Q. (BY MS. BROWN:) Since Mr. Leibel was wearing
11 clothing, how would the soot get in through the clothing?
12 A. You know, when we see this suit I'm wearing, with
13 our naked eye, the resolution, it looks smooth and clean.
14 But if you -- if you place it under a microscope, you see big
15 holes in it because it's fabric that is knitted together.
16 All of our clothes, including leather, they have big holes in
17 it.
18 Now, soot from the muzzle of a gun is particular
19 matter. It's very fine. It's like fine sand, even finer
20 than fine sand. There are still particles. The particles of
21 soot are smaller than the holes in the clothing. Soot is
22 probably about 1,200 feet per second and it is hot. So soot,
23 if it's closer to the clothing than one foot and it's fired
24 from a muzzle of a gun can pass through layers of clothing in

1 example.
2 MS. BROWN: I'm going to, Your Honor.
3 THE COURT: Thank you, ma'am.
4 Q. (BY MS. BROWN:) The first circle you made was
5 concerning the soot; is that correct?
6 A. Yes.
7 Q. And the second?
8 THE COURT: Wait. Wait. That doesn't identify
9 it because the record will have no identify what the first
10 circle he made was. So what you just marked is a circle that
11 is towards the bottom part of the picture. It comes off of
12 another circle that is around the wound. Would you agree
13 with that?
14 THE WITNESS: Yes, Your Honor.
15 THE COURT: Okay. So that -- that circle
16 identifies somewhat you've identified as soot. Then there's
17 a circle that goes -- there's a partial circle because it's
18 not a closed circle that goes around the wound.
19 THE WITNESS: Yes, Your Honor.
20 THE COURT: And then you made some marks that are
21 lines.
22 THE WITNESS: Yes, Your Honor.
23 THE COURT: And those were to identify what?
24 THE WITNESS: The splaying, the splaying of the

1 which the skin.
2 Q. But in your opinion based on the injury you're
3 seeing, you're seeing a not skin to barrel contact but a
4 contact with clothing over the skin; is that correct?
5 A. Yes, the muzzle was contacting his body but
6 because he had clothing on his body, the muzzle was touching
7 the clothing, so this will qualify also as a contact wound,
8 loose contact because mets is not absolute science. If you
9 ask me, I can stretch it back maybe half an inch, one inch
10 but the half an inch one, inch to two inches will account for
11 the thickness of the clothing. So essentially, it is a
12 contact wound.
13 Q. And in a case involving a contact wound, if a
14 person is awake and conscious, would they be aware at some
15 point there's something closer/in contact with them?
16 A. You mean if he was placed himself or someone else
17 placed him?
18 Q. Someone else placing it?
19 A. Okay. The human brain has the ability to respond
20 to stimulus in one over 10,000 of a second. That is why if
21 somebody touches you, the moment that person touches you, you
22 know he touched you. So the muzzle of a gun, if an
23 individual nudges you with the muzzle of a gun, you don't
24 even have to think. You will respond, and the response is to

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1 knock it out. It's primitive relief we, as human beings,
2 have. Something, not just response to hit it out to look.
3 So if somebody had nudged him with a muzzle of a gun, he
4 would have responded in a matter of milliseconds.
5 Q. I'm going to show you what been marked or
6 admitted as Exhibit 49. Do you recognize that?
7 A. Yes, ma'am.
8 Q. And what is that?
9 A. This is Harry's left arm, inner surface, showing
10 the gunshot wound of exit and showing contusions of the inner
11 aspect of the left arm.
12 Q. And could you put a circle around contusion.
13 A. This is the focal contusion and the outer part to
14 laceration or exit wound.
15 Q. So this area within the large circle is what
16 you're calling a contusion?
17 A. Yes, ma'am.
18 Q. And the arrow points to basically the --
19 A. Exit, yes.
20 Q. Thank you. Would this -- the chest injury that
21 you viewed both the photographs and the autopsy or the x-rays
22 concerning, would that be immediately fatal or would it take
23 time to pass from that?
24 A. No. The gunshot wound of his trunk will not --

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1 will not be immediately fatal. He could have survived that
2 wound for up to five to ten minutes, and he would have been
3 able to engage in activities.
4 Remember, the famous Ronald Regan was shot in the
5 chest. He did not even know he was shot until they were
6 driving him back to the White House. He began to cough out
7 blood, that was when he changed over to go to the naval
8 hospital. So he was shot in the chest and was not even aware
9 and was engaged in activities, that is a very good example.
10 Q. And I'm showing you now Exhibit 134. Do you
11 recognize that photograph?
12 A. Yes, ma'am.
13 Q. And what is that?
14 A. This is the X-ray of Harry after death, and it
15 shows splintered fragments of a metal projectile, rarely
16 projectiles inside the chest and extending into the left
17 shoulder and the left inner, this is important, inner aspect
18 of the left arm.
19 Q. And showing you now Exhibit Number 140.
20 A. This is, again, an X-ray of the left arm on the
21 left shoulder. You could actually see a fracture of the left
22 shoulder joint. You see the space up above the space between
23 the scapula and the clavicle.
24 THE COURT: Why don't you identify that for us.

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1 MS. BROWN: I was going to go to him, Your Honor.
2 THE COURT: All right. Have a seat, sir. She'll
3 bring it to you.
4 THE WITNESS: This is a fracture of the acromio
5 clavicle joint.
6 Q. And so that green circle is --
7 A. Is a fracture, and such a pattern of trauma, you
8 would see if his arm received such a kinetic energy with it,
9 factually extended close to the body, like in this position
10 I'm placing it. His hand was not fully extended because the
11 force of the bullet pushed away the arm and fractured the
12 acromio clavicle joint.
13 So given the pattern I just see here, I can tell
14 you reasonably that his hand was not fully extended when he
15 was shot. His hand was flexed, slightly extended, like
16 somebody manipulating something. His hand was in this way.
17 So when the bullet -- the force of the bullet, the bullet
18 traveled at about 1,200 feet per second. It had a force. So
19 he moved the hand within millisecond and caused a fracture.
20 Q. Again, this bullet or this Exhibit Number 140,
21 this is a break in which it's the circled in green, that's a
22 break in?
23 A. Joint, the acromio, a-c-r-o-m-i-o clavicle joint,
24 meaning the joint between the clavicle and scapula.

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1 Q. And showing you now what's been marked as or
2 admitted as Exhibit 45.
3 THE COURT: Ms. Brown?
4 MS. BROWN: Yes.
5 THE COURT: How much longer are you going to go
6 with this witness?
7 MS. BROWN: It's going to be a little while
8 longer.
9 THE COURT: We're going to take our break right
10 now.
11 MS. BROWN: Thank you.
12 THE COURT: We've been in session for an hour and
13 a half, and I'm going to give the court reporter a break.
14 She doesn't feel very well, and we're going to take a
15 15-minute break.
16 (Whereupon, the admonishment was given to the
17 jury by the Court not to talk about the case with anyone
18 until the case is submitted to the jury for deliberation.)
19 THE COURT: We'll be in recess until a quarter
20 'til. Thank you very much.
21 Doctor, during the recess, you're admonished not
22 to talk to anyone associated with this case except the three
23 attorneys.
24 THE WITNESS: Yes, Your Honor.

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1 THE COURT: Thank you, sir.
2 (Whereupon, a brief recess was taken.)
3 THE COURT: We're back in session in State of
4 Nevada versus Tatiana Leibel. Mr. Gregory is present for the
5 State. Ms. Brown, Ms. Henry are both here. Ms. Leibel is
6 here, as is the interpreter, one of our interpreters.
7 Doctor, you're still on the stand. You're still
8 under oath, sir. Let's bring the jury in.
9 Thank you, folks. Have a seat, please.
10 Attorneys stipulate to the presence of the jury?
11 MR. GREGORY: Yes, Your Honor.
12 MS. BROWN: Yes, Your Honor.
13 THE COURT: Ms. Brown, would you continue.
14 MS. BROWN: Thank you, Your Honor.
15 Q. Going back to Exhibit Number 140, where you
16 identified a broken bone in the shoulder by that green
17 circle, would that break in the shoulder affect flexibility
18 in the arm after it was inflicted?
19 A. The fracture dislocation of a joint would in a
20 big motion but if you try to move, you may hear what we call
21 crepitus, c-r-e-p-i-t-u-s, and I've actually done cases
22 whereby at the scene, law enforcement interpreted a fractured
23 shoulder to be rigor mortis because you try to move the
24 shoulder, the fracture in the base, the motion, soon after,

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1 death, fracture, spasm. If you've ever had a fracture, spasm
2 of the muscle, it's pain. So the muscle is spastic. If you
3 die, the spasm of the muscles with time will relate slowly.
4 So this is such a fracture could simulate rigor mortis and
5 misinterpreted as rigor mortis, and I've actually seen it in
6 several cases of mine.
7 Q. Showing you what's been marked Exhibit 45 for
8 identification, do you recognize this?
9 A. Yes.
10 Q. What is that?
11 A. Can you lower the light? There's a reflection.
12 THE COURT: It actually I think it's the light
13 from the projector. You may be able to adjust one of those
14 side lights that may help you.
15 THE WITNESS: Wonderful, wonderful. Thank you so
16 much. This is a picture of the liver. The human liver and
17 the liver of all mammals has a red, brown color-like muscle.
18 But if you notice, this liver is yellow. It's yellowish, and
19 it's diffusely yellowish. This is a specific disease we call
20 steato, s-t-e-a-t-o, steato, hepatitis.
21 What this simply means is a group of diseases
22 where you start having accumulation of fat in the liver and a
23 specific type of fat is what we call a triglyceride fat.
24 There are so many things that could cause hepatitis. It

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1 could kill you suddenly. Many people who suffer it do not
2 know they suffer from it until they do a liver enzyme panel.
3 Common causes of it, alcohol, drugs of all types and
4 sometimes even drugs of abuse. It depends on your genetic
5 makeup. Even drugs as common as marijuana can cause
6 hepatitis. Some people, it's something you may be able to --
7 it's a very very ubiquitous disease.
8 In this case, what you should do if you don't
9 believe it, it is to take microscopic section and look at it
10 in the microscope. You will see the large globules of fat in
11 the liver. What is the significance of this? The liver is
12 the organ, it's the largest organ in the body only second to
13 the skin. Why is it a large organ? It supplies -- it's the
14 only organ that has three independent sources of blood
15 because it's a big organ that plays a very important function
16 in the human body.
17 It is the organ that detoxifies your blood. It
18 removes toxins and chemicals from your blood to clean it up.
19 Why does it do that? The human brain is a very sensitive
20 organ. The brain does not do well if specific chemicals in
21 the body are elevated, specifically ammonia, and your body
22 turns out large amounts of ammonia, that is why you have
23 large amounts of ammonia in the urine. That is actually what
24 gives urine the smell. So the liver takes it out and it

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1 becomes excreted in the urine.
2 When you have a disease, if you see, this is
3 diffuse. There is impairment of detoxification of the liver.
4 Ammonia levels will be high. If I did this autopsy myself, I
5 would have performed all of the analysis. What is the
6 significance? When ammonia levels are high in the blood, it
7 causes a specific disease. We'll call hepatic
8 encephalopathy. Hepatic encephalopathy will make it to
9 manifest episodes of irrationality.
10 Q. Irrationality?
11 A. Yes. Sometimes you could have a liver episodes
12 of irrationality, where you act out of character and some
13 people that even engage in activities that are simply
14 irrational that you and I as rational beings would never
15 understand why.
16 And in doing my review, having this, I look at
17 the toxicology which, again, showed us a very significant
18 finding that further confirms that this case is not a
19 homicide.
20 Q. And in -- you said earlier that you needed what
21 would need slides of the tissue to make further diagnosis?
22 A. If you have doubt, assuming if I'm training, you
23 know, younger doctors, medical students, I would tell them to
24 take a histological section, you should in a homicide like

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1 this. An alleged homicide case, you should and must
2 according to the standard.
3 Q. And as to the brain, should tissue be take from
4 the brain?
5 A. Tissue from the brain and from every organ from
6 the body.
7 Q. And to your knowledge, were any tissue samples
8 taken in this case?
9 A. I was surprised. I requested tissues. I was
10 told there was none taken. And the brain, you should see if
11 you take microscopic sections of the brain, you should see a
12 specific change in the brain cells that would explain the
13 irrationality. It affects a specific type of self in the
14 human brain, we will call astrocytes. They will become
15 balloon because of ammonia toxicity and it affects the
16 functioning of your different regions of your brain that
17 would manifest with irrationality.
18 Q. Okay. And you mentioned also in the toxicology
19 report that there was -- it was shown that cannabis was used?
20 A. Yes. In the toxicology report, it showed that
21 Harry used marijuana less than two hours before he died. Why
22 do I know it's less than two hours, because of the types of
23 cannabinoid found in his blood and the levels.
24 If you smoke marijuana, your Delta-9 THC which is

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1 the active component of marijuana Delta-9 THC after two hours
2 should drop less than two micrograms, but Harry's THC level
3 was 20. So it tells you will he used marijuana within two
4 hours of his death. Unfortunately, marijuana is a
5 psychedelic drug. It's a hallucinogen. So if you're
6 suffering from a disease like hat hepatic encephalopathy and
7 then you smoke marijuana, you are at the much greater risk of
8 engaging in irrational behavior, including suicidal behavior.
9 Q. And you're one of leading brain experts in the or
10 experts in brain disease; is that correct?
11 A. Could you repeat.
12 Q. You're one of the leading experts in brain
13 disease?
14 A. I wouldn't say myself, but I have I have been
15 recognized as one of the leading experts. That was why the
16 U.S. Congress invited me on two occasions to advise them in
17 matters related to brain disease, yes, ma'am.
18 Q. In fact, that's a matter of a lot of your
19 publications; is that correct?
20 A. Yes, ma'am.
21 Q. Showing you what's been marked Exhibit 140 for
22 identification, do you recognize that?
23 A. Yes, ma'am.
24 Q. Is this one of the photos that was taken at the

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1 autopsy that you were shown?
2 A. Yes, ma'am.
3 Q. And Exhibit 149, do you recognize that?
4 A. Yes, ma'am.
5 Q. And is this also one of the photographs you were
6 shown?
7 A. Yes, ma'am.
8 Q. These photographs then have been since used to
9 show Harry's reach as to whether or not he could use the
10 weapon. Would this be a correct way to determine that?
11 A. No.
12 Q. And why not?
13 A. Actually, the measurement, the way they measure
14 it from the axilla to the tip of the finger is inaccurate.
15 If you want to measure range, you start from the neck to the
16 tip of the finger, not from the axilla. Why, because if I'm
17 manipulating a gun or any object, I'm using my whole body. I
18 can put my body in different concoctions and different
19 convolutions. I can -- I can do things that when I'm
20 standing stationery, someone watching me will assume I cannot
21 do.
22 So, again, this is one of the patterns of
23 erroneous assumption of things in this case. Measuring the
24 ridge from the axilla is wrong. If you want to measure the

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1 ridge, you start from the neck, actually from the midline of
2 the body and then meaning that somebody cannot perform a
3 specific act because of the length of the upper extremity is
4 erroneous, it's wrong, it's a wrong determination because
5 human beings can concoct your body and twist your body in
6 unimaginable ways. Even some of us who have the talent can
7 roll your body into a ball. So this is totally wrong, and so
8 assumptions remaining in this based on such an erroneous
9 scientific methodology.
10 Q. And have we discussed possible scenarios or
11 examples in which we could possibly demonstrate if Mr. Leibel
12 shot himself, that could be done with that 24-inch arm and
13 sofa?
14 A. Yes, ma'am. Yes, ma'am.
15 MS. BROWN: And, Your Honor, may the record
16 reflect that Dr. Kubiczek did measure my arm when he was
17 testifying it was between 24 and 25 in length.
18 THE COURT: He did measure it, and I don't recall
19 exactly. The jury will recall what the measurement was and
20 it's their memory that counts.
21 MS. BROWN: Okay.
22 THE COURT: Mr. Gregory, if you want to stipulate
23 to what you believe the evidence was, you can do that or
24 leave it up to the jury.

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1 MR. GREGORY: I would leave it up to the jury.
2 MS. BROWN: And Exhibit Number 119 is the dummy
3 gun?
4 THE COURT: I'm sorry, I couldn't hear you.
5 MS. BROWN: That's okay. I was just asking if
6 Exhibit 119 was the dummy gun.
7 THE COURT: Yes, ma'am.
8 THE WITNESS: There's no bullet in it, right?
9 MS. BROWN: Excuse me?
10 THE WITNESS: There's no bullet in it?
11 MS. BROWN: There's no bullet. Actually, the
12 firing pin has been removed. We're safe.
13 THE WITNESS: Okay.
14 THE COURT: Good question though, doctor.
15 MS. BROWN: And I'm going to be sitting on
16 Exhibit 120, the couch.
17 THE COURT: Any of you in the jury are welcome to
18 stand if you want to see.
19 Q. (BY MS. BROWN:) Could you step down, doctor.
20 A. Your Honor, may I?
21 THE COURT: You may, yes.
22 Q. (BY MS. BROWN:) We talked about arm position in
23 this example, so with the same length?
24 A. This will give you -- this was -- move this arm.

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1 Q. Okay.
2 A. So your hand -- that's to be -- okay.
3 Q. Okay.
4 A. To the side more.
5 Q. Okay.
6 A. This will give you, yes, hold that.
7 Q. Okay.
8 A. That will give you classic pattern. Depending on
9 your height and that but if you were his height, this will be
10 on a higher level, and you could and it could give you
11 exactly what we have there.
12 Q. That's what we're talking about with this?
13 A. Which is taller height.
14 Q. Yes.
15 A. He could higher and this would go shoo.
16 Q. Okay. And then as to the second shot?
17 A. He shoots himself in the chest. He's not yet
18 dead and just like some very famous people, they try cyanide,
19 they are not yet dead. They are waiting for minutes and then
20 they use secondary mechanism.
21 Q. I accidentally shot myself.
22 A. Exactly, you're trying to hold this right as
23 you're moving around.
24 Q. Uh-huh.

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1 A. Okay. Bring in your hand, okay, and erroneously
2 and that will cause exactly that. And wait, wait, wait, you
3 see, it goes to here.
4 Q. Uh-huh.
5 A. Raises the shoulder. This illustration shows
6 that atypical suicide was actually what happened here.
7 Q. Okay. But I'm not trying to shoot myself in the
8 shoulder and wrist, correct?
9 A. No, the second shot, he was trying to position
10 it. Remember, he is beginning to bleed inside.
11 Q. Uh-huh.
12 A. He's becoming a bit confused because he is
13 bleeding, and he's trying to shoot himself again, trying to
14 manipulate and he is confused and, I mean, he fell backwards.
15 Q. Okay.
16 A. Okay.
17 Q. Okay. Thank you. And, again, these are possible
18 scenarios?
19 A. Yes. That will tie everything together. The
20 evidence of hepatic encephalopathy combined with the
21 psychedelic hallucinogenic effect of the marijuana, the
22 cannabinoids, there is no reasonable degree of certainty to
23 rule this a homicide. This is a suicide. The most you can
24 stretch it is atypical suicide.

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1 Q. And so your opinion in this matter based on a
2 reasonable degree of medical certainty is?
3 A. That Tatiana did not shoot Harry. Harry is a
4 65-year-old white male, died as a result of a single gunshot
5 wound of his chest. The manner of death is suicide. What
6 type of suicide, an atypical suicide.
7 MS. BROWN: Thank you. I have nothing further.
8 THE COURT: Mr. Gregory?
9 MR. GREGORY: Thank you, Your Honor.
10 CROSS-EXAMINATION
11 BY MR. GREGORY:
12 Q. Doctor, you are a pathologist, correct?
13 A. Yes.
14 Q. Much like Dr. Kubiczek?
15 A. Yes, Dr. Kubiczek is a very good friend of mine.
16 Q. Yeah, and you actually work with Dr. Kubiczek
17 sometimes, don't you?
18 A. Yes.
19 Q. As well, as the Washoe County Medical Examiner's
20 Office?
21 A. Yes.
22 Q. There's cases you actually work together,
23 correct?
24 A. Yes, I examine brains for the Washoe County

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1 Medical Examiner's Office.
2 Q. All right. You're not a certified gun expert,
3 are you?
4 A. No, sir.
5 Q. And you're not a physicist, are you?
6 A. No, sir.
7 Q. Okay. You are not a toxicologist, are you?
8 A. I am. I'm board certified in clinical pathology.
9 Toxicology is part of clinical pathology.
10 Q. Oh, okay.
11 A. Yes.
12 Q. Are you a reconstruction expert?
13 A. No, sir.
14 Q. Are you crime scene expert?
15 A. I'm a crime scene expert in relation to the
16 medical aspect of a crime scene.
17 Q. Do you go out to the crime scenes?
18 A. Yes. In fact, the standard of forensic pathology
19 is that for every suspicious case or homicide, the
20 pathologist must, must go out to the scene.
21 Q. You understand there's a certification for crime
22 scene experts?
23 A. Yes. Part of our board certification includes
24 crime scene examination but the medical aspect of a crime

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1 scene examination, we don't go to take trace evidence at the
2 scene, no, but we will go to examine the body in relation to
3 the scene to see the relationship of the body with the scene
4 and also to advise law enforcement so that they don't make
5 erroneous assumptions like we have in this case.
6 Q. I want to talk a little bit about what things you
7 considered in rendering your opinion in this case?
8 A. Yes.
9 Q. You indicated you saw some photographs. We know
10 you saw the x-rays, right?
11 A. Yes.
12 Q. Did you see all of the autopsy photographs?
13 A. Yes.
14 Q. Did you see all of the photographs of the scene
15 taken by the Douglas County Sheriff's Office?
16 A. I don't know if it's all, but I've seen
17 photographs sent to me, and I saw all of the same photographs
18 sent to me.
19 Q. So you were provided with reports or photographs
20 by the defense, correct?
21 A. Yes.
22 Q. You have no idea if those were all of the
23 photographs in the case?
24 A. I don't know, sir.

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1 Q. Okay. Do you know that there were over 600
2 photographs taken in this case?
3 A. I don't know. Photographs were sent to me. I've
4 seen photographs sent to me.
5 Q. Okay. Did you review 600 and some photographs?
6 A. I don't recall. I didn't count them. I could
7 check in my laptop. I have it here with me, but all of the
8 same pictures sent to me, I reviewed.
9 Q. Did you review all of the laboratory reports in
10 this case?
11 A. Yes.
12 Q. So you reviewed the DNA report, correct?
13 A. Yes, I reviewed in November.
14 Q. Okay. You reviewed the fingerprint analysis,
15 correct?
16 A. Sorry?
17 Q. The fingerprint analysis, you reviewed that?
18 A. Yeah, I reviewed that in November when the case
19 was sent to me. In preparing for testimony the other day, I
20 don't typically review such reports because I don't testify
21 to them.
22 Q. And as I understand, at the time you prepared
23 your report, you did not have the measurements of the crime
24 scene that were taken by the Washoe County Crime Lab,

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1 correct?
2 A. I don't know. I don't recall, but there are the
3 measurements that were sent to me, and I've reviewed them,
4 and I do not agree with majority of your assumptions. Based
5 on the measurement, there were a pattern of --
6 Q. Doctor, my question was, at the time you wrote
7 your report, did you have those measurements?
8 A. I had measurements of the crime scene that were
9 provided to me, yes.
10 Q. Okay. Who provided those to you?
11 A. The defense attorney.
12 Q. And how is it they provided those to you before I
13 even had them?
14 A. I don't know. I don't know because I'm not
15 involved in the case that -- my team forwarded it to me.
16 What I reviewed in November, I saw pictures of the scene. I
17 saw some cartoon demonstrations. Then about last week or two
18 weeks ago, there was another formal report, a crime scene
19 report.
20 MR. GREGORY: Your Honor, I would ask you to
21 direct to the witness to answer the question.
22 THE COURT: He is answering it. You asked him
23 how he got them before you did. He's telling you when he got
24 them.

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1 MR. GREGORY: Okay.
2 THE WITNESS: There was another report, a more
3 comprehensive report with pictures, diagrams that were sent
4 to me weeks a couple of weeks ago.
5 Q. (BY MR. GREGORY:) Did you review all of the
6 police reports in this case?
7 A. Yes, in November, when I got the case, yes.
8 Q. About how many reports did you review?
9 A. There were PDF files, I would say about seven or
10 eight PDF files.
11 Q. Okay. You did not review the 58 reports that
12 were done in this case?
13 A. I don't know if the 58 were part of the several
14 PDF's but if 58 police reports, remember what I told you, I
15 don't base my opinion on police reports. Since there are 58
16 police reports, you don't expect me to give 58 opinions of
17 the 58 police reports.
18 Q. Well, if you don't consider police reports, why
19 did you look at any of them?
20 A. I look at them because as an expert witness, if I
21 did not look at them, you will criticize me that I did not
22 look at them.
23 Q. So you choose to look at some of them but not all
24 of them?

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1 A. I looked at all of the police reports that were
2 forwarded to me.
3 Q. Okay. Did you review the evidence that was
4 obtained from the cell phones in this case?
5 A. No, no.
6 Q. Did you listen to the tape recorded interviews of
7 all of the witnesses in this case?
8 A. Yes, yes.
9 Q. All of the witnesses?
10 A. It was quite long. There were two of them.
11 Q. Oh, just two?
12 A. Two videotapes.
13 Q. Okay.
14 A. That took me almost one night. I woke up at,
15 like, 2:00 o'clock. By noon, I was still looking at them.
16 They were very long.
17 Q. There were some 60 witnesses listed on the board
18 when we started this trial. You reviewed two of those
19 witness statements?
20 A. No, of Tatiana.
21 Q. Okay.
22 A. In a case like this, I don't need to review all
23 of the material. Remember my expertise, I'm not law
24 enforcement expert.

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1 Q. But so you reviewed Tatiana's statements,
2 correct?
3 A. Yes, and there's reason why I did that as a
4 physician. I want to know if her story changed. You know,
5 remember, I do this so many times. What is one of the things
6 you want to change? You want to find out is the defendant,
7 the person been accused of shooting somebody, did her story
8 change.
9 Q. Okay. So you listened to her statements,
10 correct?
11 A. Sorry?
12 Q. You listened to her statements, correct?
13 A. To her interview by the police.
14 Q. You didn't listen to any other interviews from
15 any other witnesses?
16 A. No, no. Remember -- remember --
17 Q. It's a yes or no question.
18 A. I said no.
19 Q. Thank you. Thank you. Did you discuss the case
20 with any of the witnesses at all?
21 A. No. Remember, I'm not a witness expert. I'm not
22 here to testify.
23 Q. Sir, it's a yes or no question.
24 A. Could you repeat it?

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1 Q. Did you discuss the case with any of the
2 witnesses?
3 A. No, sir.
4 Q. Did you discuss the case with any of the police
5 officers?
6 A. No, sir.
7 Q. Did you discuss the case with Dr. Kubiczek?
8 A. Yes, sir.
9 Q. Did you discuss the case with Tatiana?
10 A. No.
11 Q. But you listened to her statements?
12 A. Yes.
13 Q. Since you listen to all of her statements, you
14 are familiar with some of the discrepancies in those
15 statements, correct?
16 A. Essentially, I wouldn't categorize them as
17 discrepancies because like today if you bring me back
18 tomorrow to ask me the same questions, I wouldn't testify to
19 them exactly the same but essential call, the essence of her
20 testimony of what transpired that this was a suicide did not
21 change.
22 Q. Okay.
23 A. Now, minutia, we're human beings. Nobody has 100
24 percent recall memory that might not -- which I would dismiss

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1 as insignificant.
2 Q. Is the number of shots insignificant?
3 A. Yes, because if you notice, again, remember, the
4 Ferguson case, there were like ten witnesses that saw the
5 same thing. This is very well established in science. A
6 witness' perception of an event is based on that witness'
7 experience, state of mind and level of education. So there
8 have been cases of police officers.
9 A police officer, a case I've involved in, who
10 fired eight shots, in his mind said he fired four. He wasn't
11 lying. Just that in that moment of excitement, he had only
12 four shots, and this is within the various of human behavior.
13 When we are in unusual circumstances, our perceptions vary
14 broadly and widely, so I wouldn't say that take that to be
15 something significant that would change my opinion. It is
16 actually something that I would expect that happens quite a
17 lot even for trained officers that could fire at times but to
18 tell you I thought I fired four times.
19 Q. Okay. So in one statement, she indicated she was
20 in the kitchen when the gunshot occurred, the first gunshot
21 occurred. And in the next statement, she indicated she was
22 outside when she heard two shots. Is that a consideration?
23 MS. BROWN: Your Honor, I would object to that
24 characterization. That comes from witness in the courtroom,

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1 not from the taped interviews. He's mischaracterizing what's
2 in the taped interviews. The taped interviews --
3 THE COURT: The taped interviews are not in
4 evidence and so, you know, if you're going to keep
5 questioning him about those, they may very well come in.
6 MR. GREGORY: I'm talking about what has happened
7 right here in this courtroom is what I'm talking about.
8 THE COURT: Well, then you can ask him about what
9 witnesses have characterized.
10 Q. (BY MR. GREGORY:) Chris Lucas testified that he
11 heard Tatiana say she was outside when she heard two
12 gunshots. Did you listen to that?
13 A. Who is Chris Lucas?
14 Q. He's a paramedic. Did you not look at his
15 report?
16 A. No, no. A witness statement analysis, they both
17 red signal. You should take witness statements as it is. I
18 cannot ask a physician, make -- provide an opinion based on
19 one witness said which is the problem we have in this case.
20 Police officers coming in and manner of death but guiding an
21 autopsy.
22 Even -- and this has happened, like example why I
23 discovered the disease in football players, every doctor in
24 the world said I was wrong, but I knew the science and said,

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1 no, I'm not wrong. The science is right and today, 20 years
2 later, guess what, I was proven right. So you shouldn't as a
3 scientific expert listen on what witnesses said or what other
4 doctors said, I apply my own science. I testify. You judge
5 my credibility. You believe me or you don't believe me, but
6 I can't give you an opinion based on what a paramedic
7 witness said or what other witnesses said.
8 Q. You don't think much of the paramedics in this
9 case, do you?
10 A. It is not about thinking much. If you go to see
11 your doctor, would you want your physician to treat you based
12 on what a paramedic told him? It is simply the hierarchy of
13 medicine. As doctors, you are at the top. And, yes, you
14 listen to what a paramedic said, then you do your own
15 analysis. You examine your patient.
16 If what you say to the patient is not consistent
17 with what paramedic is saying, I don't think you would
18 believe what the physician saw yourself and go by what the
19 paramedic said. It is not that I don't respect paramedics.
20 I respect paramedics with every being in me. They are very
21 important. They have actually helped me too. It's not a
22 question of disrespecting. It's a question of the hierarchy
23 of finite industry.
24 Q. So I'm taking it from your answer, that you

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1 disregarded inconsistencies in Tatiana's statement?
2 MS. BROWN: Your Honor, I would object.
3 THE COURT: What is the objection?
4 MS. BROWN: His characterization that he
5 disregarded them because some of these inconsistencies are
6 coming from reports he may not have received or he's not
7 recalling or is testimony in court.
8 THE COURT: Well, the objection is overruled.
9 The question can be rephrased to make it clearer as to what
10 he has regarded and what he has not regarded.
11 Q. (BY MR. GREGORY:) Sir, should we disregard the
12 inconsistencies in her statements?
13 A. No, I did not disregard it. Remember, I
14 explained how I analyzed it. That I said even when you're
15 listening to a patient, when you're treating a patient,
16 there's no patient that wouldn't have inconsistencies,
17 there's no human being. So what you do is you listen to the
18 patient. You listen to whomever, and then that is when
19 you're expert, your education comes in. You sift through
20 what you have been told, and you make a need to conclusion or
21 diagnosis as the expert.
22 And like a patient, I would never tell a patient
23 that you're wrong. You don't know. What you're telling me
24 is inconsistent, no, no. You write down everything he or she

1 says, that you will review it. Review the other evidence
2 because all we have here is not just witness statements.
3 The good example is the Ferguson, remember, he
4 was shot.
5 MR. GREGORY: Your Honor, I didn't ask for an
6 example. I would ask for the witness to respond to the
7 questions.
8 THE COURT: All right. Well, I think he's given
9 you a response. Why don't you ask your next question.
10 Q. (BY MR. GREGORY:) Sir, did you examine this
11 couch before you rendered your opinion?
12 A. Yes, pictures of the couch.
13 Q. Pictures of the couch. Did you actually come and
14 observe the couch?
15 A. No, I did not think it was necessary for me.
16 Q. Okay. Did you go to the house and inspect the
17 house?
18 A. No, sir, it wasn't necessary for me.
19 Q. Did you inspect the gun?
20 A. No, sir, I'm not a gun expert.
21 Q. Okay. And yet you've testified today about
22 distances and whatnot with sooting.
23 A. Yeah, that's what we call the medical aspects of
24 ballistics, so medical aspects of ballistics. I don't need

1 to examine a gun.
2 Q. Okay.
3 A. All I need to do is skeletal examinations. Like
4 today, I saw the gun earlier today. When I came this
5 morning, I examined the gun and the replica of the gun, and I
6 saw it. They could not have shipped it to me in California,
7 and I did my medical analysis. I'm not a ballistics expert
8 but as a forensic pathologist, I'm expert in the medical
9 aspect of ballistics, that is why I know the type of bullet.
10 That is why I know the distance.
11 Q. So you didn't shoot the gun?
12 A. Oh, no, I've never shot a gun in my life, really,
13 I've never.
14 Q. All right, interesting. Your report in this case
15 was two pages long; is that right?
16 A. Yes.
17 Q. And you would agree with me that it's a very
18 conclusory report. You gave conclusions, but you don't state
19 how you arrived at those conclusions?
20 A. When I was asked to write a report, I was given
21 the guidelines because each state has its own guideline, that
22 my report should be a summary of my conclusions.
23 Q. So your two-page report was a summary, correct?
24 A. Yes.

1 Q. Okay. And in that report, you didn't cite any
2 kind of authority for your -- the science that you're talking
3 about here today, right?
4 A. No, no, it depends. Remember, I've done this so
5 many many times, many times, depending on the jurisdiction
6 and some states is different. As an expert, they don't want
7 you to cite other authorities because you're coming as an
8 authority yourself.
9 Now, if a Court would ask me to provide the basis
10 to provide published literature, I would provide that. But
11 as I'm sitting here today, nobody has asked me to provide
12 such literature.
13 Q. Okay. How long did it take you to prepare that
14 two-page report?
15 A. It took me weeks. It took me several weeks. I
16 didn't just -- I reviewed the case first. I spent time with
17 it. I thought about it. I did some reading. One day I woke
18 up early. It took me about four or five hours to write it.
19 Q. Okay. Are you familiar with the term cut and
20 paste as it refers to word processing?
21 A. Yes, I know cut and paste and somebody like me
22 who does -- I write over 100, 200 reports every year.
23 Sometimes some power in the report, things like definition of
24 a forensic pathologist.

1 Q. Okay.
2 A. The College of American Pathologist, such things
3 are copied and pasted on general terminology, general
4 concepts.
5 Q. So you might cut and past some general
6 principles, but you don't cut and paste things that are
7 specific to a case, do you?
8 A. No, I don't.
9 Q. Did you cut and paste when you prepared the
10 report in this case?
11 A. Yes. This case, I described the College of
12 American pathologists. I defined what forensic pathology
13 was. I described the general concepts of reasonable degree
14 of medical certainty. So such general concepts, I don't
15 doubt. I actually have a templet. I'll go and pick it out
16 of my template and put it on there.
17 Q. But the opinion in this case, you wouldn't
18 certainly have cut and pasted?
19 A. No, the opinion, I wouldn't copy and paste
20 because it's unique to the case.
21 Q. So one of your opinions in this case was, quote,
22 the experts are scientifically invalid and are grossly
23 outside the established and generally accepted guidelines and
24 principles of forensic pathology. Is that one of the quotes

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1 from your report?
2 A. I don't know if you're reading it, yes.
3 Q. Would you like to see your report?
4 A. If you don't mind.
5 THE COURT: Are you refreshing his recollection?
6 MR. GREGORY: I'm refreshing his recollection.
7 At page two, you'll see an asterisk.
8 THE COURT: Why don't you have it marked so the
9 record is clear.
10 MR. GREGORY: Yes.
11 Q. I'm handing you State's Exhibit or excuse me,
12 Exhibit 148. Would you take a look at that and review it?
13 A. Thank you.
14 Q. And then let me know if it refreshes your
15 recollection.
16 A. Yes, yes.
17 Q. Okay. So you would agree that one of your
18 conclusions is that that Douglas County Sheriff's Office and
19 experts --
20 A. What page, sorry?
21 Q. Page two.
22 A. Page two, what paragraph?
23 Q. Scientifically invalid and are grossly outside
24 the established and generally accepted guidelines and

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1 principles of forensic pathology?
2 A. Yes, sir.
3 Q. In the materials that you submitted regarding
4 your expertise, you referred to a case Scanlon versus Life
5 Insurance Company of America. Do you remember working on
6 that case?
7 A. You lost me. I don't understand the question.
8 THE COURT: Well, repeat it and listen carefully.
9 Q. (BY MR. GREGORY:) Okay. In your materials you
10 gave us and you listed all of cases you've been involved
11 with.
12 A. In my CV.
13 Q. Your CV.
14 A. Okay.
15 Q. And in one of the cases you indicated you were
16 involved in was a case called Scanlon versus Life Insurance
17 Company of America. Do you remember that case?
18 A. That was in a U.S. -- United States Court in
19 Seattle. The summary judgment was rendered in that case, and
20 the federal judge actually referenced me numerous times in
21 his summary judgment.
22 Q. Okay. Would it surprise you in the report you
23 authored in that case, you put the exact same conclusion?
24 A. It would not surprise me. These are not my

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1 phraseology. It is how I speak. If you watch me in another
2 case testify, you will hear me using the same terminology as
3 I do here. This is my style. There's nothing wrong with it,
4 the same language, and I may not have copied it. This is
5 just what I write. So if you review on my reports, you see
6 some commonalities which is not unusual.
7 Q. Okay. Have you ever had your testimony deemed to
8 be unreliable?
9 A. I would not say I was deemed unreliable. This
10 was a case eight years ago, a case in Pennsylvania, a man had
11 Hodgkin lymphoma from walking with --
12 Q. It's a yes or no question.
13 A. Yes, yes. I'm trying to explain what happened.
14 Q. No.
15 A. The outcome of that case --
16 Q. Sir, listen.
17 THE COURT: Doctor, doctor, give him the answer
18 and then if he wants an explanation, he'll ask for it.
19 THE WITNESS: Yes.
20 THE COURT: If Ms. Brown wants an explanation,
21 she'll ask for it, but just answer his question, please.
22 Q. (BY MR. GREGORY:) So the question is have you
23 ever been found -- has a Court ever found your testimony to
24 be unreliable?

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1 A. Yes, once, once eight years ago, and I'm trying
2 to explain the basis for that, which in my opinion looking
3 back now --
4 THE COURT: Sir, we didn't ask you for the basis.
5 Q. (BY MR. GREGORY:) You're aware of the Court's
6 findings in that case?
7 A. Yes.
8 Q. And you're familiar then that the Court concluded
9 and I quote, this Court has carefully considered the parties
10 respective positions and based on the present record, finds
11 that the methodology used by Dr. Omalu in reaching his
12 opinions in this case is not reliable and even if it was
13 found to be reliable, his opinions are too speculative to,
14 quote, fit the facts of this case. End of quote. Do you
15 recall that?
16 A. Yes in fact --
17 Q. Do you recall that?
18 A. Yes.
19 Q. Okay.
20 A. The mistake --
21 Q. Sir?
22 THE COURT: Sir, he didn't ask you a question.
23 Q. (BY MR. GREGORY:) Did the Court also quote his
24 opinions are also not grounded in science, end of quote?

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1 A. Now you're reading, that was almost a five page
2 ruling. You're reading a paragraph. If you read farther,
3 you'll see where the judge said Dr. Omalu is highly
4 qualified. He is fully trained. He can give the opinion but
5 in this case, some mistakes were made, and I agree with the
6 judge because in that case, the outcome on the case --
7 MR. GREGORY: Your Honor, I'm asking --
8 THE COURT: You answered the question.
9 MR. GREGORY: Thank you.
10 Q. In that case, the judge criticized you for citing
11 opinions without giving any authority; is that correct?
12 A. That is inaccurate. You see, which is not fair.
13 In that case, what happened --
14 Q. Sir, there's no question in front of you.
15 A. The judge --
16 THE COURT: Wait a minute. Wait a minute. Now
17 he is answering you.
18 MR. GREGORY: Okay.
19 THE COURT: Go ahead.
20 THE WITNESS: The outcome of that case lied to me
21 that there were no medical records, okay. This is how it all
22 started. I was not aware there were medical records. It was
23 only in a deposition that the medical records were shown to
24 me. I did not review any medical records because the

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1 attorney in the case told me there were no medical records.
2 THE COURT: Okay. You've answered the question.
3 Q. (BY MR. GREGORY:) And the Court also said,
4 quote, you failed to properly consider all of the relevant
5 material, end of quote.
6 A. Exactly, and I completely agree with that judge.
7 After the single case eight years ago --
8 THE COURT: Sir?
9 Q. (BY MR. GREGORY:) And lastly, the Court --
10 THE COURT: Listen to the question.
11 Q. (BY MR. GREGORY:) -- quoted, there's no record
12 of the method used by Dr. Omalu in making the actual
13 calculations referenced in his declaration, end of quote.
14 A. Yes, I agree with that judge. I agree and after
15 that case, I learned my lesson after that case. I've done
16 thousands of cases --
17 THE COURT: Sir.
18 THE WITNESS: Sorry.
19 Q. (BY MR. GREGORY:) The end result in that case
20 though, the judge did not allow you to testify in front of
21 the jury?
22 A. No, the case was thrown out. It was not -- it
23 wasn't just me. The attorney was --
24 THE COURT: Sir?

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1 Q. (BY MR. GREGORY:) Sir, how much were you paid to
2 generate your two-page report?
3 A. I was not paid to generate. I'm paid a fee for
4 the time I spend on a case. I'm not paid to do anything
5 specifically as illegal. They pay me to give a report, to
6 testify. When I work for public defenders, the public
7 defender tells me what he will pay me.
8 So in this case, they sent me to my office to
9 review to see if it was something I could help out. When I
10 reviewed it, I felt strongly about the case. I told them
11 okay. I can review the case for you. They told me all they
12 have to pay me is \$3,000, even if I work for 1,000 hours.
13 Q. Okay.
14 A. So I said it is going -- I don't do this for the
15 money. Send me whatever you have. It's taxpayers money. I
16 will work on this to establish the truth because the truth
17 will set you free.
18 Q. So how much are you getting paid then?
19 A. \$3,000.
20 Q. \$3,000 and earlier you testified that that
21 creates a conflict of interest when you're getting paid by
22 the person that you're rendering an opinion for?
23 A. No, it doesn't create conflict. It's like saying
24 the county paying you creates a conflict of interest. I need

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1 to feed my seven-year-old daughter and my five-year-old son.
2 I'm a professional. I need to be paid for innocent work I
3 do --
4 Q. When Ms. Brown was asking you questions though,
5 you were critical of the Washoe County Medical Examiner's
6 Office and --
7 THE COURT: Are you okay?
8 THE COURT REPORTER: I need a drink of water.
9 THE COURT: Hang on. We need a break.
10 THE COURT REPORTER: Can you repeat your question
11 too, Mr. Gregory?
12 MR. GREGORY: Yes.
13 THE COURT: Let's give her a moment.
14 Q. (BY MR. GREGORY:) On direct examination, you
15 voiced that you were somewhat critical of entities like the
16 Washoe County Medical Examiner's Office because they are
17 county employees that work along side of police officers; is
18 that?
19 A. That wasn't what I said.
20 Q. Okay.
21 A. What I said was that when law enforcement tells a
22 pathologist what a case is, that is the homicide, and you're
23 working with this law enforcement, if you continue going
24 against what they want, case after case, you're jeopardizing

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1 your job, that's a fact.
2 So, like I said, because a doctor should be
3 independent of law enforcement, this is the guideline, when
4 you have law enforcement concluding that a case is a homicide
5 before an autopsy is even done, that's something critically
6 wrong.
7 Q. So let me ask you; if you were going to be truly
8 independent, you wouldn't have considered Ms. Leibel's
9 statements, would you?
10 A. No. As an expert, like I said, my opinion today,
11 my opinion are based on the scientific episodes, the autopsy,
12 delivered medicine, my opinions are based on medicine, not
13 based on hearsay or what someone else said. I have never
14 said I base my opinion on what someone else said. All of the
15 opinions are given based on science not because of the
16 protocol.
17 THE COURT: Ladies and gentlemen, we're going to
18 take just a short break for the court reporter, and she's
19 having a difficult time. We're going to give her a break and
20 we'll just take a ten-minute break.
21 (Whereupon, the admonishment was given to the
22 jury by the Court not to talk about the case with anyone
23 until the case is submitted to the jury for deliberation.)
24 THE COURT: We'll just take a quick ten-minute

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1 break.
2 (Whereupon, a brief recess was taken.)
3 THE COURT: Doctor, you're still under oath.
4 Thank you, ladies and gentlemen. Have a seat.
5 Thank you. Will the parties stipulate the presence of the
6 jury?
7 MS. BROWN: Yes, Your Honor.
8 MR. GREGORY: Yes, Your Honor.
9 THE COURT: Thank you.
10 Mr. Gregory, please go ahead, sir.
11 Q. (BY MR. GREGORY:) Doctor, page two of your
12 report, in the third paragraph, the last sentence, you
13 indicate he did not sustain multiple gunshot wounds to his
14 body as has been alleged in the autopsy report?
15 A. Yes.
16 Q. Is that an accurate statement?
17 A. Yes. I mean, I did -- I have an MBA. It was
18 multiple, the lowest multiple you could have an injury. It's
19 two times two, four. One is single, two double, three
20 several, from four upwards is multiple. So if he had only
21 one gunshot wound, possibly one here, this is a graze wound,
22 so two.
23 Saying he had multiple gunshot wounds, it's my
24 interpretation of a pattern to corroborate with the law

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1 enforcement alleging that this is a homicide. Because if you
2 put multiple gunshots wounds, it makes it look like this
3 individual was shot multiple times, which is inaccurate.
4 Q. Well, how many times was he shot?
5 A. He shot himself. He wasn't shot. He was --
6 Q. How many times?
7 A. Once, the second one in my opinion was a misfire.
8 Q. Ah, okay. So you think that this statement is
9 correct, he did not sustain multiple gunshot wounds of his
10 body, that's a correct statement?
11 A. Yes, absolutely correct, sir, yes, sir.
12 Q. All right. You talked a lot about atypical
13 suicides. Are you familiar with the doctor named Warner
14 Spitz?
15 A. Warner Spitz is a pioneer of forensic science is
16 now, I believe, he's almost 90 years old.
17 Q. Pretty reputable?
18 A. He's old school.
19 Q. Anything wrong with being old school?
20 A. Yes, science -- because science evolves at the
21 very fast pace, especially with molecule biology, molecule
22 biology, even for me now, some of the interventions, two,
23 three, four years ago I defer to the newly trained doctors
24 because they know it better than me.

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1 Q. You have worked with Dr. Spitz, haven't you, on
2 cases before?
3 A. I've not worked with him. I may have testified
4 against him.
5 Q. So same case where you both were involved?
6 A. I don't remember, to be honest with you, because
7 of something. I may have. I may not have. I don't
8 remember.
9 Q. Are you familiar with his studies regarding
10 atypical suicides?
11 A. I'm familiar with his studies, but his studies
12 are very old. Some of his papers were in the '50s and '60s.
13 In fact, his peer, Dr. DeMayo, last year a judge stopped him
14 from testifying on the case. I mean, there's a limit to if
15 you're like almost 90 years old, there's a limit to what you
16 can do. We are human.
17 Q. Have you -- have you read about his studies
18 regarding atypical suicide?
19 A. Not just his study. I've read so many studies I
20 myself have published. I've published many times on suicide
21 too.
22 Q. Are you familiar with Dr. Spitz's opinion that
23 usually in a case if it's a suicide and there's multiple
24 shots that the shots go into the same general area typically.

1 So for instance, if a person is trying to shoot themselves in
2 the head and it grazes and they take another shot, it's also
3 going to be directed towards the head. Are you familiar with
4 that part of the study?
5 A. I'm very familiar with it but like I've told you,
6 this is not a case of multiple gunshot wounds.
7 Q. And are you also familiar with his study that
8 indicates that in most suicide cases, subjects do not shoot
9 themselves through clothing. Are you familiar with that part
10 of his statement?
11 A. I'm familiar with it. In fact, I think this case
12 was to me having that as a result of multiple gunshot wounds
13 because of what that people said to make it look more like a
14 homicide because we don't have multiple gunshot wounds in
15 this case.
16 I have refused with sides in other counties for
17 over ten years, and I looked at over 1,000 suicides. I
18 reviewed suicides in the state of Pennsylvania over 17 years.
19 MR. GREGORY: Your Honor, this is unresponsive to
20 the question.
21 THE COURT: Okay. Well, doctor, please listen to
22 the question, and I'm going to remind you again to answer the
23 question.
24 THE WITNESS: All right.

1 THE COURT: Yu have a lot of information in your
2 head and you want to get it out there.
3 THE WITNESS: Yes.
4 THE COURT: But right now, there are specific
5 questions being asked of you, and I want you to answer those
6 specific questions, okay?
7 THE WITNESS: All right.
8 Q. (BY MR. GREGORY:) So your opinion is that the
9 second shot here was a misfire?
10 A. Yes.
11 Q. Meaning, he didn't mean to pull the trigger?
12 A. He was manipulating the gun while progressively
13 becoming confused. He was -- possibly was confused in
14 addition to the fact of the marijuana combined with the
15 effect of his hepatic encephalopathy was getting into what we
16 call acute confusional state. While he's trying to
17 manipulate the gun and then misfired, that is why he cocked
18 it and grazed.
19 Q. And that's why he cocked the gun for a third
20 shot?
21 A. I don't know why but cocking the gun at that
22 time, nobody really knows that. Because if you remember, the
23 gun was moved at the scene, and the gun was moved at the
24 scene and somebody who shot himself in the chest, confused.

1 Q. So, doctor, it sounds to me like you choose to
2 acknowledge some facts while disregarding other facts; is
3 that correct?
4 A. No, no. I am acknowledging facts that within a
5 reasonable degree of medical certainty, like a physician
6 should do, things, assumptions in this case that are not
7 above the reasonable degree of medical certainty, I ignore by
8 the standards, I should as a physician.
9 Q. I want to make sure I understand some testimony
10 you gave before.
11 A. Yes.
12 Q. Death never occurs instantaneously, was that your
13 statement?
14 A. Let me qualify. The only time death occurs
15 instantaneously is when you have an explosion, when your body
16 is splintered. That is the only instance that will cause
17 instantaneously.
18 Q. So you're qualifying your statement that it never
19 occurs instantaneously?
20 A. I don't know if I said never. If that was what I
21 said, I didn't mean to. What I would say, maybe I said death
22 almost never. I qualify because this is not the first time
23 I'm testifying in court. I always qualify it as death almost
24 never, and the only time and it's very well documented in

1 literature is when there's an explosion, like somebody
2 wearing an explosive vest, the moment of the explosion, his
3 body is splintered, that is when you die instantaneously.
4 Q. So your opinion in this case is that Harry did
5 not die instantaneously?
6 A. No way from it. There was no way he -- the
7 gunshot wound of the chest would have killed him
8 instantaneously. It is not medically feasible.
9 Q. So let me give a hypothetical and it's based on
10 testimony in this case. Tatiana shoots Harry Leibel at
11 approximately 11:03. She immediately goes to the phone and
12 calls 911. They are on scene within minutes and within
13 approximately 13 minutes, the paramedics pronounce him dead.
14 How does that work given your opinion that he didn't die
15 instantaneously?
16 A. Instantaneously means he died within a
17 millisecond. Immediately means he died without any other
18 factors. Immediately could mean from minutes to hours to
19 days. It takes even weeks and years. It takes some people
20 years to die. So instantaneously means he died within a
21 millisecond of sustaining the gunshot wound, that is what
22 instantaneous means.
23 Q. Are we supposed to ignore the testimony of the
24 paramedics that the blood was coagulating and looked to be

1 drying?
2 A. I'm not saying you should ignore it. You should
3 weigh it. Given, it's like --
4 Q. It's a factor, right?
5 THE COURT: Wait a minute. He's not done
6 answering.
7 THE WITNESS: Hierarchy. I'm a forensic
8 pathologist, years of education, and I give an opinion, a
9 paramedic has six months of medical training, advanced
10 cardiac life support. You may not like what I say but
11 objectively, you weigh, who do you believe? Do you believe
12 me, even with all my experiences, will you believe me or what
13 he said?
14 THE COURT: You answered the question.
15 THE WITNESS: What I always say --
16 Q. (BY MR. GREGORY:) So do you just disregard?
17 A. I didn't say disregard. I said you evaluate it.
18 You evaluate it, that is why you have me. You didn't stop at
19 the paramedic. You brought a doctor. You evaluate it. You
20 consider the totality, the totality.
21 Q. Are we supposed to ignore that there were two
22 shots fired in this case?
23 A. No. If there was no autopsy, the number of shots
24 fired will be paramount, but there was an autopsy performed

1 that shows the only medic forensically significant and
2 forensically concentration shot, was only one shot that
3 killed him. The second shot is what we call incidental
4 findings because he would have still died from the single
5 gunshot wound of the chest. The one to his hand and to the
6 graze wound were of no significant forensic consequence, end
7 of story.
8 Q. Are we supposed to ignore the fact that this was
9 a long gun that was used instead of a handgun?
10 A. No, you should not ignore the fact, but you
11 shouldn't make some assumptions that are not supported by
12 science.
13 Q. Should we ignore the fact that the gun was cocked
14 for a third shot?
15 A. You shouldn't ignore it. Can somebody shoot
16 himself in the chest and still cock the gun at that time,
17 yes, and the body, yes.
18 Q. You've talked about cases where investigators
19 look at a scene and think it's a homicide initially but after
20 further investigation, they realize it's a suicide, correct?
21 A. No, they thought it was a homicide and they
22 called me to the scene.
23 Q. And you set them straight?
24 A. No, I didn't set them straight, no. Everybody

1 recognized this is my professional view of expertise. Like
2 you, you're an expert in the law, I'm not. So if I need
3 legal advice, I'll come to somebody like you. So if law
4 enforcement in my county needs the expert to make such
5 conclusions, they will call me, so I came. I told them, no,
6 no, this is why it's not a homicide. I was shot that down
7 immediately. That was not done in this case.
8 Q. Had you had the flip be true where they thought
9 it was a suicide and you thought it was a homicide?
10 A. No, because most times my opinion is based on the
11 autopsy findings and assuming the case we went to yesterday
12 in my county, sometimes I do an autopsy. I rule it on the
13 command. I have a meeting with the D.A. The D.A. tells me
14 we really think this case is a homicide but since you voted
15 on coming, we will charge for something less, maybe for blunt
16 force trauma, seriously bodily harm.
17 But the science, remember, I'm a messenger of the
18 science because of my training, not me as an individual. So
19 if I explain the science to the best of my ability, we
20 wouldn't be arguing with the science. We respect what the
21 science says. If you don't agree with it and, okay, you seek
22 a second opinion.
23 Q. Should we ignore that there was a lack of
24 gunpowder smell when the first responders went on scene?

1 A. The smell is a very subjective under scientific
2 variable. Again, the smell, how can you determine that a
3 case is a homicide and not a homicide based on the smell of
4 gunpowder? That is almost bordering on Voodoo.
5 Q. Well, if the battalion chief with 20 something
6 years of experience as a bomb tech says he can't smell
7 gunpowder, do you take issue with that?
8 A. Well, as an expert, I can provide a scientific
9 opinion.
10 Q. So you do take issue with his opinion?
11 A. That is below the limit which the law sets.
12 There has to be a reasonable degree of medical certainty, the
13 threshold.
14 Q. So you do take issue with that battalion chief's
15 opinion?
16 THE COURT: Wait a minute. Would you repeat the
17 question, please.
18 MR. GREGORY: I asked him if he takes issue with
19 the battalion chief's opinion that he did not smell gunpowder
20 in the room.
21 MS. BROWN: Your Honor, that doesn't relate to
22 the issue of whether it's a homicide or a suicide. It
23 relates to an issue of reporting.
24 THE COURT: The reason I asked him to repeat it

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1 because I didn't understand the question. Is the question
2 suggesting that the witness believes the -- believes that the
3 battalion chief did smell gunpowder?
4 MR. GREGORY: Can I ask a different question?
5 THE COURT: Would you, please, or rephrase that
6 one.
7 Q. (BY MR. GREGORY:) Should this jury disregard the
8 battalion chief's opinion regarding gunpowder?
9 A. Yes, that should be disregarded because of
10 scientific. If you smell gunpowder -- there's a test.
11 There's a scientific test to confirm what you're subjective
12 feeling is.
13 I could come as you're wearing a Cologne and I'm
14 used to smelling my own Cologne and I come to you and I tell
15 you I smell my Cologne on you, you wouldn't disregard it.
16 Just, you know what, that is a scientific test. So in a
17 court like this, we could use personal discussion but in a
18 court of law, you cannot use such a subjective interpretation
19 of scientific evidence.
20 Q. Should we ignore the paramedics found pooling?
21 A. Again, I've said you don't ignore anything. You
22 put everything together and you look at the totality because
23 what I'm saying now, the paramedic notice pooling, pooling of
24 what? What significance does that have with the patterns of

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1 injury on him at autopsy?
2 Q. So now you're saying we should consider
3 everything, right?
4 A. I said in a case like this, you look at the
5 entirety of the case. The first time you look at it, you
6 strike out the things you shouldn't evaluate. That shouldn't
7 be a foundation for my scientific opinion.
8 Q. But you didn't review the entirety of the case?
9 A. Sorry?
10 Q. You didn't review the entirety of the case?
11 A. I reviewed the case that was pertinent to my
12 opinion. I've never reviewed or witnessed statements in any
13 case and over 8,000 cases I have done in my career, I've
14 never reviewed all of the witness' statements. I review
15 material that are pertinent to my role in this case as an
16 expert in forensic pathology and neuropathology. I'm not a
17 paramedic expert. Am I making sense?
18 Q. So you indicated how important it is to do
19 testing. Did you do any testing of the wound in the hand,
20 the residues?
21 A. I did what is called a visual analysis, visual
22 inspection.
23 Q. Visual of the photo, correct?
24 A. Yes.

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1 Q. And did you take the blanket and inspect it and
2 do any kind of testing on the blanket?
3 A. It was not indicated.
4 Q. Did you take the robe and do any kind of testing
5 with the robe?
6 A. It was not indicated.
7 Q. And you've told me that you didn't take the gun
8 and test fire the gun, correct?
9 A. No, sir.
10 Q. You gave an example of rigor mortis mindset in
11 quicker than normal, and your example was a marathon runner?
12 A. That was one example I gave. That way you have
13 generalized onset of his whole body. In fact, within minutes
14 they go into generalized vital, especially if it's hot.
15 Q. And so, yeah, because you added heat to that
16 equation, I heard that in your --
17 A. Yes.
18 Q. -- running in the heat, right?
19 A. Yes, sir.
20 Q. Okay. And the combination of those two things,
21 it might bring on a quicker onset of rigor?
22 A. Generalized.
23 Q. Okay. Is there any evidence in this case that
24 Harry Leibel was doing anything as aggressive as running a

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1 marathon?
2 A. He was using his digits, manipulating a gun when
3 he was in an adrenaline state.
4 Q. While he's setting on the couch?
5 A. Committing suicide, yes. It's an adrenalin
6 state. People who commit suicide, it's an abnormal mental
7 state from start and done. It's actually a mental, like
8 mental agitation. That is why it's always compulsive.
9 Suicide is part of the compulsive behavior.
10 Q. You indicated that the concept of an average
11 spasm was created by an exotic doctor who wanted to get
12 attention for himself.
13 A. That wasn't -- some doctor -- some doctor many
14 years ago chose to name it cadaveric spasm. Why he gave it
15 that name, why cadaveric spasm, the cadaver to have spasms,
16 it's not a very accurate name, but it is in place. That's
17 why I said it's some people call it or you look at
18 literature, it's called cadaveric so the body is rigor
19 mortis.
20 Q. Okay. You've indicated you're not a gun or
21 ballistics expert, right?
22 A. Yes.
23 Q. Okay. And yet you given have an opinion
24 regarding the distance that the muzzle was to Harry Leibel's

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1 body, correct?
2 A. Yes, as a forensic pathologist, we're trained in
3 the medical aspect of ballistics, just like we're trained in
4 the medical aspect of biomechanical body because to
5 understand gunshot wounds, you need to understand the
6 fundamentals of gun. Why does a gun fire? Why is a gun
7 lethal?
8 Q. Now, a ballistics expert is going to take that
9 robe that the bullet went through and look at the gasses and
10 come up with some conclusions based on science as far as how
11 far away the gun was; is that right?
12 A. Ballistics does not do tissue. We doctors are
13 the one that do that.
14 Q. I didn't talk about tissue. I mean the robe.
15 A. Yes, he may do that. He may do that, but we take
16 the tissue to do the analysis. Photographic inspection is
17 adequate but if you want actually to take the tissue itself
18 and do analysis of the tissue to confirm but photographic
19 documentation is accurate.
20 Q. So what test did you perform in coming up with
21 your analysis that it was one to two inches away?
22 A. This is something that I want to establish is
23 common knowledge. If there's any forensic pathologist that
24 doesn't know that, his license should be taken away from.

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1 This is elementary. The range of shot of a gunshot wound,
2 it's something very basic for us as forensic pathologist. I
3 can tell you even when he's 18 inches, specific changes you
4 can see. I can tell you when it's one foot. It is all part
5 of our training.
6 Q. Okay. But you didn't perform any tests before
7 you arrived at that conclusion?
8 A. Visual inspection.
9 Q. You looked at the photos and you made your
10 opinions from that?
11 A. Yes, sir.
12 Q. What was the circumference of that sooting that
13 we saw on the back of Harry's left hand?
14 A. I cannot measure it. They should have measured
15 on autopsy. It was not measured.
16 Q. Okay. So you have no idea what the circumference
17 was?
18 A. No.
19 Q. Does that impact the distance?
20 A. No, we don't use circumference typically because
21 of what is called multi variable regression analysis. There
22 are multiple factors involved, including the size of the
23 hand, so many factors, so we don't typically use second
24 forensic of difference to make decision just like we don't

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1 use temperature of the body to determine when somebody died.
2 We don't do that because of multiple variables involved.
3 Q. If a ballistics expert testified differently than
4 you just did, would you defer him to because he's an expert?
5 A. No, because I deal with the human body. A
6 ballistics expert is not an expert on the human body, the
7 doctor is. So if it comes to opinion relating to findings on
8 a human body, I wouldn't defer to a ballistics expert, no.
9 Q. Okay. You know more than they do about that?
10 A. It's not about knowing more. This is my area of
11 expertise and training, and it's not about one person knowing
12 or not knowing. It's not about that at all.
13 Q. I've never heard the term loose contact, a loose
14 contact wound. Is that a scientific term?
15 A. Yes.
16 Q. Okay. What does that mean?
17 A. Loose contact, have contact, what it means is
18 that the muzzle of the gun is not completely, is not tight on
19 the skin. When you have the muzzle, circumference muzzling,
20 that is indeed the tight contact or hot contact.
21 Q. You agree with me that the second shot, there was
22 no way that Harry Leibel was holding the muzzle with his left
23 hand?
24 A. No, I didn't say that. I said he was

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1 manipulating the gun. Remember, he was lying on the sofa.
2 As he's losing blood, going more into act of confusion of
3 state and while he was manipulate it, maybe even trying to
4 rest it on him to die, oh, I'm not dying yet, let me shoot
5 myself again. It was a misfire.
6 Q. Let me ask my question a little more directly.
7 At the time of the second shot, was Harry Leibel's left hand
8 in any way holding onto the muzzle?
9 A. He was trying to hold onto it, yes. His hand
10 was, like I said, in intimate contact or in contact with the
11 muzzle and that was when there was a misfire. The hand went
12 on the shoulder.
13 Q. My question wasn't whether he was trying to hold
14 onto it. My question was whether he was holding onto it.
15 A. Yes, he was trying to manipulate it, trying
16 holding, the gun, the barrel. He did not mean to shoot
17 himself, that is what a misfire is.
18 Q. So is it your opinion that he was holding the
19 barrel of the gun?
20 A. He was manipulating the barrel, close to the
21 muzzle, trying to locate, maybe again to shoot himself but
22 remember, this is a rifle. So he was trying to -- this is
23 why it's atypical.
24 Q. You said something about the human brain that I

1 just wanted to ask you about. So you said if somebody came
2 up behind Harry and actually touched him with the muzzle, he
3 would have known it immediately, right?
4 A. Yes, as primitive reflex located in the brain
5 stem and it's not trying to be defensive.
6 Q. Even if he was sleeping, would that be true?
7 A. Haven't you like you're sleeping and then a fly
8 is on your face and you slap it?
9 Q. Okay. So then you gave an example of a president
10 getting shot and not even knowing he had been shot. Help me
11 understand how that works?
12 A. Why I answered that was to explain that you can
13 be shot in the chest and not die instantaneously.
14 Q. Wasn't it your testimony he didn't even know he
15 had been shot?
16 A. Ronald Regan?
17 Q. Yes.
18 A. Yeah, he was shot. They pushed him into the car.
19 He didn't know then. He even told the secret service you
20 shoved me too hard. Get off me. Then suddenly he started
21 coughing. So what why I give that example was, yes, you can
22 be shot in the chest and don't die immediately and still be
23 engaged in other activities.
24 Q. And you would still have electricity in you?

1 A. In your heart?
2 Q. Yes.
3 A. Yes, sir. Yes, sir.
4 Q. I wanted to make sure I understood your testimony
5 regarding the first shot, and what was the path it traveled
6 of the projectile?
7 A. The projectile was upward, backward and leftward.
8 Q. Okay. What type of ammunition was used?
9 A. It used a type of ammunition I saw was the type I
10 would splinter upon entrance of soft tissue. Again, this is
11 now you're going into ballistics. I'm not an expert in that,
12 yeah.
13 Q. Okay, great. If I understood correctly, you're
14 saying when his body takes that shot, it dislocated or
15 fractured his clavicle?
16 A. No.
17 Q. Okay. Tell me.
18 A. His hand was not extended because if the hand is
19 extended, the force of the impact wouldn't dislocate the
20 clavicle. So when it's such a pattern, not because of this,
21 this is what we study. When it's such a pattern of clavicle
22 acromial fracture dislocation, like you saw in the X-ray,
23 that was not mentioned in the autopsy report. What it shows
24 the arm was forcefully moved while it was still flexed.

1 Q. But what made the arm forcefully move?
2 A. The -- remember, the gun went through. The
3 bullet was able to go through the entirety of the chest into
4 the arm because it still had kinetic energy?
5 Q. So it was the force of the fragments coming up
6 through his body that --
7 A. The force of the shot.
8 Q. The force of the shot?
9 A. Yeah, and, remember, because it's close range.
10 The momentum of the shot emptied completely into his body and
11 that was why the bullet passed through and through, and it
12 was also a rifle shot. Rifle -- the bullet of rifles
13 sometimes could travel up to 300 feet per second. Handguns
14 is about 1,200. So the force of the shot because it was a
15 rifle pushed because the shoulder joint was slightly flexed,
16 not fully extended, shoved the shoulder outwards and caused
17 fracture.
18 Q. Do you agree with the ballistics expert that as
19 those fragments traveled through those body, they would lose
20 kinetic energy?
21 A. Yes, they would lose energy that is why they
22 settled in the body. But as they continue because it's a
23 rifle shot, it will continue traveling, the bullet if it goes
24 through the entirety. By the time it entered the arm, it

1 still had energy. And, remember, it still had energy to
2 cause the contusion so this is a high velocity wound because
3 it's a rifle?
4 Q. So understanding your opinion in that first shot,
5 your opinion is that Harry Leibel's arm -- left arm was down,
6 correct?
7 A. No, I thought his left upper extremity was
8 manipulating the rifle, and it wasn't extended. It wasn't
9 like --
10 Q. Where was it?
11 A. Sorry?
12 Q. Where was it?
13 A. It was close to his body and reaching out close,
14 trying to control the reaching out of the barrel of the gun
15 to support it to shoot himself, and he's a taller guy. The
16 attorney who made the demonstration is shorter, so his trunk
17 would be higher than the attorney's.
18 Q. Okay. So his arm is like this when he shot?
19 A. His arm -- all I could say, they were not there
20 when it happened. All I can say is his hand was not extended
21 out.
22 Q. Okay. And what is your opinion as to how all
23 that shrapnel traveled down his arm and exited right here,
24 how did that happen?

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1 A. That happens when it's -- if you notice, you're
2 axilla when you slightly flex comes down, okay? Why it
3 happens, you have blood vessels and nerves going to your
4 upper extremities, so you need some lactic. Otherwise, you
5 tear your blood vessels. So whenever you move your arm
6 slightly, it could travel through the chest, through the
7 axilla without exiting the skin into the arm.
8 Q. Okay. So how did those fragments -- what causes
9 fragments to turn?
10 A. The fragment, remember, when we take x-rays, we
11 take it anatomic position. So when you set down anatomic
12 position, you think the fragment is turned downwards, am I
13 making sense?
14 Q. I don't know.
15 A. The picture was taken with his hands by his side.
16 When you see like it looks like he's turned downward, he
17 didn't. If you raise your hand slightly above, it's actually
18 a leaning trajectory and that was what Dr. Kubiczek in his
19 report did not say it went leftward, backwards and upwards
20 and then downward. He didn't say that. He actually agrees
21 with me that it was backwards, leftward and upward.
22 Q. Dr. Kubiczek testified that the arm was up like
23 this at the time of the shot?
24 A. Dr. Kubiczek did not mention the fracture.

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1 Dr. Kubiczek said it was multiple gunshot wounds.
2 Dr. Kubiczek did not describe the soot that was around the
3 wound. So there was so many things wrong with his report.
4 He did not take any section of the liver, any sections of the
5 brain. He did not even describe the fatty liver. So, yes,
6 he is a very good friend of mine. I respect him but in this
7 case, there was things wrong with this. I discussed it with
8 him personally before I came here.
9 Q. You talked about the measurements of the arm
10 being done incorrectly, right?
11 A. Yes, sir.
12 Q. Do you dispute that the tape measure or the
13 accuracy of the tape measure that was depicted in that
14 photograph?
15 A. No. Remember, the -- yes, I dispute it.
16 Remember, the --
17 Q. You dispute the accuracy of the tape measurement?
18 A. Yes, I dispute it. Remember, the judge's opinion
19 you read, that if your methodology is lacking or wanting,
20 your results are inaccurate. So methodology is insufficient,
21 is inadequate, is wrong. And so the outcome of that
22 methodology, scientific issue would be dismissed.
23 Q. A few minutes ago you did a demonstration with
24 Ms. Brown and she told you that Dr. Kubiczek measured her arm

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1 in front of the jury?
2 A. Why she said that was because she said that where
3 he measured was similar to -- what he measured was similar to
4 Harry's upper arm length.
5 Q. The way they measured Ms. Brown's arm was similar
6 to the way it was measured by Dr. Kubiczek when he looked at
7 Harry Leibel.
8 A. Yes. When he brought up the measurement of the
9 expert is because of legal issues.
10 Q. So the measurements of her arm was inaccurate
11 also?
12 A. It's not scientifically valid. It's not to
13 measure reach because that is why you're measuring your
14 extremity. To measure somebody's reach, you need to start
15 from the midline of the body. If you don't want to start
16 from the midline, you start from the neck and then go, and
17 you don't go inwards because you're measuring reach. Reach,
18 you go outwards, outwards to the tip but if you notice in
19 that case, it's not inward. From the axilla inward.
20 Q. So this demonstration was inaccurate because
21 Ms. Brown's arm wasn't measured?
22 A. The demonstration was not about the length of her
23 arm. The demonstration was just to show that assuming this
24 case was a homicide was inaccurate.

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1 Q. Are we supposed to disregard then the length of
2 Mr. Leibel's are?
3 A. Sorry?
4 Q. Should we disregard the length of Mr. Leibel's
5 arm?
6 A. Again, we shouldn't disregard it. We put
7 totality of the story. You look at the methodology. It was
8 inadequate. They measured it wrongly. So you can see that
9 you give it weight, like the evidentiary weight. The weight
10 I will give it would be low because of the methodology that
11 is inadequate. So I'll give it a low score, push it down.
12 This process is called differential diagnosis, so I'll score
13 it low, not that I would disregard it, no.
14 Q. In the demonstration for the first shot, the gun
15 -- the butt of the gun was on the floor; is that right?
16 A. I don't know where it was. Nobody can tell you
17 exactly where it was.
18 Q. No, I'm asking in the demonstration, the butt of
19 the gun was on the floor; is that correct?
20 A. It could have been on the floor or we want to
21 demonstrate that it is probable that a man like Harry could
22 kill himself with a rifle.
23 THE COURT: Sir, what I'm asking you to do is to
24 listen to his question. The question was during the

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1 demonstration, was the butt of the gun on the floor. He
2 didn't ask you during the shooting.
3 THE WITNESS: Okay.
4 THE COURT: He asked you about the demonstration.
5 That's the only question you're asked right now. There may
6 be other questions later but during the demonstration, was
7 the butt of the gun on the floor, that's yes or no.
8 THE WITNESS: I don't recall if it was on the
9 floor.
10 THE COURT: He doesn't recall.
11 Q. (BY MR. GREGORY:) You don't know?
12 A. I wasn't paying attention because that wasn't
13 what the demonstration was for.
14 Q. Since you're not a ballistics expert, you
15 couldn't tell us what the kick of the gun would do if it was
16 against the floor, can you?
17 A. What?
18 Q. What the kick of the gun would do?
19 A. We don't call it kick, backfire.
20 Q. Backfire?
21 A. It recoil, the recoil. Could you repeat the
22 question?
23 Q. Yeah. You're not a ballistics expert so you
24 can't testify what would happen if you put the butt of the

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1 gun on the floor and shot it, what would happen to the gun?
2 A. Every gun has a recoil capability, every gun so
3 there would be recoil.
4 Q. Did you test the trigger pull of the gun?
5 A. No, that is ballistics, that is above my pay
6 grad.
7 THE COURT REPORTER: That is what?
8 THE WITNESS: Above my pay grade. Above my pay
9 grade.
10 Q. (BY MR. GREGORY:) You didn't weigh the gun?
11 A. No, that is true.
12 Q. And when you did the demonstration for shot
13 number one, Ms. Brown had both of her hands on that gun,
14 didn't she?
15 A. Yes.
16 Q. Okay. And the muzzle of the gun was touching her
17 torso, correct?
18 A. Yes.
19 Q. And she was seated at the front, the very front
20 edge of the couch; is that right?
21 A. Possibly, yes.
22 Q. Right here?
23 A. Yes.
24 Q. Okay. And then for shot number two, now she's

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1 back reclined on the couch, correct?
2 A. Yes, because the human body, when you're shot,
3 you're bleeding, you're going to fall back.
4 Q. And it's your testimony, again, I just want to
5 make sure I understand, when that second shot was fired,
6 Harry was manipulating the barrel of the gun with his left
7 hand?
8 A. With both hands.
9 Q. Both hands?
10 A. He was manipulating the gun.
11 Q. Okay.
12 A. It was a misfire.
13 Q. How do you know it was a misfire?
14 A. Because of my education and training, cases I've
15 seen, experience. Misfires happen a lot. In fact, sometimes
16 you actually see the misfire before the fatal shot or
17 sometimes they actually do it intentionally. We call it
18 hesitation, hesitation wounds. They test the gun first on
19 themselves and actually shoot your hand sometimes before they
20 now give the fatal shot.
21 Q. You were talking about rigor mortis. You talked
22 about heat from a bullet can cause rigor?
23 A. No. In this case, on the side of the gunshot
24 wound, and I was saying in addition to the rigor starting in

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1 the small extremities, the heat of the gun could also
2 contribute why it was only a one side.
3 Q. So the same thing would be said of this wound
4 then, wouldn't the heat cause rigor mortis over on this side
5 of his body?
6 A. Rigor mortis is over joint. Side of the body,
7 the chest, abdomen, heart. Soft tissue does not activate
8 rigor mortis. Rigor mortis is inability to move a joint
9 because of the rigidity of the muscles.
10 Q. So, doctor, you disagree with the opinions of the
11 paramedics in this case?
12 A. I wouldn't -- I don't disagree with people
13 because that is not my role. I can't play God. All I'm
14 saying is the evidence in this case --
15 Q. You disagree --
16 A. -- does not support the allegation that this is a
17 homicide. The paramedics has the constitutional right and
18 the professional right to say whatever he wants to say. I'm
19 not here to agree or disagree with anybody. I'm simply here
20 with my training, expertise and experience. I looked at
21 scientific evidence, and I'm telling you this is not a
22 homicide. Tatiana did not kill Harry. This is suicide.
23 Q. You don't give much weight to what the paramedics
24 said?

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1 A. I think I said this before.
2 THE COURT: Well, wait a minute. If you're going
3 to make that statement, ask him about a particular statement
4 that one or more paramedics would have said. The question is
5 too vague for him to even pose an answer to it.
6 Q. (BY MR. GREGORY:) Well, the paramedics indicated
7 that they thought it didn't look like the shooting had just
8 occurred.
9 A. I said what you just said, the paramedics talked.
10 You're free to think whatever you want to think, but you're
11 not to try to interpret evidence of how to interpret it. The
12 paramedics is free to think whatever he wants and support his
13 right to do that, but he does not have the right to interpret
14 the scientific evidence anyway he wants, that is a point I'm
15 making.
16 Q. And the police officers in this case, you
17 disregard what they have stated?
18 A. The police officers are going to --
19 MS. BROWN: Again, that's too general.
20 THE COURT: Sustained. You're welcome to ask him
21 those questions but you have to be more specific about what
22 he disagrees with.
23 Q. (BY MR. GREGORY:) In concluding or coming to
24 your conclusion, did you give any weight to statements made

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1 by police officers?
2 A. The weight, like I have said in my differential
3 diagnosis process, in this case, my methodology, the weight
4 of what a police officer said in terms of the cause of death
5 is down. The weight -- my foundational purpose of that is
6 weighed down. The police is free to assume and say whatever
7 they want to say. They have that right.
8 But in a case like this, the cause of death is
9 scientific and medical, and I completely and totally disagree
10 with the interpretation of medical evidence.
11 Q. Okay. So what about Dr. Kubiczek's opinion, do
12 you disregard his opinion?
13 A. His opinion, like I have said, he said multiple
14 gunshot wounds. I told you personally this is not the case
15 of multiple gunshot wounds. Dr. Kubiczek was not the one who
16 determined this to be a homicide. In fact, in the report, it
17 says the manner of death would be determined by the Douglas
18 County Sheriff's Coroner. Why did do that, I don't know.
19 He's pretty much deferring a medical duty to a police
20 officer.
21 Q. Are you aware that that's the law in the State of
22 Nevada?
23 MS. BROWN: I would object, Your Honor. That's
24 not the law.

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1 MR. GREGORY: It is the law.
2 THE COURT: Sustained.
3 Q. (BY MR. GREGORY:) So you disregard
4 Dr. Kubiczek's opinion?
5 A. Sorry.
6 Q. You disregard Dr. Kubiczek's opinions?
7 A. I don't --
8 MS. BROWN: Objection, Your Honor. Again, he's
9 asking for opinions, if he disagrees with one.
10 THE COURT: Overruled. Well, again, though, you
11 do need to be fairly specific so remember that, sir. So I
12 understand the question, but it's almost like a compound
13 question and so it's -- unless you want a narrative answer,
14 then you need to ask about specific opinion, sir.
15 Q. (BY MR. GREGORY:) You read Matt Noedel's report
16 in this case?
17 A. Sorry?
18 Q. You read Matt Noedel's report; is that correct?
19 A. Who is Matt Noedel, I'm sorry?
20 Q. Maybe you didn't read his report. He's the
21 ballistics expert.
22 A. I perused through it. I did not read it because
23 I was not coming in here as a ballistics expert.
24 Q. Okay. You would know if you read his report that

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1 he gave conclusions regarding the distances of the shots that
2 were fired?
3 A. The distance I think that I remember vividly but
4 I think he may have said that the wound on the chest was
5 about two or three inches, am I correct? Help me out,
6 please.
7 Q. I'm just asking if you read the report?
8 A. Yes, I perused through it. I didn't spend time
9 on the report as I spent with the autopsy report.
10 Q. Because you are not an expert in that area, you
11 would defer to his opinions in that regard?
12 A. Not in matters relating to medical determination
13 of cause and manner of death, no.
14 Q. What about distance of shots fired?
15 A. Shot on the body, no.
16 Q. All right. Thank you. I have nothing further.
17 THE COURT: Ms. Brown?
18 MS. BROWN: Thank you, Your Honor.
19 THE COURT: Ms. Jackson, are you ok?
20 THE COURT REPORTER: Yes.
21 REDIRECT EXAMINATION
22 BY MS. BROWN:
23 Q. I'm showing you what has been marked as
24 Exhibit 54. If we are looking for the measurement from just

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1 the general measurement from the armpit to the end of the
2 fingers, this would be an accurate way to measure that?
3 A. Yes.
4 Q. But it's not an accurate way to measure reach?
5 A. Reach, yes, it's not.
6 Q. Okay. And when you're talking about the marathon
7 runner and you said that can lead to basically set an onset
8 of generalized rigor mortis if they die in the sun?
9 A. Yes, ma'am.
10 Q. And generalized would be more all over the body
11 as opposed to an isolated?
12 A. Yes, ma'am.
13 Q. Okay. You did not have access to Mr. Leibel to
14 do any testing on him; is that correct?
15 A. Could you repeat that?
16 Q. You didn't have access to the body of Mr. Leibel
17 to do any testing at all on him; is that correct?
18 A. No, ma'am, I did not.
19 Q. And the one thing that you were specifically
20 looking at, the liver and the brain, you requested
21 microscopic slides on those tissues; is that correct?
22 A. Yes, ma'am.
23 Q. And those weren't available?
24 A. Yes, ma'am.

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1 Q. Showing you what's been marked as Exhibit 149 for
2 identification, can you go ahead and read through that.
3 A. Yes, I remember that e-mail.
4 Q. What is that e-mail?
5 A. It was an e-mail you sent me instructing me on
6 how to write my report that the law states.
7 THE COURT: Don't -- sir, don't say what it says.
8 THE WITNESS: Sorry.
9 THE COURT: It's not in evidence. Lay a
10 foundation.
11 Q. (BY MS. BROWN:) So do you -- you recognize this
12 e-mail?
13 A. Yes, ma'am.
14 Q. And it was one I sent to you back in November?
15 A. Yes, ma'am.
16 Q. And is it a fair and accurate copy of that e-mail
17 I sent to you?
18 A. Yes, ma'am.
19 MS. BROWN: Your Honor, I would offer Exhibit
20 141.
21 THE COURT: Objection, Mr. Gregory?
22 MR. GREGORY: No objection.
23 THE COURT: Then it's admitted.
24 Q. (BY MS. BROWN:) And this e-mail I sent you a

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1 copy of our discovery statute and the requirement of the
2 brief summary I needed for purposes of listing you as an
3 expert in our notice of experts; is that correct?
4 A. Yes, ma'am.
5 Q. And so that request from me for a brief statement
6 regarding the subject matter of which the expert testimony is
7 expected to testify was what you responded to with the report
8 that Mr. Gregory was referring to?
9 A. Yes, ma'am.
10 Q. And showing you what's been admitted as
11 Exhibit 73, you recognize this scene as the one you were
12 shown? Do you recognize this scene?
13 A. Yes, ma'am.
14 Q. And what is that?
15 A. The scene of the house with the sofa and Harry
16 lying on the couch.
17 Q. And in this photograph, there's several places
18 where there's blood, including smeared on the couch; is that
19 correct?
20 THE COURT: Do you want to display it so that
21 people can see what you're talking about?
22 Doctor, you can see it up there. You can see it
23 right in front of you also I believe.
24 THE WITNESS: Essentially, smears of blood

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1 indicating where he was moved from the sofa.
2 Q. (BY MS. BROWN:) Let me just ask, there's
3 different areas of blood, including there's Mr. Leibel in the
4 foreground, there's smears of blood on the couch and pools of
5 blood on the couch?
6 A. It's a small amount. Well, yes, yes.
7 Q. Okay. And they are different consistencies and
8 thickness?
9 A. Yes.
10 Q. In listening to the taped interviews of
11 Ms. Leibel, you could tell she had a heavy Russian accent; is
12 that correct?
13 A. Yes, I remember I called you to ask you what her
14 ethnicity was. I have an accent. You know, she has an
15 accent. You told me she was Russian.
16 Q. And Mr. Gregory was questioning you about a case
17 called Pritchard v. Dow?
18 A. Yes, ma'am.
19 Q. When did that judgment he was reading from occur?
20 A. That was about -- this is 2015, about eight years
21 ago.
22 Q. And what was the issue that came up in Pritchard
23 V. Dow?
24 A. The issue was Mr. Pritchard had Hodgkin lymphoma.

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1 He had walked for Dow Chemicals, a big corporation for 25
2 years where he was exposed to some chemicals. He was also
3 adding onto that after the fact he was an alcoholic, that was
4 not revealed to me. So they wanted me to do a medical legal
5 report, what we call a causation report. It's not a criminal
6 case. It's a civil case. So that Dow Chemicals would pay
7 Mr. Pritchard compensation for his cancer.

8 So Dow Chemicals being a corporation hired a very
9 big law firm, and their strategy was to exclude me because if
10 they exclude me, the case was closed. So I was deposed. It
11 was during the deposition, I realized there was some
12 information that the attorney, Mr. Pritchard's attorney kept
13 from me but by then, it was already too late.

14 And the judge requested for papers to support my
15 opinion. I provided papers. The judge arbitrarily decided
16 that she needed a paper to show technical terminology, we
17 call odds ratio.

18 THE COURT: Would you spell that, please.

19 THE WITNESS: Odds, o-d-d-s, odds ratio.

20 THE COURT: Odds ratio.

21 THE WITNESS: If you're odds ratio is greater
22 than one, even if it's 1.1, your ratio cause the disease, but
23 the judge said in her court, we have to use an odd ratio of
24 two. Of course, there was no paper of mine that had an odds

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1 ratio of two, so she ruled I was very qualified but my
2 methodology was flawed.

3 And looking back now, I agree with her, but she
4 said I was highly qualified though, but a good thing is I
5 learned from that mistake. I've done over 8,000 -- thousands
6 of cases. I have not repeated such a mistake, and I think
7 the mistake I made in the previous case is making an
8 assumption is the case we're making in this case.

9 Q. Thank you. I have nothing further.

10 THE COURT: Mr. Gregory?

11 RE-CROSS-EXAMINATION

12 BY MR. GREGORY:

13 Q. Harry's left shoulder, the X-ray you talked
14 about, there was two different things you said. You called
15 it a fracture, and I think you called it something different.
16 How do you characterize that?

17 A. The one on the skin is a graze wound from the
18 wound, the shot trajectory grazed the shoulder. This is on
19 the skin. But inside the body in the skeleton, that was a
20 fracture dislocation of a specific if joint. The acromial
21 clavicle joint collecting the scapula to the clavicle.

22 Q. The autopsy is done at a time when the person is
23 in full rigor, does the pathologist have to break anything?

24 A. No, not the shoulder. Yu break the ribs, not the

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1 shoulder, and I checked and the autopsy pictures to see if
2 Dr. Kubiczek dissected it to expose it, he did not.

3 Q. You can't tell from that photograph or that X-ray
4 whether that's a post mortem wound or pre?

5 A. It's pre mortem because the x-rays were taken
6 before the autopsy.

7 Q. Well, he's dead at the time of the autopsy,
8 right?

9 A. Yes, dead or a fracture after -- before you die,
10 the fracture will remain the same. The acromio clavicle
11 joint is one of the smaller --

12 MS. BROWN: Your Honor, I would object because
13 we're going way beyond the scope of my questioning.

14 THE COURT: That's sustained.

15 MR. GREGORY: Your Honor, I may recall him then.
16 Then we'll go to a different subject and that is rigor
17 mortis.

18 Q. You testified about --

19 MS. BROWN: Your Honor, again, we're going beyond
20 the scope, if it's about the marathon runner.

21 THE COURT: Go ahead.

22 MR. GREGORY: I was going --

23 THE COURT: The objection was withdrawn.

24 Q. (BY MR. GREGORY:) Where was the rigor mortis in

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1 Harry's arm?

2 A. The rigor mortis, to the best of my
3 understanding, in the small joints of the upper extremity,
4 the fingers, the hand, the wrist joint. I don't remember
5 exactly, maybe in the elbow. I don't remember exactly.

6 Q. So if the arm is on the floor in the upward
7 position, would that indicate rigor in the elbow?

8 A. Not exactly.

9 Q. Okay. What would it indicate?

10 A. It indicates so many things. It could indicate
11 what we call a subluxation. It could indicate a post mortem,
12 what is it called, hyperactivity state. It could mean so
13 many things, and that is why you don't have to make
14 assumptions on anything because there are so many things that
15 could cause one single thing. You can't make an assumption
16 just based on one thing.

17 Q. Thank you. I have nothing further.

18 THE COURT: Okay. Thank you.

19 Doctor, thank you for being here. You may step
20 down.

21 THE WITNESS: Thank you, sir.

22 THE COURT: You may be subject to being recalled
23 so I don't want you to leave the building. Don't leave the
24 building.

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1 THE WITNESS: Thank you.
2 THE COURT: Because of that, do not discuss your
3 testimony with anyone other than these three attorneys.
4 THE WITNESS: All right.
5 THE COURT: Thank you, sir.
6 (Witness excused.)
7 THE COURT: Ms. Brown?
8 MS. BROWN: Is he going to be recalled right
9 away?
10 THE COURT: I don't know. I'm not trying this
11 case.
12 So do you have another witness, ma'am?
13 MS. BROWN: No, Your Honor, that would be the
14 defense's case. We would rest.
15 THE COURT: So the defense rests?
16 Mr. Gregory. Do you have rebuttal, sir?
17 MR. GREGORY: I do have a rebuttal witness, Your
18 Honor. I would excuse Dr. Omalu. I'm not going to recall
19 him.
20 THE COURT: You're not going to recall him?
21 MR. GREGORY: I'm not going to recall him.
22 THE COURT: Could we let the doctor know he's
23 free to leave, please, the doctor who just left. He's free
24 to go.

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1 And who would you like to call, sir?
2 MR. GREGORY: Your Honor, may we approach?
3 THE COURT: Uh-huh.
4 MR. GREGORY: Do we need to canvass the defendant
5 if they are going to rest.
6 THE COURT: I'm not going to canvass her in front
7 of the jury. I might send them out. Yeah, I'll canvass her,
8 that's right, but who are you going to call?
9 MR. GREGORY: I have one witness who is a
10 neighbor.
11 THE COURT: Okay. All right. Ladies and
12 gentlemen of the jury, I'm going to excuse you for just about
13 five minutes. And during this recess, however short it is,
14 you're still admonished not to -- I apologize.
15 (Whereupon, the admonishment was given to the
16 jury by the Court not to talk about the case with anyone
17 until the case is submitted to the jury for deliberation.)
18 THE COURT: I'm going to ask you to just go to
19 the jury room. Don't go out anywhere. This will just be a
20 moment.
21 MS. BROWN: Your Honor, Ms. Henry needs to leave
22 to take Dr. Omalu to the airport. Is that okay if she's
23 absent from the courtroom?
24 THE COURT: Absolutely. Ms. Henry, you can

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1 excuse yourself, that's fine.
2 MS. HENRY: Thank you.
3 THE COURT: Ms. Henry, would you approach.
4 MS. BROWN: He's going to ask you about the legal
5 discussion.
6 THE COURT: The jury is now out of the room.
7 It's 4:45.
8 Ms. Leibel, the defense has indicated that they
9 are going to rest their case, and they have determined not to
10 call you as a witness, do you understand that?
11 THE DEFENDANT: Yes, Your Honor.
12 THE COURT: Do you understand that you have a
13 right to testify if you choose to do so?
14 THE DEFENDANT: Yes, this is my --
15 THE COURT: You're by no means compelled to
16 testify.
17 THE INTERPRETER: This is my desire.
18 THE COURT: And I'm not by any means attempting
19 to convince you to testify. I simply want to make certain
20 that you understand that you have a right to take the stand
21 and testify if you choose to do so.
22 The decision as to whether you testify is yours
23 and yours alone but should be made after consultation with
24 your attorneys and after listening to their advice. I'm not

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1 asking you what you attorney's advice was. I'm not
2 attempting to interfere with that relationship. I just want
3 the record to be clear that you understand that you have
4 right to testify. And if you want to do so, you must do so
5 now before the case proceeds any further.
6 THE INTERPRETER: I understand what Your Honor
7 has said, but this is my decision because I feel that I'm
8 innocent from the very beginning of this case.
9 THE COURT: Thank you, ma'am.
10 Are you satisfied with that canvass?
11 MR. GREGORY: Yes, Your Honor.
12 THE COURT: Are you satisfied with that canvass?
13 MS. BROWN: Yes, Your Honor.
14 THE COURT: You may have a seat. Let's bring the
15 jury back in.
16 How do you all feel about settling instructions
17 tomorrow at 8:30?
18 MS. BROWN: That's fine.
19 MR. GREGORY: Yes.
20 THE COURT: I appreciate it, I really do. If you
21 want to do it tonight, I'll stay and do it.
22 MS. BROWN: Tomorrow morning early is fine.
23 THE COURT: 8:30?
24 MS. BROWN: 8:30.

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1 THE COURT: Thank you. We'll bring the jury back
2 at 10:00.
3 Thank you, folks. Have a seat, please. I
4 appreciate it. Will counsel stipulate the presence of the
5 jury?
6 MR. GREGORY: Yes, Your Honor.
7 MS. BROWN: Yes, Your Honor.
8 THE COURT: Thank you.
9 Mr. Gregory your witness, please.
10 MR. GREGORY: Lawrence Kearney.
11 MS. BROWN: Okay if I move over by Ms. Leibel?
12 THE COURT: Sure, sure. The whole table is
13 yours.
14 Come on in, sir. Come up just near the clerks,
15 pause right there, right where you are. Raise your right
16 hand. Face the clerk.
17
18 LAWRENCE KEARNEY,
19 called as a witness on behalf of the
20 State having been first duly sworn,
21 was examined and testified as follows:
22
23 THE COURT: Thank you. Would you come up here
24 and have a seat, please, sir. If you would like, there's

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1 some water for you. I think there's an old cup, but we'll
2 throw that away. You can get it.
3 DIRECT EXAMINATION
4 BY MR. GREGORY:
5 Q. Please state your name and spell your last name.
6 A. Lawrence Kearney, K-e-a-r-n-e-y.
7 Q. And, sir, are you familiar with Harry and Tatiana
8 Leibel?
9 A. Familiar with my neighbors, yes.
10 Q. Okay. So you live close to them?
11 A. Very close.
12 Q. Where was your residence in relationship to their
13 residence back in February of 2014?
14 A. Well, my house is about 20 yards from the front
15 of their house, my kitchen window and my dinette room.
16 Q. Okay. From your residence, were you ever able to
17 hear things that were going on inside the Leibel residence?
18 A. Only when windows were open and that's typically
19 between May and the fall.
20 Q. Okay. Did you ever hear any arguing?
21 A. Yes.
22 Q. When did you hear that? What kind of frequency
23 did you hear that?
24 A. When I first moved there, which was in May of

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1 '07. I heard -- I heard arguing, you know, every now and
2 then. I can't recall entirely, that's too far back for me to
3 remember, right, but I did hear arguing and sometimes, you
4 know, you're actively listening too, but sometimes it's kind
5 of in the background but when there are things that are
6 elevated --
7 THE COURT: The question was when did you hear
8 it, so thank you for your answer.
9 The next question.
10 Q. (BY MR. GREGORY:) Let's go a little more recent.
11 If we can go back from February 23rd, 2014, when prior to
12 that had you heard any arguing?
13 A. I probably heard a couple of arguments in-between
14 July and October.
15 Q. Any argument that stood out?
16 A. One argument was the most spirited argument.
17 Q. What do you mean by most spirited?
18 A. Loud, I could hear Harry.
19 Q. Was it loud -- was it loud enough you could hear
20 what he was saying?
21 A. I could hear some things he was saying for sure.
22 It just seemed like one of those arguments that came to where
23 you're battling it out, and you kind of hit certain buttons
24 or you come to an impasse, and I could hear Harry saying,

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1 well --
2 MS. BROWN: Objection, hearsay.
3 THE COURT: Sustained.
4 MR. GREGORY: It goes to Harry's state of mind,
5 as well as Tatiana's state of mind.
6 MS. BROWN: In July and October, their state of
7 mind isn't an issue.
8 THE COURT: It's sustained.
9 Q. (BY MR. GREGORY:) So you said that one stuck out
10 in your mind because it was spirited?
11 A. Yes. Well, then you're actively listening to it
12 because it's loud, and I was working at my computer and when
13 I'm working at my computer, I'm on the side where I'm the
14 closest to the Leibel residence.
15 Q. Thank you. I have nothing further.
16 THE COURT: Questions?
17 MS. BROWN: No questions, Your Honor.
18 THE COURT: You are excused, sir. Thank you for
19 being here.
20 THE WITNESS: Okay. Thank you.
21 (Witness excused.)
22 THE COURT: Any other witnesses?
23 MR. GREGORY: No, Your Honor.
24 THE COURT: Thank you. So the State finally

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1 rests?

2 MR. GREGORY: Yes.

3 THE COURT: Okay. All right. Ladies and
4 gentlemen, at this time, we're almost at 5:00 o'clock.
5 Mostly because I'm not feeling so spunky, I've asked the
6 attorneys to meet me early tomorrow to go over the
7 instructions instead of doing it tonight, as I told you I
8 would.

9 We're going to meet at 8:30 in the morning. I'm
10 going to ask you to be here at 10:00, okay?

11 (Whereupon, the admonishment was given to the
12 jury by the Court not to talk about the case with anyone
13 until the case is submitted to the jury for deliberation.)

14 THE COURT: And I want to remind you, as I did
15 just the other day, I think that's there's a natural
16 temptation to go home and say to yourselves, well, I've heard
17 it all, I can start to decide what happened. You haven't
18 heard my instructions on the law and you haven't heard the
19 attorneys argue their cases to you.

20 So I will remind you, you're not to form or
21 express any opinion on any subject connected with the trial
22 until the case is finally submitted to you. I appreciate
23 your attention, and you're released until tomorrow at
24 10:00 a.m. Thank you very much.

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1 I'm going to ask the attorneys to stay for just a
2 minute and let me talk to you for a minute.

3 (Jury excused for the evening.)

4 THE COURT: You can have a seat. Thank you.
5 Just very briefly I wanted to talk to you. I have read your
6 proposed instructions and all, and I really don't believe
7 it's going to take us that long to settle instructions
8 tomorrow. We'll get through it.

9 Ms. Leibel has asked for a copy of the
10 instructions, particularly the interpreter has asked for a
11 copy of the instructions so I think probably so that she can
12 read through them and it makes it easier. If you've ever
13 interpreted anything, if had a chance to read it first, it
14 makes it easier.

15 As I read the instructions, it will be hard to
16 interpret it as we go along, and I wonder if there's any
17 appetite on the part of the defense to simply have a copy of
18 the instructions and not have to have the interpreter read
19 along with me as I read them to the jury.

20 If you -- if you want them to be interpreted as
21 we go through it, I'm happy to do that, and I'll order that,
22 but I would be happy to give you a copy early and have them
23 translated at a slower pace, if you would be satisfied with
24 that methodology. If you're not, you just let me know.

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1 MS. BROWN: So you're just saying they are
2 reading the instructions and each instruction to Ms. Leibel,
3 they aren't following what your voice says but they
4 eventually will all be read?

5 THE COURT: Yeah, I would give the interpreter a
6 copy. She could read them maybe before we being the process
7 because I think we're going to have plenty of time between
8 8:30 and 10:00. I think if we meet at 8:30, we'll resolve
9 the instructions. We'll probably have to retype a couple of
10 them and once we get the final set, I would be happy to give
11 them to the interpreter. They are not voluminous, as you
12 know. You've read them.

13 MS. BROWN: Uh-huh.

14 THE COURT: So they could read them to her at the
15 interpreter's pace.

16 MS. BROWN: That's fine.

17 THE COURT: Without having to try to keep up with
18 me as I read them to the jury. Now, if you want me to do it
19 that way, I'll just read them a lot slower, and I'm happy to
20 do that.

21 MS. BROWN: That's fine for them to read them at
22 a different time prior to us being in court.

23 THE COURT: And then I'll ask you to advise me as
24 to whether you believe that the set of instructions I've

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1 given you to be read to Ms. Leibel is the same as the set of
2 instructions that I read.

3 MS. BROWN: Okay.

4 THE COURT: Okay. And I'm also going to ask are
5 either of you requiring the court reporter to report the
6 instructions as I read them as you know the set of
7 instructions in the file in the record of this case? And it
8 seems to me that it's not necessary to have the court
9 reporter write them down as I go through it unless one of you
10 has an objection and says, you know, Instruction Number 11
11 said X and Your Honor said B. So would you agree to have the
12 court reporter not have to sit and report them as I read the
13 instructions?

14 MS. BROWN: Yes, Your Honor.

15 MR. GREGORY: Yes.

16 THE COURT: Okay. That will be the process that
17 we adopt. I appreciate your courtesy in agreeing to meet me
18 tomorrow morning, and I will see you at 8:30.

19 THE INTERPRETER: And, Your Honor, what time
20 would you like the interpreter to come, as well?

21 THE COURT: Ma'am, Ms. Leibel does not need to be
22 here for the settling of instructions. She'll be here for
23 all of the critical phases of this trial, but that's a very
24 informal process. Typically, we would do it if my office or

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1 I could come down and sit with the attorneys down here. I
2 don't want to get either of them sick, and I may keep some
3 distance from them.

4 It's very informal. It's not reported. Once the
5 instructions are all settled, then we'll put on the record
6 exactly what the instructions are, and then everybody has had
7 an opportunity to object or to ask for other instructions,
8 okay?

9 I would ask that the interpreter plan on being
10 here by probably about a quarter -- a quarter -- well, how
11 about 9:00? I think we'll make sure that you have time to
12 then read those. Is that acceptable to you, Mr. Gregory?

13 MR. GREGORY: It is.

14 THE COURT: And to you, Ms. Brown?

15 MS. BROWN: Yes, Your Honor.

16 THE INTERPRETER: For the Court's information, it
17 takes about three minutes to read one page, just so that you
18 know.

19 THE COURT: Well, none of these are page in
20 length.

21 THE INTERPRETER: And they are very large font?

22 THE COURT: Well, they are not large font, but
23 they are -- most of the instructions are approximately a
24 paragraph, some up to three paragraphs so I don't believe

1 STATE OF NEVADA,)
2 CARSON CITY.) ss.
3

4 I, KATHY JACKSON, Nevada Certified Court Reporter
5 Number 402, do hereby certify:

6 That I was present in the District Court in Minden, in
7 and for the State of Nevada, on February 4, 2015, for the
8 purpose of reporting in verbatim stenotype notes the
9 within-entitled Trial;

10 That the foregoing transcript, consisting of pages 1
11 through 147, is a full, true and correct transcription of
12 said Trial.

13
14 Dated at Carson City, Nevada, this 15th day
15 of June, 2015.

Kathy Jackson

KATHY JACKSON, CCR
Nevada CCR #402

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1 it's going to take you that long.

2 You be here at 9:15 if you want.

3 Is there anything else you need to raise today,
4 Mr. Gregory?

5 MR. GREGORY: No, Your Honor.

6 THE COURT: Thank you.

7 Anything from you, Ms. Brown?

8 MS. BROWN: No, Your Honor.

9 THE COURT: Okay. We're in recess.

1 CAPITOL REPORTERS
2 515 W. Fourth Street, Suite B
3 Carson City, Nevada 89703
4 775-882-5322

5 THE NINTH JUDICIAL DISTRICT COURT
6 IN AND FOR THE COUNTY OF DOUGLAS

7 STATE OF NEVADA, Case No. 14-CR-0062
8 Plaintiff, Dept. No. 1
9 Vs.
10 TATIANA LEIBEL,
11 Defendant.

12 AFFIRMATION
13 Pursuant to NRS 239B.030

14 The Undersigned does hereby affirm that the following
15 document DOES NOT contain the social security number of any
16 person: (List of document(s) attached below)

17 1) Trial -- 2/4/15

18 -or-

19 The undersigned does hereby affirm that the document
20 named below DOES contain the social security number of a
21 person as required by state or federal law or for the
22 administration of a public program or for an application for
23 a federal or state grant: (List of document(s) attached
24 containing social security number information below)

1) _____

2) _____

(Your signature) _____ (Date) 6/15/15

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In The Matter Of:

State of Nevada vs

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

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Closing Arguments - Thursday

February 5, 2015

Rough Draft

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1 CASE NO. 14-CR-0062
2 DEPT. NO. 1
3 IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
4 IN AND FOR THE COUNTY OF DOUGLAS
5 BEFORE THE HONORABLE DISTRICT COURT JUDGE, NATHAN TOD YOUNG
6
7 THE STATE OF NEVADA,
8 Plaintiff,
9 vs.
10 TATIANA LEIBEL,
11 Defendant.

12
13 Partial TRANSCRIPT OF PROCEEDINGS
14 CLOSING ARGUMENTS
15 THURSDAY, FEBRUARY 5, 2015
16

17 APPEARANCES:

18 For the State: TOM GREGORY
19 Chief Deputy District Attorney
Minden, Nevada
20 For the Defendant: KRIS BROWN
21 Attorney at Law
Minden, Nevada
22 JAMIE HENRY
23 Attorney at Law
24 Reported By: Kathy Jackson CSR
Nevada CCR #402

1 Harry controlling her. Her feelings are hurt, and she makes
2 the decision to go down a path to ultimately kill Harry. The
3 following morning at 10:00 a.m., Harry is in the living room
4 on his couch, reclined, watching supports.
5 Harry loved life, you heard that. Harry had
6 plans. In fact, a friend of his Chris Hetrick, you'll see in
7 the text messages was coming to visit him that day and did,
8 in fact, go to the residence only to find the police there
9 and the crime scene tape up and he text Harry one last time.
10 Harry, are you okay?

11 He had plans with the Joe Rajacic. He had plans
12 with his son, Justin Leibel, to restore old vehicles. Harry
13 was a survivor of cancer, but he would not survive the
14 gunshots inflicted by Tatiana Leibel.

15 So what is the evidence of murder in this case?
16 Let's talk first about the overwhelming evidence of delay and
17 what I mean by delay is the delay in time between when she
18 shot him and the time that she called 911, which you will
19 recall occurred at 11:03 in the morning.

20 To give context to all of this, you need to
21 understand the timeline and the timeline, the cell phones,
22 cell phone and the technology and all of the information that
23 can come from those are so helpful in this case.

24 You heard evidence and actually got to see the

Page 2

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1 THURSDAY, FEBRUARY 5, 2015, MINDEN, NEVADA
2 -oOo-
3 MR. GREGORY: Thank you, Your Honor. May it
4 please the Court, counsel, ladies and gentlemen of the jury,
5 good morning. Sheron Bardete, he warned his friend Harry
6 Leibel, not once, not twice, not three times but four times
7 that his wife was going to kill him, and that he should lock
8 her out of the house and kick her out. Unfortunately, Mr.
9 Bardete was correct. Harry, as you heard from the testimony
10 regarding his cell phone, had punched in that he was going to
11 call the locksmith on February 25th. Harry was two days too
12 late.
13 February 23rd, 2014, was a nice, quiet day here
14 in Douglas County, like most others that we enjoy here, but
15 fire raged that morning, the head of Tatiana Leibel. The
16 night before, you're going to hear or had heard during the
17 course of the trial and through the text messages, she had
18 plans to go visit her daughter, Lana, down in Southern
19 California and booked a hotel room for three nights. She was
20 going to leave on Saturday at 10:00 p.m. Only Harry told her
21 no, and you'll see in the text messages again that Lana keeps
22 asking Tatiana, are you coming. Are you still coming at
23 10:00? No, I'm not because Harry had gone crazy.
24 And so Tatiana changes her plans. She's tired of

1 evidence of the extractions that were done for both Tatiana's,
2 phone and Harry's phone. On Harry's phone, you see
3 communications with Chris Hetrick regarding their plans, and
4 you also see that final text message that Harry sent off to
5 his friend, Joe Rajacic.

6 On Tatiana's end, you see the text messages
7 between her and Lana discussing their plans. And so on
8 Saturday, February 22nd, in the actual extraction reports,
9 there is more information that goes beyond what's here in
10 terms of the dates, so you'll want to refer to those actual
11 exhibits. It is for demonstrative purposes.

12 At 4:35 p.m., we have a text message from Harry
13 to Chris Hetrick. I'll wait to hear from you. Hope to see
14 guys tonight. It's been too long. I hope you're both well,
15 and 4:35 Chris text back okay.

16 At 4:27 p.m., this was the text message from
17 Harry to Joe Rajacic, we read the text message in its
18 entirety. He did not include it all here, but it starts out
19 with hi, pal. Hope you're both well. We're okay, and then
20 it goes on into the political cartoons and the jokes that you
21 will recall. Those two communications are Harry's last known
22 communications that have been presented to you here.

23 At 9:34 p.m., Lana text messages Tatiana. Are
24 you still starting to drive, 10:00? Tatiana responds a few

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1 minutes later at 9:50, not yet. Harry go crazy. I need him
2 to calm down. I'll contact you little bit later, kiss.
3 10:16 p.m., Lana text messages to Tatiana. Are
4 you really coming or are you doing this to me and telling me
5 tomorrow?
6 At 11:54 p.m., Lana text messages Tatiana, can
7 you please tell me what's going on. And then at 11:16 p.m.,
8 which was the last text message that evening on Tatiana's
9 phone, I start little bit later. I send you message.
10 Now, there's other information on those
11 extraction reports which includes web history and searches
12 that are conducted. You're free to look at those in the
13 exhibits. I'm going to turn to Sunday, the very next day.
14 The first activity on Tatiana's phone that day was at 5:54 in
15 the morning where there's a Google search conducted on
16 Tatiana's phone, and the search is for gun stores in Reno,
17 Nevada.
18 And at 5:55, a search for the U.S. Firearms
19 Academy. At 5:57, another Google search for gun stores in
20 Reno, Nevada, and then at 5:57 is the booking, the hotel
21 booking.
22 At 7:03 that morning, there's a text message from
23 Lana to Tatiana. Actually, excuse me, Tatiana to Lana.
24 Unfortunately, that text message was deleted. I would love

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1 to know what it said. You'll see when you look at the phone
2 extractions, that deletions on Tatiana's phone are somewhat
3 of an anomaly. In other words, she doesn't always delete
4 text messages right away.
5 Going further into the morning, now at 9:00 is
6 when things start to get interesting. Lana wants to know
7 when her mom is coming, if she's coming at all, and so she
8 starts making repeated attempts to contact her mom.
9 At 9:13, Lana tries to call Tatiana. It's a
10 missed call. Two minutes later at 9:15, she text messages
11 Tatiana, can you please tell me what's going on because I'm
12 packing all my stuff to the car.
13 Five minutes later, she tries calling Tatiana,
14 missed call. Five minutes later, she tries calling Tatiana,
15 missed call. 9:34, calls again, missed call. 9:41, she
16 tries again, missed call, and it's not until 9:56 that she
17 finally gets a response from Tatiana, and it's a text message
18 that I talked about in my opening statement. I'm still home.
19 I have an uncomfortable situation. I'll explain a little bit
20 later.
21 Lana then texts her back at 10:03. I need to
22 know now what is going on. Are you coming or not because I
23 already told her I'm moving out. I'm here with here, and I
24 need to know. Tatiana did not respond to those text messages

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1 or those phone calls.
2 The next thing we know that happens is at 11:03
3 in the morning, Tatiana calls 911. Douglas County Sheriff's
4 Office is on scene shortly thereafter followed by the Tahoe
5 Douglas Fire Protection. At 11:15 Harry is pronounced dead,
6 11 minutes after the 911 call.
7 11:44, Tatiana calls an unidentified person and
8 finally then at 11:58, she finally calls Lana back. At
9 12:13, we have a text message on Harry's cell phone, coming
10 in from Chris Hetrick, I'll be at your house at 3:00. And
11 then at 3:46, Chris to Harry, Harry, are you home? And then
12 finally at 4:47, Harry are you okay? I saw the sheriff at
13 your house. Is everything okay? Please answer.
14 And then as we've already discussed on Tuesday,
15 February 25th, Harry has two entries on his cell phone
16 calendar. One is to call the locksmith and one is to turn on
17 the house alarm. That timeline is important because it shows
18 what's going on first with Harry. He has plans. He has a
19 friend coming over. Second with Tatiana, her daughter, Lana,
20 is absolutely blowing up her phone every five minutes or so,
21 trying to find out what's going on, what's going on, what's
22 going on until at 9:56, you have the uncomfortable situation
23 text.
24 Well, as I indicated in my opening statement

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1 what's uncomfortable is that Harry is dead. What other
2 information do you have in that regard? Well, you have none
3 other than Tatiana's own statements. Remember, Leanne
4 Brooks? Leanne Brooks had Tatiana stay at her house the
5 night of the shooting. It's a place for Tatiana to stay.
6 What did Tatiana tell her? It happened between 9:30 and
7 10:00 in the morning, her own words. That's consistent with
8 the text message that I have an uncomfortable situation.
9 What else is it consistent with, all of the testimony from
10 the first responders. You heard from a battalion chief. You
11 heard from a captain. You heard from a paramedic. You heard
12 from an engineer, and you heard from two sheriff's deputies
13 who responded.
14 What did they see when they responded shortly
15 after the 911 call? They find Harry on the floor. The blood
16 looks to be drying and coagulating. They do not smell
17 gunpowder. Dr. Omalu testified, well, it's kind of like when
18 you wear cologne, you get so used to it, you don't smell it.
19 Okay, but it's doubtful to me that the battalion chief was
20 wearing a cologne that smelled like gunpowder when he went
21 into that residence.
22 He is a bomb tech with years of experience. He
23 did not smell gunpowder. Nobody else smelled gunpowder. One
24 of the guys testified he smelled a slight odor of gunpowder.

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1 Dr. Omalu would ask you to disregard that. I would ask you
2 to consider that as one of many factors. What are the other
3 factors? There were signs of pooling. His eyes were
4 dilated. There was absolutely no electrical activity in his
5 body when they conducted a check in four different leads and
6 in four different places, no electrical activity.
7 Rigor mortis, they observed the hand on the floor
8 like this, and when they touched the hand, it goes back,
9 consistent with rigor mortis. Dr. Omalu wants to talk about
10 marathon runners in heat and what can happen to them. Harry
11 had not run a marathon. Dr. Omalu also wanted to talk about
12 how there was rigor mortis in the hand, but he didn't
13 initially want to talk about where the rigor really was which
14 was down in the elbow.
15 If you remember Dr. Omalu first said, well, it
16 sets first in the hand, in the extremities. I said wait a
17 minute. The hand was like this, so where would the rigor be?
18 Oh, well, it traveled downwards, okay. So we're talking
19 about a death. If you listen to Tatiana, death had occurred
20 about 11:03 in the morning and the minute those responders
21 walk in which is minutes later, his hand is like this. Now
22 all of those first responders found that odd, and they found
23 it inconsistent with the idea that the death had just
24 occurred.

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1 I'm not asking you to take any one of those
2 factors and find there's delay. I'm asking you to look at
3 all of those factors and find that there's overwhelming
4 evidence of delay, including her own statement that it
5 happened at 9:30 or 10:00 in the morning.
6 Why is delay important in this case? Well, it's
7 important because she told the police she called right away,
8 that's the first reason it's important. The second reason
9 it's important is if you're going to stage a murder as a
10 suicide, you might need some time to do that. So you just
11 killed somebody, and the story is going to be suicide. What
12 are you going to do? You think you might wipe the gun?
13 Might that be something you do?
14 Do you recall the testimony and evidence in this
15 case is that gun, which had to be loaded, cocked, shot,
16 cocked, shot and then cocked again had no Tatiana
17 fingerprints on it and no Harry fingerprints on it. Even
18 though the defense, you know, in the suicide theory, he had
19 both hands on that barrel, no fingerprints of that barrel of
20 Tatiana or Harry.
21 DNA, okay, here's a gun that's been handled quite
22 a bit. Jennifer Wrong comes in and tells you the levels of
23 DNA were too low to even test. Do you think she wiped the
24 gun? What else might you do? Maybe you take a shower.

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1 Maybe you wash your hands. Maybe you turn up the thermostat
2 to keep the body warm, okay, and you have to develop your
3 story to the police.
4 Tatiana calls 911. You can tell when you listen
5 to that 911 call, she's not prepared to and does not want to
6 give details of what happened. She just wants to say my
7 husband shot himself but when the operator, the dispatcher
8 keeps asking her more details, you can tell she starts to
9 equivocate and then starts giving some of the details.
10 Those details are important because later she
11 gives conflicting statements. In the 911 call, she talks
12 about being in the kitchen, hearing a shot. She returns to
13 the living room and is present when the second shot occurs.
14 She tells 911 that he shot first his hand, and that she
15 didn't know where the other shot was.
16 Later that same day when she talks with Leanne
17 Brooks, one shot. It was one shot and it was somewhere here.
18 What did she tell Captain Lucas? Captain Lucas, she tells I
19 was outside when I heard two shots. And you'll recall the
20 defense cross-examined him. They wanted to make sure there
21 wasn't a language barrier problem or he didn't misunderstand.
22 No, I took it that she was outside when the two shots
23 occurred, inconsistent statements.
24 All right. Let's talk a little bit about the two

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1 shots that were fired, you know, an awful lot about the gun
2 and those shots that were fired. You heard it from Matt
3 Noedel. Dr. Omalu said who is Matt Noedel? Matt Noedel, you
4 heard, is one of 17 people in the country who is qualified to
5 render opinions that he rendered in this case, that's who
6 Matt Noedel is.
7 Is Matt Noedel just somebody that sits back and
8 looks at some photographs, like Dr. Omalu, and make opinions,
9 no. He considered all of the evidence in the case, went and
10 got the gun, examined the gun, shot the gun, conducted tests
11 with the gun. He got the robe out. He examined the robe.
12 He conducted tests on the robe. He took the blanket. He
13 examined the blanket. He conducted tests on the blanket. He
14 went to the house and looked at the house. He looked at the
15 couch, okay, and it wasn't then until he considered all of
16 that information that he was able to start rendering his
17 opinions.
18 He told you a lot about this gun, the way it
19 functions, including interestingly when he himself shot that
20 gun, test fired it, he got stippling right here from the
21 gasses that come out of that cylinder. That's important
22 because. Dr. Kubiczek testified, remember, if Harry is
23 shooting himself, where is that cylinder going to be? Where
24 would he have stippling. Dr Kubiczek --

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1 MS. BROWN: Objection, Your Honor.
2 THE COURT: What is your objection.
3 MS. BROWN: Mischaracterization of the evidence.
4 There's not always stippling. That's a rare circumstance.
5 THE COURT: Overruled.
6 MR. GREGORY: Well, Matt Noedel got stippling, we
7 know that. Dr. Kubiczek testified Harry did not have any
8 stippling here. Matt Noedel also tested the robe to see if
9 there were gasses that would be consistent with those
10 cylinder gasses, and he found none. So Matt Noedel does all
11 of this experiencing, looks through everything and is able to
12 render his opinions.
13 He talks to you about, first, the ammunition and
14 how that first shot was called an extreme shot round,
15 designed to kill. It did what it was supposed to do in this
16 case. Enters his body and fragments and goes throughout the
17 body, striking multiple organs.
18 He talks about the length of the gun. He talks
19 about the trigger pull, how hard it is to pull the trigger.
20 He talks about the measurements from the muzzle to the
21 trigger and the muzzle to the trigger when the gun is cocked
22 and how that changes. He did all of those observations.
23 And what did he find? Dr. Omalu likes one plus
24 one equals two. In this case I like one plus one plus one

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1 equals murder, and here's what I mean by that, Exhibit Number
2 142, the first part of my equation, my math equation is the
3 photograph that's depicted on top, that's the photograph
4 taken of Harry's arm measurement taken at the autopsy.
5 I asked Dr. Omalu if he questioned the accuracy
6 of the tape measure itself. Much to my surprise, he said
7 yes. I was so surprised, I asked him again. Do you question
8 the accuracy of the tape measure itself, and he, again, said
9 yes. I would ask you folks to look at this tape measure.
10 You can decide for yourself if there's some kind of trick
11 tape measure or not. I'll leave that up to you.
12 Nonetheless, we have the tape measure up on top
13 and it shows the length of Harry's arm. Now, the defense
14 talked about, okay, well, his wrist is a little bit bent in
15 this picture; so they did the demonstration on Ms. Brown's
16 arm and the difference was three quarters of an inch. Okay,
17 give them three quarters of an inch. I would ask you to
18 think about Harry is holding that gun, isn't his wrist going
19 to be bent. It's not going to be like this, un-supportive,
20 so that's number one in the equation.
21 Number two in the equation is the measurement of
22 the gun and, again, you can decide for yourself if it's a
23 trick tape measure, but he demonstrated in this exhibit the
24 distance from the end of the muzzle to the trigger in a stage

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1 where the trigger or the hammer had not been pulled. Now,
2 remember, if the hammer is back, that trigger moves back even
3 further. So in the photograph here, where it's uncocked, it
4 shows a distance of 21 inches and that's what Mr. Noedel
5 testified to. If the hammer is back though, that trigger is
6 even further. It goes to 22 inches. Again, that's what
7 Mr. Noedel testified to. When you plug those distances in,
8 that's factor one and factor two.
9 Factor three, the other distance you need is how
10 far away was the muzzle of the gun from the body at the time
11 it was shot? Now, Matt Noedel actually did some experiencing
12 with that. He got the robe. How did they determine how far
13 away it is? Well, they do look at the wound, okay, but they
14 also look at the clothing, and they look at the gasses on the
15 clothing and based upon that they can determine how far away
16 the gun was.
17 His determination was that gun was as far as
18 18 inches away, 18 inches away, pretty impossible for Harry
19 to do that, but he gives a range, and the range is as closest
20 to, so he's got a range of two to 18 inches, okay. Most
21 likely though in the range of two to six inches.
22 Now, when you take number one plus number two,
23 plus number three, which is the distance of the muzzle to the
24 body, it equals murder. Why, because it would have been

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1 impossible, impossible for Harry to shoot himself given those
2 distances.
3 Well, could Harry have somehow stretched to make
4 it happen, contort, yeah, but there's something else in this
5 case that makes that a factor. Let's talk about what his
6 left arm was doing at the time of that first shot.
7 Dr. Kubiczek and Mr. Noedel both opined that that arm had to
8 be up, not extended. Remember, Dr. Omalu was talking about
9 it being extended. Nobody testified it was extended, up.
10 Dr. Kubiczek, remember, elbow to ear, arm was up. Matt
11 Noedel and Dr. Kubiczek, Dr. Kubiczek being the attending
12 person who actually did the autopsy. Matt Noedel being the
13 person that actually did some experiencing in this case.
14 You saw the x-rays that show the shrapnel going
15 up through that body into the arm and an exit wound right
16 here. Now, when I was listening to Dr. Omalu and he was up
17 here, I asked him, so are you saying is your opinion the arm
18 was down? No, no, I didn't say down, and he kind of held his
19 arm like this, and so we started the dialogue.
20 And I said, well, is it your opinion that the
21 shrapnel traveled up and then took a right-hand turn and went
22 straight down? No, no, no, okay? And as I questioned him,
23 his arm started going up, okay, to the point where he gets to
24 here and he actually then leans over. He's leaning this way,

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1 okay. So this was his last thing he showed. Well, that's
2 pretty darn consistent with Dr. Kubiczek and Mr. Noedel. It
3 was not Dr. Omalu's testimony that that shrapnel went up the
4 arm and then turned and came straight down, that was not his
5 testimony.

6 Shrapnel goes up in the arm and there's an exit
7 wound up there. Remember, Dr. Kubiczek testified that the
8 trajectory was from back to front, left to right. So as it's
9 traveling through the body, it's coming more closer to the
10 front of Harry's body. That's why we have the exit wound
11 here and all of the shrapnel that's on the surface right
12 here.

13 Why is the position of the arm so important?
14 When you take Dr. Kubiczek or Mr. Noedel or even Dr. Omalu is
15 because of his hand, his arm is in position, there is no way
16 his hand, his left hand could have been on the gun, no way.
17 Impossible for his left hand to be on the gun at the time of
18 the shot.

19 If his left hand isn't being used for the shot,
20 then the hypothesis has to be from the defense that it was a
21 one handed shot from Harry. So now Harry has a rifle, not a
22 handgun, it's a rifle, and he's going to do a one handed shot
23 with, and the barrel of the gun is unsupported by a hand.
24 It's unsupported by the couch. How do we know that, Matt

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1 Noedel tested the blanket, and said there weren't gasses
2 consistent with the cylinder.

3 And it couldn't have been supported by the end
4 table. You'll see the end table. Remember, the end table is
5 sitting here. The end table and arm of the chair were such
6 that if Harry was trying to push it down, it would be
7 inconsistent with the trajectory. In other words, couldn't
8 hold it down low enough.

9 So you add this weapon, it was going to be
10 suicide, a one handed shot, a one handed shot. Dr. Omalu
11 doesn't take into consideration the weight of the gun or the
12 recoil of the gun. What happens to that gun when it's fired
13 can you even hold onto the darn thing after it's fired in a
14 one handed manner, not forgetting that the shrapnel goes
15 through both of Harry's lungs, his liver and his pulmonary
16 trunk and up into his arm, that is shot number one.

17 Shot number two, you can't look at shot number
18 two all by itself. You have to look at it in context. You
19 have to remember that Harry had just sustained shot number
20 one. So here is Harry with his internal blown out, his
21 shoulder blown out. Now we've got shot number two. What
22 does Matt Noedel tell you about shot number two? Well, he
23 did distance testing.

24 What was very important to him was the

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1 circumference of the sooting that you observed on the back of
2 the hand. Amazingly, Dr. Omalu says that's not important. I
3 don't even know what the circumference was. It means nothing
4 to me. I'm not a ballistics guy, but I looked at this
5 photograph, and I think it was a close contact wound or he
6 had some different phraseology.

7 Matt Noedel, the ballistics expert, this is what
8 he does. That circumference is everything and from that, if
9 you recall, he told you when the gasses come out, they start
10 out like this and then they go out into the room. So the
11 distance of that is very important and it's why it rules out
12 that this was a contact wound. Those gasses had to escape
13 out, and it let Matt Noedel know what the trajectory or the
14 distance was. In his opinion, it was most consistent with
15 being three inches away from the hand.

16 Go back to my equation, number one, plus number
17 two in this case, number three is going to be three inches.
18 Suicide is impossible.

19 And, again, what is the theory for suicide have
20 to be at this point, that this is a one handed shot.
21 Dr. Omalu equivocated on that a little bit. I asked him
22 several times what are you saying Harry was doing with the
23 muzzle of the gun at the time it was fired? Well, he was
24 manipulating it. Well, I'm not talking about before it was

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1 fired. I'm talking about at the time it was fired. Well, he
2 was manipulating. He was showing it like this, manipulating.

3 Well, how on earth is he shot in the back of the
4 hand, right here wadding sticking out right here if he's
5 holding the barrel of that gun, impossible. We know from
6 Matt Noedel, the muzzle of that gun was three inches away
7 from the hand. Look at it from a common sense standpoint
8 when you look at the circumference of those gasses on the
9 hand, three inches, makes a lot of sense.

10 So now again, we've got this theory that it's a
11 one handed suicide. In context, he already shot himself here
12 and blown out his inside, the one handed shot, somehow was
13 able to keep hold of the gun, cocks it, shoots again and then
14 cocks it again.

15 Remember, the first demonstration of how the
16 first shot could have happened, he put the butt of the gun on
17 the floor. Again, the demonstration, two hands on the gun
18 wasn't like this, and they don't talk at all about what that
19 gun would do. What the recoil of that gun would do when the
20 butt end is pressed against something hard, like the floor or
21 the wall and push the trigger, what is going to happen to
22 that gun? No discussion of that, no -- didn't even think
23 about that. So I'm asking you to look at the equation. Look
24 at the measurements. Decide that suicide is impossible in

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1 this case.
2 Now, what is murder? Murder, as the judge has
3 instructed you, is intentionally taking someone's life. What
4 is the proof of intent in this case? As the instruction
5 said, we rarely can determine intent except by looking at the
6 circumstantial evidence. Usually people don't announce what
7 they are going to do, sometimes they do.
8 So what is the evidence in this case of intent?
9 Shot number one, it's a kill shot, extreme shock, ammunition,
10 fired at a range of two to 18 inches into Harry. Any
11 question what the intent is there? If there is any question,
12 you have a second shot fired at Harry, and then you've got
13 preparation of a third shot to Harry. All of these things
14 strongly indicative of an intent to kill. What other intent
15 could there be?
16 Dr. Omalu talked about the second shot was a
17 misfire. Matt Noedel tested that gun and said it was working
18 just fine, no indications of any misfire.
19 First degree murder as distinguished between
20 second degree murder is in addition to that intent,
21 willfulness element, you have premeditation and deliberation,
22 and the judge read you a very important instruction on that.
23 It talks about how premeditation and deliberation. We don't
24 look at time, okay, whether it's a day, an hour or a minute,

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1 instruction set, we don't look at that.
2 We look at did the person with design commit this
3 offense? What information do you have that Tatiana
4 premeditated and deliberated? Think of just the basic thing
5 she would have had to have done to commit this offense. You
6 have to get the gun. You have to load the gun. You have to
7 wait for an opportune time. You have to approach and then
8 commit the crime. And then what do you have to do? You have
9 to stage it. You have to delay, do all of the things she did
10 after.
11 She didn't call for 911 right away. She didn't
12 call for help right away. She didn't call friends and
13 family. She was delaying to put forth the falsity that Harry
14 had killed himself. All of these things indicate
15 premeditation and deliberation, and it's why when we're done
16 here today, I'm going to ask that you return the verdict of
17 murder in the first degree with the use of a deadly weapon.
18 Thank you.
19 THE COURT: Thank you. We're going to give
20 Mr. Gregory a moment just to return any exhibits that he has
21 to the clerk. We'll let them her put them in order, let
22 Ms. Brown or Ms. Henry grab any exhibits.
23 MS. BROWN: Can we do that, Your Honor? There's
24 going to be quite a few. I only get one chance.

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1 THE COURT: Do you know the numbers that you
2 need?
3 MS. BROWN: Yes, I do.
4 THE COURT: Go ahead. We'll give you all of the
5 time you need.
6 MS. BROWN: Thank you, Your Honor.
7 THE COURT: Folks, as we do this, we're going to
8 continue working through lunch and until the attorneys are
9 done and the case is finally handed to you. The Court will
10 purchase lunch for you, give you some options of where you
11 would like. You're going to have to agree on one spot,
12 unanimous verdict on the restaurant, and we'll go out and
13 we'll get lunch for you. We've got some menus. We'll pick
14 up lunch for you. I know we're approaching noon, and some of
15 you may have been thinking about that, so we're going to keep
16 working though.
17 MS. BROWN: May it please the Court.
18 THE COURT: Yes, ma'am.
19 MS. BROWN: Ladies and gentlemen of the jury,
20 Mr. Gregory. One of the instructions that I want to, again,
21 bring to your attention is presumption of innocence.
22 Ms. Leibel is presumed innocent until the contrary is proved
23 by evidence beyond a reasonable doubt. This is one of the
24 jury or one instruction that I called to your attention when

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1 we first talked both in voir dire and at the beginning of the
2 case.
3 And because Ms. Leibel comes in front of you, she
4 does not have to prove anything. It's not our burden to
5 prove this is suicide. It's the State's burden to come
6 forward with enough evidence to convince you that this is
7 murder.
8 Yesterday you heard Dr. Omalu testify and even
9 though he concluded to a reasonable degree of medical
10 certainty that this was suicide, that we presented that
11 evidence to you, that is not our burden. It's the State's
12 burden to bring forward evidence to show that this is murder.
13 But that statement of Dr. Omalu, if nothing else,
14 provides a reasonable doubt in this case. You heard his
15 qualifications, and you know he relied on scientific
16 evidence, on medical evidence that he's an expert in. He
17 then applies what he knows and the wounds he sees on the body
18 to the evidence he's familiar with and the crime scene, and
19 he makes that determination, and he told you that this is a
20 suicide.
21 But probably one of the most important things he
22 said was on cross-examination, when he's being questioned
23 concerning the Pritchard case, at that point, he said, yes,
24 on that occasion I made a mistake. I made an assumption I

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1 shouldn't have made and it was wrong of me. Since that time,
2 over eight years, his qualifications have not been held into
3 question again. One time, he said that was my mistake. I
4 made an assumption I shouldn't have made.

5 Now, when we say the term presumption of
6 innocence, it almost requires some kind of mental gymnastics
7 because you know that Ms. Leibel has already been arrested in
8 this case. We know that she sits there in the defendant's
9 chair. She's called the defendant, and you know she's
10 already been charged with murder, so it's kind of hard in
11 your brain to say, how has that all come about, and then she
12 sits there innocent? That's a presumption the law requires
13 you to make, and now she's asking you to go back through the
14 evidence for the reasons I explained in open court, that the
15 officers in this case in the very beginning formed an opinion
16 that this was murder. And once you form an opinion, you
17 don't start looking at the other options.

18 Once they formed an opinion, they started looking
19 for evidence to support that conclusion because you become
20 invested in your own opinion, and your profession starts
21 relying on your own opinion.

22 I told you at the very beginning, the hardest
23 thing to change in the world is your own opinion. Once those
24 officers had formed that opinion, then they looked at the

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1 evidence in light of that opinion. I too want to take you
2 back to February 23rd because that was a day that changed
3 Tatiana Leibel's life forever. That was the day her husband
4 died, almost in front of her eyes. That was the day she was
5 -- after her husband's death, she was excluded from her own
6 home. She couldn't be there with Harry.

7 At a time when she shove been grieving, she
8 voluntarily went to the station to talk to officers. For the
9 next eight hours, she answered their questions over and over
10 and over again. Since that time, she's continued to protest
11 her innocence. And at that time, she cooperated fully with
12 those officers. When they asked her for consent to search
13 her house, nothing -- no one had done at the scene but when
14 one of the investigators during the interview asked her to
15 search her house, she gave it. She gave consent to search
16 her phone because she knew there were text messages on there
17 that were important which she had been trying to tell the
18 police about the exchanges about her and Lana.

19 I want to talk to you about this 911 call. You
20 heard it before. I think it's an important piece of evidence
21 because it gives you a snapshot of that day. You can hear
22 Ms. Leibel's words. You can hear her emotions in a way that
23 no testimony could ever portray. It's real time. It's
24 happening then. This will be Exhibit 56.

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1 (Whereupon, 911 tape was played.)

2 MS. BROWN: This is a woman in the immediacy of
3 the moment. This is a woman who has just lost her husband of
4 ten years. This is a woman who is trying to comply with the
5 instruction given to her by 911. This is not a whom who just
6 went and took a shower. This isn't a woman who just wiped
7 her fingerprints off a gun.

8 And if you believe the story that the gun was
9 cocked at that time while she's wiping it clean to uncock it,
10 this is a woman who is trying to seek help for her husband,
11 and she's not just crying. She's struggling to breathe, and
12 she can't breathe, and some of the words she uses, you can
13 hear. They are not always in the right order. Sometimes she
14 uses the wrong word. At the end of that exchange is the put
15 him on his back. His right back or his left back?

16 She still struggles with the English language,
17 and she's trying to explain to operator what happened, and
18 she does start out with there was an argument concerning my
19 daughter, Lana, and the dispatch directed her back and trying
20 to stay more on point of what is the injuries. And at one
21 point she does say, he shoot two times. He first shoot his
22 hand, and then he shoot somewhere, I don't know. Before
23 that, she says I'm not seeing bleeding. I see one hand, one
24 hand. He shoot two times.

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1 So I don't think this is evidence she's trying to
2 report that he shot himself in the hand the first time and
3 another place a second time. I think, again, she's
4 struggling with English, struggling with her own emotions
5 trying to say I don't know. And what everybody sees when
6 they go in that house after that is this injury to the hand,
7 and so that would be the most obvious injury to her when she
8 takes her hands off her face and sees her husband dead.

9 Another thing you hear in that tape is and
10 remember way back at the beginning of the trial, Deputy
11 Williamson and Deputy Haley both testified there was a delay
12 in answering the door. They had to ring the bell. They had
13 to knock on the door. They had time to go around. One of
14 them went around to the side of house to look for another way
15 inside. They finally had to call 911 to get them to call her
16 back to tell her to come open the door.

17 What you hear on that tape, however, is the
18 doorbell rings once, her immediately start going that
19 direction. The only things that delays her is she has Bo,
20 the dog, who is obviously in the room with her. You can hear
21 him barking and hearing the variations from the distance that
22 he moves from the telephone, and that was the delay to put
23 the dog away.

24 But this report of a delay was later transmitted

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1 to Investigator Garren when he arrived on the scene, and so
2 this suspicion that something had gone on that was not quite
3 right because she wasn't waiting outside because she didn't
4 immediately come to the door, the suspicion then followed as
5 this investigation continued.

6 And finally, as I said, on this tape, you hear
7 the dog, and we talked about the dog with Dave Billau
8 concerning trace evidence. Now, if the dog had been in the
9 house the whole time after she shot Harry, she went to the
10 bathroom to take a shower. She was messing around with the
11 gun. She was in various parts of the house. The dog, most
12 likely a friendly dog, a dog that was affectionate with Harry
13 would have been in and around Harry, and there would have
14 been tracks of blood, and that's not evidence, and it's not
15 logical she would put the dog outside to kill Harry and then
16 let him back in right when she's ready to call 911. There's
17 no sense in that.

18 But nothing was ever done to look at Bo to see if
19 there was some support for what she was saying to the
20 officers. He was kept in the room until close 'til 9:00
21 o'clock, and there's no indication that he was examined, and
22 he left the house, and there was evidence on him that went
23 with him.

24 I think finally the most important thing in that

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1 911 tape is a variant was when the officers have arrived and
2 the dispatch saying, okay, everything is okay now, and she
3 says together you stay with me. Then she reaches out to
4 somebody who represents law enforcement to say I'm alone.
5 I'm scared. Together you stay with me. So that person, that
6 law enforcement officer would stay on the phone with her
7 until others arrived, and she had some companionship out
8 there.

9 And you've heard the descriptions of Tatiana at
10 the scene. Chris Lucas who is a paramedic said what he saw
11 was emotions that were consistent with a person whose spouse
12 had just committed suicide. She was upset and crying. You
13 also have confirmed that she had a heavy Russian accent, that
14 she was difficult to understand. Again, I would point out to
15 her in terms of outside could very well mean out and this was
16 brought up, outside could mean outside the living room and
17 then I went inside the living room.

18 There was testimony that she was overly
19 hysterical and admitted that people in difficult situations
20 handle things in different ways.

21 Nick Robidart said she was crying, hysterical and
22 even saying unusual things. And, again, this is something
23 that would be typical of someone who is very hysterical. At
24 the time she got there, she's grieving. She's mourning and

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1 saying could you please go and feed the fish because her mind
2 is going through who is going to shovel the snow. This is --
3 my life has changed at this point.

4 Deputy Williamson also confirmed she was
5 hyperventilating, panicked and that she was at times
6 difficult to understand and his first contact with her, he
7 asked her to get him a verbal statement, and she went through
8 the story. She and Mr. Leibel were arguing because she
9 wanted to go down and visit her daughter in California, and
10 that he told her he'll kill myself if you go.

11 Ms. Leibel had planned on leaving the day before
12 but hadn't done it so she changed her plans to that morning
13 and that morning, Harry started carrying around a gun with
14 him. He sat in the living room. He sat with that gun, and
15 this would just as equally justify a text to Lana, we have an
16 uncomfortable situation here. I can't come right now.

17 And the night before, she had texted I cannot
18 leave. Harry is very upset. I have to wait for him to cool
19 down. Confirming, again, with real time documentation that
20 there was this argument going on. There's nothing to say
21 that that statement to Lana is anything besides Harry is
22 acting weird. He's mad again. We have an uncomfortable
23 situation. I need to get back to you.

24 She talks about the mourning and they sat down to

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1 watch TV, and things calmed down some, and then she thought
2 this is a good time to bring it up again. I want see my
3 daughter. You can go through the text, and you'll see the
4 text of her daughter begging, are you going to flake on me
5 this time again. I've got three kids. I'm moving out of the
6 apartment. This is very important to her.

7 And when she brings it up again, the argument
8 starts again and she gets frustrated, and she walks off into
9 the kitchen, and the next thing she hears is a boom, and she
10 comes running into the living room, and she sees Harry on the
11 couch. There's, obviously, something wrong with him, and
12 she's aware there's just been a gunshot, and she covers her
13 face, oh, Harry what have you done? And at that time there's
14 another boom.

15 And then she says runs into the kitchen and calls
16 911, and you have Exhibit Number 59. Again, she was
17 cooperating with the officers. He wanted to get a written
18 statement from her. She doesn't write well in English. And
19 so she said, you know, I can tell you and the officers
20 dictated for you but, again, she went ahead and gave them a
21 written statement of what occurred.

22 There was also an attempt by her to give a
23 description to Deputy Williamson of what she saw when she
24 came back into the room in-between when she first saw Harry

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1 before she covered her eyes, she could just remember his hand
2 somehow on the gun. Everybody interpreted this to me this is
3 how I had the gun positioned at the time I was going to do
4 the second shot.

5 What you're seeing are snapshots in time when she
6 ran in there. She saw him in a position that possibly he had
7 finished a shot and was repositioning for another one. And
8 so with her statements of he had his hands on his lap,
9 holding the gun. It's not saying this is what was going to
10 happen next. It's simply saying this is what is going to
11 happen or what just happened could be happening next.

12 And, again, she was cooperative with the
13 officers. She didn't have to -- during the written
14 statement, they asked her to come down and give an interview
15 and during those interviews, she had agreed to have her phone
16 searched because there were texts in there and she never made
17 an attempt to be secretive in any way.

18 Another thing that led to this conclusion that
19 there was some kind of delay in her reporting was a lot based
20 on the testimony of the paramedics, and Dr. Omalu was asked
21 for his attitude concerning those paramedics by Mr. Gregory,
22 him making some like derogatory, I think, of them, lower than
23 me. You don't value their opinion.

24 And Dr. Omalu wasn't trying to be arrogant or put

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1 down the paramedics. He was saying this, again, is the value
2 of information I'm taking, and I value information of the
3 paramedics as to this faction and it starts stepping into the
4 point of making a medical diagnosis, then that stops for me
5 but within their job doing what they do, he doesn't disagree
6 with them.

7 And the paramedics described Mr. Leibel in
8 several ways. He was pale, ashen, blue or jaundice. You
9 have to remember the statements of these paramedics were
10 taken on March 6th, about two weeks after this occurred, and
11 they had talked again. And what happens when you talk
12 together, you always start remembering things similar.

13 And Ms. Rajacic had testified that she noticed
14 that just a few months before that she had noticed Harry
15 starting to look frail and thin and started to loss weight.
16 You have Exhibit Number 1, which is the photograph that was
17 taken of Mr. Leibel when the deputies first appeared. And
18 all of the photographs you look at, this is the only one that
19 shows him at 11:00 o'clock that morning. Any other photo you
20 see was taken when John Barton and Investigator Garren went
21 into that room -- went into the house about 4:00 o'clock that
22 afternoon. The same with Exhibit Number 2, this was taken at
23 11:00 o'clock. It was taken by Deputy Williamson when they
24 first entered the residence.

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1 Dr. Omalu was asked about rigor mortis, and he
2 did -- was indicating, yes, it does start in the hands and
3 the smaller joints. It doesn't form everywhere in the body
4 all at once, unless you're a marathon runner. This is where
5 the marathon runner came in. Unless you're a marathon runner
6 running in the sun and you die suddenly, then you can have
7 very spontaneous full rigor, which means the whole body is
8 involved. And other times, it's going to appear in various
9 places, appear at various degrees, and it's going to -- it
10 can start almost immediately either the term of what's known
11 as rigor or what they call cadaveric or sudden onset rigor,
12 but it isn't an impossibility to see this happening
13 immediately, and especially he described it because that
14 wound through the arm and wrist that generates extra heat and
15 that can cause that limb to develop rigor much much sooner
16 than anything else.

17 There's also a description of the blood in the
18 room being variously thick coagulated, dry, whatever. But
19 remember in that room, there was a couch that had blood on
20 it. There was -- and blankets that had blood on them. There
21 was Mr. Leibel that had blood on him and what they were
22 talking about in many instances was he wasn't actively
23 bleeding, and the blood appeared to start coagulating, but
24 there were also statements concerning dry blood and that

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1 couch has dried blood on it when it was -- it was spread thin
2 and would have been given a dried appearance.

3 Chris Lucas smelled a slight odor of gunpowder in
4 the room. The others, they didn't see anything or smell
5 anything. But, again, this was -- became a topic of
6 conversation, which they discussed with each other. And if
7 you're not consciously aware of looking for the smell of
8 gunpowder, then it's a possibility that it could be missed or
9 you can see from these photographs, Exhibit Number 1, 2, 3,
10 the living room isn't a closed off room from another room.
11 It's very open to the dining room and open to the kitchen,
12 very high ceilings, and you can see the venting of the heat
13 that comes in there.

14 And if that's forced air heat, there's an intake
15 somewhere that is pooling that -- the air in and circulating
16 it. The heat is always in this so the heater is running full
17 blast so, again, that could be some explanation to that.
18 They take all of these to show, again, that there was some
19 kind of delay in making the report.

20 The suspicion were raised even before that. I
21 mean, they thought something was wrong because there was a
22 rifle that was used. It was reported as a suicide, and there
23 were two injuries, and that's unusual, and so there must be
24 something weird going on here.

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1 And Ms. Leibel even in her statement to Deputy
2 Williamson was unclear on how long it took her to respond to
3 actually call. She missed another five minutes which is an
4 odd number I would call 911 five minutes later. Remember,
5 people are sometimes, when they see a tragic event in front
6 of their eyes, sometimes time slows way down. Sometimes time
7 speeds way up. Sometimes you lose time. So there may have
8 been a period of time where she was just in shock of what had
9 happened and then in her mind immediately went to call.
10 The only other evidence you have of different
11 reporting of the time this occurred would be the statement to
12 Leanne Brooks that the friend she went to stay with. It was
13 9:30 or 10:30 that morning and, again, she just -- she made
14 this statement after she just been interviewed for eight
15 hours by investigators. She was tired. It wasn't important.
16 You know, what time did it happen? Who knows, who cares is
17 basically it.
18 One of the most troubling things about the scene
19 in this room is the number of paramedics. They have been
20 necessary at the beginning, but some of them became
21 investigators of the scene which there's no need to do.
22 Chris Lucas testified, mostly he remained on the landing
23 which would have been a good supervisory position. But then
24 at one point, he leaned over the railing in-between the

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1 dining room and the pony wall, in-between the dining room and
2 living room, he said it was at that time he saw a bullet hole
3 behind the couch.
4 And, again, if you look at photos number 1, 2, 3,
5 1, 3, 4 and 110, you're going to see above that couch is a
6 very large aquarium. Being able to look around that and that
7 aquarium is above the couch, being able to look around that
8 and see a bullet hole in the wall is rather extraordinary.
9 The other thing is other people -- other
10 paramedics, including and with Deputy Garren, Deputy
11 Williamson, Investigator Garren said we went around the right
12 hand side of the couch. But, again, you see in these photos
13 on the right hand side of the couch, there's a chair and a
14 table, and Joe Lear testified that when he went in to do the
15 drawings, he had to remove that table in there so he could
16 access getting behind the couch so he could get shots of the
17 bullet holes.
18 And then we had the testimony from Nick Robidart
19 where he said he -- that he saw the bullet hole when Douglas
20 County Sheriff's Office personnel moved that couch, and he
21 couldn't recall making that statement when he was testifying
22 on the stand, but he finally admitted after having been --
23 his memory refreshed that he made that statement back to
24 Investigator /SHERPB /SHERPB back on March 6th.

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1 And it's -- if they had needed to move furniture.
2 like they did, move the coffee table to treat Mr. Leibel,
3 that was documented, but we have this movement of furniture,
4 kind of laying around that there's no documentation
5 concerning this is what we do. That becomes troubling. We
6 start moving into the trajectory because it does depend on
7 position and it does depend on lines and angles.
8 More troubling is the gun itself. This was a
9 photo that was taken of the gun by the officers when Deputy
10 Williamson was in the residence that morning, and you can see
11 these up-close strap is over that gun.
12 And this was taken by Investigator Garren when he
13 went back into the residence at 12 or 4:00 o'clock, Exhibit
14 Number 12, the strap is moved off, so there has been a
15 difference.
16 Also, in looking at Exhibit Number 2, again, that
17 strap covers that weapon where the cylinder would be where
18 you look to see the handle cocked. I'm sure Mr. Gregory will
19 say, well, look real close. You can see the trigger back
20 like it was pulled, pushed back and action. You can look at
21 that photograph just to see if that's correct.
22 But you have two deputies that come in,
23 Williamson and Haley, they testify they saw the gun on the
24 couch. Neither -- neither of them said that's been cocked

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1 and, in fact, Deputy Haley said I saw the gun was secured.
2 At that time the only witness who noticed the gun was cocked
3 was Chris Lucas, and he said from his position overlooking
4 the fish tank, I saw the gun was cocked. Now, he's a
5 paramedic. He's used to saving people's lives, caring for
6 people, and he understands the dangerousness of a loaded
7 cocked weapon, but there's no indication that he reported
8 that to any deputies at the scene, that he did anything but
9 make a mental note of it that anything he relayed to an
10 investigator some two weeks later.
11 You're going to have the same entry log. What
12 this Deputy Garren testified about that, once they corridor
13 off the scene which they did about 1:00 o'clock, everybody
14 that goes into that scene has to be entered into this log and
15 entered, signed out of this log. And the thing is it doesn't
16 really keep track of who goes into the house. It's who goes
17 into the scene itself.
18 And we know from the testimony, several of the
19 witnesses that even though this house was sealed because they
20 were waiting to get in there to be able to search, that other
21 people were entering, given the walkthrough so they could see
22 what was going on.
23 The condition of this gun became a key piece of
24 evidence in this case, but we don't know for sure whether it

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1 was touched or tampered with. We see it in one position. At
2 11:00 o'clock, we see the strap off of it where this -- where
3 it's covered the cylinder about five hours later.

4 Also, as you heard this gun -- they were going to
5 look at it for trace evidence. They were going to look at it
6 for fingerprints. They were going to look at it for DNA.

7 If you look at Exhibit Number 111, they were
8 moving things off the couch and they could have access of the
9 couch. It appears that gun is on the floor in front of the
10 couch. This was later going to be processed for trace
11 evidence.

12 After that, Joel I Lear came from the Washoe
13 County Crime Lab. He was one of the officers or individuals
14 that came to do the trajectory measurement and measurement of
15 the place, and he testified also in this -- it was his work,
16 his measurement that became the basis for this investigation.
17 And he told you in Exhibit Number 27, you know, this is when
18 we first tried to do it with the couch upright, the
19 trajectory rod, that this is going to the holes in the wall.

20 And he testified concerning Exhibit Number 28
21 that they did get the couch in a position and were able to
22 get that trajectory rod to match up and so that's where their
23 positioning and trajectory came from. But then he went on to
24 say, the way we got that trajectory rod to go into that hole

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1 is we had one of or sergeants sit on the couch to add some
2 weight to it to make it go into that hole.

3 None of that was documented. When he finally did
4 his measurement and none of that was documented in his report
5 and so there was no way to know how that trajectory was
6 reached and for something to be as subjective, as well, we
7 couldn't make it go into the hole. So what we did is we put
8 a person in a location on the couch that has nothing to do
9 with anything. We just knew this -- there was a person on
10 the couch at one time.

11 So we put this person in the middle of the couch
12 and, again, this trajectory rod has nothing to do with
13 anything except that shoulder shot which you would have to be
14 slouched down equal to that hole, yes, and that was the only
15 way they could get these various subjective measurements.

16 And, again, none of this is documented. When you
17 look at and you'll get to see them again, these are the
18 notations that he created at the scene, Exhibit Number 101
19 and Exhibit Number 100, and they have notations of certain
20 distances that they used to figure this, but there's no
21 indication. And then to get this trajectory, we had to move
22 the couch back so many degrees, line that trajectory rod up,
23 and there's no indication that we had the weight of a body.
24 We don't know that person's weight on that couch to make it

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1 do the same thing or to make it line up with that hole in the
2 wall. So there's really no way to create what they got as a
3 trajectory outside of that circumstance they were in.

4 There's other issues with the trajectory. When
5 Mr. Noedel said he got the report, this reporting and then he
6 went ahead and visited the house, and he took pictures of or
7 he visited the house. He saw the sofa, and he saw pictures
8 that were taken of the hole in the wall of the bullet hole.
9 And, again, you have this documentation of -- you have the
10 bullet hole in the wall where it's at. A measurement of it,
11 that's up and is unclear.

12 When they took that piece of wood out and then
13 found pellets behind that, there's no documentation
14 concerning, and this pellet was found in a joist that's five
15 inches up and one inch over or anything like that. So to
16 match what's behind that wall that was used for trajectory
17 with an actual object that ended up behind that wall is
18 lacking.

19 You can also see that this hole in Exhibit Number
20 -- it's Exhibit Number 36, overlapping holes that make a
21 large space. If you put a trajectory line through that, you
22 have a lot of wiggle room at that point. So you're working
23 from a wall that at this point cannot really be recreated
24 because there's at the house, there's no -- there's a big

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1 open gap there.

2 And the photograph that you see of it, of the
3 portion that's taken out, there's no way to correlate that to
4 what's behind the wall back at the house. So that's your
5 trajectory. It's a large hole with a lot of wiggle room.

6 Next thing you're working with is a couch, and
7 that couch is movable in and of itself. It can go this way.
8 It can go that way. It can go forward and back, and we don't
9 know at the time even though they made measurements of where
10 it was when they were doing the trajectory, if there was
11 movement of that couch before they got in there and that
12 again would have affected the trajectory. And then the couch
13 itself is manipulatable because you can move it forward or
14 put it out. You can bring it back up, and there's no
15 indication of how they were able to match up those numbers.
16 Because of this poor documentation and, again,
17 part of it because of the poor preservation of evidence and
18 in the end in looking at the same reports, Dave Billau says
19 there's not enough information here to do this trajectory,
20 and we don't know where things are before.

21 It was part of that -- using that trajectory that
22 Mr. Noedel came in and gave the opinion that the evidence
23 best supports that Mr. Leibel did not kill himself. Best
24 support was the basis of the opinion complete, best supports

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1 to a reasonable degree of scientific certainty. Best isn't
2 good enough.

3 Standard of proof in this case is beyond a
4 reasonable doubt, and it was based on that trajectory that he
5 made part of his conclusions concerning Mr. Leibel that
6 Ms. Leibel had actually killed him. In fact, he stood in the
7 sofa. This is the trajectory. This is what would have to be
8 done, and that's based on my trajectory report.

9 The other thing he based it on was Exhibit Number
10 14 and exhibit -- sorry, Exhibit Number 54 and Exhibit Number
11 55. These were the measurements taken by Dr. Kubiczek at the
12 time of the autopsy.

13 And then Mr. Noedel went on to create this
14 juxtaposition of the measurements and the length of the gun,
15 and he said the implication is based on the length of that
16 reach, and this was to the trigger on that gun. There's no
17 way Mr. Leibel held that gun himself, and you're going to
18 have a chance to have that gun back there in the jury room
19 with you, and you can see, and you saw Dr. Kubiczek measure
20 my arm from the armpit to the fingers, not my reach. He
21 measured my arm and that's the argument that Dr. Omalu was
22 having with Mr. Gregory is this is not your reach. This is
23 the length of your arm from the armpit to the tip of the
24 fingers.

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1 And then with that length, then you can start
2 manipulating, like I showed you yesterday. It's not a
3 straight up and down pushing that gun at a distance, doing
4 something with it, bracing it in some way, using a leg,
5 whatever you can manipulate the positioning. So the length
6 of your arm does not dictate how far you can reach, whether
7 or not you can reach the trigger. You can try it and see
8 that this is not a possibility based on the fact that reach
9 comes from your full body.

10 And when we were doing that demonstration
11 yesterday and as was stated, this is how it happened. This
12 is possible scenarios because there are ways you can use a
13 gun that would make the ability to reach that trigger by one
14 person shooting themselves a possibility. So use that static
15 distance to say is it a possibility? Is it science?

16 You also saw during the -- when we were working
17 on the demonstrations yesterday and when I was -- had the gun
18 on the floor, then Dr. Omalu came up to the stand and said,
19 no, your arm has to be at least this height to follow not
20 only that track, but he also said it can't be outreached. It
21 can't be like this. It has to be some positioning coming
22 across the body.

23 And the reason he said was because of that, the
24 X-ray that was taken at the autopsy, Exhibit Number 136, and

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1 he said there's a broken bone up here in the shoulder, and
2 the way that broken bone would occur would be from the impact
3 of that first shot going through the body, and it's an
4 impact. It basically broke the bone not from any bullet or
5 anything but from the impact of the shot itself. And to
6 create that type of impact is some blocking force so that
7 energy is blocked. It can't be transmitted out something
8 extended. It can't be transmitted something higher. There
9 has to be a blocking force to bringing the arm back across
10 the body to create the force to break that bone.

11 The other thing we were talking about when we
12 were discussing the second shot was and when he was
13 testifying again with Mr. Gregory, he was asked if this -- he
14 said a misfire. It's not he was saying the gun was misfired.
15 What he was saying was Mr. Leibel was not trying to shoot
16 himself in the arm and then to the shoulder, that this was --
17 he was already injured. He was trying to position this gun
18 to kill himself but because of the manipulation and his weak
19 state, at some point he lost control, and that this was not a
20 misfire of the gun. It was basically not an intentional shot
21 in this location and something has gone wrong, and I'm
22 missing what I was aiming at.

23 And it could have been he was going for the face.
24 He was going for the heart and in that movement, again, lost

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1 his grip on the gun, and that's when he was shot. Again, I
2 want -- these are snapshots in time. The photographs that
3 show, you know, this track or the trajectory that, you know,
4 can or the lineup that can show this is -- this isn't
5 something I'm going to pose in this position and I'm going to
6 shoot the rifle. This is something that happened in a series
7 of movements, and we can't say exactly what happened.

8 Dr. Omalu also talked to you about the first shot
9 and there being two shots and even there being Mr. Leibel is
10 the one would cocked the gun is that at the time you're
11 injured, you're going through this, your adrenalin is going
12 up, you become almost a zombie of movement without thought.
13 If it's in Mr. Leibel's brain that I want to die and he's
14 going to continue those actions towards that direction.

15 Then Dr. Omalu also talked to you about
16 Mr. Leibel's liver. This is -- this shows signs of disease.
17 If there's liver disease, there's a possibility of what's
18 called hepatic encephalopathy. That is correct, that the
19 blood is not being filtered, so poisons are going to the
20 brain and it can lead to mental confusion. This progresses
21 over time and when he requested that there be -- to see the
22 microscopic slides and the different tissue.

23 There was an autopsy done by Mr. Kubiczek. There
24 were no slides taken. This was not even noticed. So instead

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1 of doing an autopsy that looked at everything for missed
2 broken bone in the shoulder but instead of looking for, okay,
3 we have gunshot wounds, what else do we have what's wrong
4 with this person? Oh, we have a diseased liver. Maybe that
5 affects the brain. So we're going to do microscopic slides
6 so we can go on with further diagnosis. Again, that wasn't
7 done.

8 I told you Ms. Leibel was arrested just a few
9 days after this happened and we were hearing about the finger
10 prints. And, again, Mr. Gregory has said, you know, they
11 weren't -- the reports eventually came back long after
12 arrest. They aren't her fingerprints and they aren't
13 Mr. Leibel's fingerprints. So that must have become that the
14 gun was wiped of any DNA.

15 But we have Dave Billau testify the ability to
16 find useful prints on a firearm is very low, and they did
17 find one. They found it on the cylinder and that wasn't Ms.
18 Leibel's and that wasn't Mr. Leibel's. So there was a usable
19 prison that was never associated with any person.

20 Again, with the ballistics testing, Mr. Noedel
21 testified what we do is a series of test patterns, and we do
22 -- this is a two-inch shot, three, four, five, six and seven,
23 and then we visually compare what we can see in the
24 photographs of the injury or viewing the actual robe to look

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1 for a match, same pattern.

2 And so, again, this is not scientific testing,
3 one plus one. This is something that is subjective. I'm
4 comparing this to this, and this is my best guess, and then
5 they point a range on it. But even with that, the range she
6 came up with is this shot was most consistent with two to six
7 inches, and this shot was most consistent with three inches
8 away.

9 Dr. Omalu testified concerning loose contact
10 wound. That doesn't mean the barrel is on the skin itself.
11 It's saying it was within inches, the same on the side, but
12 he was seeing the medical indications that he associated with
13 those contact wounds and that's why he can say those are
14 close contact wounds.

15 What is important in that case is these are close
16 range shots and this is a rifle that was used and so if
17 you're going to use a rifle to kill someone and Ms. Leibel
18 was familiar with the handling of rifles. We know they
19 handle both. I mean, this is a person, your husband of ten
20 years. Are you going to get right up close and personal and
21 almost against him and shoot him and shoot you.

22 If it's an anger situation, whatever situation,
23 if you're going to shoot a rifle, you're going to stay back.
24 You're going to distance yourself from that situation. You

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1 aren't going to get in range where it would be a struggle
2 occur over a gun, and so that's one thing that nobody seemed
3 to want to look at in this case. And those ballistics came
4 back, it was, oh, well, those shots and move on. That's one
5 of the things Dr. Omalu looks at is total view of the case.

6 And then, again, you're going to get to see the
7 evidence, keep talking about these extractions. And there
8 was a lot of discussion and you'll get to go through them, a
9 lot of discussion between Lana and Ms. Leibel about coming
10 down to visit in L.A. and exchanges back and forth and Lana
11 is saying you're not going to flake on me again, are you?
12 And then there was the text from Ms. Leibel on Saturday
13 night, I can't leave now. Harry needs to calm down. The
14 text following, we have an uncomfortable situation.

15 And then Mr. Gregory also told you about web
16 pages. You're going to be able to see that. Page 21 of the
17 exhibit, what I want you to notice is in those web searches
18 they began at 152, it goes to 157. Within that short period
19 of time, she is going through various web pages. Also we
20 don't know history. We see cookies, cookies, web history.
21 We don't know what's being done. Is that just I'm going
22 through somebody's phone and looking where they have been
23 before, what they have been looking at. It's not time enough
24 to be actually going and searching those web sites for any

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1 particular information.

2 And you heard from Investigator Garren that
3 Ms. Leibel's phone was not pass word protected. If
4 Mr. Leibel had suspicions at all concerning her or was just
5 the phone is conveniently on the kitchen table. I'm going to
6 pick that one up and check something. He had equal access to
7 that phone, and that would be consistent with that type of
8 activity, just looking through a phone.

9 What would be important in that is there is a
10 view of a confirmation page. Ms. Leibel had confirmed a
11 hotel room down in Southern California. And so, again, he
12 knew she was leaving or made plans to leave. And if you go
13 back through older text messages and just a few weeks prior,
14 there's talk of a part that Ms. Leibel was actually helping
15 her daughter look for an apartment. That if he sees that,
16 maybe he thinks it is not just for a visit. She's leaving.

17 We also have the extractions from Mr. Leibel's
18 phone, and we've gone through the message to the Rajacics,
19 and that would be in the send message as opposed to the
20 other. That's hi, tat, hope you're both well. We're okay.
21 This thing has dragged on for way too long. That being said,
22 the slow moving powers should bring this process to a
23 conclusion in the very near future days. You'll hear a
24 sound --

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1 THE COURT: Ms. Brown, I think the interpreters
2 can't hear you.
3 THE INTERPRETER: It's just too fast.
4 THE COURT: Thank you, ma'am.
5 MS. BROWN: You'll hear a loud sigh like distant
6 thunder, that will be me. Now, there's an interpretation
7 Mr. Rajacic put on that those are Harry's words. They could
8 be viewed as goodbye my friend. I'm tired of what is going
9 on. I'm tired of this life.
10 We heard about the text messages going back and
11 forth between Mr. Leibel and Chris Hetrick. There were plans
12 to meet that evening and exchanges and that never occurred,
13 and he didn't show up and came the next day.
14 The day after Harry's death, he said apostolus
15 Harry my friend you left without saying goodbye. The good
16 moments we had and your truce of life, people that we have in
17 our universe good and bad. I knew a month ago something
18 wasn't right. We felt you were going to be on a journey to
19 another world. This world wasn't right for your soul, didn't
20 say why, but I see. It's weird that you're gone and I've
21 lost a real friend. I pray for your soul, and hope we meet
22 again.
23 Again, an indication that his friend Chris was
24 aware things were going -- he wasn't happy. Something was

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1 going on in his life. The other thing we have is his contact
2 with Darla, his ex-wife. They hadn't spoken in about four
3 years, and yet he contacts her and a few weeks before his
4 death to talk over old times, contacts her on Facebook, gets
5 her number, and they reminisce about old times. Again,
6 reaching out to the folks in his life.
7 We know very little about Tatiana and Harry's
8 relationship that's been presented at trial except for
9 Mr. Oren felt Harry's life was in danger. He couldn't give
10 specifics. He just said that was it. I warned him.
11 The Rajacics, Joe described their relationship as
12 a very loving relationship and they had contact periodically.
13 They were with them over the years. And Kerry Rajacic, when
14 she testified, it was obvious that she loved Harry dearly.
15 And at one point, she began weeping, talking about how much
16 he used to talk philosophy, and but ever since his death, she
17 is still in touch with Ms. Leibel, Tatiana. Sometimes we
18 don't know the reason for this.
19 Dr. Omalu is a forensic pathologist. He
20 explained that in addition to this encephalopathy which
21 couldn't affect the mind, the additional use of putting
22 marijuana in on top of that, he testified that Mr. Leibel
23 smoked marijuana within an hour or two of his death, that
24 that could lead to further mental confusion.

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1 But I think also things you need to look at are
2 the texts, the one saying goodbye. The one from Chris, I
3 knew you weren't long for this world. I knew something
4 wasn't right with you. You were ready to go, and maybe he
5 felt some kind of mental problems coming on, and that was the
6 one thing he couldn't face. He had been through the physical
7 pain of cancer. He had been through this and that. And
8 maybe he was afraid if Tatiana was leaving, that it's not
9 just for a visit. She's going to go get an apartment because
10 I had a friend who keeps warning me against her, whatever.
11 In the end, we sometimes we never know because as
12 Dr. Omalu told you, suicide is an irrational act, and you
13 can't find logic in the midst of a irrational act, and it's
14 seen all of the time. I mean, sometimes you look at a person
15 and say that person is a train wreck and any day it's going
16 to come. And when they kill themselves, well, we saw that
17 one coming.
18 But in so many occasions, it's not something that
19 is expected. It's the happy person that's smiling in the
20 middle of the morning has killed themselves in the afternoon
21 and noble knows why. They can't find the death. They can't
22 find the fallen relationship. They can't find any reason.
23 And another thing you look with what Ms. Rajacic
24 said was Harry's philosophy, that he talked about all

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1 different philosophies, that he talked about even to the
2 point where he was into zodiac and into the horoscopes and
3 fortune cookies, anything like that.
4 This was a person who was raised in a very
5 traditional Jewish household, and it would be like a very
6 traditionalist Baptist or Methodist or Christian, any
7 Christian religion looking at alternative philosophies, that
8 you have a religion you're raised in and you don't vary in
9 that. So it may have been his search, I've been raised in
10 this tradition and it's not something that is helping me.
11 I've lost my faith. I'm looking out there for something
12 else, and that may have played a part in the conclusion, but
13 we don't know.
14 Dr. Omalu is a forensic pathologist and he's --
15 what he told you about his credentials, I won't repeat
16 because they are very lengthy. And although Kubiczek is a
17 forensic pathologist. He stated in his case, he was working
18 as basically a medical examiner. Dr. Omalu, who is qualified
19 in both the medical and legal aspects of the case looked at
20 all of this evidence, including things that weren't done in
21 the medical world, what failures there were at the autopsy,
22 what samples weren't taken at the autopsy, what wasn't
23 recorded at the autopsy.
24 Further tested needed to be done to look at

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1 everything, not just this is a homicide, so we'll find, track
2 the bullet. What else do we have that could have contributed
3 to this situation?

4 Several questions have been raised concerning the
5 handling of the evidence. Again, I showed you that gun. It
6 looks like it's laying on the floor. Those photographs are
7 taken late in the afternoon. Movement of furniture, there's
8 lack of documentation, what was at the scene, what was moved.
9 That trajectory comes from the couch itself that is movable,
10 could have been moved. There's testimony of witnesses who
11 indicate they saw that couch being moved. So, again, we
12 don't have reliable basis for the science that follows.

13 The measurement of the arm, positioning something
14 against a static arm does not tell you reach. They use that
15 and call it science and then go in to make other conclusions.
16 The ballistics even is a subjective test, where you're doing
17 the testing, looking at the object, but it's your subjective
18 interpretation of it that makes those ranges.

19 I told you back on February 23rd that there was a
20 life changing decision made for Tatiana. It's made by
21 others, and now she's back with others, and you guys are
22 going to be asked in a few minutes to make another life
23 changing decision for her.

24 As I said in the beginning, our job of Tatiana

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1 things like the fact that Harry reached out to his former
2 wife, it might indicate that his current marriage isn't all
3 that great or the fact that he was going to call the
4 locksmith on the 25th and indicated that he was going to
5 divorce Tatiana.

6 We can speculate about those things, and we can
7 bring our emotions into it or we can consider the facts and
8 the science of the case, and that's what I'm asking you to do
9 here.

10 Even though I'm an attorney, I don't watch too
11 many CSI shows or even the real crime shows, but over the
12 weekend a case caught my attention, a show that I watched.
13 It was about the OJ Simpson case, and I watched it because
14 when I was in law school, 20 plus years ago, that case was
15 going on. And you recall in that case what the defense
16 really hammered on is that the police messed up. They
17 planted evidence. All of this DNA and everything they found
18 associated with the OJ and his possessions all police screwed
19 that up.

20 MS. BROWN: Your Honor, I would object.

21 MR. GREGORY: What was interesting --

22 MS. BROWN: Comparison with that case.

23 THE COURT: Well, the objection is overruled. I
24 don't know what the point is yet, but it's consistent with

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1 Leibel is not to prove that she is innocent. She's presumed
2 guilty. She could sit there, not come forward with any
3 evidence. The State has the burden of coming forward with
4 the evidence to prove her guilt beyond a reasonable doubt.
5 It's not our job to prove this is a suicide. It's the
6 State's job to prove this is a murder and only based on the
7 evidence you see and the questions that have been raised
8 concerning the reliability, only when you say we have enough
9 evidence that we trust that it convinces us beyond a
10 reasonable doubt that we have an abiding conviction of the
11 truth of these charges can you make a finding of guilty.
12 Thank you.

13 THE COURT: Mr. Gregory, do you need a minute?

14 MR. GREGORY: I'm ready, Your Honor.

15 Have you ever had a couple that you knew that you
16 were friends with, you thought they had a great marriage,
17 ideal marriage from what you saw of them. Then you hear they
18 are getting a divorce. Man, I just thought they were a great
19 couple, and you think to yourself, it just goes to show you
20 you don't know what is going on behind closed doors, you
21 never do.

22 So I can sit here and speculate like Ms. Brown
23 did regarding Harry's status and whether he was suicidal or
24 not or I can speculate about the marriage. I can point to

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1 argument that you were making.

2 MR. GREGORY: Here's the point --

3 THE COURT: I'm going to allow him to continue.

4 MR. GREGORY: Thank you. The point I was going
5 to make was what happened as a result of that OJ case is that
6 every case, almost every case that went to trial after that,
7 a component of the defense is that the police messed up and
8 that's what we're seeing here. It's a component of the
9 defense. And do police mess up? Yeah, they do. Sometimes
10 it's a small screw up. Sometimes it's a big one. Sometimes
11 it's so big the case can't go forward, but it's up to you to
12 evaluate their conduct in this case and really ask yourself
13 if the issues, the mistakes that were made were of such that
14 it detracts from the evidence in the case.

15 You had two sheriff's deputies responding in a
16 very timely manner to this and when they got there, they then
17 let the fire guys in to see if Harry could be resuscitated.
18 When that couldn't happen, they seized the scene. They
19 stopped, and they called the investigator, Ed Garren.

20 Mr. Garren who was down here in the valley
21 traveled up there as quickly as he could. When he gets
22 there, he makes an initial assessment of the scene and, yeah,
23 he sees some things that are suspicious to him, a suicide
24 with a rifle, that's two shots, and you got this weird thing

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1 going on with the hand.
2 He made the decision to back up and to do the
3 right thing. Isn't that what we want our investigators to
4 do? He sealed the scene. He called the crime lab to come in
5 and they did. Everybody that -- yeah, they did a scene log.
6 They did that. You saw in the picture Ed Garren when he's
7 collecting that firearm. He's got gloves on. Everybody that
8 went into that scene had a purpose for being in that scene,
9 and they processed the scene to the best of their abilities.
10 Is there some things they might do different,
11 maybe. In every case I've tried, win or lose, we sit down
12 when the case is over, and we talk about things we can do
13 better. Are there things we can do better, sure. But are
14 those things such in this case that the police just blew it
15 and the paramedics just blew it, and so you folks should just
16 disregard all of the evidence in this case?
17 The judge gave you two different jury
18 instructions and I think are important. One being you get to
19 bring your common sense to the table. So when you go back in
20 there to deliberate, don't forget your common sense. He also
21 told you, you can accept the reasonable explanations, and you
22 can reject the unreasonable explanations. Again, don't
23 forget those instructions when you go back to deliberate.
24 I'm going to hit on just some points that

1 and police officers, you'll recall he sat down here and said
2 way down here, that's what he thinks of our local battalion
3 chief, captains, Sergeant Halsey, all of these people that
4 came to testify to, they are way down here.
5 Another person that's way down here is a
6 90-year-old pathologist who has studied atypical suicides but
7 to Dr. Omalu, he's just a 90-year-old guy who doesn't know
8 what he's talking about anymore. Well, his studies of
9 atypical suicides are very important. His studies, as I
10 discussed with Dr. Omalu indicate that in a two-shot or
11 multiple shot suicide case, you expect to see the shot go in
12 the same area.
13 So as I talked to Dr. Omalu, if it's a gunshot to
14 the head and he kind of misses, the second shot is going to
15 go to the head, okay? In this case, the first shot to the
16 torso didn't do the damage. The second shot is going to go
17 to the torso. That's not what you have here.
18 You also found in suicides it's rare for people
19 to shoot through clothing. For whatever reason, that's what
20 his studies show. Here, of course, we have the shot being in
21 the clothing but to Dr. Omalu, ah, 90-year-old guy doesn't
22 know what he's talking about.
23 I brought up Dr. Omalu's prior case not to
24 embarrass him but because I felt that he made the same

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1 Ms. Brown brought up. These aren't necessarily in any order.
2 During the 911 call just now, something struck me and, that
3 is that when asked by 911 is he breathing, the answer was no,
4 he's not breathing. Remember, Dr. Omalu testified death is
5 not instantaneous. It just kind of struck me that if he's
6 not breathing, one other piece of the puzzle as far as
7 evidence of the delay.
8 Another thing that struck me when Ms. Brown was
9 talking is that this idea and the text messages that Lana
10 says to her mom, are you going to flake on me again? Doesn't
11 that suggest it had happened before where she has these plans
12 to go to L.A. to see her daughter and Harry controls the
13 situation and tells her no was Ms. Leibel cooperative, yeah.
14 If you're going to stage a suicide, don't you cooperate with
15 the police? You're not going to call it suicide and then not
16 cooperate, so that's all part of the plan.
17 If you struggle with this case at all, come back
18 to the science and the facts, the facts about what happened
19 with the shooting itself. And when you do that, consider
20 Dr. Omalu, a huge part of the defense case. It was most of
21 what Ms. Brown just talked about.
22 Let's think about what Dr. Omalu said as he
23 testified up here. Basically, nobody's opinion is as
24 important as his. When asked about opinions of paramedics

1 mistakes in that case that he made in this case. He was
2 criticized in that case for making conclusory statements that
3 were not backed up by science without any kind of testing
4 being done and without any kind of backup in studies or
5 whatnot. He owned that mistake, I'll give him that, and he
6 said he quit making that mistake but you know what, he did it
7 here again.
8 In his two-page conclusory report, where he cites
9 no studies or anything, he comes up with these opinions, and
10 he came up with more new ones as he sat up there on the
11 stand. Every time I would ask him something, he seemed to
12 more of his responses.
13 I'm going to read the quote to you again that I
14 discussed with Dr. Omalu the prior case with the Court struck
15 his testimony. It said, the Court has carefully considered
16 the parties' respective positions and based on the present --
17 THE COURT: Sir, you're going a little bit fast
18 for the interpreter.
19 MR. GREGORY: I'm sorry. I will start over. The
20 Court has carefully considered the parties' respective
21 positions and based on the present record finds the
22 methodology used by Dr. Omalu in reaching his opinions in
23 this case is not reliable. And even if it was found to be
24 reliable, his opinions are too speculative to fit the facts

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1 of the case.
2 The defense has built its case on unreliable
3 methodology of a doctor who was flown in to look at some
4 photographs and make opinions without looking at anything,
5 without firing the gun, without going to the home, without
6 conducting any experiments. Dr. Omalu made the same mistakes
7 here that he made back in Pennsylvania.
8 I implore you to accept the reasonable and reject
9 the unreasonable. When you return a verdict, I'm asking it
10 to be murder in the first degree with the use of a deadly
11 weapon. Thank you.

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1 STATE OF NEVADA,)
2 CARSON CITY.) ss.
3
4 I, KATHY JACKSON, Nevada Certified Court Reporter
5 Number 402, do hereby certify:
6 That I was present in the District Court in Minden, in
7 and for the State of Nevada, on February 5, 2015, for the
8 purpose of reporting in verbatim stenotype notes the
9 within-entitled Trial;
10 That the foregoing transcript, consisting of pages 1
11 through 66, is a full, true and correct transcription of said
12 Trial.
13
14 Dated at Carson City, Nevada, this 15th day
15 of June, 2015.

Kathy Jackson
KATHY JACKSON, CCR
Nevada CCR #402

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1 CAPITOL REPORTERS
2 515 W. Fourth Street, Suite B
3 Carson City, Nevada 89703
4 775-882-5322

THE NINTH JUDICIAL DISTRICT COURT
IN AND FOR THE COUNTY OF DOUGLAS

6 STATE OF NEVADA, Case No. 14-CR-0062
7 Vs. Plaintiff, Dept. No. 1
8 TATIANA LEIBEL,
9 Defendant.

AFFIRMATION
Pursuant to NRS 239B.030

11 The Undersigned does hereby affirm that the following
12 document DOES NOT contain the social security number of any
13 person: (List of document(s) attached below)

13 1) Trial -- 2/5/15

-or-

15 The undersigned does hereby affirm that the document
16 named below DOES contain the social security number of a
17 person as required by state or federal law or for the
18 administration of a public program or for an application for
19 a federal or state grant: (List of document(s) attached
20 containing social security number information below)

18 1) _____

19 2) _____

20 (Your signature) _____ (Date) 6/15/15

	54:21	50:22	associated (3)	28:21
	affected (1)	angles (1)	49:19;50:12;59:18	barrel (5)
/	44:12	39:7	assumption (2)	10:19,19;17:23;20:5;
/SHERPB (2)	affectionate (1)	announce (1)	24:24;25:4	50:10
38:24,24	29:12	21:6	attempt (2)	barrier (1)
A	affects (1)	anomaly (1)	32:22;33:17	11:21
	49:5	6:3	attempts (1)	Barton (1)
abiding (1)	afraid (1)	answered (1)	6:8	34:20
58:10	55:8	26:9	attending (1)	based (10)
abilities (1)	afternoon (3)	anymore (1)	16:11	15:15;33:19;45:4,8,
61:9	34:22;55:20;57:7	63:8	attention (3)	9,15;46:8;58:6;64:16,
ability (2)	again (62)	apartment (3)	23:21,24;59:12	21
46:13;49:15	2:21;6:15,16;10:16;	32:6;52:15;55:9	attitude (1)	basic (1)
able (9)	14:7,8,22;15:6;19:19;	apostolus (1)	33:21	22:4
12:16;13:11;20:13;	20:10,13,14,17;23:20;	53:14	attorney (1)	basically (5)
38:6,7;40:20;41:21;	25:3;26:10;28:3;30:14,	appear (2)	59:10	37:17;47:4,20;56:18;
44:15;51:16	22;31:19,22;32:2,5,7,8,	35:8,9	attorneys (1)	62:23
above (2)	16,20;33:12;34:1,11;	appearance (1)	23:8	basis (3)
38:5,7	36:5,17,18;37:13;38:4,	36:2	atypical (2)	41:16;44:24;57:12
absolutely (2)	12;39:16;42:12,16,17;	appeared (2)	63:6,9	bathroom (1)
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