

IN THE SUPREME COURT OF THE STATE OF NEVADA

THE STATE OF NEVADA,

Appellant,

vs.

TATIANA LEIBEL,

Respondent,

_____ /

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

RECORD ON APPEAL

VOLUME 16

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

IN PROPER PERSON

THE STATE OF NEVADA

DOUGLAS COUNTY DISTRICT ATTORNEY

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1 THE COURT: It's not admitted for evidence as to
2 whether Mr. Leibel committed suicide. It is admitted as to
3 whether Mrs. Leibel was consistent.
4 MS. BROWN: Thank you.
5 THE COURT: And it's for that reason only that
6 the jury may consider that evidence.
7 Q. (By Ms. Brown) And towards the end of this
8 interview, it was clear -- you made it clear to Ms. Leibel
9 that you didn't believe her story; is that correct?
10 A. That's correct.
11 Q. And you basically accused her of killing her
12 husband over and over again?
13 MR. GREGORY: Your Honor, I object to the
14 hearsay.
15 THE COURT: The question is whether he accused
16 her. That's not hearsay. Overruled.
17 THE WITNESS: Yes, I did.
18 Q. (By Ms. Brown) And at -- you told her everything
19 in the investigation pointed to her being the suspect; is
20 that correct?
21 A. That's correct.
22 MR. GREGORY: Objection, your Honor. Hearsay.
23 THE COURT: The question is whether this witness
24 accused her; is that correct? Is that the question?
25 MS. BROWN: Yes.

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1 THE COURT: It's overruled.
2 MS. BROWN: And she told you repeatedly that you
3 needed to do more investigation?
4 MR. GREGORY: Your Honor, objection. Hearsay.
5 She's asking for content of the interview, statements by her
6 own client. It's hearsay.
7 THE COURT: I think that you're getting beyond
8 simply was she consistent. Now you're getting to the content
9 of what she had to say and I think that that does become
10 hearsay.
11 MS. BROWN: Your Honor, I think her response is
12 not for the truth of the matter asserted, again, but for the
13 fact that she directed these responses towards Investigator
14 Hubkey.
15 THE COURT: You're offering it for that reason?
16 I'll admit it for that reason.
17 Q. (By Ms. Brown) Yes. And at the conclusion --
18 She had earlier allowed Investigator Chrzanowski to go
19 through her phone; is that correct?
20 A. Correct.
21 Q. And then she had signed a consent to search her
22 residence?
23 A. Correct.
24 Q. And at the end of your talk with her, you asked
25 her to sign a written consent to search her phone; is that

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1 correct?
2 A. That's correct.
3 Q. And she signed the written consent for you to
4 search her phone; is that correct?
5 A. That's correct.
6 Q. And that phone is not password protected, is it?
7 A. No, it's not.
8 Q. And at that point different clothing was brought
9 to her and the clothes she had been wearing during the day
10 were taken?
11 A. That's correct.
12 Q. She was told to come back the next morning?
13 A. I asked her if she would come back and she
14 agreed.
15 Q. And she did show up the next morning?
16 A. Yes, she did.
17 Q. And again she was -- talked to you about what had
18 happened?
19 A. Correct.
20 Q. And at the end of that interview she was again
21 allowed to leave?
22 A. Correct.
23 Q. And then you obtained a search warrant for her
24 later that day on the 24th? Or I'm sorry. An arrest
25 warrant?

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1 A. Later that night, yes.
2 Q. And that was done during the day following
3 Mr. Leibel's death?
4 A. I'm sorry. What was that?
5 Q. That was done the day after Mr. Leibel's death?
6 A. Yes. On the 24th.
7 Q. And what is the process of -- or do you prepare
8 documents in support of getting an arrest warrant?
9 A. Yes. An affidavit was prepared and issued by the
10 judge and it's his determination whether he believes there's
11 probable cause for the arrest.
12 MS. BROWN: I need Number 74.
13 MR. GREGORY: Your Honor, I would request a
14 hearing outside the presence of the jury, please?
15 THE COURT: Okay. At this time I'm going to
16 excuse the jury for a few minutes. I'll ask you to go in to
17 the jury room. We're going to hear some arguments of
18 counsel. So while you are out of our presence during this
19 recess, you are not to talk or converse among yourselves or
20 with anyone else in any subject connected with this trial or
21 read, watch or listen to any report of or commentary on the
22 trial or any person connected with this trial by any medium
23 of information, including without limitation, newspapers,
24 television, radio or internet. You're not to form or express
25 any opinion on any subject connected with the trial until the

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1 case is finally submitted to you. I'll have the bailiff
2 escort you to the jury room.
3 We're now outside the presence of the jury. Mr.
4 Gregory.
5 MR. GREGORY: Thank you, your Honor. I
6 appreciate the opportunity. I realize that the next exhibit
7 Ms. Brown was going for is an exhibit that contains the
8 portion of the interview that was conducted by the sheriff's
9 department with Ms. Leibel. My concern is, your Honor, that
10 they are eliciting hearsay. There is a way for Ms. Leibel to
11 get her statements in front of the jury and it's to take the
12 stand if she chooses to do that. I object to the defense
13 continually asking this witness for information regarding the
14 content of that interview. And I asked for this hearing
15 outside the presence because of the next exhibit that was
16 being reached for. So I would ask that your Honor address
17 that issue and direct the defense to quit asking questions
18 that elicit hearsay.
19 THE COURT: Well, I haven't -- I haven't reviewed
20 the exhibit itself. Ms. Brown, if they're within that
21 affidavit if there's information about what Ms. Leibel said
22 happened, it seems to me that it's either hearsay or you're
23 simply trying to do what I've told you already that you could
24 do, which is to provide proof that she was consistent. And
25 it's not going to be allowed for evidence as to proof of her

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1 defense that this was in fact a suicide. So there may be --
2 you may have some other reason for offering it. I don't know
3 what's in it. But I'll tell you that if it is simply -- if
4 you're going to tell me it's simply to demonstrate that she
5 was consistent, I think that there are other ways to do that,
6 other than the admission of this affidavit.
7 MS. BROWN: Actually I wasn't going to offer it.
8 I just wanted it available if in questioning Investigator
9 Garren that I was going to ask about things that are not
10 included in it and if he needed to refresh his memory we
11 would have the document available.
12 THE COURT: Then it may be subject to redaction
13 if in fact it is admitted. So your objection seems to be a
14 little premature but I think it was wise to bring it up
15 outside the presence of the jury. The jury will be returned.
16 MR. GREGORY: Thank you.
17 THE COURT: Bring them back in. Both parties
18 know where I am on this issue.
19 Folks, you barely had time to cut a little corner
20 off one of those doughnuts. Thank you, folks. Have a seat.
21 Stipulate to the presence of the jury,
22 Mr. Gregory?
23 MR. GREGORY: Yes, your Honor.
24 THE COURT: Ms. Brown?
25 MS. BROWN: Yes, your Honor.

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1 THE COURT: Okay. Proceed, please.
2 Q. (By Ms. Brown) And on February 24th, the day
3 after Mr. Leibel's death, you obtained an arrest warrant for
4 Mrs. Leibel; is that correct?
5 A. That's correct.
6 Q. And as part of that, getting that arrest warrant,
7 you prepared an affidavit that contains facts as you know
8 them to be?
9 A. Correct.
10 Q. And this affidavit contained facts concerning the
11 investigation up to this point?
12 A. Yes.
13 Q. And at this point the crime lab had been to the
14 house the previous evenings but there was no reporting from
15 their -- from their analysis of the scene; is that correct?
16 A. No official reports had come in yet.
17 Q. And there was nothing concerning that reporting
18 included in your affidavit?
19 A. Correct.
20 Q. And there had been no ballistics testing done?
21 A. No.
22 Q. And there had been no fingerprint evidence
23 analyzed at this point?
24 A. No.
25 Q. And there had been no DNA processing done at this

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1 point?
2 A. No.
3 Q. And as I said, there had been even though the
4 crime lab had been at the scene, had done some measurements,
5 there was no trajectory reported yet?
6 A. Correct.
7 Q. And how was Mrs. Leibel's arrest arranged the
8 following day?
9 A. We had spoken to a friend with her and arranged
10 for her to be at the house in the morning. And when she
11 arrived on scene, she stepped out of the car, I asked her to
12 walk over to my car because her daughter was in the car with
13 her. And I walked her over to my car between the house and
14 the car as out of view as I could, I informed her we had a
15 warrant for her arrest, I placed her in handcuffs and sat her
16 in my car.
17 Q. So again, she had been free in her movements up
18 to this point?
19 A. Correct.
20 MS. BROWN: Can we get all the lights on up here?
21 THE COURT: Yeah, we'll get them on.
22 MS. BROWN: I believe I was going blind.
23 Q. (By Ms. Brown) Then you did the forensic
24 examination on Tatiana's phone that you spoke about earlier;
25 is that correct?

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1 A. That's correct.
2 Q. And she, there was considerable exchanges between
3 her and Lana, her daughter, concerning planning that trip to
4 southern California; is that correct?
5 A. That's correct.
6 Q. And even going through booking of a hotel
7 reservation in California?
8 A. Correct.
9 Q. And her daughter kept begging her to come?
10 A. Correct.
11 Q. And Mrs. Leibel would promise and then back off
12 some because Harry was not agreeing to that; is that correct?
13 A. There were messages saying she was coming and
14 then she was going to be delayed and she would explain to her
15 later.
16 Q. And entry number 43 was a message from Tatiana
17 Leibel to Lana Ramo, and this was on the evening of the 22nd
18 at 9:50. And at that point she said that she couldn't leave
19 now because Harry was going crazy, she needs to calm him down
20 some, I'll contact you a little bit later?
21 A. If that's what's written down there, that's
22 right. I don't have a copy of that with me.
23 Q. But then by the next morning Mrs. Leibel still
24 hadn't been able to leave?
25 A. I know she hadn't left.

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1 Q. And in the web history did you see a hotel
2 confirmation?
3 A. Yes, I did.
4 Q. And that was the following day?
5 A. Which day are we talking, following day of?
6 Q. The 23rd.
7 A. There was a confirmation that had the check in
8 the 23rd, to check out on the 26th.
9 Q. And then you also did the examination of
10 Mr. Leibel's phone?
11 A. Correct.
12 Q. And you noted two calendar entries, one was a
13 start time on the 25th of call locksmith. One was a start
14 time of 1:00 o'clock on the 25th, turn on house alarms; is
15 that correct?
16 A. Correct.
17 Q. And you don't know when those phone -- those
18 entries in to a calendar were made, do you?
19 A. No.
20 Q. And you can't enter reoccurring entries on a
21 telephone such as this?
22 A. You can.
23 Q. In another message you saw on the phone was an
24 incoming text from Chris Hedrick and that was on 2-24?
25 A. Yes. I would need the document to see what it

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1 is.
2 THE COURT: Again, why don't you say for the
3 record what exhibit you're looking at?
4 MS. BROWN: I'm sorry, your Honor. I believe
5 it's Exhibit 61. I'm showing you Exhibit 61.
6 THE WITNESS: Okay.
7 Q. (By Ms. Brown) And I think it's on the last
8 page?
9 A. Page four on the back, very back.
10 Q. Yes. Starting with entry number 44. These were
11 messages from Chris Hedrick?
12 A. Yes. Incoming from Chris Hedrick.
13 Q. And what were the messages Chris sent in?
14 A. Starting at 44?
15 Q. Yes.
16 A. "Harry, my friend, you have left me without
17 saying good-bye. The good moments we've had and your truths
18 of life and people that we have in or universe good and bad.
19 I knew a month ago something wasn't right and felt you were
20 going to be on your journey to another world. This world
21 wasn't right for your soul. I couldn't say why, but I did
22 see it. It's weird that you're gone and I have lost a real,
23 real friend. I pray for your soul and hope we meet again. I
24 thank you for guiding me to bettering myself and my life with
25 your honesty. Love your friend Chris."

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1 Q. And was -- Thank you. Was Chris ever contacted
2 after you reviewed this text message?
3 A. Yes, he was.
4 Q. But that was not until October of last year; is
5 that correct?
6 A. That's correct.
7 Q. And so there's a text message indicating that at
8 least one of his friends felt something was wrong and Harry
9 wasn't right for this world and you didn't investigate it for
10 several more months?
11 A. No. I wasn't able to get him in for an interview
12 until October.
13 Q. From -- You did these in March?
14 A. Correct. I had scheduled at least two interviews
15 with him that he didn't show up for. And getting to contact
16 him was difficult at times. Sometimes he wouldn't call back.
17 Q. Thank you. And then there was also the -- on
18 page two.
19 THE COURT: Of the same exhibit?
20 MS. BROWN: Of the same exhibit.
21 THE WITNESS: Okay.
22 Q. (By Ms. Brown) And this was message number 17,
23 the one you referred to earlier?
24 A. Correct.
25 Q. To Keri Rajacic?

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1 A. It's from -- Yeah. Outgoing, correct.
2 Q. "Hi, pal. I hope you both are well. We're okay.
3 Things have dragged on for way too long. That being said,
4 the slow moving powers that being should bring this process
5 to a conclusion in the very near future(days) You'll hear a
6 loud sigh like distant thunder. That would be me?"
7 A. Uh-huh.
8 Q. And these individuals weren't contacted until the
9 following month?
10 A. That's correct.
11 Q. And they were contacted by a different
12 investigator?
13 A. That's correct.
14 MS. BROWN: Thank you. I have nothing further.
15 THE COURT: Mr. Gregory.
16 REDIRECT EXAMINATION
17 By Mr. Gregory:
18 Q. Investigator, you were asked on
19 cross-examination, and actually they referred you to your
20 report where you indicated that it did not look like a
21 suicide to you. D you remember them asking you about that?
22 A. Yes, I do.
23 Q. What was it that didn't look like a suicide to
24 you?
25 A. Well, it was like no suicide I have ever seen or

1 Q. Ms. Brown was asking you whether or not
2 Ms. Leibel was consistent in her statements. As case agent
3 are you familiar with all the statements made by Ms. Leibel
4 during the course of this case?
5 A. Yes, I'm familiar with them.
6 Q. Are you familiar with the contents of the 911
7 call?
8 A. Yes, I am.
9 Q. Are you familiar with what Ms. Leibel told first
10 responders?
11 A. Yes, I am.
12 Q. Are you familiar with what she told Leann Brooks?
13 A. Yes, I am.
14 Q. You interviewed Ms. Brooks?
15 A. Yes, I have.
16 Q. And you're familiar with the contents of the
17 interview that has been indicated went on for about eight
18 hours; correct?
19 A. Correct.
20 Q. Was Ms. Leibel in fact consistent throughout that
21 interview, all of those statements?
22 A. No, she wasn't.
23 Q. Okay. Let's talk about that. In what ways was
24 she not consistent?
25 A. There were minor inconsistencies with her story

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1 been a part of. And the nature of the scene seemed
2 suspicious to me. So at that point I wasn't comfortable at
3 that moment in time saying, yeah, he took his own life. So
4 I've done what I've previously done on other death
5 investigations is we back out --
6 THE COURT: That's nonresponsive. The question
7 is what was it that didn't seem like a suicide. Not what you
8 did. So there probably is another question.
9 THE WITNESS: Sorry.
10 Q. (By Mr. Gregory) And you were about to indicate
11 that you had done that in the past whenever you see a
12 suspicious set of circumstances and then you back off. Is
13 that what you did here?
14 A. That's correct.
15 Q. And you've done that in other cases?
16 A. Yes, I have.
17 Q. Can you give an example of that?
18 A. At the end of July, 2013, it was a reported
19 suicide. When I got on scene, the scene was suspicious. We
20 backed everybody out, followed the same procedure. Called
21 more investigators, called Washoe County Crime Lab and
22 processed the scene and conducted the investigation.
23 Q. And what was the result of that investigation?
24 A. It was ultimately determined that it was a
25 suicide.

1 regarding the morning of the incident. At the very beginning
2 she indicated that when she got up in the morning Harry made
3 her tea to the point that she said thank you and he said
4 you're welcome. Later on that changed to where she made her
5 own tea. She was inconsistent and changed how she saw
6 Mr. Leibel holding the gun after the first shot to where she
7 demonstrated how she saw it and then kept changing and then
8 ultimately said, I don't know, I don't remember. That kept
9 changing.
10 Q. How about more specifically with the time frame
11 in terms of when she had argued with Harry and when she
12 called 911, anything inconsistent in that regard?
13 A. During the first part of the interview she
14 indicated that this argument with Harry started between nine
15 and ten a.m. She indicated she had just received a message
16 from Lana on her phone, had set her phone down and then got
17 up to make her statement to Harry that she was leaving.
18 Q. And since you're familiar with the first
19 responders and what she said to them, you would know that she
20 told Chris Lucas that she was outside when she heard two
21 gunshots. Is that statement consistent with what she said in
22 the interview?
23 A. No, it's not.
24 Q. In what way?
25 A. She told the one first responder, I was outside,

1 I heard two shots. And then it changed to where she wasn't
2 in the living room. She went to the kitchen, heard a shot
3 and came in, saw him moving the weapons, put her hands over
4 her face and at that time heard the second shot.
5 Q. And how about the order of the shot? Which shot
6 came first? Was she always consistent about that?
7 A. On the 911 call she indicated that he shot
8 himself first in the hand and then somewhere else. She
9 indicated that early on in the interview that after the first
10 shot she saw something on his left hand. And when we checked
11 the gun in examination, the order the bullets were fired, we
12 were able to determine that the first round was shot through
13 his right torso and the second shot came through the left
14 hand.
15 Q. And how about how she demonstrated for you how
16 Harry looked when she first came in to the room? Was she
17 always consistent in that regard?
18 A. I don't recall any major inconsistencies with
19 that.
20 Q. How about how Harry was holding the gun, any
21 inconsistencies there?
22 A. She indicated several different ways that he was
23 holding it. I believe the first time she had the right hand
24 up here and the left hand here.
25 Q. Okay. You've demonstrated your right hand out in

1 front of you?
2 A. The left hand here.
3 Q. And your left hand tucked in towards your torso?
4 A. Towards my body. And then as she got questioned
5 more about it as it went along, she would change I don't know
6 where it is, and then ultimately said I don't know, I don't
7 remember.
8 MR. GREGORY: Court's indulgence.
9 THE COURT: Take your time, sir.
10 Q. (By Mr. Gregory) What about in reference to the
11 second shot? Was she consistent in referring the involvement
12 of their dog?
13 A. She indicated in the interview that when the
14 first shot went off the dog went crazy and was running around
15 like crazy. And then on the 911 you don't hear the dog, you
16 only hear the dog bark momentarily before the doorbell rings.
17 And then the dog barks some more and it's the deputies at the
18 house.
19 Q. How about seeing the wound to Harry's left hand,
20 was she consistent regarding that?
21 A. Like she said on the 911, he shot himself in the
22 hand first. On the interview, she said after the first shot
23 he shot himself on the hand first. And as she progressed,
24 she didn't really remember what happened.
25 Q. In your experience, Investigator, are arrests

1 typically made only when the investigation is fully
2 completed?
3 THE INTERPRETER: I'm sorry. Only when?
4 MR. GREGORY: Only when the investigation is
5 fully completed.
6 THE WITNESS: No. Sometimes we have the ability
7 to do that. Sometimes we make the arrest as soon as we start
8 working a case and develop probable cause and believe we have
9 probable cause to arrest somebody and then we'll apply for an
10 arrest warrant.
11 Q. (By Mr. Gregory) And the investigation
12 continues?
13 A. The investigation does continue.
14 Q. Anything abnormal about the process that was done
15 in this case compared to other cases you've handled?
16 A. No.
17 Q. And Chris Hedrick was kind of alluded to that
18 maybe you weren't diligent in contacting him. Can you tell
19 us about your efforts to contact Mr. Hedrick?
20 A. I made several phone calls. I got in touch with
21 him a couple times. I had arranged a couple interviews. He
22 didn't show up. He travels a lot doing his wood cutting
23 business. So he said I'll be here this weekend. I said
24 here's my cell phone number, call me. I will make myself
25 available to you. I never got any calls from him. He told

1 me he lives in an area in California where he doesn't have a
2 lot of cell reception. It took several times of coordinating
3 with him before he finally came up and I met with him for the
4 interview.
5 Q. So you acknowledge and you've talked about how
6 the arrest was made while the investigation was still
7 pending; correct?
8 A. Correct.
9 Q. Had the investigation panned out such that you
10 believe that the murder did not happen, that it was a
11 suicide?
12 MS. BROWN: Objection as to what his belief is.
13 THE COURT: Repeat the question.
14 MR. GREGORY: And I'll rephrase it.
15 THE COURT: Okay.
16 Q. (By Mr. Gregory) After Ms. Leibel was arrested,
17 had the investigation uncovered evidence that supported that
18 it was a suicide, what would you have done?
19 A. I would have brought that information to the DA's
20 office and told them this is what we uncovered and seek a
21 dismissal of the charges.
22 MR. GREGORY: Thank you. I have nothing further.
23 THE COURT: Ms. Brown.
24 RE-CROSS-EXAMINATION
25 By Ms. Brown:

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1 Q. And Investigator Garren, you've given bits and
2 pieces of an eight-hour interview and said there's
3 inconsistencies; is that correct?
4 A. Correct.
5 Q. And that whole interview was videotaped; is that
6 correct?
7 A. Correct.
8 Q. And that video tape has been logged in to
9 evidence?
10 A. Correct.
11 MS. BROWN: Your Honor, I would ask the
12 investigator to bring the video tape to court to be offered
13 in to evidence. He's referred to bits and pieces of it and I
14 have the right to offer the rest of the statement.
15 MR. GREGORY: Your Honor, request another hearing
16 outside the presence.
17 THE COURT: Well, first of all, it's not here.
18 And so --
19 MR. GREGORY: It is here, your Honor.
20 THE COURT: In the room?
21 MR. GREGORY: Yeah, it was marked as an exhibit.
22 THE COURT: So the investigator doesn't have to
23 go get it. Do you have other questions that you want to ask
24 this witness before we do that?
25 Q. (By Ms. Brown) The information you received from

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1 the 911 call is basically a one statement concerning while
2 she was trying to explain to a dispatcher that her husband
3 had been shot and she wanted somebody to come to the house;
4 is that correct?
5 A. Correct.
6 Q. And the quote of that is she was asked if there's
7 serious bleeding. I don't know. I'm not seeing bleeding but
8 I see one hand, he shoot two times, first shoot his hand and
9 there -- then shoot somewhere else, I don't know where.
10 Now, you spent a lot of time with Mrs. Leibel.
11 You know her English is -- she's conversant but it's broken;
12 is that correct?
13 A. I don't know that it's broken. But at times she
14 does use inappropriate words, which would be typical of
15 somebody that didn't learn English in this country.
16 Q. And so sometimes if you're trying to -- talk
17 about one the number or first, you may use the wrong
18 translation in to another, a second language; is that
19 correct?
20 A. I don't know how somebody would handle that.
21 That isn't knowledge of our language or not.
22 Q. It was obvious to you that English was not her
23 native tongue; is that correct?
24 A. She spoke with a heavy Russian accent but she was
25 able to converse and we were able to talk freely without

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1 really having to repeat.
2 THE COURT: Did you hear the question, sir?
3 Repeat the question and then answer the question, repeat the
4 question, Ms. Brown.
5 MS. BROWN: I forgot it.
6 THE COURT: It was obvious to you that English
7 wasn't her native tongue?
8 THE WITNESS: Correct.
9 THE COURT: I believe I've stated that correctly,
10 what the question was; is that correct?
11 MS. BROWN: That's correct.
12 THE COURT: Then your next question, ma'am.
13 Q. (By Ms. Brown) And in her interview statement
14 she gave Williamson, the written statement she gave, she
15 couldn't say what happened because for the first shot she was
16 in the kitchen, for the second shot she had come in to the
17 living room and put her hands over her face; is that correct?
18 A. That's correct.
19 Q. And so positioning of hands would have been
20 higher to a shot, after a shot, something like that?
21 A. Correct.
22 Q. In the matter of the seconds it took for this all
23 to happen?
24 A. Correct.
25 Q. And in fact, she told you towards the end of your

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1 interview with her she was asking -- you were asking her, or
2 Hubkey at that point was asking, you were present, she had
3 just explained again that she was covering her face and heard
4 a boom and you were asking if -- or Hubkey was asking if she
5 had been shot under the armpit and she said no, I think
6 before because I not see shot hand beginning when I come from
7 kitchen?
8 THE INTERPRETER: I'm sorry. Because I did not
9 see?
10 MS. BROWN: Shot hand beginning when I come from
11 kitchen.
12 THE WITNESS: I would have to hear that part of
13 the interview to verify that's what she said.
14 Q. (By Ms. Brown) Have you reviewed the transcript
15 of the interview?
16 A. I have.
17 Q. So even at the conclusion of that interview,
18 she's saying I didn't see what happened because I not -- and
19 then I not see shot hand beginning when I come from kitchen?
20 A. I would have to see the transcript. That was a
21 long interview. I don't have the entire thing memorized.
22 THE COURT: Would looking at the transcript
23 refresh your recollection?
24 THE WITNESS: It would.
25 THE COURT: Ms. Brown, do you have the

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1 transcript? And this is not the entire transcript; is that
2 correct?
3 MS. BROWN: That's correct.
4 THE COURT: This is a portion that you've been
5 asking him about?
6 MS. BROWN: Yes. I'm showing you what's been
7 marked for identification as 124. Do you recognize that?
8 MR. GREGORY: Your Honor, I have not seen that
9 Exhibit.
10 MS. BROWN: I'm sorry.
11 THE COURT: I would appreciate if you show
12 Mr. Gregory.
13 THE WITNESS: That's a portion of the transcript
14 of the interview.
15 Q. (By Ms. Brown) And does looking at that refresh
16 your memory concerning the statement she made concerning not
17 seeing the shot hand?
18 A. Correct, yes. That refreshes my memory.
19 Q. Thank you.
20 THE COURT: You may go ahead and ask him the
21 question.
22 MS. BROWN: And your Honor, again, I'd offer
23 Exhibit Number 63, the video of her statements.
24 THE COURT: Wait a minute. You refreshed his
25 recollection. Do you intend to ask him a question about his

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1 recollection?
2 Q. (By Ms. Brown) Was the statement I made to you
3 concerning, no I think before because I am not see shot hand
4 beginning when I coming from kitchen. Is that a statement,
5 one of the statements she made towards the conclusion of the
6 interview?
7 A. Correct.
8 Q. And in that you can see that she's speaking in
9 somewhat broken English and transposing words?
10 A. Correct.
11 MS. BROWN: Thank you.
12 THE COURT: I understand you have an exhibit that
13 you want to offer. Do you have any other examination of this
14 witness that you want to do for the next 15 minutes while we
15 have the jury here?
16 MS. BROWN: No, your Honor. Thank you.
17 THE COURT: Okay. Well, folks, I'm going to hear
18 from the attorneys for a little bit and I'm going to let you
19 go early tonight. You should know that you will also get the
20 opportunity to leave early tomorrow. There's some issues
21 that I need to deal with the attorneys with and we will begin
22 that at 3:00 o'clock tomorrow. So when we take our 3:00
23 o'clock break tomorrow afternoon, you'll be released for the
24 rest of the day and you won't have to come back tomorrow
25 after 3:00 o'clock. I expect that the rest of the days of

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1 this trial will be full days.
2 So we'll take our evening recess. During this
3 recess you are admonished not to talk or converse among
4 yourselves or anyone else on any subject connected with this
5 trial or to read, watch, or listen to any report of or
6 commentary on the trial or any person connected with this
7 trial by any medium of information including without
8 limitation, newspapers, television, radio or internet.
9 You're not to form or express any opinion on any subject
10 connected with the trial until the case is finally submitted
11 to you. Please bear that in mind as you spend your evening.
12 Thank you.
13 Before any of the witnesses leave, the
14 admonishment about talking to each other or anyone other than
15 the attorneys remains true.
16 Ms. Brown.
17 MS. BROWN: Yes.
18 THE COURT: Clearly you want to introduce the
19 entire tape of this interview, to which Mr. Gregory is
20 exactly correct is hearsay.
21 MS. BROWN: Your Honor, I think somewhat under
22 NRS 47.120 when any part of writing a report or statement --
23 THE COURT: You need to slow down, ma'am.
24 MS. BROWN: When any part of a writing or
25 recorded statement is introduced by a party, the party may be

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1 required at the time to introduce any other part of that
2 which is relevant and any party may introduce any other
3 relevant parts. Although the recording has not been
4 introduced, the officer has testified to specific portions
5 and so I think the rest of the context of where he's getting
6 his inconsistent statements from would be admissible.
7 THE COURT: Aren't you the one who introduced
8 those parts of the recording first?
9 MS. BROWN: No. Mr. Gregory on rebuttal was
10 questioning him about specific statements that were made.
11 THE COURT: I think you were asking him about her
12 statement to the officers first and whether she was
13 consistent. You started that, did you not?
14 MS. BROWN: No, I didn't ask if she was
15 consistent. I said she maintained the fact, maintained that
16 her husband committed suicide.
17 THE COURT: It was admitted for purposes of you
18 demonstrating that she was consistent. And so you were
19 admitting portions of that statement. I don't believe that
20 you can come in and admit portions of the statement and then
21 claim that now you get to introduce the rest because there
22 was cross-examination about the part that you introduced.
23 MS. BROWN: Mine wasn't coming in for the truth
24 of the matter asserted.
25 THE COURT: And how was his? His was coming in

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1 to rebut your allegation of consistency.
2 MS. BROWN: No. My allegation -- What I had
3 offered it for was to show that throughout an eight-hour
4 period where she was confronted she maintained that her
5 husband committed suicide.
6 THE COURT: She maintained consistency. That's
7 the same thing.
8 MS. BROWN: In the general story of my husband
9 committed suicide.
10 THE COURT: So she maintained the consistency.
11 She got -- Mr. Gregory gets to attack that position through
12 his follow-up examination. But you're the one who went to
13 the eight-hour examination and who said let's talk about this
14 examination and she was consistent. Now, I limited the
15 admissibility of that testimony so that it was not admitted
16 to prove the truth of what Ms. Leibel was saying in that was
17 not admitted to establish the truth of the allegation that --
18 or of the position that she's taken that in fact her husband
19 committed suicide. It's not admissible for that reason. It
20 was admitted only to show the maintain or the consistency.
21 Maintain and consistency are interpreted by this Court as the
22 same thing unless you can provide me with different
23 definitions. I have a dictionary on my desk in there that I
24 would be happy to get for you.
25 So if that's why it was admitted, certainly

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1 Mr. Gregory gets to take the position that she was not
2 consistent. How does that allow you to then bring in hearsay
3 to establish the truth of the matter asserted? Help me with
4 that.
5 MS. BROWN: Because my maintain is maintained her
6 innocence. His is inconsistencies on details within the
7 story. Out of an eight-hour interview he couldn't even
8 describe some of them. She demonstrated the gun some way, I
9 can't remember exactly which way she was holding it, but it
10 changed. Broad general statements concerning very specific
11 things that were said in an interview. And so I think since
12 those specific statements have been brought in that that
13 would then give the jury the right to hear the whole context
14 of what was said.
15 THE COURT: Mr. Gregory.
16 MR. GREGORY: Well, I tried very hard and fired
17 many shots across the bow to prevent this from happening but
18 Ms. Brown kept asking the questions about the interview. I
19 kept objecting on hearsay grounds. She insisted it was for
20 the purpose of consistency only. And so the Court allowed
21 that. Absolutely then the State should get to ask about
22 inconsistencies without opening the door up to the whole
23 hearsay statement.
24 The interesting thing with consistency and
25 inconsistency is in NRS 51.035(2) where it talks about prior

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1 consistent and inconsistent statements, consistent and
2 inconsistent statements. The declarant testifies at trial
3 and is subject to cross-examination regarding --
4 THE INTERPRETER: Counsel.
5 THE COURT: You're going too fast, sir, and I'm
6 going to ask you to slow down.
7 MR. GREGORY: My apologies.
8 THE COURT: It's okay.
9 MR. GREGORY: 51.035(2). It talks about
10 testimony coming in of consistency when a declarant has
11 testified. Now, again, I tried to keep that from going that
12 direction but it went there. Ms. Brown insisted that we go
13 to consistency and it came in.
14 THE COURT: Well, the State previously introduced
15 evidence that she made an inconsistent statement to someone
16 outside of the home about her being outside, so I think that
17 consistency issue was already raised.
18 MR. GREGORY: That's a fair position, your Honor.
19 So the defense does not get to drive the boat though as far
20 as which statements of the defendant come in. I know they
21 very badly want that statement to come in. And frankly, it
22 upset me when they kept asking the questions knowing that
23 they were going to get the hearsay objection and ringing that
24 bell with the jurors. The bell has been rung. That's fine.
25 But there is no way they should be able to now introduce this

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1 whole statement when they were the ones that opened up that
2 door on inconsistency. She opened it extremely wide and I
3 drove through it.
4 THE COURT: It's the position of the Court that
5 the defense was allowed to introduce evidence of this
6 statement only as to her maintaining a consistent position.
7 The State was allowed to introduce evidence that was contrary
8 to that. That does not open the door to this whole
9 statement. And I think that to do so would allow in hearsay
10 evidence that is not related to the issue of consistency and
11 the Court is not going to admit it.
12 Anything else?
13 MS. BROWN: No, your Honor.
14 THE COURT: Mr. Gregory?
15 MR. GREGORY: No, your Honor.
16 THE COURT: I'm not going to admit it at this
17 point.
18 So are both parties done with this investigator?
19 MR. GREGORY: No, your Honor. I don't know if
20 Ms. Brown was finished. But I had some questions based upon
21 what she elicited.
22 THE COURT: I think she's done with her cross.
23 She may have recross later. Are you done?
24 MS. BROWN: No. I thought he had already done
25 redirect.

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1 THE COURT: Well, he may get to.
2 MS. BROWN: Recross.
3 THE COURT: And he may get to re-redirect. So
4 you'll get to re-recross.
5 With that having been said, Investigator, you're
6 ordered to be here at 9:00 a.m. tomorrow morning. You're not
7 to talk or converse with any witnesses or anyone associated
8 with this trial other than the attorneys. Do you understand
9 that, sir?
10 THE WITNESS: Yes, sir.
11 THE COURT: You're excused for the evening, sir.
12 THE WITNESS: Thank you, sir.
13 THE COURT: Thank you for being here, sir. That
14 having been said, we will reconvene at 9:00 o'clock tomorrow
15 morning.
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1 STATE OF NEVADA }
2 COUNTY OF WASHOE } ss.
3
4 I, CHRISTY Y. JOYCE, Nevada Certified Court
5 Reporter Number 625, do hereby certify:
6 That I was present in the District Court of
7 Minden Township, in and for the State of Nevada, on
8 Wednesday, the 28th day of January, 2015, for the purposes of
9 reporting in verbatim stenotype notes the within-entitled
10 hearing;
11 That the foregoing rough draft transcript,
12 consisting of pages 1 through 221, is a full, true, and
13 correct rough draft transcript of said hearing.
14
15 Dated at Reno, Nevada, this 17th day of June,
16 2015.
17
18
19
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21
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25


CHRISTY Y. JOYCE, CCR #625

EXHIBIT 7

In The Matter Of:
State of Nevada vs
Tatiana Leibel, aka Tatiana Kosyrkina - 14-CR-0062

Jury Trial - Thursday
January 29, 2015
Rough Draft

Capitol Reporters
208 N. Curry Street

Carson City, Nevada 89703

Original File jan 29 15 TLeibel.txt
Min-U-Script® with Word Index

Page 1

1 Case No. 14-CR-0062
2 Dept. No. I
3 DA 14-343G

4
5 IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF
6 NEVADA IN AND FOR THE COUNTY OF DOUGLAS
7 THE HONORABLE NATHAN TOD YOUNG, DISTRICT JUDGE

8 -o0o-

9 STATE OF NEVADA,)
10 Plaintiff,)
11 vs.)
12 TATIANA LEIBEL, a.k.a.)
13 TATIANA KOSYRKINA,)
14 Defendant.)

14 ***ROUGH DRAFT** TRANSCRIPT OF PROCEEDINGS
15 JURY TRIAL
16 THURSDAY, JANUARY 29, 2015
17 MINDEN, NEVADA

18 For the State: Thomas Gregory,
19 Deputy District Attorney

20 For the Defendant: Kristine L. Brown, Esq.
21 Jamie Henry, Esq.

22 The Defendant: Tatiana Leibel, a.k.a.
23 Tatiana Kosyrkina

24 Reported by: Capitol Reporters
Nicole Alexander, Nevada CCR #446
(775) 882-5322

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1 MINDEN, NEVADA, THURSDAY, JANUARY 29, 2015, A.M. SESSION
2 -o0o-

3 JOEY LEAR,
4 having been first duly sworn, was
5 examined and testified as follows:

6 THE COURT: Come on up and have a seat up
7 here, please. There's some water there, if you'd like.

8 THE WITNESS: Thank you, sir.

9 THE COURT: Mr. Gregory?

10 MR. GREGORY: Good morning, sir.

11 THE WITNESS: Good morning.

12 DIRECT EXAMINATION

13 BY MR. GREGORY:

14 Q State your name and spell your last name.

15 A Joey Lear: L-e-a-r.

16 Q And what were you doing for a living back in
17 February 23rd, 2014?

18 A I was assigned as a forensic investigator for
19 the Washoe County Crime Lab.

20 Q And in that capacity, did you visit a crime
21 scene on that date located at 452 Kent Way in Zephyr
22 Cove, Nevada?

23 A Yes.

24 Q And as part of your job that day, were you

Page 2

1 I N D E X

2 THE WITNESS: PAGE:
3 JOEY LEAR

4 Direct examination by Mr. Gregory 3
5 Cross-examination by Ms. Brown 20

6 THE WITNESS:
7 JENNIFER NARANJO

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10 THE WITNESS:
11 KEVIN BYRNE

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13 THE WITNESS:
14 JUSTIN LIEBEL

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18 THE WITNESS:
19 JAMES HALSEY

20 Direct examination by Mr. Gregory 86
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22 THE WITNESS:
23 PIOTR KUBICZEK

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27 THE WITNESS:
28 MATTHEW NOEDEL

29 Direct examination by Ms. Brown 166
30 Cross-examination by Mr. Gregory 199

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1 tasked with measuring and diagramming the living room?

2 A. Yes.

3 Q. Can you tell me just generally how do you go
4 about measuring and diagramming a crime scene?

5 A. Once we have been requested to do a diagram,
6 I ask to be informed of the locations of all items of
7 evidence to make sure that I set my diagram parameters to
8 be large enough to not miss any items of evidence, and I
9 start large, and I begin with exterior measurements, and
10 I work my way through each room systematically to take
11 enough accurate measurements to draw up that scene and
12 also locate items of evidence within that scene.

13 Q. What types of instruments do you use to take
14 the measurements?

15 A. I use a distometer, which is a laser
16 measuring device commonly used in forensics. I will also
17 use just a hand-held tape measure for smaller
18 measurements.

19 Q. And the first instrument you mentioned?

20 A. Yes.

21 Q. What is the accuracy of an instrument like
22 that?

23 A. We, as a lab, we quality assurance measure
24 them quarterly, and then every scene that we use them, we,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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Page 27

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

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

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

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

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

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

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

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

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Page 35

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13 Q. Exhibit 47.

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

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

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

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

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

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

21 Q. Where is the liver in the body?

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

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

2 Q. Exhibit Number 48?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10 MR. GREGORY: Yes, Your Honor.

11 MS. BROWN: Yes, Your Honor.

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

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

17 THE COURT: The little handheld one --

18 MR. GREGORY: Yes.

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

23

24

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

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

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

1 CONTINUED DIRECT EXAMINATION
2 BY MR. GREGORY:

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

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

17 Q. Doctor, what is rigor mortis?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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1 a your motion. I don't know if you've talked to
2 Mr. Gregory about him doing that, agreeing on how you'll
3 proceed. Mr. Gregory?

4 MR. GREGORY: No, we have not spoken about
5 that.

6 THE COURT: Well, it's your motion, ma'am.
7 Call any witnesses.

8 MS. BROWN: Yes, I'll call Mr. Noedel.

9 THE COURT: Is Mr. Noedel here?

10 THE WITNESS: Yes.

11 THE COURT: Come forward, sir. If you would
12 pause about right there, turn and face the clerk.

13
14 MATTHEW NOEDEL,
15 having been first duly sworn, was
16 examined and testified as follows:

17
18 THE COURT: Come on up and have a seat on the
19 stand there, sir. And it looks like somebody left their
20 cup, but clean cups and fresh water are there for you if
21 you'd like to have that.

22 THE WITNESS: I prepared this one, sir.

23 THE COURT: Go ahead.
24

1 when you're training or doing work on a contract, or is
2 that performed in another way?

3 A. I'm physically present. I come to Reno about
4 once a -- one week out of every month for about the last
5 four years.

6 Q. And you submitted a report in this case,
7 excuse me, if I can just find a copy here. Showing you
8 what's been marked as Exhibit 139. Do you recognize
9 that?

10 A. Yes, I do.

11 Q. And what is that?

12 A. This looks like a copy might of my
13 reconstruction report from this event.

14 Q. And when you prepared this report, was it
15 done under your own private company or under Washoe
16 County Crime Lab?

17 A. It was prepared as a part of my own company,
18 Noedel Scientific.

19 Q. Now, as part of this report, you said you did
20 examine some documents, photographs, pictures, things
21 like that?

22 A. Yes, I did.

23 Q. What did you examine?

24 A. I examined all of the available crime scene

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1 DIRECT EXAMINATION

2 BY MS. BROWN:

3 Q. Thank you, Your Honor. Could you state your
4 name and spell your last name, please.

5 A. Matthew Noedel: N-o-e-d-e-l.

6 Q. And what is your occupation?

7 A. I'm a forensic consultant for my own company
8 called Noedel Scientific.

9 Q. Are you also an employee of the Washoe County
10 Crime Lab?

11 A. Yes, a contract basis.

12 Q. And what do you mean by, "on a contract
13 basis"?

14 A. One of my contracts through my business as
15 Noedel Scientific was to help train and work on backlog
16 cases at the Washoe County Crime Laboratory, specifically
17 training new examiners in the firearm tool marking and
18 also working on backlog cases as time permitted.

19 Q. And you give an address in "Pollyup,"
20 Washington?

21 A. Yes, Puyallup, Washington.

22 Q. And is that where your business is located?

23 A. That's correct.

24 Q. Are you physically present at the crime lab

1 photographs, the available autopsy photographs, the
2 autopsy report, some of the police reports that were
3 available about the event, other forensic reports
4 initiated by people who were at the crime scene, so
5 laboratory reports.

6 Q. Five people that were at the crime scene?

7 A. Yes, from people at the crime scene.

8 Q. Oh, from people at the crime scene?

9 A. Sorry.

10 Q. Did you have a chance to speak with one of
11 the crime scene investigators, Joey Lear?

12 A. Yes, I did.

13 Q. And when did you speak with him?

14 A. About three weeks ago, I spoke with him via
15 the phone.

16 Q. That was prior to preparing your report?

17 A. Yes, it was prior to my report.

18 Q. And in your report, you reached a conclusion
19 the physical evidence including the length of the rifle,
20 the length of Mr. Leibel's, Harry Leibel's arm, the
21 distance of each shot, the angle of each shot --

22 THE COURT: Ma'am, please slow down. It's
23 okay, but it's going to be difficult. Thank you. You
24 may start over, if you'd like.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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1 usable thought process, not just giving measurements.
2 It's not helpful to give the jury measurements without
3 telling them, having an expert explain how do those
4 measurements -- how can we use those measurements.

5 THE COURT: My concern though is that they're
6 subject to couple of problems. One, speculative
7 testimony is not admissible. And I know that you would
8 agree with that. So when the witness says, clearly
9 testified yeah, that's one way. It could have been some
10 other way. I just did this because it seemed like it was
11 a way to depict one of the ways, then we're -- it seems
12 like it's speculative because he's acknowledged there
13 could be other ways. So he's chosen one of the many
14 ways. That's one issue.

15 And two, even if you're going to say well,
16 it's more likely that it's that way, but it could be some
17 other way, don't we run the risk of it being more
18 prejudicial than probative then? And that's the other
19 concern I have. And it seems to me that if this
20 testimony is going to be presented, that the best way to
21 present it is without diagrams and pictures that the
22 witness acknowledges may not be right so that he could
23 testify without presenting to the jury things that he
24 acknowledges may not be correct. Help me with that.

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1 MR. GREGORY: Yes.

2 THE COURT: And tell me if you disagree
3 that's okay.

4 MR. GREGORY: I disagree that's speculative.
5 Here's a guy whose qualifications are spotless. He's one
6 of 17 guys that have these qualifications. He's not just
7 sitting here speculating, Your Honor. He's basing it on
8 data. And yes, from that data, there can be other ways
9 that Mr. Leibel could have been positioned, and he's
10 acknowledging that.

11 THE COURT: Other conclusions reached.

12 MR. GREGORY: But there are some really good
13 definite absolutes in this case which are the
14 measurements, the trajectory, the path of every -- you
15 know, the wounds through the body, the arm being up. All
16 of this testimony that's already been covered that's come
17 in, and I should say there's been no testimony that the
18 couch has been moved. At least I haven't heard that;
19 that the couch was moved prior to Joey Lear doing his
20 measurements. I haven't heard that.

21 The other thing I heard from Mr. Noedel is
22 this idea that when they put Sergeant Lyford on that
23 couch to load it up, he's acknowledging maybe that's not
24 the best, but that didn't impact his decision. He still

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1 felt like he had enough data, which included looking at
2 the couch itself, going to the house itself, handling the
3 gun, and going through all of that. So I didn't take it
4 that that changed his opinion. In fact, and I asked him
5 how confident he was in his opinion even with that
6 information.

7 THE COURT: I'm not addressing that with you.
8 I'm talking to you about the diagrams contained in here.
9 Now, we already have an issue where I told you I'm not
10 going to allow diagrams of a skeleton shooting anybody,
11 but if he's able to testify without these diagrams that
12 may or may not be accurate as to how the body was
13 positioned and he gets to testify, but he's simply not
14 able to use diagrams that are based on it could have
15 happened this way. And that's my concern.

16 MR. GREGORY: Well, I didn't take his
17 testimony to be that these diagrams are inaccurate. In
18 fact, he builds into the diagrams a rate of error, as you
19 can see with the cones that he put on and even in his
20 testimony. I did understand Your Honor's concern
21 regarding the figures that were used, and he has put
22 different figures into the diagrams, giving two options.
23 One is with a female, which we have in this case. The
24 other is that a more neutral-type figure, but not a

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1 skeleton-like figure.

2 THE COURT: I think it should be asexual.

3 MR. GREGORY: And I have to tell you that's
4 what he and I did understand what you were saying with
5 those. He was making every attempt with those photos to
6 make it neutral. Understanding what your concerns were,
7 though, he has even a different --

8 THE COURT: I don't presume bad intent, sir.
9 I understand that. I appreciate that.

10 MR. GREGORY: Okay.

11 THE COURT: I'm not presuming that it was
12 intended to be ghoulish.

13 MR. GREGORY: Thank you.

14 THE COURT: Anything else; sir?

15 MR. GREGORY: No.

16 THE COURT: All right. Having listened to
17 the expert, I think Mr. Noedel does possess the
18 qualifications necessary to be an expert witness.

19 Two, under Hallmark, would his testimony
20 provide the jurors with some assistance? And I think his
21 testimony would assist the jury, and the scope is going
22 to be limited because I'm not going to allow him to
23 present -- I'm not going to allow the State to present
24 evidence of diagrams that he's created where he's

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

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

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

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

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

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

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

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

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

Carson City, NV.

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4 (775) 882-5322

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

7 THE STATE OF NEVADA,
8 Plaintiff,

9 v. Case No. 14-CR-0062
10 DA 14-343G
11 TATIANA LEIBEL, a.k.a.,
12 TATIANA KOSYRKINA,
13 Defendant.
14

15 AFFIRMATION

16 Pursuant to NRS 239B.030

17 The undersigned does hereby affirm that the
18 following document DOES NOT contain the social security
19 number of any person:
20
21
22
23
24

NICOLE ALEXANDER

June 5, 2015

EXHIBIT 8

In The Matter Of:
State of Nevada vs
Tatiana Leibel, aka Tatiana Kosyrkina - 14-CR-0062

Jury Trial - Friday
January 30, 2015
Rough Draft

Capitol Reporters
208 N. Curry Street

Carson City, Nevada 89703

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Page 3

1 Case No. 14-CR-0062
2 Dept. No. I
3 DA 14-343G

4 IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF
5 NEVADA IN AND FOR THE COUNTY OF DOUGLAS
6 THE HONORABLE NATHAN TOD YOUNG, DISTRICT JUDGE

7 -o0o-

8 STATE OF NEVADA,

9 Plaintiff,

10 vs.

11 TATIANA LEIBEL, a.k.a.

12 TATIANA KOSYRKINA,

13 Defendant.

14 ***ROUGH DRAFT** TRANSCRIPT OF PROCEEDINGS
15 JURY TRIAL
16 FRIDAY, JANUARY 30, 2015
17 MINDEN, NEVADA

18 For the State: Thomas Gregory,
19 Deputy District Attorney

20 For the Defendant: Kristine L. Brown, Esq.
21 Jamie Henry, Esq.

22 The Defendant: Tatiana Leibel, a.k.a.
23 Tatiana Kosyrkina

24 Reported by: Capitol Reporters
Nicole Alexander, Nevada CCR #446
(775) 882-5322

1 MINDEN, NEVADA, FRIDAY, JANUARY 30, 2015, A.M. SESSION
-o0o-

2
3
4 THE COURT: We're back in session in 14-DI16,
5 State of Nevada versus Tatiana Leibel. Mr. Gregory is
6 here for the State, and for the defense, we have
7 Ms. Brown and Ms. Henry, who are both here. Ms. Leibel
8 is here, and the interpreters are here. However, we have
9 a new interpreter that I would like to swear before we go
10 any further. New to us. Face the clerk here. Raise
11 your right hand.

12 (WHEREUPON, the interpreter was duly sworn.)

13 THE COURT: Thank you, ma'am. You may have a
14 seat. Now all of our interpreters has been sworn. I
15 want to address an issue that came to my attention this
16 morning. One of the bailiffs advised me that one of our
17 jurors saw someone that she knew, apparently didn't know
18 her very well, and it turns out that they had a very
19 brief conversation, and she -- the question was, "What
20 are you doing here? Do you work in this building?" She
21 said, "No, I'm at Ed Garren's mom." And she said, "Oh,
22 well, I can't talk to you," I think, was the extent of
23 it.

24 However, I intended to bring that juror in

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2 THE WITNESS:
3 RALPH BURACH
4 Direct examination by Mr. Gregory
5 Cross-examination by Ms. Henry

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6 THE WITNESS:
7 DARLA LEIBEL-BURROW
8 Direct examination by Mr. Gregory
9 Cross-examination by Ms. Henry

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10 THE WITNESS:
11 SHARON OREN
12 Direct examination by Mr. Gregory
13 Cross-examination by Ms. Brown

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14 THE WITNESS:
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17 Cross-examination by Ms. Brown
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1 just to have her say exactly what happened and hear if
2 either of you believes that there's cause to dismiss her
3 from the jury. So it's Miss Martin, and it's my
4 intention to start with that. Do you have any objection
5 to that, Mr. Gregory?

6 MR. GREGORY: No, Your Honor.

7 THE COURT: And do the defense, either of one
8 of you?

9 MS. BROWN: No, Your Honor.

10 THE COURT: Can we bring Miss Martin in.

11 Ms. Martin, good morning.

12 JUROR NO. 3: Good morning. It's me again.
13 I apologize.

14 THE COURT: No, ma'am. It's all right, but
15 it came to my attention that perhaps you had a
16 conversation with Mr. Garren's mother.

17 JUROR NO. 3: I didn't know it was
18 Mr. Garren's mother at the time.

19 THE COURT: That's okay. Do you mind telling
20 us about it?

21 JUROR NO. 3: No. I mentioned it because I
22 didn't know who possibly could have seen it who might
23 have misconstrued it. So when I was leaving, I saw Sandy
24 Garren, and I had seen her in the audience yesterday, and

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1 as I was leaving, I just said, "Hi, Sandy." She said,
2 Hi. I thought it was you." And so I said to her, "Are
3 you still going to the same church?" We talked about the
4 church for a little bit, and then we talked about bunco
5 because that's how we knew each other, and this is years
6 and years ago. I mean, years and years ago. I used to
7 do coffee and doughnuts at Life Point Community Church,
8 so when she'd get her donut, we'd say, "Good morning."
9 That was the extend of it.
10 I would not call her a friend, but an
11 acquaintance, and just as we were just about finishing
12 the conversation, I said to her, "Do you work here?" And
13 she said, "No. I was here to see my son testify,
14 whatever Garren." And I said, "Okay. Nice to see you,"
15 and I left.
16 THE COURT: Okay.
17 JUROR NO. 3: And I realized it was somebody
18 that was involved.
19 THE COURT: Well, first of all, I greatly
20 appreciate you telling us. I really, really do. And do
21 you believe that that conversation influences you in this
22 trial in any fashion?
23 JUROR NO. 3: Absolutely not.
24 THE COURT: Does it tend to make you believe

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1 or disbelieve Investigator Garren, that conversation?
2 JUROR NO. 3: No.
3 THE COURT: Has it impacted you in any
4 fashion regarding this trial?
5 JUROR NO. 3: No, and I didn't even know if I
6 should mention it, but I thought there could have been
7 someone who witnessed an encounter that could have
8 thought it went on beyond that point.
9 THE COURT: Well, you should have mention it.
10 You did exactly the right thing.
11 JUROR NO. 3: Well, you had said people on
12 the board, and Sandy wasn't on the board, but -- and I
13 didn't even know she had -- I know people like to come
14 see trials, so I didn't have a clue.
15 THE COURT: Absolutely, ma'am. Mr. Gregory,
16 do you have any questions?
17 MR. GREGORY: No.
18 THE COURT: Ms. Brown?
19 MS. BROWN: No, Your Honor.
20 THE COURT: Ms. Martin, I think you did
21 exactly the right and honorable thing. There's no reason
22 to excuse you. We appreciate your participation.
23 Now I'm going to bring in the rest of the
24 jury. You can go back and walk in with them or just take

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1 your seat.
2 JUROR NO. 3: I'd like to get something
3 first.
4 THE COURT: Okay. We'll give you a moment to
5 do that.
6 JUROR NO. 3: Just going to grab a bottle of
7 water.
8 THE COURT: Thank you.
9 THE BAILIFF: Can we let the audience in or
10 the people?
11 THE COURT: Yes, sir, you may.
12 Counsel still think we're looking okay for
13 Friday concluding?
14 MR. GREGORY: Yes, Your Honor.
15 THE COURT: You know the place you're at,
16 so --
17 MR. GREGORY: Yes. I would tell the Court I
18 think I'm ahead of schedule. Yeah, we're on track.
19 THE COURT: Well, you I don't know where we
20 are?
21 MS. BROWN: Yeah. I was going to say how far
22 ahead of schedule.
23 THE COURT: All right. Well, we'll see. Why
24 don't we bring in the jury. Thank you very much.

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1 MS. BROWN: And, Your Honor, just in case
2 there's any witnesses in the courtroom, they need to be
3 instructed on the rule of exclusion.
4 THE COURT: Are there any witnesses in the
5 courtroom other than the family members I've talked to
6 already? Okay. Thank you. The public is welcome.
7 Good morning, all. Have a seat please.
8 Thank you. Good morning to all of you. Ms. Martin, I
9 forgot to ask, and I apologize. How is your mother?
10 JUROR NO. 3: Much better. I think it was
11 blood pressure. She was very low again this morning, and
12 she couldn't get out of bed, so it's probably the blood
13 pressure that's affecting her. But she's a got caregiver
14 that is coming in all day long.
15 THE COURT: Very good. Thank you. To all of
16 the jurors, I want to apologize. We generally have that
17 jury room cleaned up a little bit. Mr. Seddon and I went
18 in last knew night and cleaned up a few things, but
19 generally the janitorial staff comes in and empties the
20 garbage can. I note that that didn't happen last night,
21 but we'll make sure it does. We want you to be
22 comfortable back there. Those of you who left bottles of
23 water out here, we left them in place. If you want fresh
24 water, you're welcome to it, but I kind of presume that

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Page 11

1 you left your bottles here because you wanted them. If
2 you don't and you want a fresh bottle, you're welcome to
3 that. Good morning to all of you.
4 So will counsel stipulate to the presence of
5 the jury?
6 MR. GREGORY: Yes, Your Honor.
7 MS. BROWN: Yes, Your Honor.
8 THE COURT: Okay. With that, Mr. Gregory,
9 your next witness, please, sir.
10 MR. GREGORY: Thank you, Your Honor. I'll
11 start with an exhibit first, Exhibit Number 140. That's
12 a certified copy of a Certificate of Death from
13 Mr. Leibel. I'd move for its admission.
14 THE COURT: May I see it, please?
15 MR. GREGORY: Yes.
16 THE COURT: Do you have any objection to it?
17 MS. BROWN: No, Your Honor.
18 THE COURT: 140 is admitted.
19 (Exhibit No. 140 was admitted into evidence.)
20 MR. GREGORY: The State calls Ralph Burach.
21 Come on in, sir. If you would pause right there and face
22 the clerk for a moment. This is the clerk right here,
23 the lady who is standing. Raise your right hand, sir.
24

1 with Mr. Leibel.
2 A. Harry Leibel was my dearest and closest
3 friend. I knew the man for over 50 years. Our
4 relationship started back in Los Angeles at Fairfax High
5 School. We went to high school together, junior college,
6 practically grew up together, lived in the same community
7 for years. He encouraged me to move to Orange County. I
8 knew him in Orange County for years; knew his family
9 exceptionally well. Harry Leibel was my closest and
10 dearest friend.
11 Q. Do you know when about in time Harry moved to
12 Tahoe?
13 A. Harry moved to Lake Tahoe, I believe, the me
14 beginning of like 2001-2002, somewhere in there.
15 Q. How did that impact your contact with
16 Mr. Leibel?
17 A. It impacted it a little bit. Obviously, you
18 know, the distance was a bit of a problem, but it didn't
19 stop me from using the phone and always calling my buddy
20 to see what was going on. We were very close.
21 Q. And would you still be able to get together
22 sometimes even though he had moved up here?
23 A. Absolutely. I drove up and I saw Harry on
24 occasion a few times. I enjoyed the Lake Tahoe area.

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Page 12

1 RALPH BURACH,
2 having been first duly sworn, was
3 examined and testified as follows:
4
5 THE COURT: Come over here and have a seat,
6 please, sir.
7 THE WITNESS: Yes, sir.
8 THE COURT: There's some water if you'd like.
9 THE WITNESS: Thank you.
10 THE COURT: Mr. Gregory?
11
12 DIRECT EXAMINATION
13 BY MR. GREGORY:
14 Q. Good morning, sir. Will you please state
15 your full name.
16 A. My name is Ralph Baruch.
17 Q. How do you spell your last name?
18 A. B-a-r-u-c-h.
19 Q. And it's my understanding you're visiting us
20 today from Southern California?
21 A. Yes, sir. That is correct.
22 Q. Do you know Harry Leibel?
23 A. No know him very well.
24 Q. Tell us a little bit about your relationship

1 It's beautiful.
2 Q. And describe Harry's personality.
3 A. Describe Harry's personality. Harry was one
4 of a kind. He had a very up-tone personality. He loved
5 living. He was very intelligent. Him and I would share
6 many stories and discuss many different topics. Harry
7 was open minded about a lot of things. He was always
8 kind of searching for truths, and different kinds of
9 things. He had a very unique personality. He was very
10 fun person, very up-tone, and just a swell guy. A good
11 guy to be around.
12 Q. Are you also familiar with Tatiana Leibel?
13 A. Yes, I'm familiar with Tatiana.
14 Q. And who is she? How do you know Tatiana?
15 A. Well, obviously through Harry when they
16 married and they started their relationship in Los
17 Angeles. I met her then.
18 Q. Are you familiar with Harry's children?
19 A. I am very familiar. I am the Godson --
20 Godfather to both of them, both Sharon and Justin.
21 Q. And they're both adults now?
22 A. Yes, they are.
23 Q. And were they children of Harry's by a prior
24 marriage?

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1 A. By a different marriage, yes.
2 Q. And did you actually attend Harry and
3 Tatiana's wedding?
4 A. I did, yes, in the Marina Del Ray. I
5 attended. Yes.
6 Q. Are you familiar with Harry's religious
7 beliefs?
8 A. Yes, I am, to some degree. You know, Harry
9 was a member of the Jewish faith, and Harry also started
10 practicing and learning the Kabbalah, which is old Jewish
11 scriptures.
12 Q. Do you know to what extent he was involved
13 with that?
14 A. Very extensively. The Kabbalah, he got into
15 it very extensively in Los Angeles. He was actually an
16 instructor in the West L. A. Kabbalah Center and did a
17 lot of reading, and we talked about it openly. Harry was
18 very well-versed on Kabbalah.
19 Q. Are you familiar with that as well?
20 A. Not as well as he was, but through lectures
21 and stories with Harry, he turned me on to quite a few
22 things, and he brought me along.
23 Q. Do you know that religion's view of suicide
24 is?

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1 A. Totally unacceptable. It's a sin.
2 Q. Describe Harry's relationship with Tatiana.
3 A. Well, at first, it was very good. It was a
4 good relationship, a loving relationship. They got along
5 exceptionally well. They were good together. Through
6 their years in Los Angeles, they got along very well.
7 They worked well together.
8 And then when they moved to Tahoe, I would
9 have to assume in the beginning it was good, but towards
10 the end, I sensed a little friction in the relationship.
11 Something was quite not right. Things were changing a
12 little bit, but I never got too personal with Harry.
13 That's a line I didn't like to cover or cross, you know.
14 If he wanted to tell me something, he would tell me
15 something, but it was changing a little bit. The
16 relationship was changing a little bit. I sensed a
17 little friction.
18 Q. Okay. So I take it you said you didn't get
19 into it with him. You don't know what the problem was?
20 A. No, not in the beginning. Towards the end,
21 my last trip when I saw Harry was in 2013 around the July
22 4th weekend, and I had some discussion Harry about a few
23 things. Tatiana wasn't there at the time, but we talked
24 about a few things.

Page 15

1 Q. Anything that -- You said you sensed some
2 friction. Anything that shed light on that?
3 A. The money situation, some financial things
4 came up. He had been helping Tatiana's oldest Daughter
5 out, Lana, and he was going to stop doing that. He
6 wasn't going to be a part of that. He wasn't going to
7 subsidize them anymore, and that was causing a little bit
8 of friction.
9 Q. Okay. You said he visited them July 4th,
10 2013?
11 A. Yes, sir. That is correct.
12 Q. And was that up here in Lake Tahoe?
13 A. Yes, it was.
14 Q. How long did you stay?
15 A. I stayed maybe four days, five days. It was
16 a short stay.
17 Q. And you said when you talked with Harry,
18 Tatiana wasn't there. Was she there during the course of
19 your stay?
20 A. No. She was down taking care of her
21 daughter. Her daughter had just given birth to twins. I
22 believe she was either living in, I think, Glendale or
23 the Pasadena area.
24 Q. So Southern California --

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1 A. Yes, sir. That's correct. Yes.
2 Q. -- as well? When did you last speak with
3 Harry on the phone?
4 A. I spoke to my friend a week before the
5 murder.
6 MS. HENRY: Objection, Your Honor.
7 THE COURT: What's your objection?
8 MS. HENRY: The objection is is there's --
9 THE COURT: What's your legal objection?
10 MS. HENRY: Assuming facts not in evidence.
11 THE COURT: The reference to "murder" will be
12 stricken.
13 MS. HENRY: Thank you, Your Honor.
14 THE COURT: And the jury is instructed to
15 disregard that.
16 Q. (BY MR. GREGORY:) You told investigators you
17 last spoke to him on February 20th. Does that sound
18 correct?
19 THE COURT: The objection was it's based on
20 supposition, not this witness's personal knowledge, would
21 be the appropriate objection. Thank you. And that's why
22 it was stricken. Go ahead.
23 MR. GREGORY: Understood.
24 THE WITNESS: Could you repeat the question?

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Page 19

1 THE COURT: Would you, please.
2 Q. (BY MR. GREGORY:) Yes. You had told
3 investigators that the last conversation was on February
4 20th.
5 A. Yeah, right around there, yeah. I had talked
6 to Harry then, yes.
7 Q. Okay. And then he passed away on the 23rd,
8 just three days later?
9 A. (Indicating.)
10 THE COURT: The witness is nodding his head.
11 Q. (BY MR. GREGORY:) Thank you. Nodding his
12 head in affirmative.
13 A. Yes, that's correct.
14 Q. How was Harry during that conversation?
15 A. Harry was okay. He kind of apologized to me.
16 When we had saw each other last during that 4th weekend,
17 he wasn't feeling quite well, and then he later explained
18 to me that he had gone to the doctor, and he was
19 suffering from blood poisoning, and he was on heavy-duty
20 antibiotics.
21 Q. That's from back in July when you visited
22 him?
23 A. Yes, when I saw him. That's correct. And he
24 apologized to me. We didn't really do much. We

1 Q. Did you ever hear from Tatiana?
2 A. Never.
3 Q. Did that surprise you?
4 A. No, didn't surprise me.
5 Q. Okay. Why not?
6 A. You know, towards the end of the
7 relationship, I hardly spoke with her, you know. There
8 wasn't much communication. And usually when I did call
9 Harry, he would be the one that always answered the
10 telephone, so our conversation was between the both of
11 us.
12 Q. So predating the July 4th day when you came
13 to see him, when was the time prior to that you had seen
14 him? About how much separation in time?
15 A. Possibly a year, maybe two. We had been -- I
16 had been up with my wife to Tahoe to see him. I don't
17 know if it was in '12 or '11. Some time had passed.
18 MR. GREGORY: Thank you. Nothing further.
19 THE COURT: Ms. Brown, Ms. Henry?
20 MS. HENRY: Thank you, Your Honor.
21
22
23
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Page 20

1 basically stayed in the house because I didn't really
2 want to do much to him. I didn't want to take him down
3 the hill because I knew he wasn't feeling well.
4 Q. How about during the course of this
5 conversation? Did you guys discuss his health at all
6 then?
7 A. No, that was about it. It was just that
8 brief thing about the blood poisoning, and he was
9 starting to feel a little better because of the
10 medication.
11 Q. How did he sound to you?
12 A. He sounded okay. He sounded pretty good.
13 Q. Did he sound like himself?
14 A. Yeah, he did. He did. He did. He was
15 basically up-tone, and I could understand him clearly.
16 Q. Anything about that conversation that raised
17 red flags or concerns --
18 A. No.
19 Q. -- for Harry's well-being?
20 A. No, none at all.
21 Q. When did you hear of Harry's death?
22 A. I guess it was the middle of the week. I was
23 working, and I had just got home from work, and my wife
24 told me that Harry had been shot and killed.

1 CROSS-EXAMINATION
2 BY MS. HENRY:
3 Q. Now, you had said that when you spoke with
4 Mr. Leibel, he indicated to you that he wasn't feeling
5 well on the last visit in the summer of 2013; correct?
6 A. Yes, that is correct.
7 Q. He had suffered from blood poisoning, that he
8 was on heavy antibiotics?
9 A. Yes, that's what he told me.
10 Q. And being his best friend, you obviously know
11 that he had cancer a while back as well; correct?
12 A. That's correct. Yes.
13 Q. And he also had major surgery for that
14 cancer; correct?
15 A. Yes, ma'am. That is correct. Yes.
16 Q. And then I'm sure that you're also probably
17 aware that there might have been some issues with that
18 surgery?
19 A. Yes, there were.
20 Q. Okay. And do you know who those issues were?
21 A. He had to visit the bathroom frequently.
22 Q. Very frequently; correct?
23 A. Yes, ma'am, he did.
24 Q. That it was very hard for him to leave the

Page 21

1 house?
2 A. At times, yes.
3 Q. And then in addition to those -- to his
4 health issues, he also you had indicated, was stressed
5 with his financial situation as well; correct?
6 A. Yes, to some degree, you know, over that one
7 situation with Tatiana's oldest daughter, Lana.
8 Q. Sure. But he was worried about money?
9 A. You know, that's difficult. Kind of yes and
10 no. Just pretty much that situation. I didn't get too
11 involved with Harry's personal finances and everything.
12 Q. Sure. Did you also know -- Did you know
13 Harry's family as well, like his mother?
14 A. I knew them very well. Grew up with them.
15 Q. And Harry's mother and Mr. Leibel's mother,
16 she was very religious; correct?
17 A. Yes.
18 Q. And she had a lot of influence over
19 Mr. Leibel's decisions?
20 A. I would have to say yes, she did.
21 Q. Because isn't it true that he was married
22 previous to Mrs. Leibel, and he divorced that woman
23 because of his mother; correct?
24 A. That is correct. Yes.

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1 Q. And I believe you said in your interview with
2 the sheriff's office that, you know, even though you
3 didn't really speak with Mrs. Leibel at the end, you
4 know, in the last few years previous and in the years
5 that they had been married, she's always been nice to you
6 and a good hostess; right?
7 A. Yes, she was. Yes, she was.
8 Q. And whenever you had seen them previously,
9 they seemed like a good couple?
10 A. They did. Yes. They did.
11 MS. HENRY: No further questions.
12 THE COURT: Mr. Gregory?
13 MR. GREGORY: Nothing further, Your Honor.
14 THE COURT: Sir, thank you so much for being
15 here today. You are excused.
16 THE WITNESS: Yes, Your Honor.
17 MR. GREGORY: Court's indulgence.
18 THE COURT: Yes, sir.
19 MR. GREGORY: Thank you, Your Honor. Your
20 Honor, the State calls Darla Leibel.
21 THE COURT: Do you intend to recall
22 Mr. Burach?
23 MR. GREGORY: I do not.
24 THE COURT: Ms. Brown?

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1 MS. BROWN: No, Your Honor.
2 THE COURT: Sir, you may remain.
3 THE WITNESS: Thank you.
4 THE COURT: Hello, ma'am.
5 THE WITNESS: Hi.
6 THE COURT: If you would pause right there
7 and raise your right hand.
8
9 DARLA LEIBEL-BURROW
10 having been first duly sworn, was
11 examined and testified as follows:
12
13 THE COURT: Would you come up here and have a
14 seat please, ma'am. And if you'd like, there's some
15 water right there this that pitcher.
16 THE WITNESS: Oh, thank you.
17 THE COURT: Yes, ma'am.
18 MR. GREGORY: Good morning.
19 THE WITNESS: Hi.
20
21 DIRECT EXAMINATION
22 BY MR. GREGORY:
23 Q. Would you please state your full name.
24 A. Darla Leibel-Burrow.

Page 24

1 Q. Spell your last name, please.
2 A. L-e-i-b-e-l dash B-u-r-r-o-w.
3 Q. Thank you. Are you familiar with Harry
4 Leibel?
5 A. Yes.
6 Q. How so?
7 A. He was my husband.
8 Q. Okay. When was he your husband?
9 A. From 1985 to 1998.
10 Q. And where did the two of you reside?
11 A. In Los Angeles.
12 Q. Following your separation, did you
13 subsequently move?
14 A. I moved to Reno.
15 Q. When did you move the Reno?
16 A. In 2000.
17 Q. After you divorced Mr. Leibel or the two of
18 you divorced, tell us about the level of contact you
19 continued to have with him.
20 A. Well, for the first few years in L. A. After
21 our divorce, we still saw each other. We worked
22 together, and we saw each other without his parents
23 knowing. Either I'd go to his apartment or he'd come to
24 my house. And then over the years after he moved -- I

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1 moved here, I went on with my life. And after I moved
2 here, he'd call. After he moved up to Lake Tahoe, he'd
3 call quite frequently, and over the years, it dwindled.
4 So that was our relationship.
5 Q. So it dwindled. During the last five years
6 of his life, how much did you have contact with him?
7 A. Well, the last five years, probably a half a
8 dozen times. There was a four-year space where I never
9 heard from him, and then out of the blue, about a week
10 before his death.
11 Q. Let's talk about that out-of-the-blue
12 communication. How did that happen?
13 A. I got a message on Facebook from Harry that
14 said something about, "How you doing? Can we talk? Can
15 I call you?" So I answered back, "Sure. Here's my
16 number." Well, he had my number. So he says, "How about
17 1:00 clock?" And I said, "That's fine." So he called.
18 I spoke to him. Now you have to know there was nothing
19 romantic between us at this time. We were just friends.
20 We had always been best friends, and we talked for a long
21 time, and that was that.
22 Q. I can tell you're emotional.
23 A. Yes.
24 Q. Sorry to make you go through this. You said

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1 you talked a long time. About how long did you talk?
2 A. Close to two hours.
3 Q. Did how did Harry sound to you?
4 A. Fine. He was talking about a project he was
5 working on, and they expected it to come to fruition real
6 soon. And then we started talking about our -- we had at
7 one time bought a fifth wheel and a truck and traveled
8 across the country, and we started talking about some of
9 the things that we did and he sounded pretty jovial.
10 Q. Did he say anything that was of concern to
11 you?
12 A. Actually, not of concern because everything
13 seemed positive. The only thing he asked me how my
14 husband was doing, how Ariel was doing, and I said he was
15 great. He had told me about his cancer, going through
16 his cancer thing, and I had had a liver transplant, so I
17 was describing how my husband took such good care of me,
18 how I was down to 84 pounds, and he'd carry me from my
19 bed to the living room to the bathroom. He bathed me,
20 cleaned me. I says, "He took such good care of me." And
21 even in the hospital, he would sit with me all day long
22 for days because I'd be in there for months, and how well
23 he took care of me and how much he loved me and
24 everything. And he said --

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1 MS. HENRY: Objection. Hearsay.
2 THE WITNESS: Pardon?
3 MS. HENRY: She's saying what Mr. Leibel
4 said.
5 THE COURT: Sustained.
6 Q. (BY MR. GREGORY:) Did he indicate anything
7 about his relationship with Ms. Leibel?
8 A. Well, he stated that he wished he had that,
9 what I had, but he didn't. He said --
10 MS. HENRY: Objection. Hearsay.
11 THE COURT: Sustained.
12 MR. GREGORY: Your Honor, it goes to his
13 state of mind.
14 THE COURT: It's sustained.
15 Q. (BY MR. GREGORY:) Okay. Anything else?
16 THE COURT: The jury is instructed to
17 disregard that.
18 Q. (BY MR. GREGORY:) Anything else about the
19 conversation that caused you to concern?
20 A. He basically told me he had --
21 MS. HENRY: Objection. Hearsay. "He told
22 me."
23 MR. GREGORY: Your Honor --
24 THE COURT: Sustained.

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1 MR. GREGORY: -- I'm trying to elicit his
2 state of mind regarding his marriage.
3 THE COURT: I'm not going to allow that.
4 Q. (BY MR. GREGORY:) Okay. Did you have any
5 children in common with Harry?
6 A. No.
7 Q. And are you familiar with his -- Did he have
8 a wife prior to you?
9 A. Yes.
10 Q. And who is she? Do you know?
11 A. Susan Leibel. She's now Susan Green. I
12 raised her children, you know, Sharon and Justin, and we
13 still today have always had a good relationship.
14 Q. Describe Harry's personality.
15 A. He was basically a happy type individual,
16 always happy, made the best out of something bad or made
17 you laugh when you were at your worst. He could be mean
18 as far as nothing physical. It was normally just verbal,
19 and then he'd smile at you and hug you, and it was over
20 with. In fact, I couldn't get him to fight. He'd never
21 raise his voice, and I'm a voice -- very boisterous. So
22 I keep him going, and he wouldn't fight. He'd just sit
23 back and say, "Okay. Just does that make you feel
24 better?"

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1 Q. Is there any posturing that he would do when
2 he'd have those verbal debates with you?
3 A. No.
4 Q. Okay. And when you said he was mean, I also
5 heard you say --
6 A. Mean verbally.
7 Q. I also heard you say he didn't yell.
8 A. No.
9 Q. So he'd do it with a calm voice?
10 A. He never yelled at anybody.
11 MR. GREGORY: All right. Thank you. Nothing
12 further.
13 THE COURT: Cross, Ms. Henry?
14 MS. HENRY: Yes. Thank you, Your Honor.
15
16 CROSS-EXAMINATION
17 BY MS. HENRY:
18 Q. So when you said Harry was mean --
19 A. Verbally.
20 Q. Verbally. Just a sharp tongue?
21 A. Yes.
22 Q. Okay. Now, he contacted you by Facebook? He
23 found you on Facebook?
24 A. Yes, that's how he made contact with me.

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1 Q. And prior to that contact, you hadn't had
2 contact with him, did you say, for four years?
3 A. About four years, yeah.
4 Q. And but you always thought about him?
5 A. Well, I didn't think about it. No.
6 Q. Didn't you say that you guys were best
7 friends?
8 A. We were best friends.
9 Q. So you --
10 A. But, see, I left for a liver transplant. I
11 was Back East waiting for a liver and going through
12 everything that there has to be with that comes along,
13 out of your head and --
14 Q. Sure. And Harry, Mr. Leibel, he was the love
15 of your life; correct?
16 A. You might say that.
17 Q. And you believe that he loved you too when
18 you guys were married; correct?
19 A. It was never brought up, but I'm sure at some
20 degree, you know. You never lose -- These are people you
21 marry. You love them.
22 Q. And the only reason you were divorced was
23 because of his mom --
24 A. Yes.

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1 Q. -- correct? Otherwise, you probably wouldn't
2 have divorced?
3 A. Right.
4 Q. And was that because his mom didn't like you?
5 A. It was because I wasn't Jewish.
6 Q. Okay. So she was very religious?
7 A. Yes.
8 Q. Didn't you say, when we spoke, didn't you
9 they you converted?
10 A. I converted. I went to the University of
11 Judaism on Mulholland Drive in L. A. And got my
12 certificate. It wasn't good enough.
13 Q. It wasn't good enough for her?
14 A. No. I had to be born Jewish.
15 Q. When he contacted you on Facebook, were you
16 surprised?
17 A. Yes.
18 Q. And do you check Facebook regularly?
19 A. No.
20 Q. Did you just happen to check Facebook?
21 A. I just happened to check Facebook, and it had
22 been there for a while.
23 Q. Okay. How long?
24 A. A week, two weeks. Something like that. The

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1 date -- That's about how often I check Facebook.
2 Q. Okay. So you spoke with him about a week
3 before he had passed --
4 A. Yes.
5 Q. -- but you made contact with you --
6 A. Uh-huh.
7 Q. -- two or three weeks prior to that?
8 A. Probably on Facebook --
9 Q. Right.
10 A. -- but the day I read the Facebook I --
11 Q. Okay. Sure. And then after that, you spoke
12 for a couple of hours?
13 A. Uh-huh.
14 Q. And when we had our conversation, you had
15 said that you guys reminisced for over two hours?
16 A. Well, it was about two hours, yeah.
17 Q. About two hours, and that was regarding?
18 MR. GREGORY: Your Honor, I'd object if
19 they're going to get into hearsay and ask about the
20 conversation.
21 THE COURT: Exactly. Sustained if you're
22 going to get the substance of conversations.
23 Q. (BY MS. HENRY:) So you reminisced --
24 A. Yes --

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1 Q. -- about old times?
2 A. -- about our travels.
3 Q. And you guys had traveled. Where did you
4 travel to?
5 A. Just across country. We went to every state
6 just about and spent a little time here and there.
7 Q. And had a great time doing that?
8 A. Yes.
9 Q. And you reminisced about that?
10 A. Yes.
11 MS. HENRY: Nothing further.
12 THE COURT: Anything else, Mr. Gregory?
13 MR. GREGORY: Yes, Your Honor. I'd like to
14 ask the questions I was prohibited from asking before
15 given the nature of the defense's questioning.
16 THE COURT: No.
17 MR. GREGORY: Nothing further.
18 THE COURT: You may step down.
19 THE WITNESS: Am I excused from jury? I mean
20 from being a witness?
21 THE COURT: Yes, ma'am, you are. You may
22 stay in the courtroom, if you'd like.
23 THE WITNESS: Thank you.
24 MR. GREGORY: The State calls Sharon Oren.

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1 THE COURT: Come on in, sir. If you would
2 pause right in front of the clerk, face the clerk, raise
3 your right hand, please.
4
5 SHARON OREN,
6 having been first duly sworn, was
7 examined and testified as follows:
8
9 THE COURT: Come on up and have a seat up
10 here, please. Help yourself to some water, if you'd like
11 it.
12 THE WITNESS: Thank you. I'll be fine.
13 THE COURT: Mr. Gregory?
14 THE WITNESS: I was in the service a long
15 time ago. Please don't call me sir.
16
17 DIRECT EXAMINATION
18 BY MR. GREGORY:
19 Q. Morning, sir. Can you please state your full
20 name?
21 A. Sharon Oren.
22 Q. Spell your first name, please.
23 A. S-h-a-r-o-n.
24 Q. And your last name?

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1 A. O-r-e-n.
2 Q. What do you do for a living?
3 A. I own Maccabee Arms here in Nevada.
4 Q. All right. And are you familiar with Harry
5 Leibel?
6 A. Yes, I am.
7 Q. How are you familiar with Mr. Leibel?
8 A. I met him a few years ago through business,
9 and then we became friends.
10 Q. And are you also familiar with Tatiana
11 Leibel?
12 A. I am.
13 Q. And how familiar are you with her?
14 A. Through Harry so, you know, I met both of
15 them at the same time, and most of our interaction,
16 majority of them were together through the family, wives.
17 Q. Did Harry's death surprise you?
18 A. No.
19 Q. Were you becoming -- Did you have concerns
20 for Harry during the latter portions of his life?
21 MS. BROWN: Objection as to --
22 THE COURT: What is the objection?
23 MS. BROWN: As to his concerns, the relevance
24 of his concerns.

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1 THE COURT: The relevance. Okay. Why is
2 that relevant?
3 MR. GREGORY: Because he's going to be --
4 He's going to give background as to what his concerns
5 were that shed light on what was going on in Harry's life
6 that he's aware of.
7 THE COURT: I'll overrule it, but you're
8 going to have to tie it in.
9 MR. GREGORY:) Okay. Go ahead.
10 THE WITNESS: If you can repeat the question
11 again. Sorry.
12 Q. (BY MR. GREGORY:) Yes. Were you having
13 concerns for Harry towards the end of his life?
14 A. Yes. Yes, I did.
15 Q. What type of concerns?
16 A. I pretty much was afraid for his life.
17 Q. Okay. Why was that?
18 A. Unfortunately, seeing what was going on in
19 his life in the past, I would say almost couple of years,
20 and that I've seen with my eyes and I heard from him,
21 unfortunately, and the writing was on the wall.
22 A JUROR: Your Honor, I'm having trouble
23 hearing what he's saying.
24 THE COURT: Sir, you're going to have to sit

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1 up, okay, and put your -- Understand that there's a
2 microphone right in front of you, sir, and I'm going to
3 ask you to speak a little bit louder if you would,
4 please.
5 THE WITNESS: Sure.
6 THE COURT: Thank you. Would you repeat your
7 answer.
8 THE WITNESS: Yes. Unfortunately because of
9 my interaction with Harry in the past couple years, the
10 writing was pretty much on the wall, so --
11 Q. (BY MR. GREGORY:) Explain that. I don't
12 know what that means.
13 A. Looking at the relationship between Harry and
14 Tatiana, conversations I had with Harry regarding --
15 regarding their marriage and their current situation.
16 Like I said, the concerns were definitely there.
17 Q. What were your worried was going to happen?
18 MS. BROWN: Objection. Relevance.
19 THE COURT: I'm going to sustain that, and
20 not on the relevance, but it's speculation. And I'm not
21 going to -- You're going to have to go to some specific
22 incident or something like that.
23 Q. (BY MR. GREGORY:) Okay. Did you give Harry
24 any warnings.

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1 A. Yes.
2 Q. What were those warnings?
3 A. I told him that he basically needs to get
4 away from Tatiana, lock the door, get a divorce attorney
5 because I think she will kill him.
6 MS. BROWN: Objection.
7 THE COURT: Okay. It is important that if
8 you want to object that you need to state a legal basis
9 for that objection as opposed to just the fact that you
10 object to it. So do you have a legal basis that you'd
11 like to object to that testimony on?
12 MS. BROWN: Again, it's relevance.
13 MR. GREGORY: The relevance --
14 MS. BROWN: And speculation.
15 THE COURT: Mr. Gregory?
16 MR. GREGORY: Your Honor, the cell phone
17 information we went through had an entry log for Harry
18 for February 25th saying that he was going to call a
19 locksmith, so I'm trying to get context to that. His
20 testimony that he had told Harry to lock her out is
21 relevant for that purpose.
22 THE COURT: Then establish a timeframe
23 because right now, he's talked about two years, and
24 that's not going to tie it in.

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1 Q. (BY MR. GREGORY:) Okay. How often did you
2 warn Harry?
3 A. I believe that the first real warning was
4 when I met with him in the Lake at the -- probably it was
5 Camp Richardson. There was another friend of ours who
6 was -- of mine from Los Angeles was present for the
7 conversation.
8 THE COURT: Wait a minute. Wait a minute.
9 First out when the most recent warning was.
10 Q. (BY MR. GREGORY:) When was the most recent
11 warning?
12 A. I will have to say it was roughly about a
13 month prior to the event.
14 THE COURT: Okay. That testimony is allowed.
15 I'm not going to go back.
16 MR. GREGORY: And I'll end with that, Your
17 Honor. Thank you.
18 THE COURT: Do you have questions of this
19 witness, defense table?
20 MS. BROWN: Yes, Your Honor.
21 THE COURT: Thank you.
22
23
24

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1 CROSS-EXAMINATION
2 BY MS. BROWN:
3 Q. Do you own Maccabee Arms?
4 A. I do.
5 Q. And was Mr. Leibel involved in guns?
6 A. Both Harry and Tatiana liked guns, yes.
7 Q. I'm sorry?
8 A. Both Harry and Tatiana liked guns. That's
9 how I met them.
10 Q. So they both liked guns?
11 A. That is correct.
12 Q. And did you ever go shooting with them?
13 A. No.
14 MS. BROWN: Thank you. I have nothing
15 further?
16 THE COURT: Mr. Gregory?
17 MR. GREGORY: Nothing further.
18 THE COURT: Sir, you may step down. Thank
19 you for being here today.
20 MR. GREGORY: Your Honor, I'd like to check
21 on the availability of Steve Smith. If he's here, I'd
22 like to call him next.
23 THE COURT: Okay.
24 MR. GREGORY: We'll go with Matt Noedel,

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1 please.
2 THE COURT: Mr. Noedel.
3 MR. GREGORY: Can I take a moment to see if
4 he's --
5 THE COURT: Actually, I believe someone just
6 left to go check for you, sir.
7 MR. GREGORY: Thank you.
8 THE COURT: I believe Mr. Schultz is looking
9 for him, so we'll give him a moment.
10 Come on in, sir. Step right up, and we're
11 going to swear you again here. Okay, Mr. Noedel. Would
12 you pause, please. Face the clerk.
13
14 MATHEW NOEDEL,
15 having been first duly sworn, was
16 examined and testified as follows:
17
18 THE COURT: Come on up and have a seat
19 please, sir.
20 MR. GREGORY: Good morning, sir.
21 THE WITNESS: Good morning.
22
23
24

1 manufacturers, FBI courses, ATF courses, and
2 participation in professional memberships and
3 organizations, for example, like AFTE, which is the
4 Association of Firearm and Tool mark Examiners; provide
5 annual training, conferences, publish journals, and are
6 basically the association that covers scientists like
7 myself who study firearm and tool mark and ballistic
8 issues as a primary part of their job responsibility. So
9 I'm a member of that organization and trained in those
10 fields with the state patrol for 15 years before I left
11 for starting my own company, which is how I'm employed
12 now as a private consultant in firearm, tool mark and
13 shooting scene reconstruction.
14 Within those organizations, there are
15 certifications. I carry certifications in firearm
16 examination, tool mark examination, gunshot residue, and
17 crime scene reconstruction. I also take proficiencies in
18 each of those areas every year to maintain a level of
19 expertise and experience. So basically, that involvement
20 is where my training comes from, where the experience and
21 practical application of firearm examination comes from,
22 working in the crime labs as well.
23 Q. Have you been trained in how to determine
24 distancing between barrel of a gun and an object that's

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1 DIRECT EXAMINATION
2 BY MR. GREGORY:
3 Q. Please state your full name and spell your
4 last name.
5 A. Matthew Noedel: N-o-e-d-e-l.
6 Q. And Mr. Noedel, we're going to be covering
7 two different subject matters, broad matters: Ballistics
8 and reconstruction. I'd like to talk about the first
9 part of that, the ballistics part. What is your training
10 and experience regarding ballistics and firearms?
11 A. Well, specifically, my first level of
12 training involves my college education, Bachelor of
13 Science degrees in microbiology and medical technology
14 with a chemistry minor. I have a third Bachelor of
15 Science degree in forensic science from California State
16 University.
17 After obtaining my degrees, I worked for a
18 private forensic company for three years before I went
19 moved onto the Washington State Patrol Crime Laboratory
20 in Tacoma, Washington. That's where I first began
21 training in firearm and tool mark analysis. Training is
22 provided in the form of mentorship programs where senior
23 members of the crime lab provide training. It's also a
24 lot of external training from courses offered by firearm

1 hit with a projectile?
2 A. Yes. That's a common task that we are asked
3 to evaluate in forensic situations, and one of the
4 certifications deals with that aspect specifically, that
5 is, the gunshot residue certification.
6 Q. And have you also been trained in how to
7 identify whether a particular shell casing was fired out
8 of the gun?
9 A. Yes. Again, the practical application of
10 that, of the ballistic science in the laboratory involves
11 microscopic analysis of microscopic pieces of information
12 that are left behind on bullets or cartridge cases that
13 come from the gun that fired it. So we study the
14 microscopic marks that are translated from a gun onto
15 something like a cartridge case where, say, the firing
16 pin has struck the cartridge case. That can leave
17 microscopic marks.
18 So a big portion of the responsibility and
19 experience in ballistic examination is studying those
20 marks and comparing knowns, marks that we make on purpose
21 by test firing a particular firearm, comparing those
22 knowns to evidence exhibits that are recovered from a
23 scene, from some scene, and the comparison of those
24 microscopic pieces of information is a big part of what's

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1 done in the forensic laboratory and ballistic
2 perspective.
3 Q. Did you have an opportunity to actually
4 examine the gun that was used in this case?
5 A. I did.
6 Q. Where did that take place?
7 A. That was at the Washoe County Crime
8 Laboratory in Reno.
9 Q. And were you able to determine whether the
10 gun was operable or not?
11 A. Yes.
12 Q. How did you do that?
13 A. Operability testing of the gun starts with a
14 visual inspection. Typically, we maintain a worksheet as
15 we go through that prompts us to check each of the
16 aspects. We do things like look down the barrel to make
17 sure there's no obstructions blocking the barrel. We
18 measure some of the characteristics of the firearm, for
19 example, how hard it is to pull the trigger, what is the
20 amount of pressure it takes to pull a trigger. We check
21 the safeties, visually check them. And in doing all of
22 these visual assessment, we get an idea of how the gun is
23 going to perform, if there's any problems that we can
24 anticipate, and all of those visual assessments are spent

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1 to work towards a point to whether or not we can actually
2 test fire the gun.
3 If we consider the gun as safe and reasonable
4 to test fire, then take it to either an indoor water tank
5 range of an outdoor range and load it up and actually
6 shoot it to test the performance, the actual firing
7 performance of the gun.
8 Q. Did you actually shoot this gun?
9 A. Yes.
10 Q. And did it -- Was it working as it should?
11 A. Yes. This gun has no mechanical flaws or
12 failures with this gun at all.
13 MR. GREGORY: Your Honor, I'm going to show
14 him Exhibit 119, which is the firearm that has been
15 rendered inoperable.
16 THE COURT: That's the duplicate firearm;
17 correct?
18 MR. GREGORY: The what?
19 THE COURT: The one that the sheriff's office
20 purchased.
21 MR. GREGORY: Yes, correct.
22 THE COURT: Thank you. It has the firing pin
23 removed.
24 MR. GREGORY: Yes.

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1 Q. (BY MR. GREGORY:) Mr. Noedel, this exhibit
2 has already been marked into evidence. It is a replica
3 gun of the that was used. I'm going to ask you to verify
4 that, but I want you to know they pulled the firing pin
5 out of it, but I would ask you to do a quick inspection,
6 ascertain that it's not loaded, and that the firing pin
7 has in fact been removed from it.
8 A. The firearm is not loaded, and the firing pin
9 is not installed in the proper position. This gun cannot
10 fire in this condition.
11 Q. Not the actual gun that was used, but give us
12 a general description of the gun.
13 A. It's a -- It's essentially an exact copy of
14 this firearm. This is a firearm that's mass produced.
15 It has some unique features. This particular design is
16 made by a company called Rossi. They're in association
17 with a company called Taurus, so it's Rossi slash Taurus
18 out of Brazil.
19 And the interesting features about this gun
20 is it's essentially a revolver, which is something we
21 typically see in handguns. A revolver refers to this
22 rotating cylinder which is the position that holds the
23 ammunition in line for firing. Usually we see this as a
24 handgun type of a design, but what Rossi has done is they

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1 put a long stock on it to make it capable of shoulder
2 firing, and instead of a short handgun barrel, it's got a
3 full-length rifle barrel, so it's basically a revolving
4 rifle, which is a fairly unique type of a design.
5 In the late 1800's, there were some rifles
6 that had this mechanism, but the modern guns, I don't
7 know of anyone else who is making a revolving rifle in
8 modern production gun.
9 Q. Is Exhibit 118 a fair representation of the
10 actual gun?
11 A. Yes, it is.
12 Q. What's the name of the gun?
13 A. This is called a Circuit Judge.
14 Q. And what kind of ammunition is it capable of
15 firing?
16 A. Another unique feature of this gun is it can
17 fire both shotgun shells in 410 caliber, so that's the
18 small the small-sized shotgun shells, or it can fire 45
19 Colt. And it happens that the 410 shot shell and the 45
20 Colt happen to have a similar profile of the size of the
21 cartridge case. That's why this gun can actually
22 accommodate either the single type of projectile in a 45
23 Colt or shotgun loads that are the smaller size, the 410
24 caliber shotgun.

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1 Q. For the layperson, what's the difference
2 between a 45 round and a 410 shotgun?
3 A. The 45 Colt is a single projectile. It's
4 designed to deliver typical construction, so it's a
5 cartridge case with gun powder, but a single projectile.
6 That's what a 45 Colt is designed to be. The shot shell
7 is a shell that is designed that the payload can be a
8 single projectile, but you can basically dump anything
9 you would like in a shot shell, so you can use multiple
10 small pellets and load them in the shot shell and that
11 shot would deliver all of those pellets downrange, or you
12 could put four big pellets. The shot shell accommodates
13 a variety of different types of projectile, where the 45
14 Colt is always going to be just a single projectile.
15 Q. Can you just kind of tell us some of the
16 terminology with this gun and point out the barrel, the
17 muzzle, cylinder, different types of terminology, please.
18 A. Yeah. So basically, the barrel is the long
19 portion. That's the part of the firearm that directs the
20 bullet when you fire this gun. The bullets or
21 projectiles, if it's a shot shell, go down the barrel and
22 are directed on their way to their target.
23 In this gun, we have this metallic rotating
24 piece is called the cylinder. This gun can accommodate

1 doesn't have to do so much work. So single action is
2 much lighter. It takes much less pressure in single
3 action than it does in double action to fire. So single
4 action is the easy way to fire. It takes about -- on the
5 evidence gun, it takes about three or four pounds of
6 pressure. Double action, because you're doing so much
7 more work on the evidence gun, took about 13 or 14 pounds
8 of pressure. So double action is quite a bit heavier,
9 more difficult to pull through than single action.
10 THE COURT: Would you make the record clear
11 as to what he means by evidence gun because both guns are
12 in evidence.
13 Q. (BY MR. GREGORY:) If we could refer to this
14 as the demonstration gun as opposed to the gun that was
15 actually used.
16 A. Yes. The trigger pull pressures that I
17 measured were on the gun that was recovered as evidence
18 from the house. I haven't measured this gun on that. So
19 when I talk about evidence gun, I'm talking about the gun
20 recovered from the Leibel house.
21 Q. So all of the analysis and shooting of the
22 gun that you do was the gun that was taken from the crime
23 scene; correct?
24 A. Correct. The actual firearm, the test

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1 five -- up to five shots, so there are five chambers
2 inside the cylinder, and each chamber is aligned one next
3 to the other. The hammer is this small spur that comes
4 back here. In this gun, you can either simply pull the
5 trigger and the firearm will caulk and fire -- that's
6 called double action -- or you can manually caulk into
7 single action and manually caulk the hammer and fire it
8 with single action.
9 Q. Let me ask you about that. So if you could
10 release the hammer. Is there a difference in the how
11 hard it is to pull the trigger between double action and
12 single action?
13 A. Yes, there is, because in double action,
14 double action refers to what happens when you pull the
15 trigger. Two activities occur. What has to happen in
16 double action is when you pull the trigger, it has to
17 rotate the cylinder, caulk the hammer, and if you keep
18 pulling it, ultimately fire. So double action, you have
19 to pulling the trigger caulks the hammer and fires it.
20 So you have to move the trigger farther to have all of
21 those mechanisms operate.
22 In single action, the trigger is actually
23 reset because you do half of the work externally by
24 physically caulking the hammer. Now, pulling the trigger

1 firing, the manipulation, the measuring of the trigger
2 pull was all done with the gun that was recovered from
3 the scene, not the replica gun.
4 MR. GREGORY: If you could just stand right
5 there, I'd like you to demonstrate and close the
6 cylinder. Your Honor, can he just step right there.
7 THE COURT: Certainly.
8 MR. GREGORY: I would just like to have you
9 demonstrate for the jury first double action. Go ahead
10 and shoot it?
11 THE COURT: One moment. I don't know which
12 of you is going to cross this witness, but whomever,
13 Ms. Brown, if you'd like to step around where you have a
14 better view, you're welcome to do that as he engages in
15 this demonstration.
16 Q. (BY MR. GREGORY:) So this in a double
17 action, as I understand it, the hammer is uncocked;
18 correct?
19 A. Correct. Double action starts with the
20 hammer at rest forward, and all of the activity is going
21 to occur by pulling the trigger. So when I -- it's
22 called dry firing. When I dry fire this gun because this
23 gun cannot fire without a firing pin, when I dry fire
24 this gun, if you watch the cylinder, pulling the trigger

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1 is going to cause the cylinder to rotate, it's going to
2 cause the hammer to caulk back, and if I pull all the way
3 through, ultimately, the hammer will go as far back as it
4 can go, and it will slam forward, and that would initiate
5 a discharge if the gun were loaded.
6 So in double action, access the trigger, once
7 the cylinder rotates, the hammer goes back, and bang. So
8 double action, I can fire this gun in double action.
9 That's about -- on the gun recovered from the scene,
10 that's about -- takes about 13 or 14 pounds of pressure
11 to fire in double action because we're doing work
12 internally to turn the cylinder, caulk the hammer, and
13 load all of the mechanisms.
14 Q. As far as trigger pulls go, what does 13
15 pounds mean to the layperson?
16 A. Thirteen pounds, in reference to most
17 resolving revolvers, this is essentially a revolver, 13
18 pounds is a fairly typical, just slightly to the high end
19 of the anticipated pressure that we would require. The
20 way we measure that is we simply hang weights on there.
21 So it's different than, say, hanging 13 pounds on the end
22 of your finger and trying to lift it. It's a little
23 easier than that because if the ergonomics of the grip
24 and the gun and the squeezing mechanism allows us to do

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1 that. So 13 pounds double action is about a normal
2 double action pressure for all revolvers.
3 Q. Could you go and ahead and demonstrate single
4 action.
5 A. Single action requires me to do this
6 activity. I have to caulk this hammer in some mechanism.
7 So you'll see the cylinder is already rotated when I
8 apply that pressure, so in single action, you'll see I'm
9 manually caulking the hammer and manually rotating the
10 cylinder, so I've now done at least half of the work
11 required to organize for the shot.
12 The other thing that you'll notice is in
13 single action, the trigger is set way to the rear. It
14 doesn't have to travel nearly as far, so it has to do
15 much less work. Now that it's caulked in single action,
16 I simply pull the trigger, and it will fire.
17 Q. What is the trigger pull in single action?
18 Is it easier to pull it?
19 A. Much easier because you see in double action,
20 it sits towards the middle. In single action, that
21 trigger actually recesses almost an inch, about
22 three-quarters of an inch, and so it's much easier that
23 I'm doing much less work. I don't have to rotate the
24 cylinder, and I don't have to caulk the hammer. I've

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1 already done that manually, so it's much easier. On the
2 gun that was recovered from the scene, that measurement
3 was around three or four pounds, so it's five times
4 easier, lighter, to pull it in single action to cause it
5 to discharge.
6 Q. You can go ahead and retake the stand,
7 please. I'd like to talk to you a little bit about gases
8 that are released upon a rifle being fired. Could you
9 talk to us a little bit about that?
10 A. Yes. What happens when a round of ammunition
11 is discharged, whether it's a shotgun shell or a single
12 projectile, the hammer falls and it hits the firing pin,
13 and the firing pin strikes that cartridge on a little
14 metallic piece called the primer. The primer is the
15 small dab of explosive that when it's impacted by this
16 metallic hammer and the firing pin strikes it, creates a
17 little spark. That spark ignites the gunpowder. The
18 gunpowder burns, and the pressure goes up. It's all
19 contained inside this metallic chamber.
20 The pressure has nowhere to go but out. So
21 the pressure build, and this is all happening in an
22 instant in a milliseconds. The pressure builds. The
23 energy has to go somewhere, so what happens is the bullet
24 jumps out of the cartridge case and into the barrel. The

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1 bullet is --
2 THE COURT: One minute. One minute.
3 THE INTERPRETER: This is the interpreter
4 speaking. Your Honor, could the witness be instructed to
5 slow down just a little bit. Thank you.
6 THE WITNESS: Yes.
7 THE COURT: Did you hear that, sir?
8 THE WITNESS: Yes, sir.
9 THE COURT: Thank you.
10 THE WITNESS: So once the cartridge is
11 detonated, the pressure has gone up, and the projectile
12 has jumped out of the cartridge case and into the barrel.
13 It's directed down the barrel. Those gases are right
14 behind it pushing this bullet at a very high velocity
15 with high energy down the barrel on its way.
16 What happens is the bullet then leaves the
17 barrel, and it goes on the whatever it's going to hit.
18 But following the bullet are all of those expanding gases
19 and residues, and it's comprised of particles of gun
20 powder. There are combustion products like nitrates.
21 There are clouds of vaporous lead. We see it as smoke or
22 soot. If you've seen a gun that has smoke coming out of
23 the end, it's from those combustion products.
24 Well, right at the muzzle, those combustion

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1 products are moving as fast as the projectile. They're
2 all moving the same rate together. What happens is
3 because the projectile has all of the mass, it keeps
4 going, but these gases and residues can only go a short
5 distance.

6 So the principle behind the gases on the
7 barrel, if an object is in close range to the end of the
8 barrel, the bullet can go right into that object, and we
9 can characterize the distribution of these residues that
10 follow the bullet. If we're very close to the muzzle,
11 the residue pattern is very small. The farther we get,
12 the more that residue pattern dissipates and gets bigger
13 and bigger until it just doesn't reach any further.

14 So we can do distance determination based on
15 the distribution of gases that follow the bullet if a
16 target intercepts those gases that follow the bullet.
17 Because this is a revolver, there's another source of
18 residues. All of that pressure that builds inside the
19 chamber that's pushing the bullet down the barrel,
20 because this revolver opens, there's a gap between the
21 back of the barrel and the front of the chamber. It's
22 called the cylinder gap. It's this little line that is
23 right here.

24 So in fact, the bullet or the shotgun

1 This gun actually had designed these little
2 metallic wings to try to help reduce that, and it
3 actually pushes the gases forward. So if your hand is in
4 proximity to that cylinder gap, you can get those gases,
5 and I in fact had that firsthand experience by holding my
6 hand out of position at during my test firing.

7 Q. Let me ask you at this stage, because we're
8 talking about the gases, did you also have an opportunity
9 to look at the robe that was being worn by Mr. Leibel?

10 A. I did.

11 Q. An did you have an opportunity to --

12 THE COURT: One minute.

13 MS. BROWN: Objection. Testifying to items
14 not in evidence.

15 THE COURT: Overruled. He just asked if he
16 looked at it.

17 Q. (BY MR. GREGORY:) You had an opportunity
18 look at the robe?

19 A. I did.

20 Q. Did you have an opportunity to look at the
21 right sleeve of the robe?

22 A. Yes, I did.

23 Q. Did you conduct any examinations of that for
24 these gases that you've been talking about?

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1 pellets, whichever is being fired, have to jump out of
2 the cylinder, that little short gap across, to get into
3 the barrel. These gases, remember, are very high
4 pressure. They're going as fast as the bullet. They
5 escape out the sides. So not only do we have gases
6 following the bullet out the barrel, we have gases that
7 are blasted out of the side called cylinder gap gases.

8 Again, if an object is in close proximity to
9 the side of this gun, those gases can be detected because
10 they will actually impact and leave images of smoke or
11 soot or residues, and they could even leave a product
12 called stippling, which is actual punctate gunpowder
13 particles that can hit your skin and leave a little mark.
14 Stippling can occur on a barrel as well.

15 Q. Can this particular gun cause stippling to
16 somebody who is firing the gun?

17 A. Yes. Yes, it can. If you -- When you're
18 firing this gun, if you put a part of your body in close
19 proximity to the cylinder gap, those gases will come out,
20 and they can impact your wrist. While I was test firing
21 the gun recovered from the scene, I actually had my hand
22 out of position and stippled my own wrist and created
23 these little punctate marks because my wrist got too
24 close to the cylinder gap.

1 A. I did.

2 THE COURT: Just a minute.

3 MS. BROWN: I'd still object. He's
4 testifying concerning items not in evidence.

5 THE COURT: He can testify as to what he did.
6 Yes, he can. You're overruled.

7 THE WITNESS: Yes, I tested the entire length
8 of the right sleeve of the robe for the presence of
9 gunshot residue, whether it be following out of the
10 barrel or cylinder gap residues from being in close
11 proximity to the side of the gun.

12 Q. (BY MR. GREGORY:) Okay. If the gun had been
13 fired by Mr. Leibel himself, would you expect to have
14 seen anything, any gas particles on the robe sleeve?

15 A. I don't think we would see them on the robe
16 sleeve because the sleeves are of his robe are kind of
17 the half to three-quarter. In other words, it's not like
18 a dress shirt that goes all the way to his wrist. It's a
19 shortened one. So if the robe was adjacent to it, it
20 could receive those gases. But I'm not sure the sleeves
21 were long enough, given that the characteristics that I
22 believe would have to be met for him to handle the
23 firearm and shoot. I don't think -- I think the sleeve
24 would be too short, and it would put his skin in

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1 proximity.
2 Q. If his arm was uncovered then, would
3 stippling be a possibility on his arm if he had shot
4 himself?
5 A. Yes. If his bare skin is adjacent to that
6 cylinder gap, those gases are going to come out. It's
7 not a maybe proposition. They will come out, and if his
8 arm is close enough to the side of the firearm at the
9 cylinder gap, he will get marked as I did.
10 Q. And Dr. Kubiczek testified he did not see any
11 stippling on Harry's right arm. Are you familiar with
12 that?
13 A. I understand that to be true.
14 Q. Did you have an opportunity to measure the
15 gun that was taken from the crime scene?
16 A. Yes, I did.
17 MR. GREGORY: May I approach, Your Honor?
18 THE COURT: What do you have there?
19 MR. GREGORY: Exhibit 141.
20 THE COURT: Thank you, sir.
21 MR. GREGORY: Would you like to see it, Your
22 Honor?
23 THE COURT: Thank you, sir.
24 Q. (BY MR. GREGORY:) Showing you what's been

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1 marked as 141. What is that?
2 A. This is -- These are two images that I took
3 at the forensic laboratory while I was analyzing the
4 recovered firearm. And specifically, it's a --
5 THE COURT: Don't say what it shows.
6 THE WITNESS: Sorry.
7 Q. (BY MR. GREGORY:) Does that photograph
8 accurately depict your measurements of the gun?
9 A. Yes.
10 MR. GREGORY: I'd move for admission of
11 Exhibit 141.
12 MS. BROWN: No objection, Your Honor.
13 THE COURT: It's admitted. Go ahead.
14 Q. (BY MR. GREGORY:) Can you -- I'm going to
15 get the projector going, but can you tell us -- there's
16 two photographs there; correct?
17 A. Yes.
18 Q. What do they -- What's the top photograph
19 show?
20 A. The top photograph is depicting the recovered
21 firearm from the scene as it's at rest in double action,
22 and it has a ruler to show the distance from the end of
23 the gun to the trigger.
24 The lower image shows the same firearm, but

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1 cocked into single action, and it shows the same ruler,
2 and it's meant to show the distance of the trigger travel
3 and the distance of the end of the gun to the position of
4 the trigger in either condition that the firearm can
5 maintain.
6 Q. What was the distance -- So you're measuring
7 the end of the -- the very end of the barrel?
8 A. Correct. I'm going right from the exact end
9 or the muzzle of the barrel to the start of the trigger.
10 MR. GREGORY: Your Honor, may I just hold
11 this up for the jury?
12 THE COURT: Sure. Does that not work for
13 you?
14 MR. GREGORY: It's not going. I need to get
15 it --
16 THE COURT: It's warming up.
17 Q. (BY MR. GREGORY:) It's warming up, or I
18 don't know how to turn it on. One or the other.
19 So the top photo again is -- just before I
20 show it to them -- the top photo?
21 A. The top is double action. The hammer is at
22 rest. The bottom is single action. The hammer has been
23 caulked.
24 Q. Thank you. And in the above photo when the

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1 hammer is uncocked, what did you determine the distance
2 to be?
3 A. The straight line distance from the muzzle to
4 the trigger is approximately 21 inches.
5 Q. And then in the bottom photo, how did the
6 distance change when you go into the cocking the gun?
7 A. The single action image, the distance from
8 the muzzle to the trigger, is 22 inches.
9 Q. I'll return that exhibit. What direction
10 does that cylinder travel?
11 A. The cylinder is designed and rotates
12 counterclockwise, or from the shooter's perspective to
13 the left.
14 Q. Did you have an opportunity to actually
15 inspect the ammunition that was taken out gun?
16 A. Yes, I did.
17 Q. And what did you -- Tell us a little bit
18 about that ammunition.
19 MS. BROWN: Your Honor --
20 THE COURT: Wait a minute.
21 MS. BROWN: -- I'm going to object again.
22 He's testifying concerning items that are not in
23 evidence. There's been no chain of custody established
24 for them. He refers to them as, for example, Mr. Leibel

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1 robe. We have no testimony concerning that.
2 THE COURT: Well, actually, there have been
3 photographs introduced depicting Mr. Leibel in a robe.
4 MS. BROWN: And how do we know -- There's no
5 authentication to these objects, Your Honor.
6 THE COURT: Mr. Gregory, do you have a
7 response?
8 MR. GREGORY: Your Honor, there's no
9 requirement to actually move in an object that he's
10 observed and can testify that he observed. There's no
11 requirement that the actual object be moved into
12 evidence.
13 MS. BROWN: But we need some --
14 THE COURT: Well, just a minute. I don't
15 need it argued. The argument essentially has to do with
16 how do we know that the robe that he observed was the one
17 that was in the photograph. You can clear that up, and
18 you can have him testify as to what robe he observed or
19 you get to cross examine him on that. I'm going to allow
20 him to testify.
21 MS. BROWN: Your Honor, I'm going to then
22 lodge a standing objection to all of this testimony.
23 THE COURT: There are no standing objections.
24 You can object to any questions you want.

1 removed and packaged, and they came with a photograph
2 showing how they were positioned in the firearm.
3 Those components that were from the firearm,
4 the recovered firearm itself, were a fired 45 Colt
5 cartridge case, a fired 410 shot shell, and then two
6 unfired rounds of 45 Colt, and one more unfired round of
7 410 shot shells. There was a total of five components.
8 It was one represented in each chamber of the firearm.
9 Q. The fired 45 round, did you have an
10 opportunity to examine it?
11 A. Yes.
12 Q. And do you have an opinion whether it was
13 fired out of the gun that was taken from the crime scene?
14 A. Yes. I test fired the firearm recovered and
15 did a microscopic comparison of the firing pin marks and
16 the tool marks are left behind by the gun recovered from
17 the scene, and that cartridge case recovered from the
18 firearm was fired in the gun.
19 Q. And how about the 410, the fired 410
20 ammunition? Did you have an opportunity to evaluate it?
21 A. I did.
22 Q. And do you have an opinion regarding whether
23 it was fired from the gun and removed from the crime
24 scene?

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1 MS. BROWN: I'm going to object again to any
2 reference to a robe that's not been identified as being
3 taken into evidence.
4 THE COURT: I understand your objection.
5 Thank you.
6 Q. (BY MR. GREGORY:) Your report refers to a
7 robe that you received up at the crime lab?
8 A. Yes.
9 Q. And it came to you along with the firearm;
10 correct?
11 A. Correct.
12 Q. Under the same case number?
13 A. Yes.
14 Q. And what about the ammunition that we were
15 just about ready to discuss?
16 A. In the same submission, I received a number
17 of different pieces of ammunition and ammunition
18 components.
19 Q. And you had an opportunity to observe that
20 ammunition?
21 A. I did examine the ammunition, yes.
22 Q. Describe what you observed.
23 A. One of the submissions was the actual
24 components that were loaded in the firearm and had been

1 A. Yes. It also matches the test fires, the
2 known samples test fired in the gun, so it was also
3 identified as having been fired in the submitted rifle.
4 Q. The 410 ammunition that was unfired, can you
5 tell us anything about the characteristics of that in
6 terms of how many projectiles were inside?
7 A. Yes. It's a brand made by Federal Cartridge
8 Company, and it's specifically called triple ought buck,
9 and that's a 000-buck shot, and it's a type of large
10 projectile. There are four pellets in that load that
11 encompasses the entire shot shell. Those four pellets
12 are contained inside of a plastic sleeve, or we call it a
13 wad, and that's the payload or the projectiles that the
14 rounds are able to deliver, so it's four stacked one on
15 top of another, copper-coated pellets. Each one is about
16 .36 inches in diameter, so about a third of an inch in
17 diameter; four of them stacked in a linear fashion.
18 Q. Now, compare that to the 45 round. Can you
19 tell us about it?
20 A. The 45 long Colt round is a specialty type of
21 a round. It is a single projectile as expected, but the
22 type of projectile is unique. It's different than what
23 we typically see as a single projectile, which might just
24 be a led round-nosed bullet or maybe a copper jacket

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1 bullet. This is a bullet that is designed to fragment
2 upon impact with soft tissue, so it has a very unique
3 characteristics. And as a matter of fact, it's not in
4 production in that caliber anymore, so it's kind of hard
5 to find. It's a very unique round comprised of a copper
6 jacket that has softer tungsten and lead fragments on the
7 inside with a cap on the top; the idea being that when
8 that projectile impacts something like soft tissue, it
9 can break apart and create multiple wound channels
10 instead of like a single projectile that doesn't break
11 apart creates one wound path. So it's a fragmenting
12 round, a fairly unique design of cartridge.
13 Q. During the course of your experience, have
14 you had an opportunity to shoot that type of round?
15 A. Yes.
16 Q. And based on your training and experience,
17 can you tell us how that type of round would be expected
18 to function if shot into a body?
19 A. The round is very effective. In testing that
20 I've done by shooting into ballistics gelatin that I've
21 done before the experimenting with this particular case,
22 but what the round can do is when it hits something with
23 a lot of liquid content, high hydraulic something like a
24 body or an animal, it breaks apart very effectively, and

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1 all of the payload flies through the air as one single
2 projectile, but when it impacts soft tissue, it begins to
3 break apart, and you get multiple fragments.
4 Now, they still continue along that path of
5 momentum they have, but now they're fragmenting, and each
6 one of those little fragments is carrying some of the
7 energy of that original shot. So it flies through the
8 air as a single projectile, gets to the target, and then
9 breaks apart. If it doesn't hit something like soft
10 tissue, like let's say it hits drywall or wood, it stays
11 together. So the idea being you can shoot this round
12 through a significant object and still keep it together
13 with all of its energy together, but when it hits
14 something soft, that's when it fragments and breaks
15 apart. And that's how this projectile is designed to
16 perform.
17 Q. What happens to the speed and energy of the
18 projectiles as they travel through a body?
19 A. The projectile is at its maximum velocity and
20 energy right as it leaves the barrel. It can never get
21 more energy and velocity than what it has at that point.
22 So when this projectile travels through the air, it's
23 beginning to slow down, but not a lot. When it hits
24 something significant like soft tissue and begins to

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1 fragment, each of those fragments carries some of that
2 velocity and energy, and so what arrives to a target with
3 a lot of energy is quickly dissipated as each fragment
4 carries some of the energy away from the main mass.
5 So you wind up with multiple smaller
6 lower-velocity, lower-energy projectiles inside the wound
7 as opposed to a single massive projectile that stays all
8 as one. So the energy dissipates through the wound track
9 that it creates.
10 Q. Did you have an opportunity to weigh the gun
11 from the crime scene?
12 A. I did not weigh it specifically. I have a
13 catalog entry that references what the gun weight is.
14 Q. Do you know what that is? And that's from
15 the manufacturer, are you talking about?
16 A. Correct. The manufacturer's catalog has
17 that, and I believe it's around five and a quarter
18 pounds. I would have to refer to the catalog to refresh.
19 Q. And if you could lift the gun up, where is
20 the weight of that gun centered?
21 A. It's designed -- Most of the weight is here
22 on what we call the receiver that holds the frame and the
23 cylinder. These are all metallic parts because they have
24 to contain the pressure of a gunshot, so they're very

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1 heavy, very sturdy, very thick metal. So the bulk of the
2 mass is toward the center of this gun, and this is a
3 wooden sock, so it's a little bit lighter, and of course
4 the barrel is metal, but not as much metal as is in the
5 center of this gun.
6 Q. Now, going back to the gases that escape from
7 the muzzle upon firing, in an enclosed room, what would
8 happen to those gases?
9 A. Well, the gases typically, by way of example,
10 where the bullet might have the ability to go a mile or
11 farther, the gases can only go a matter of feet. Maybe
12 the lighter components of the products that follow the
13 bullet can just travel inches.
14 The heavier particles like the actual pieces
15 of gunpowder can travel maybe four or five feet before
16 they begin to fall off. And ultimately, as they mix with
17 the air, they just fall off and are laying on the ground
18 or laying in the environment in which the shot occurred
19 unless, of course, something is close to the muzzle that
20 intercepts those gases.
21 Q. Can particles that are left be transferred at
22 all?
23 A. Yes, they can. Those particles that are just
24 dissipated in a shooting environment are free to be

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1 transferred. They can be tracked on shoes or clothing.
2 You can transfer those particles. They will exist --
3 Imagine it as if we had some pepper; we threw some pepper
4 on the floor. We could step in it, and we could move
5 pepper around, and maybe if we sat down on the floor, we
6 might transfer pepper that way. Well, the gunpowder
7 particles are similar. They're present, and they can be
8 transferred and moved around.
9 Q. What happens -- You talked about energy going
10 away from the muzzle. Is there any resultant energy
11 going backwards?
12 A. Yes.
13 Q. Tell us about that.
14 A. You may be familiar with the statement for
15 every action, there's an equal and opposite reaction.
16 It's a law of physics. As we apply that to discharge of
17 a firearm, the action would be the bullet going down the
18 barrel. So that action has to have an equal and opposite
19 reaction. So for all of the energy that's pushing the
20 bullet down the barrel toward its target, there's an
21 equal amount of energy pushing the gun back away, and so
22 that's what we call recoil energy. That's the felt gun
23 moving away as these equal and opposite energies come
24 back for balance and equilibrium.

1 just fallen off. I can then compare the series of
2 distance tests from small close-range to big distant
3 range, and compare that to the article of clothing or the
4 article that I'm comparing it to. In this case, it was a
5 robe.
6 We process the robe and look at what size of
7 the pattern is on the robe, and then we simply compare it
8 and go along this range of known distances and see what
9 distance does the robe match the known test fires, and
10 that's the result that we then report.
11 Q. Okay. Did you have an opportunity to
12 determine which round was fired first, either the 45
13 round or the 410?
14 A. Yes.
15 Q. And which? What was your opinion in that
16 regard?
17 A. The documentation from when they unloaded the
18 gun identifies that the first round was the 45 Colt.
19 This gun rotates counterclockwise, and so they documented
20 how they found the gun. And so if we just simply work
21 backward, two positions over is where the 45 Colt was,
22 two positions to the left. One position over was the
23 410. So as that cylinder rotates, that means the 45 Colt
24 was fired. The gun was fired again. That second shot

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1 Q. You talked earlier about having the ability
2 to determine distances between the muzzle and an object
3 that's been struck with the projectile. Did you have an
4 opportunity to do that type of analysis with the gun that
5 was taken from the crime scene?
6 A. Yes, I did.
7 Q. How did you go about doing that?
8 A. The process to conduct that test involves
9 getting similar type of ammunition. The burn rate and
10 the performance of the ammunition is very important, so
11 it's important that we have the same kind of ammunition
12 and the actual firearm from the scene. And then what we
13 do is begin to take test fires at known distances, so we
14 put a panel. We call it a witness panel. It's just a
15 fabric panel, and we put it at distances starting with,
16 say, contact, and then we back the panel up three or six
17 inches at various increments, and we take a test shot at
18 each of those various distances.
19 Then we have -- so from those panels, we can
20 lay out a range. When we're very close to the muzzle,
21 the soot and the residue is very small. It's the same
22 diameter as the barrel. The farther we get away, the
23 more those residues dissipate and the bigger the pattern
24 gets until we get no pattern at all where the gases have

1 was the 410. The cylinder rotated, and then in this
2 case, the gun was cocked a third time, introducing but
3 not discharging a next round in line.
4 Q. Dr. Kubiczek had testified that Harry Leibel
5 had one gunshot under his right armpit, and then there
6 was another series of injuries that went through his hand
7 and through the shoulder. Did you have an opportunity
8 look at the x-rays involved in this case?
9 A. Yes, I did.
10 Q. And did those -- do you have an opinion
11 regarding -- Did you see any projectiles in the x-rays?
12 A. Yes, I did.
13 Q. And do you have an opinion regarding which
14 ammunition those would be most consistent with?
15 A. The x-ray is consistent with the performance
16 of a 45 Colt, which was the first shot fired. The x-ray
17 demonstrated small fragments. And in fact, what the
18 doctor recovered and submitted to the lab were these
19 actual small fragments that I examined in the laboratory,
20 so those little fragments of copper and lead and tungsten
21 that he removed from the body that are imaged in the
22 x-rays are from the 45 Colt that was associated with this
23 gun.
24 Q. So talking about that shot, the 45 Colt round

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1 in the torso, did you have an opportunity to determine
2 the distance?
3 A. Yes.
4 Q. How did you go about doing that?
5 A. Start with a visual inspection. Well, first
6 I needed to know what was the layers of clothing, what
7 was Harry wearing, Harry Leibel wearing. The
8 documentation clearly shows that he had this robe was on
9 the exterior, so that's where we start.
10 THE COURT: Okay. I'm going to stop you now.
11 We're going to take the morning break, and we'll come
12 back. We'll pick that up. We're going to be in recess
13 for 15 minutes. And during this recess, you are
14 admonished -- sit down, please, sir -- not to talk or
15 converse among yourselves or with anyone else on any
16 subject connected with this trial.
17 You're not to read, watch, or listen to any
18 report of or commentary on the trial or any person
19 connected with this trial by any medium of information
20 including, without limitation, newspapers, television,
21 radio, or Internet. You're not to form or express any
22 opinion on any subject connected with the trial until the
23 case is finally submitted to you. We'll be back in
24 session at a quarter till. Thank you.

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1 MR. GREGORY: Your Honor, on that, the next
2 phase of his testimony is going to involve a
3 demonstration with the couch. If we could take a longer
4 recess, we could get that established during the recess.
5 THE COURT: You mean move the couch?
6 MR. GREGORY: Move the couch and set up a
7 demonstration.
8 THE COURT: We'll give you a 20-minute minute
9 recess. Thank you.
10 (Recess was taken.)
11 -o0o-
12 THE COURT: Okay. We're back in session in
13 14-CR-62. Mr. Gregory is here for the State. Ms. Brown
14 and Ms. Henry are here for the defense. Ms. Leibel is
15 here together with her interpreter, and we are prepared
16 to go forward. Mr. Noedel is on the stand, and let's
17 bring in the jury.
18 As we are waiting for them to come in, I'm
19 going to remind the audience that there is no recording
20 allowed in here, either audio or audio and visual. So if
21 someone has an iPad or something like that, you're
22 welcome to take notes on it and use your phone to take
23 notes on, but you are not welcome to engage in any
24 recording, and I'll just make that point. Any recording

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1 that is done in violation of that rule will result in me
2 confiscating your equipment, and you will lose it
3 permanently.
4 Thank you, Ladies and Gentlemen. Have a
5 seat, please and relax. Counsel stipulate to the
6 presence of the jury?
7 MR. GREGORY: Yes, Your Honor.
8 MS. BROWN: Yes, Your Honor.
9 THE COURT: Ladies and Gentlemen, it took a
10 little bit longer than I said, but as you can see, we did
11 some furniture moving during that period of time.
12 Actually, I didn't. I didn't lift anything.
13 Mr. Gregory? I'll speak up. I said I didn't
14 lift anything.
15 A JUROR: Okay. Good.
16 THE COURT: Sir?
17
18 CONTINUED DIRECT EXAMINATION
19 BY MR. GREGORY:
20 Q. Thank you, Your Honor. Mr. Noedel, when we
21 broke, we were talking about your opinions regarding
22 distance, and you were talking about the shot to Harry's
23 right side first shot. Did you have an opinion regarding
24 the distance as it relates to that shot?

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1 A. Yes, I did.
2 Q. What was your opinion?
3 A. The absolute range is farther -- the gun was
4 farther away than contact with the side of the road, but
5 closer than 18 inches. And to narrow that down on my
6 range, it's most like the test targets that I generated
7 in the two to six-inch range. So the distance that the
8 end of the gun was from the side of the road is best
9 characterized to be the range of about two to six inches.
10 Q. So two to six inches is the best, but out to
11 18?
12 A. Yes, because when we're doing that type of
13 test, I have to be certain that I encompass any
14 conceivable range that could be represented on the test
15 fires, and the range sometimes has some overlapping
16 distances. For example, my nine-inch target overlaps a
17 little with my 12-inch. They're hard to differentiate.
18 So I go to a rate, a distance that I'm absolutely sure is
19 -- can't be the same as the robe. That's my 18. And I
20 go to my closest distance that I'm absolutely sure it can
21 be, can't be contact. But to focus that, because that is
22 a wide range, I look at the pattern that was processed on
23 the clothing to my test targets, and that's where get the
24 two-to six-inch range for the distance of the gun, best

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1 fitting with the tests that I generate.
2 Q. So when you say the distance of the gun, can
3 you show the muzzle of the gun?
4 A. Yes. The muzzle is the exit end of the gun
5 here. And so when distance testing, I'm trying to
6 determine this range here, forward of the muzzle to how
7 far away the object was when the gases arrived to them.
8 Of course there's a hole in the object that let the
9 bullet go through, and I'm looking at the interception of
10 gases around the hole, and that's what I'm going to
11 evaluate. So I'm looking, in this case, we're somewhere
12 farther than approximately two inches out from the muzzle
13 but closer than about six inches.
14 Q. And did you also have an opportunity to do
15 distance analysis on the shot to his hand and shoulder?
16 A. Yes.
17 Q. Tell us about how you went about that
18 analysis.
19 A. It's a similar process. The pattern that was
20 present on the left hand of Mr. Leibel can be compared to
21 known patterns. I needed to know that that was in fact a
22 shot from the shotgun because different ammo will have
23 different ranges associated with it. So there was a
24 component, that plastic sleeve called the wad, was still

1 here.
2 Q. Thank you. And previously, I indicated we
3 were going to get into a separate area altogether, and
4 that is reconstruction. What is accident or what is
5 reconstruction, scene reconstruction?
6 A. Scene reconstruction is a branch of forensic
7 science that involves assembling and testing elements of
8 the whole of an event where laboratory analysis basically
9 looks at the specific components. That provides the
10 basis on which we can attempt a scene reconstruction.
11 So scene reconstruction is a process whereby
12 using the evidence, you set out to try to answer
13 questions about the whole of the event. And so
14 reconstruction is a process and a method that uses a
15 scientific method. We pose a hypothesis, we look for
16 what data we have, distance data, whatever physical
17 evidence is, dimensions of the room, and we test how
18 these elements can come together and try to reconstruct
19 things that are of question in a given case.
20 Q. How long has reconstruction been around?
21 A. Reconstruction is as old as forensics itself.
22 It's always been the ultimate goal of any forensic
23 analysis to have a reconstruction. So formal forensic
24 science has, particularly with shooting reconstruction,

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1 present in his wound. So I knew that that hand and the
2 deposits on the hand were associated with the shotgun.
3 So then I take the evidence gun and the shot shells of
4 the appropriate size and do another series of patterns of
5 known distances from contact out to maybe as far as two
6 feet and compare the size and density and distribution of
7 the residues on his hand to the size and density of the
8 patterns that I test fired in the laboratory.
9 Q. And what was your opinion regarding the
10 distance of that shot?
11 A. It's again greater than contact. Farther
12 away than contact, but closer than -- I think closer than
13 six inches; most like my three-inch test targets. So the
14 best distance that matched my test fires, my known
15 distances, was the three inch. So the hand is
16 essentially in that range, about approximately three
17 inches away from the end of the gun when the shotgun shot
18 was delivered.
19 Q. So the muzzle would be -- if you could
20 demonstrate approximately the muzzle to the back of the
21 hand.
22 A. So the muzzle to the back of the hand would
23 be somewhere in this range. That's approximately two
24 inches and maybe as far as six inches, so somewhere in

1 has gone on for the last 125 years. Reconstruction as a
2 formal branch of forensic science has really come into
3 its own in the last about 25 years, but virtually every
4 scene that someone is assembling and telling -- trying to
5 figure out a sequence is actually doing a reconstruction.
6 Q. Is it accepted as a formal branch of forensic
7 science?
8 A. Yes, it is.
9 Q. How long -- Well, tell me about your training
10 and experience regarding reconstruction.
11 A. My first introduction to shooting scene
12 reconstruction started when I was working with the state
13 patrol crime laboratory. I was a firearm examiner inside
14 the lab, but I also had a responsibility to go tend to
15 crime scenes. So I used to have a dual responsibility,
16 and in attending crime scenes, not only did I process and
17 collect objects, but began to get involved with the
18 reconstruction aspects.
19 Of course there's training, a lot of training
20 and mentorship from senior investigators and detectives
21 and other people doing reconstruction, but there are
22 certainly formal courses that I've taken in the processes
23 and what you look for in reconstruction, how you sequence
24 events, what do you look for. So there's training there.

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1 There are textbooks on the subject, and those are all
2 avenues that I'm involved with.
3 There's also an association, a professional
4 organization called the Association For Crime Scene
5 Reconstruction. Next week is our 25th anniversary in
6 that organization. I'm the past president of that
7 organization. That's a group of practitioners, I'll say,
8 not only forensic scientists, but they're also detectives
9 in that group, private consultants, public officials, and
10 we meet annually and have training conferences, and we
11 publish a journal where we release how people are
12 approaching crime scenes. So it's a legitimate as any
13 branch of science of forensic sciences where you might
14 have a DNA analysis, a firearms analysis. Reconstruction
15 is one of those branches that I maintain expertise in.
16 Q. What is your certification in reconstruction?
17 A. The International Association for
18 Identification. The IAI has a certification in crime
19 scene reconstruction. It's a written test followed by a
20 practical test, and I'm certified by that organization in
21 reconstruction.
22 Q. How many others are certified?
23 A. They are only about 17 people that have
24 passed that certification to date, so I'm one of 17.

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1 Q. You were asked to perform a reconstruction in
2 this case?
3 A. Yes.
4 Q. How did you go about obtaining data?
5 A. The first thing to start with a
6 reconstruction is to gather information about the case,
7 so I requested things like the police reports, the
8 autopsy reports, the original scene photographs and the
9 scene documentation, notes and maps and things were made
10 at the house. Of course I was not at the house the dare
11 the scene was processed. I'm relying on that information
12 that was recorded, so statements offered by individuals
13 what's being said, what's being alleged about this case.
14 And in that data, then we can begin to look
15 for where are there issues that physical evidence can
16 help answer and thereby reconstruct. So that's the
17 process, and that's the information for any types of
18 information that document or talk about the scene. And
19 then we can test it using reconstruction processes.
20 Q. So you said obviously you weren't out at the
21 crime scene; correct?
22 A. Correct.
23 Q. So you rely on what others report; correct?
24 A. Correct. That's the function of the crime

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1 scene respondents is to document that scene, and of
2 course the reconstruction is only as good as the scene
3 documentation.
4 Q. And were you provided with measurements that
5 were taken by Joey Lear?
6 A. Yes, I was.
7 Q. And you used those and incorporate those into
8 your reconstruction?
9 A. I did.
10 Q. Ultimately, were you able to do a
11 reconstruction in this case?
12 A. Yes. One thing that needs to be understood
13 about reconstruction is not necessarily and typically not
14 going to play out like a movie where I can account for
15 everything that happens from start to finish of an event,
16 but we can test specific elements. So there was
17 sufficient data and documentation to test various
18 elements, so that aspect of a reconstruction could be
19 done. It won't tell you how the entire event played out
20 from start to finish.
21 Q. Were you able to do a reconstruction --
22 A. Yes.
23 Q. -- in this case? Did you feel like you had
24 ample information to be able to do that?

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1 A. Yes, for the specific questions that were
2 being considered in this case, there's plenty of data to
3 consider and evaluate.
4 Q. What were the considerations that you were --
5 questions that you were going to answer?
6 A. The big question of this event was was this
7 shooting a suicide or was it a homicide. In other words,
8 somebody shoot -- did Harry Leibel shoot himself or did
9 somebody else shoot him. And so that's a huge question,
10 so we have to break that down for reconstruction and make
11 it into more smaller manageable questions like
12 sequencing: Which shot was first. How did that bullet
13 perform. What does the performance of that bullet tell
14 us about positions, locations of people, where are the
15 bloodstains. We can begin to -- where are the
16 bloodstains. We can begin to piece these pieces of
17 documentation together and draw a picture about these
18 elements.
19 THE COURT: Sir. Again, I'm going to ask you
20 just to slow down a little bit.
21 THE WITNESS: Yes, sir.
22 THE COURT: I know that you have a lot of
23 information you want to get out, but it has to be
24 conveyed also.

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1 THE WITNESS: Yes, sir.
2 THE COURT: And so slow down a little bit.
3 Thank you very much, sir.
4 THE WITNESS: Okay. So that's the process.
5 That was the big question that we were set out to answer.
6 And so using the data like the distance that was measured
7 from the robe and the hand, the path of the bullet that
8 went through the couch, all of those pieces are elements
9 that we are going to use to try to reconstruct the actual
10 delivery of the two gunshots.
11 Q. (BY MR. GREGORY:) Now, in addition to the
12 data that you reviewed, you also, as we already know, you
13 actually handled the weapon that was used; correct?
14 A. Yes. That was a big advantage to be able to
15 actually work with the actual recovered firearm and test
16 fire it and examine how it performs.
17 Q. Did you also have an opportunity examine the
18 couch?
19 A. I did.
20 Q. And the end table that's here?
21 A. Yes.
22 Q. And did you have an opportunity to visit the
23 residence?
24 A. I did. The residence was vacant by time I

1 MR GREGORY: Just one.
2 MR. GREGORY: Would you like that see that
3 one first, Your Honor?
4 THE COURT: I would. Thank you. Thank you,
5 sir.
6 Q. (BY MR. GREGORY:) I'm going to show you
7 what's been marked as Exhibit Number 142. What does
8 photograph depict?
9 A. This is a composite of two different images:
10 One of Harry Leibel's right arm, and the other one is the
11 photograph that I took of the length from muzzle to
12 trigger.
13 Q. Are those photographs accurate
14 representations of who you observed in doing your
15 reconstruction?
16 A. Yes.
17 MR. GREGORY: Your Honor, I'd move for
18 admission.
19 THE COURT: Any objection?
20 MS. BROWN: No objection, Your Honor.
21 THE COURT: 142 is admitted.
22 Q. (BY MR. GREGORY:) Publishing 142. Dim the
23 light, please. All right. Let's go through the couch
24 has been set up. Did you set this up during the break?

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1 was able to go, but I wanted to just see the spatial
2 relationships and verify some of the measurements that
3 were recorded from the original scene and just as a way
4 to check the arrangement and validity of the issues that
5 we were testing.
6 Q. And did you ultimately arrive at an opinion
7 in this case?
8 A. Yes.
9 Q. Are your opinions that you're going to offer
10 today within a reasonable degree of scientific certainty?
11 A. Yes, they are.
12 Q. Thank you. And those opinions were in a
13 report that was generated?
14 A. That is correct.
15 Q. I wanted to ask you, was part of the
16 information you obtained, we know you measured the gun.
17 Did you also have any kind of data referencing the length
18 of Mr. Leibel's arm?
19 A. Yes, I did.
20 Q. And was that through photography that you'd
21 received?
22 A. Yes. Autopsy photographs recorded the length
23 of his arm.
24 THE COURT: Are these new?

1 A. Yes.
2 Q. Can you tell us what you were trying to
3 achieve with this setup.
4 A. Part of the reconstruction involved this
5 bullet path analysis. And in this event, we have the
6 shotgun pellet, the shot that was responsible from the
7 shotgun shot, which was the second shot, after leaving
8 the gun, perforating the hand, and eclipsing the left
9 shoulder, those pellets continued into and through the
10 couch, out the back of the couch and into the wall.
11 When we have these multiple points along the
12 path of a bullet, we can connect those, follow the line
13 back, and it gives up an idea of where the firearm would
14 be located at the beginning of that path. So that's the
15 trajectory analysis. That's the value of recording this
16 path that went through the couch and into the wall behind
17 the couch.
18 Q. And the jury can't see it. You have a box
19 set up behind the couch where the rod goes into. What's
20 that represent?
21 A. The scene documentation shows how far up the
22 wall the pellets entered. And so what we've done rather
23 than build a wall here, we're just using a small box, the
24 box is into the wall approximately ten inches up from the

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1 ground, and so we've put a hole in the box ten inches up
2 and given a place for the rod to connect to, so the rod
3 is connecting a box that represents where the wall would
4 be.

5 THE COURT: Mr. Gregory, since there hasn't
6 been an objection to that testimony, I'm going to allow
7 the jurors to step down from the jury box, walk around,
8 come around the couch, see the box that's being
9 demonstrated to them, and walk back up. I'd ask you be
10 careful not to kick the box, but you can walk around see
11 what the box is talking about.

12 Mr. Gregory, you may proceed.

13 MR. GREGORY: Thank you, Your Honor.

14 THE COURT: There's a number of red lines and
15 dots, and those come from touching your screen up there.
16 Thank you, sir.

17 Q. (BY MR. GREGORY:) Sir, looking at your
18 report, there's a section called bullet path analysis.
19 And I'd like to talk about the first shot first, which
20 would be the one to the torso. Who can you tell us about
21 the bullet path analysis that you performed?

22 A. In examining the first shot, prior to that,
23 the first thing we know is that the first shot, because
24 of the sequence of the load that was in the chamber, we

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1 know it was the one that had gone two positions to the
2 left was the 45 Colt. It's that unique type of
3 ammunition that fragments upon impact with soft issues.
4 So in examining that bullet path, we know where the
5 bullet entered as a single projectile. It travels
6 through the air as a single projectile and that began to
7 break apart when it hit the soft tissue of Harry Leibel's
8 side.

9 What we can see from the description by the
10 doctor and the fragments that he recovered along the
11 wound track and from the x-rays that he took of the body,
12 we can see a trail of all of those fragments. And when
13 you look at the trail of fragments that connect from the
14 entry wound to his side, they eclipse upward and across
15 inside of his body across his chest striking whatever
16 organs they come across. The bullet is breaking apart
17 into smaller fragments. Each little fragment is carrying
18 a portion of the energy, and so they're slowing down.
19 They're running out of energy as they break apart and get
20 smaller, and they continue to eclipse upward and across
21 the inside of his body.

22 If you put a protractor and measure that
23 angle, it's about 15 degrees relative to straight across
24 his body, about 15 degrees to 20 degrees upward. The

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1 pellets continue upward toward his left shoulder, and
2 near the end of that pellet path and the fragments' path,
3 if his arm is down, the pellets make a right turn and go
4 down his arm, but the pellets end at his -- at the inside
5 of his left arm.

6 And so in evaluating that and knowing how
7 this ammunition performs, I expect these pellets to
8 continue trying to go on a straight line. So how do I
9 resolve a pellet that's -- the pellets or fragments that
10 seem to have turned 100 degrees downward? Well, by
11 raising the arm, I can create a continuous 15 to
12 20-degree upward path and resolve how I think the bullets
13 should be performing.

14 I could see no reason for the bullets to take
15 a right turn if the arm was down. So for the bullets to
16 end up here and maintain their energy path as they're
17 fragmenting for the fragments to maintain their path, I
18 think the arm has to be raised to give you a linear
19 straight line path to where fragments were located and
20 one fragment actually exited inside of the arm.

21 Q. If his left arm was raised in such a manner,
22 would you agree with me that there would be no way for
23 his left hand to be in contact with the weapon?

24 A. Correct. In my opinion, his left hand cannot

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1 be handling the firearm.

2 Q. And tell us about, a little bit about the
3 bullet path travel for second shot.

4 A. The second shot we know is the shotgun shot,
5 and the projectiles start in the gun as a stack of four
6 triple ought buck pellets. They travel down the barrel
7 in their plastic sleeve, and about three or approximately
8 three inches out of the barrel, they encounter Harry's
9 left -- the back of Harry's left hand. That column of
10 pellets perforates through his hand, and in doing so,
11 that plastic sleeve called the wad, part of that breaks
12 off and actually sticks in his wound.

13 The pellets, which are the most massive part
14 of that projectile set, continue on, exit toward the base
15 of his thumb, and continue in essentially a straight line
16 and eclipse the top of his left shoulder. That's
17 photographed and described in the postmortem autopsy
18 report. After eclipsing the top of his shoulder, they
19 continued into the hole, creating the front hole in the
20 surface of the couch, tunneled through the structures
21 inside the couch, came out the backside of the couch,
22 finally ran into the wall where they ran out of energy
23 and were trapped in the wall.

24 There's a stud actually in the construction

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1 of the wall, and that helped stop the projectiles so they
2 -- so that's the path that we know the second set of
3 projectiles. There's actually four pellets in that
4 shotgun load.
5 Q. Now, you've already testified this was not a
6 contact wound. Could you demonstrate what contact would
7 be there with the muzzle.
8 A. Contact is literally the gun touching the
9 structure that is involved. And when you have a contact
10 type of a gunshot wound, there's no time for the residues
11 to expand. So with a contact gunshot wound, you can get
12 a lot of tearing and a lot of damage, but from the
13 residue perspective, the residues would all be blown
14 right into the wound. He doesn't have that on his left
15 hand, there's an actual -- there's a big pattern of what
16 we call soot, basically vaporous led and products that
17 followed those pellets out.
18 For that to have enough time for that soot to
19 spread out and distribute on his hand, he can't be
20 touching the gun. He has to be moved back. But he can't
21 be so far away that the residues don't reach him. So
22 he's right there in that approximately three-inch
23 distance is where we see heavy soot residues with some
24 gunpowder particles in a distribution about the size that

1 path of the bullet. Could you demonstrate where the gun
2 would have been, in your opinion?
3 A. Yes. Because we have this trajectory, we
4 know the bullets will travel in a straight line as they
5 are traveling through this arrangement, so we have to
6 position the firearm. You can imagine we can extend this
7 line. We have to position this firearm somewhere along
8 this yellow line. In between the firearm and the back of
9 the couch, we have to put Harry Leibel, and we have to
10 arrange that in a circumstance that the left hand, the
11 back of the left hand, is approximately three inches away
12 from the gun.
13 So when we put all of that together, assuming
14 that Harry Leibel is in fact on the couch where his blood
15 was where the shot is, the gun has to be somewhere in
16 this general vicinity, somewhere right in here, by the
17 time we put his body there. His shoulder has to be right
18 on -- right beneath the yellow rod because he has that
19 eclipsing wound here. So when he was on this couch, he's
20 positioned in a manner such that his left shoulder is
21 here just under this line here, and his left hand is
22 forward of his shoulder in some capacity; the back of his
23 hand presented to the gun. So it's this kind of an
24 arrangement, and there is -- there's also a range with

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1 was represented on his left hand.
2 Q. So given that opinion, could his left hand
3 have been in contact with the barrel of the gun at the
4 moment the gun was shot?
5 A. No.
6 MR. GREGORY: Your Honor, may he step down to
7 the couch?
8 THE COURT: He may.
9 MR. GREGORY: And we will need, if you could
10 bring the demonstration gun with you, please.
11 THE COURT: But the record should reflect
12 exactly what exhibits that you have down there.
13 MR. GREGORY: Thank you. He has Exhibit 118,
14 I believe. The end table is Exhibit 121.
15 THE COURT: It's right back here, sir.
16 MR. GREGORY: Thank you. And Exhibit
17 Number 120. 119 is the demonstration gun. Thank you.
18 THE COURT: So he has Exhibits 119 --
19 MR. GREGORY: Correct.
20 THE COURT: -- 118 and 120; is that correct?
21 MR. GREGORY: Yes.
22 THE COURT: Proceed, sir.
23 Q. (BY MR. GREGORY:) Talking about what would
24 have been the second shot, and you just talked about the

1 trajectory rods. We account for plus or minus five
2 degrees or so because there is some error. Of course we
3 can move this. So we come up with a zone for that shot.
4 The rifle was positioned somewhere in this zone, and at a
5 time when the left hand was forward the barrel and the
6 left shoulder was just on the bottom of that yellow path.
7 Q. Thank you. You can retake the stand.
8 Mr. Noedel, what was your ultimate opinion in this case?
9 A. Well, ultimately, piecing together all of the
10 different components that I've examined for the
11 reconstruction, in my opinion, because of the reach and
12 the elements that have to be met, the distance
13 determinations and all of those elements, I think that
14 the best explanation is that Harry did not shoot himself.
15 Harry Leibel did not shoot himself. It creates much
16 easier logistics if someone else delivered the shots,
17 both shots to Harry Leibel.
18 Q. What do you mean by that, what you just
19 stated about the movements? In your scenario, your
20 opinion is that it was most likely he didn't shoot
21 himself. Describe for me what his movements would be
22 during the course of the two shots.
23 A. So knowing the sequence, we have to arrange a
24 situation where the firearm is close to the side of his

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1 body, so let's estimate two to six inches from the side
2 of his body, and left arm has to be up.
3 So when the first shot eclipses his body,
4 pellets go in, and then he moves to this position to
5 present his left hand, eclipse his left shoulder, and
6 continues into the couch. So he has to present the left,
7 or I'm sorry, present his right side, and then present
8 his shoulder. So that's, as I'm demonstrating, that
9 twist is the kind of movement that Harry would have to
10 achieve, assuming that the shooter is not moving
11 dramatically through the scene. And we know that the
12 shooter had to be close to Harry.
13 Q. And were you provided with information
14 regarding the position of the hammer when the gun was
15 found?
16 A. Yes, I was.
17 Q. And what was the position of the hammer?
18 A. After the second shot and the way the gun was
19 found, the hammer was in the cocked position. So the
20 caulking of the gun takes that specific movement.
21 Somebody had to physically caulk the hammer back and
22 prepare it for a third shot, which was not delivered.
23 Q. And your opinion regarding this case, again,
24 is to a reasonable degree of scientific certainty?

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1 A. Yes, it is.
2 MR. GREGORY: Thank you. Nothing further.
3 THE COURT: Ms. Brown?
4
5 CROSS-EXAMINATION
6 BY MS. BROWN:
7 Q. So it's to a reasonable degree of scientific
8 certainty that Mr. Leibel being killed by another person
9 is the best explanation?
10 A. Yes.
11 Q. When you prepared or when you did the
12 ballistics testing, you where were you working at?
13 A. Physically, I was located in the Washoe
14 County Forensic Laboratory in Reno.
15 Q. And can you describe -- you've testified you
16 have your own company, Noedel Scientific, and then you
17 also work at Washoe County?
18 A. Correct.
19 Q. Could you explain that relationship?
20 A. Yes. Part of my forensic consulting is I
21 provide a lot of training, I teach a lot of courses, and
22 I had an opportunity to be invited to, on a contract
23 basis, to work at Washoe County to help reduce their
24 backlog and to help train new firearm examiners at their

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1 laboratory. So that's a contract that whereby I come
2 down from my home near Seattle, Washington, I come down
3 one week a month and have been doing so for about the
4 last four years.
5 Q. And when you work the Washoe County Crime
6 Lab, then you're basically you're compensated out of
7 county funding?
8 A. Correct. Grant money that the laboratory has
9 secured.
10 Q. And within your own company, then you are
11 basically a vendor?
12 A. Yes, in a sense. I consult for attorneys all
13 over the country on primarily shooting scene incidents.
14 Q. And in this instance, you were contacted by
15 Mr. Gregory at the DA's office concerning doing the
16 reconstruction in this case?
17 A. That is correct.
18 Q. And when did that occur?
19 A. My recollection was it was concurrent with
20 the laboratory examination as the case was developing and
21 these objects were in the lab.
22 Q. Which laboratory?
23 A. The Washoe County Forensic Laboratory.
24 Q. Which laboratory report?

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1 A. The ballistic report that talks about the
2 bullets, the cartridge cases, the firearm, and the
3 distance testing. While that testing was going on, I was
4 contacted, and we discussed can a reconstruction be done,
5 and if so, how do we get that done, but the laboratory
6 specifically does not offer reconstruction as one of
7 their forensic services. So I do reconstruction as part
8 of my business, so I said since I'm working on the case
9 in the lab, perhaps I can just do a reconstruction
10 outside of the lab as Noedel Scientific.
11 Q. And you ultimately prepared a report in this
12 case on January 15th of this year?
13 A. Yes.
14 Q. And how much were you paid for doing the
15 reconstruction in this matter?
16 A. My hourly rate for consulting with Washoe is
17 \$150 an hour, and so the reconstruction aspect, probably
18 somewhere on the order of 20 or 30 hours that so far,
19 I've been covered have been covered in the grant money
20 with Washoe, Washoe contract money.
21 Q. So Washoe County doesn't do crime scene
22 reconstruction, but you received compensation through
23 Washoe County for doing the reconstruction?
24 A. Well, for my time in the laboratory. When

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1 I'm here in Reno and checking in or going into the
2 laboratory, which is where I did a lot of this
3 reconstruction, that was billed to the county. A lot of
4 the reconstruction work was done on my computer and at
5 home for which there is no bill. There is no invoice.
6 Q. So other than what you were paid through
7 Washoe County, you receive nothing else for this?
8 A. That's correct. I do intend to try to get
9 reimbursement for my travel for this testimony.
10 Q. Now, going back first to the ballistics
11 report, you were talking about the cylinder gases that
12 escape from the gap around the cylinder?
13 A. Yes.
14 Q. And you said you tested the robe that you
15 viewed and weren't able to find any indication of
16 stippling of gases?
17 A. Correct. I didn't find any cylinder gap-type
18 deposits on the robe.
19 Q. On the robe sleeves?
20 A. On the sleeves. Yes.
21 Q. But you said that was because these are
22 three-quarter type sleeves, and so they wouldn't be down
23 near that area?
24 A. That would be one good explanation as to why

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1 they're not there.
2 Q. And you said there could be a possibility
3 that you would find something similar on arms that were
4 close to a firearm that had been fired?
5 A. Yes. If your arm or wrist is close enough t
6 the cylinder gap when the gun is discharged, you will get
7 residues at that location.
8 Q. You said it was a possibility?
9 A. Correct. If your arm is close enough, you
10 will get the residues.
11 Q. Okay. And stippling is different from
12 residue; correct?
13 A. Yes.
14 Q. Okay. So you can get stippling?
15 A. You can.
16 Q. But not in all cases?
17 A. Not necessarily in all cases. No.
18 Q. And with the residue, would that always be
19 visually? Would you be able to see that visually, or
20 would that require other testing?
21 A. When it was visual, when I was stippled by
22 the cylinder gap --
23 Q. I'm not talking about the residue. I'm
24 talking about just the residue itself. If you don't get

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1 stippling, if there's some other indication, what --
2 A. Yes, a black soot appearance.
3 Q. And you talked about the manner in which this
4 exhibit, is it 119?
5 THE COURT: I don't know. Which one do you
6 want?
7 MS. BROWN: The gun, the demo gun.
8 THE CLERK: Yes. It's 119.
9 Q. (BY MS. BROWN:) When you were talking about
10 the way the gun, the actual evidentiary gun, 118 was
11 loaded, and you said there was alternating rounds with a
12 shot and the 45 shot, 45?
13 A. Yes.
14 Q. Is that any type of typical loading?
15 A. Yes. You're free to put any sequence or any
16 order. Some people load guns with for a purpose.
17 Sometimes they're just random sequencing of like a
18 revolver. Sometimes you'll see where you have the highly
19 fragmented bullet followed by the shot shells, so the
20 idea being if the fragmenting bullet doesn't work
21 properly, then you have a different design shot next, and
22 another fragmenting bullet, and another shot. So some
23 people believe that loading in that manner gives them
24 more versatility in the order in the way that the firearm

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1 can perform.
2 Q. And is it -- Is that type of pattern typical
3 for loading for home protection with that type of gun?
4 A. Sure. You can load a revolver in a sequence
5 like that for any purpose.
6 Q. But is it typical for home protection?
7 A. No. I don't think there is a typical
8 revolver load. I would say the most typical revolver
9 load would be the same ammunition all the way through all
10 five cylinders. So this is -- This appears to be because
11 of a specific sequence.
12 Q. And you don't know if Mr. Leibel does that
13 specific sequence or if anybody else does that specific
14 sequence?
15 A. I do not know that.
16 Q. So there's no implication from that sequence?
17 A. Correct. The sequence is --
18 Q. And both -- All guns have some degree of
19 recoil; is that correct?
20 A. Yes.
21 Q. And that would include long guns, handguns?
22 A. Yes.
23 Q. When you were doing the test firing for the
24 robe itself, you said you used fabric panels at different

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1 distances. What type of fabric were you using?
2 A. For the comparison to the robe, I was using
3 terry cloth panels, and for the comparison to the hand, I
4 was shooting into a type of filter paper called bench
5 coat, and it's coated on one side and a dense paper on
6 the other side.
7 Q. And so the paper itself is not the same as
8 flesh; is that correct?
9 A. That's correct.
10 Q. And when you do -- You said you do these test
11 patterns at as a series of inches --
12 A. Yes.
13 Q. -- so that you can make comparisons. And
14 when you're to the point of doing comparisons between
15 using a photograph or actual -- a photograph of the
16 object that was actually hit?
17 A. With the robe, I had the actual exhibit, the
18 actual robe. I don't have access to his hand, so I used
19 the photograph of his hand, and I used the actual robe
20 for each respective analysis.
21 Q. And then based on either the actual robe --
22 (Brief interruption.)
23 THE COURT: One moment. Ma'am, can we turn
24 that off, please.

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1 A JUROR: Sorry.
2 THE COURT: It's okay. I'm going to ask you
3 to leave that in the jury room.
4 A JUROR: I will after this, sir.
5 THE COURT: Thank you.
6 Q. (BY MS. BROWN:) And then you're comparing
7 photographs in a sequence at the actual item itself to
8 try to determine which pattern best fits what you see on
9 either on the object or in the photograph of the hand; is
10 that correct?
11 A. The only photograph that I used was the
12 photograph of Harry Leibel's hand. The other targets I
13 have right in front of me, so I don't -- I do take a
14 photo at the end of the analysis, but I'm directly
15 comparing the photograph of his hand to the targets that
16 I just shot and then seeing where the densities are.
17 Q. Okay. So you're visually comparing your test
18 pattern with your actual observations of the robe or a
19 photograph of that?
20 A. That's correct.
21 Q. And based on those visual observations, then
22 you're making your best determination of the distance; is
23 that correct?
24 A. That's correct.

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1 Q. So there is some degree of subjectivity in
2 this because you're using a visual site. It's not like
3 you feed information into a computer and it pops out.
4 A. That's correct. That's why distances are
5 always reported as a range.
6 Q. And you noticed in your report on the robe
7 there were two, I believe it was, two separate defects in
8 your --
9 A. There were multiple defects through the robe;
10 two -- essentially two positions that were consistent
11 with the passage of a projectile.
12 Q. I'm sorry. Two through the mid right side
13 and the right belt loop?
14 A. Yes.
15 Q. Where were two holes? Was it through the
16 belt loop? Through the belt? What was the position?
17 A. On his robe, it was a very heavy terry cloth
18 type of robe, and it has a sewn belt loop. The shot that
19 -- the first shot, the one that entered his right side,
20 entered, eclipsed right at where that belt loop is sewn
21 to the main fabric. So it's right at the intersection --
22 the hole was right at the intersection of those two
23 pieces, the belt loop being sewn to the fabric.
24 Q. So it was a single entry shot that hit two

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1 different pieces of fabric?
2 A. There is -- yes, it eclipsed the belt loop
3 and continued in, but I think there was also a partial
4 fold because there was a secondary hole near it. But we
5 know there was only one projectile. So the way we get
6 two holes from one projectile is if there's a fold at the
7 time that that bullet goes through when we flatten it
8 out, as we do in the laboratory, there were once folded
9 together, and now we flatten them out and we see it as
10 two holes.
11 Q. And do you recall how far apart those holes
12 were?
13 A. I would have to refer to my notes. Maybe a
14 quarter of an inch apart.
15 Q. And then the distance estimates you came up
16 with for the pattern on the robe was two to six inches
17 away from the barrel of the gun?
18 A. Correct. I think that's the best distance
19 based on my test fires.
20 Q. And on the robe side, there was some kind of
21 fold in the material that caused two distinct holes?
22 A. I believe that to be true.
23 Q. And then on the injury that was to the hand,
24 it was your opinion that it was most likely three inches

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1 away from the hand?
2 A. Correct.
3 Q. When you were doing the -- got to the point
4 of doing the crime scene reconstruction, you relied on
5 information from several different sources; is that
6 correct?
7 A. That's correct.
8 Q. And you had the autopsy photos?
9 A. I did.
10 Q. And some police reports?
11 A. Yes.
12 Q. And you also had measurements that were taken
13 by Joey Lear?
14 A. I did.
15 Q. And Joey Lear was one of the forensic
16 investigators with the Washoe County Crime Lab?
17 A. Yes, he is.
18 Q. And he was the one that responded, to your
19 knowledge, to the scene the night of February 23rd to
20 perform measurements and to initially put the trajectory
21 rods in place?
22 A. Yes.
23 Q. And do you have contact with Joey Lear
24 through your dealings with Washoe County Crime Lab?

1 A. Yes.
2 Q. And at that point, the sofa was in place in
3 the actual location where this incident happened; is that
4 correct?
5 A. Yes.
6 Q. And the wall, we've heard testimony that a
7 portion was taken out of the wall to preserve the defect
8 in it?
9 A. Yes, I understand that to be true.
10 Q. And so when he was there, this wall was still
11 intact; is that correct?
12 A. Other than the bullet hole in the wall, I
13 don't believe it had been cut as yet.
14 Q. As yet? And at that point, he did
15 measurements of the room that you eventually relied on;
16 is that correct?
17 A. Yes.
18 Q. And showing you Exhibit 100, is this one of
19 the documents you relied on to get measurements?
20 A. Yes.
21 Q. And in Exhibit 101, was this the other
22 document sent to you by Mr. Lear to rely on to get
23 measurements?
24 A. Yes, these are his raw notes.

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1 A. Yes, I did.
2 Q. And what type of contact do you have?
3 A. I met Joey while I was working in the
4 laboratory. He worked in the crime scene response
5 section. And so initially, I met him just in passing
6 because we're working across the hall from each other
7 when I'm in Reno. And that's the extent of how much I
8 knew about Joey.
9 Q. But he's in the forensic division of the
10 Washoe County Crime Lab?
11 A. He was. I believe he's moved on to other
12 responsibilities.
13 THE COURT: There was an exhibit up there.
14 MS. BROWN: I lifted it off.
15 THE COURT: Where did we put it?
16 MS. BROWN: Just right to the right.
17 THE COURT: Could we return it to the clerk,
18 please, unless you intend to use it, ma'am.
19 MS. BROWN: I may intend to use it, Your
20 Honor.
21 THE COURT: Then go ahead and do that.
22 Q. (BY MS. BROWN:) And from the reporting you
23 received, Mr. Lear was on the scene of the day that this
24 happened?

1 Q. And there's no indication, as to the couch
2 that's shown reclined in this document, they're showing
3 it was actually the right-hand side of the couch where
4 they documented this?
5 A. Yes, that's correct.
6 Q. And there's no indication when they were
7 doing the actual measurements of if they had at one point
8 leaned the couch back what degree of angle they would
9 have created?
10 A. Correct. If they were leaning the couch
11 back, I don't know what the process is.
12 THE COURT: Can we just make the record clear
13 that when you say right-hand side, that's means if you're
14 standing in front of it and viewing it as opposed to if
15 you're sitting on it.
16 MS. BROWN: Thank you, Your Honor.
17 THE COURT: Do you agree with that, ma'am?
18 MS. BROWN: Yes.
19 THE COURT: Okay. Thank you.
20 Q. (BY MS. BROWN:) And you were provided the
21 photographs that they used in conducting the measurements
22 in their trajectory measurements; is that correct?
23 A. Yes.
24 Q. I'm showing you what's Exhibit Number 27.

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1 Are you familiar with that photograph?
2 A. Yes, I am.
3 Q. And this was one of the photographs that
4 Mr. Lear introduced yesterday that he used to testify
5 from?
6 A. I understand that to be a photograph taken
7 when they were processing the crime scene.
8 Q. And at this point in this photograph, the
9 trajectory rod was not lining up against where the defect
10 is down towards floorboard; is that correct?
11 A. That's correct.
12 Q. And Exhibit Number 28, there's a different
13 view, and in Exhibit 28, the trajectory rod is coming out
14 of the back of the couch and actually fitting in that
15 hole in the defect in the wallboard; is that correct?
16 A. That's correct. That's the proper
17 trajectory.
18 Q. And when Mr. Lear testified yesterday, he
19 explained that the difference between Exhibit Number 27
20 and Exhibit Number -- Exhibit Number 27 and Exhibit
21 Number 28 where there's no patch? The wall between --
22 THE COURT: I think both of you have muted
23 your microphones, I'm advised.
24 MS. BROWN: Mine is on.

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1 THE COURT: There you go. The ones on the
2 table, you mean?
3 THE CLERK: She got it.
4 THE COURT: The ones on the table. Oh, Jamie
5 take care of it. Do you have yours, Mr. Gregory? Got
6 it? Thank you both.
7 Q. (BY MS. BROWN:) And Mr. Lear explained the
8 difference between Exhibit Number 27 where there's no
9 match between the trajectory rod and the wall and Exhibit
10 Number 28 where there is -- the trajectory rod can be
11 inserted in the hole in the wall was that they put weight
12 of a body on the couch in order to get their trajectory.
13 A. He may have said that. I don't think -- I
14 don't think that that's completely accurate based on what
15 I understand about this bullet path.
16 Q. Okay. And showing you what's been marked as
17 Exhibit Number 130. Mr. Lear identified this photograph
18 as the way they weighted the couch in order to get that
19 trajectory rod to go through both holes in the couch and
20 to line up with the hole in the wall. He said it was the
21 body weight that pushed the couch back so they can get
22 that position measuring the trajectory.
23 A. Okay.
24 Q. Okay. So they were able to reproduce the

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1 angles of the trajectory in a way that's different from
2 what you've testified to. It was different; correct?
3 A. Yes, I did not -- Obviously, I'm not
4 weighting the couch, pushing back on the couch.
5 Q. And as you've testified before, there's two
6 distinct injuries in this case; correct?
7 A. Yes.
8 Q. And one of them is through the chest wall
9 into the chest?
10 A. Correct.
11 Q. And then the other one is to the wrist and
12 shoulder?
13 A. Yes.
14 THE COURT: Ms. Brown, I hate to interrupt
15 you, ma'am, and I apologize for that, but it appears to
16 be noon. Would this be a good time for you to --
17 MS. BROWN: That would be fine, Your Honor.
18 THE COURT: -- take a break? Okay. And
19 we're going to take our noon recess right now. Because
20 of a couple other issues that the attorneys have told me
21 about, we're going to recess for an hour and a half, and
22 that will be until 1:30.
23 So during this 90-minute recess, you are
24 admonished not to talk or converse among yourselves or

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1 with anyone else on any subject connected with this
2 trial. You're not to read, watch, or listen to any
3 report of or commentary on the trial or any person
4 connected with this trial by any medium of information,
5 including, without limitation, newspapers, television,
6 radio, or Internet. You're not to form or express any
7 opinion on any subject connected with the trial until the
8 case is finally submitted to you.
9 Mr. Noedel, you are going to remain under
10 oath. You're not to discuss your testimony with anyone
11 except the three attorneys.
12 THE WITNESS: Yes, sir.
13 THE COURT: Ladies and Gentlemen, have a good
14 lunch. I'll see you at 1:30. Thank you very much.
15 (Recess was taken.)
16 THE COURT: We're back in session in
17 14-DI-62. Mr. Gregory is here for the State. Ms. Brown
18 and Ms. Henry are here for the defense. Ms. Leibel is
19 here together with her interpreters, and I guess we're
20 ready to bring in the jury. Are you ready, Mr. Gregory?
21 MR. GREGORY: Yes, Your Honor.
22 THE COURT: Bring them in. Good afternoon,
23 Ladies and Gentlemen of the Jury. I trust you had time
24 for a nice lunch. You may have a nice seat. Thank you.

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1 Parties stipulate to the presence of the
2 jury?
3 MR. GREGORY: Yes, Your Honor.
4 MS. BROWN: Yes, Your Honor.
5 THE COURT: Very well. Ms. Brown, would you
6 like to pick up?
7
8 CONTINUED CROSS-EXAMINATION
9 BY MS. BROWN:
10 Q. Before we took a break, we were talking about
11 Mr. Lear when he was doing his trajectory, doing the
12 photographs for the trajectory. He was able to get that
13 couch with the trajectory rod to line up with it into the
14 hole in the wall by putting weight on the couch, but that
15 was in the middle of a location; is that correct?
16 A. They did position a person in the middle of
17 the couch and take pictures of that.
18 Q. Okay. Did you align that in another -- the
19 couch the trajectory rod and the wall in a different way
20 by reclining the couch to a certain degree?
21 A. Yes.
22 Q. And so that couch is able to be manipulated
23 just by its very movement of being a recliner; is that
24 correct?

1 Q. Did you view the section of wall that they
2 had or Deputy Halsey had taken out of the wall up at the
3 Lake house?
4 A. No, just the photographs of that of that
5 piece.
6 Q. And in order to view the scene, you had to go
7 to 452 Kent Way up at Lake Tahoe and look at what at that
8 the point in time was an empty house?
9 A. That's correct.
10 Q. And that was the same timeframe, four to six
11 weeks ago?
12 A. That's correct.
13 Q. And then using these various elements, try to
14 put them back together in sequence to arrange what you
15 believe to be an accurate representation of the scene?
16 A. That's correct.
17 Q. So it's possible for two different people
18 looking at the same circumstance to come up with
19 different ways to align that trajectory rod into the wall
20 through the couch. Mr. Lear had one way, you have
21 another?
22 A. I don't think so. To establish the bullet
23 path through the couch, you have to connect the entry
24 hole and the exit hole, which is what Mr. Lear did.

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1 A. That's correct.
2 Q. And Mr. Lear manipulated it one way. You
3 manipulated it another?
4 A. I don't know how Mr. Lear maneuvered the
5 couch when he was there.
6 Q. Okay. We'll stick with you. In order to get
7 that trajectory, you had to position the couch in a
8 somewhat reclined position?
9 A. That's correct.
10 Q. When was it you first viewed the couch?
11 A. I don't recall the exact date, but it was
12 about six weeks ago.
13 Q. And where was it at when you saw it?
14 A. It was here in this building in a meeting
15 room, a vacant meeting room downstairs.
16 Q. And prior to it being placed in that vacant
17 meeting room, you don't know where it had been?
18 A. That's correct.
19 Q. And you don't know if it was -- there was any
20 differences from the time it was at the scene to the time
21 you viewed it?
22 A. Correct. I don't know the history of the
23 couch from the time it left the house to the time I
24 viewed it here in the building.

1 Seeing somebody on the couch for me, in my assessment, I
2 don't see the need to seat someone on the couch, so I
3 don't know why Mr. Lear went through that process. The
4 entry and the exit hole are the same as they appeared in
5 photographs of the scene, so that's how a trajectory is
6 documented and measured, is by connecting the multiple
7 points along the line.
8 Q. And you testified in the first shot that went
9 through the trunk and out had an exit wound in the arm,
10 that it was your opinion that that arm had to be extended
11 at the time of the shot?
12 A. Yes, raised. Not necessarily extended. I
13 don't know what from the elbow to the wrist, but where
14 the projectile fragments ended, I believe the arm has to
15 be raised in order to complete the path, the straight
16 line path of fragments through his body.
17 Q. And Dr. Kubiczek testified it was possible
18 that the arm was bent and there was some deflection off
19 the wall.
20 MR. GREGORY: Your Honor, that misstates his
21 testimony. The last part of what she said misstates his
22 testimony.
23 THE COURT: Well, first of all, that's a
24 statement, not a question, so it's simply not a question,

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1 and Counsel isn't testifying. The jury will have their
2 own recollection as to the doctor's testimony. This
3 witness was not present, so unless there's a question
4 associated, we'll move on.
5 Q. (BY MS. BROWN:) Thank you, Your Honor.
6 Showing you Exhibit 14. Sorry. 54. Do you
7 recognize that photo?
8 A. Yes, I do.
9 Q. And what is that?
10 A. This is the photo that was taken by someone
11 at the medical examination and autopsy of Harry Leibel.
12 Q. And that was an attempt to show the length of
13 his arm?
14 A. Correct. My understanding is that the
15 purpose of the photo was to have scale of the length of
16 his arm.
17 Q. And showing you Exhibit Number 55. This
18 shows an extension out to his middle finger to try to get
19 the full range of his hand?
20 A. Correct.
21 Q. And so with the middle finger, that would be
22 a 24-inch range?
23 A. Yes, from the start of the tape measure
24 tucked in his armpit to the extension of the middle

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1 finger was documented to be 24 inches.
2 Q. And you know that you can gain more in your
3 reach just by the flexibility of your body; correct?
4 A. That's true.
5 Q. And so if I drop this shoulder, I've
6 lengthened my arm?
7 A. Yes.
8 Q. And if I bend in a certain way, I can reach
9 something out here that I couldn't have reached with just
10 the length of my arm; is that correct?
11 A. That's correct.
12 Q. And you said during reconstruction, you can't
13 always account for every little detail; is that correct?
14 A. That's correct.
15 Q. You have to go with the best you can do with
16 the solid evidence you have?
17 A. Correct. If you don't have enough
18 information about the particular question, you may not be
19 able to address it.
20 MS. BROWN: Thank you. I have nothing
21 further.
22 THE COURT: Mr. Gregory?
23
24

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1 REDIRECT EXAMINATION
2 BY MR. GREGORY:
3 Q. The robe that was discussed, you received
4 that up at the crime lab?
5 A. Yes, I did.
6 Q. And do you recall the number that the crime
7 lab attributed to that article?
8 A. I would need to refer to my notes. I don't
9 recall the number.
10 Q. May I show you your notes?
11 A. Please.
12 Q. Showing you Exhibit 144. Can you just --
13 Well, just see if that refreshes your recollection.
14 A. Yes, it does.
15 Q. And what was the number?
16 A. The control number is W283405, black
17 bathrobe.
18 Q. Handing you what's been marked as Exhibit
19 number 143. Can you indicate what that is, please? Go
20 ahead and take a look.
21 A. This is the package that contains if black
22 bathrobe.
23 Q. And does it have the control number on there
24 that you just recited?

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1 A. Yes, it does.
2 Q. On cross-examination, you were asked some
3 questions about the photographs with Sergeant Lyford
4 sitting in the chair. Do you recall that?
5 A. Yes, I do.
6 Q. Did you have an opportunity when you
7 conducted your analysis of the couch to weight the couch
8 at all and see how that impacted angles and whatnot?
9 A. Yes, I did.
10 Q. Did you take a photograph of that?
11 A. I did.
12 MR. GREGORY: I'm showing you 145. Would you
13 like to see it, Your Honor? It's a copy.
14 THE COURT: Thank you, sir.
15 Q. (BY MR. GREGORY:) Does that photograph
16 accurately depict what we were just discussing?
17 A. Yes, it does.
18 MR. GREGORY: Move for admission.
19 MS. BROWN: No objection, Your Honor.
20 THE COURT: Then it will be admitted.
21 Q. (BY MR. GREGORY:) What does that photograph
22 show?
23 A. While I was examining the couch, this idea of
24 what does weighting the couch and how do these -- the

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1 seat portion and the back portion, how do they work
2 together, and does weighting the couch change any
3 directions significantly that might lead to a different
4 position of the couch at the scene.
5 So we reconstructed the bullet path, and then
6 with the rod in place, we used a laser to point to the
7 site where the bullet path goes. Then we had a person
8 who happen to weigh approximately 185 pounds sit on the
9 couch in a similar position that would have been required
10 for Harry Leibel to be positioned when the shot eclipsed
11 his shoulder, and then we looked to see how far the
12 yellow rod moved based on our stationary laser pointer.
13 So it was a way to measure how much influence there is by
14 weighting and seating and leaning back on the couch.
15 Q. Dr. Kubiczek testified that Harry's weight
16 was 170 pounds. Do you recall the weight of the subject
17 that you used?
18 A. Yes. The person that was with weighs 185
19 pounds.
20 Q. A little bit heavier?
21 A. Fifteen pounds heavier than the documented
22 weight.
23 Q. So with a heavier subject on it, if you could
24 look at this photograph and explain what you were just

1 THE COURT: Thank you.
2 MR. GREGORY: You're welcome. Your Honor, I
3 don't have further questions. However, I will need to
4 recall this witness to talk about one other item of
5 evidence that's being brought up.
6 THE COURT: I understand. First of all, do
7 you have any recross?
8 MS. BROWN: No, Your Honor.
9 THE COURT: Sir, you may step down. But,
10 Mr. Noedel, I don't want you to leave the premises. I
11 also admonish you I don't want you to talk about your
12 testimony to anyone other than the three attorneys here
13 in this room. Do you understand that, sir?
14 THE WITNESS: Yes, sir.
15 THE COURT: Thank you very much. I'm sure
16 that there's probably someplace that you were waiting or
17 staging before you came here. You can return to that
18 area and make sure that you're available for us. Thank
19 you, sir.
20 MR. GREGORY: Now, Your Honor, I'll like to
21 recall Mr. Noedel.
22 THE COURT: Okay. Sir, I would remind you
23 that you're still under oath.
24 THE WITNESS: Yes, sir.

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1 telling us about.
2 A. Yes. So as we view that photograph, the
3 model that we had that weighs 185 pounds, we put him in a
4 tie-back suit to protect his clothing from the blood
5 that's present on there, so you see -- that's present on
6 the couch. So if you look at the left edge of the
7 picture, you're actually looking at his left arm and left
8 side. That's just captured to the left. That's the
9 white-looking material. That's the model's left side.
10 The yellow trajectory rod that's sticking out
11 toward the left is this trajectory rod placed back when
12 this analysis was going on. And the green dot that's
13 above and to the right of the trajectory rod is where the
14 trajectory rod was before he sat down on it. So the
15 trajectory rod was originally approximately one inch up
16 and one inch over. When he weights and sits on it, it
17 lowered it and moved it to the left by about one inch.
18 When he gets up off the of the couch, that
19 couch cushion actually relaxes back to where the yellow
20 probe will go right back to where that green dot is. So
21 we get about an inch or so of movement in two directions
22 when we have 185-pound person load the seat.
23 MR. GREGORY: Your Honor, I'm going to return
24 Exhibit 145. There were also Exhibits 141, 54 and 55.

1 THE COURT: Thank you.
2
3 FURTHER EXAMINATION
4 BY MR. GREGORY:
5 Q. Mr. Noedel, if that particular gun, you
6 talked about how gases escape out of that cylinder to the
7 extent that it stippled you when you shot the gun. If
8 that cylinder were laying on a couch like that, would you
9 expect to be able to find any kind of those gases on the
10 couch?
11 A. Yes. The cylinder gap gases that blast out
12 the sides could be a useful piece of reconstruction if we
13 can find them because it would help us position the
14 firearm, knowing that it would have to be adjacent to or
15 laying on the couch or the surfaces.
16 Q. Did you have an opportunity to examine the
17 blanket that was laying on this couch?
18 A. Yes, I did.
19 Q. Showing you Exhibit Number 146. First, if
20 you could describe where did that examination take place?
21 A. That also took place here in this building in
22 the utility room or examination room that they have
23 available downstairs.
24 Q. Okay. And if you could look at this exhibit

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1 and let me know if that's the -- what it is.
2 A. Yes. This is the exhibit that I examined
3 that day here in the building, and this is a blanket that
4 had been draped over the arm of the couch at the time of
5 the initial scene processing. It's captured in
6 photographs of the original scene, and it was tucked in
7 and over the arm and involved with the seat that was
8 adjacent to the bullet path.
9 MR. GREGORY: Move for the admission of 146.
10 MS. BROWN: No objection.
11 THE COURT: 146 is admitted.
12 Q. (BY MR. GREGORY:) What were your
13 observations regarding that blanket?
14 A. It was kind of a two-step process. First
15 using the photographs of the scene documentation to show
16 exactly how that blanket was organized on the arm of the
17 chair at the time of the event, we found those locations
18 based on landmarks and the shapes of the bloodstains. So
19 we knew exactly which part was over the arm as opposed to
20 which part was tucked in.
21 Then I used a process where of looking for
22 the cylinder gap gases, the evidence of a deposit of soot
23 from the cylinder gap which can look like a stripe of
24 black or dark-colored soot material. Doing that

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1 visually, I didn't see anything, but there were some
2 stains here and there, so it went one step further, and
3 there's a chemical color test that you can perform that
4 will reveal the vaporous lead and the types of materials
5 that blast out of the side of the cylinder car gap if
6 there is there, so if it wasn't adjacent; processed using
7 those chemical, and then didn't find any deposits that
8 are consistent with cylinder gap or that would indicate
9 that a firearm was adjacent or laying on the blanket that
10 was over the arm of the couch.
11 MR. GREGORY: Thank you. Nothing further.
12
13 RE CROSS EXAMINATION
14 BY MS. BROWN:
15 Q. Are you referring to laying on the couch or
16 blanket of the couch when it was fired?
17 A. Correct. Yes. At the time it was fired,
18 there were no cylinder gap gases on the blanket while it
19 was on the couch.
20 MS. BROWN: Okay. Thank you. I have nothing
21 further.
22 THE COURT: Redirect?
23 MR. GREGORY: No, Your Honor. Thank you.
24 THE COURT: Mr. Noedel, thank you. Is he

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1 finally released?
2 MR. GREGORY: Yes, Your Honor.
3 THE COURT: Do you intend to call him?
4 MS. BROWN: No, Your Honor.
5 THE COURT: Sir, you are released. Thank you
6 for your appearance.
7 THE WITNESS: Thank you.
8 MR. GREGORY: The State would call
9 Investigator Schemenauer.
10 THE COURT: Sir, if you would come forward
11 before the clerk.
12
13 JEFF SCHEMENAUER,
14 having been first duly sworn, was
15 examined and testified as follows:
16
17 THE COURT: Come on up and have a seat up on
18 the witness stand. There's some water there if you like.
19 THE WITNESS: Thank you, Your Honor.
20 THE COURT: You're welcome, sir.
21
22
23
24

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1 DIRECT EXAMINATION
2 BY MR. GREGORY:
3 Q. Please state your full name and spell your
4 last name.
5 A. Jeff Schemenauer: S-c-h-e-m-e-n-a-u-e-r.
6 Q. What do you do for a living sir?
7 A. I'm an investigator with the sheriff's
8 office.
9 Q. In this particular case, were you in
10 attendance at the autopsy of Harry Leibel?
11 A. Yes, I was.
12 Q. And at the end of that autopsy, did you
13 collect any evidence?
14 A. Yes, I collected the clothing that the
15 decedent dependent was wearing.
16 Q. Did that include a black robe?
17 A. Yes.
18 Q. And what did you do with that?
19 A. It was packaged. When I collected it, I
20 brought it back to our department and booked it into our
21 evidence.
22 Q. Showing you Exhibit Number 143. Can you
23 please identify that.
24 A. This is the item that I booked, as evidenced

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1 by my name on the chain of custody.
2 Q. And does it indicate on the chain of custody
3 that that item ultimately went up to the Washoe County
4 Crime Lab?
5 A. It does.
6 MR. GREGORY: Thank you. I'd move for
7 admission, Your Honor.
8 MS. BROWN: No objection, Your Honor.
9 THE COURT: It's admitted. What was the
10 number again? Please tell me.
11 THE CLERK: 142.
12 MR. GREGORY: 28 --
13 THE COURT: 143.
14 MR. GREGORY: Oh, not the lab number.
15 THE COURT: No.
16 MR. GREGORY: Yes. It's 143.
17 THE COURT: Thank you, sir. 143 is admitted.
18 (Exhibit No. 143 was admitted into evidence.)
19 MR. GREGORY: No further questions.
20 THE COURT: Cross?
21 MS. HENRY: No questions.
22 THE COURT: Investigator, you may step down.
23 Thank you for being here.
24 MR. GREGORY: May I have one moment, Your

1 A. Since retired.
2 Q. All right. What was your role up at the
3 crime scene on February 23rd, 2014 up at 452 Kent Way?
4 A. My role at that time was to process the crime
5 scene, which in this case was photographing and
6 collecting evidence.
7 Q. Do you recall collecting a blanket -- Well,
8 first of all, do you recognize in couch right here,
9 Exhibit Number 120?
10 A. Yes, I do.
11 Q. And what do you recognize it from?
12 A. The living room at the Kent address.
13 Q. Did you help seize the couch and collect it
14 for evidence?
15 A. Yes, I did.
16 Q. What did you do with the couch?
17 A. It was taken to a storage lot and put in a
18 sealed locker.
19 Q. Do you recall how you packaged it?
20 A. A moving company assisted with that, and it
21 was covered with -- It was sealed with Saran wrap and
22 taped.
23 Q. And stored in a secure location?
24 A. Yes.

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1 Honor, to check on my witnesses?
2 THE COURT: You may.
3 MR. GREGORY: John Barden is the next
4 witness, Your Honor.
5 THE COURT: Mr. Barden, you can just wait
6 right there and she'll swear you in. Would you face the
7 clerk.
8 JOHN BARDEN,
9 having been first duly sworn, was
10 examined and testified as follows:
11
12 THE COURT: Would you come up and have a seat
13 up here please, sir. Help yourself to some water.
14
15 DIRECT EXAMINATION
16 BY MR. GREGORY:
17 Q. Sir, please state your full name and spell
18 your last name.
19 A. John Barden: B-a-r-d-e-n.
20 Q. And back in February of 2014, what were you
21 doing?
22 A. I was an evidence technician. I was employed
23 by the Douglas County Sheriff's Office.
24 Q. Since retired; correct?

1 Q. Do you recall or did you collect any items
2 from the couch?
3 A. Yes, I did.
4 Q. What did you collect from the couch?
5 A. I collected two pillows and one blanket and
6 also a rifle.
7 Q. Do you recall what you did with the blankets
8 or the blanket?
9 A. Yes. I transported it back to the sheriff's
10 office where I put it in a paper bag and booked it.
11 Q. Showing you what's been marked as 146. Just
12 bring it over to the side here. Can you take a look at
13 that --
14 A. Yes.
15 Q. -- and tell me what it is?
16 A. It's the blanket from the couch.
17 Q. Okay. And how do you know that?
18 A. Because it's marked on the front of it,
19 "Couch Blanket."
20 Q. And did you put an evidence number on that?
21 A. Yes, I did.
22 Q. What's the number?
23 A. The number is 868. The entire number is 14 E
24 as in Edward, V as in Victor 00868.

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1 Q. Okay. Thank you. Can you just take a look
2 at the chain of custody on that.
3 A. Yes.
4 Q. And does it indicate that Ed Garren checked
5 that out at some point, if you can decipher it.
6 A. Well, I can read the last line where he
7 returned it to me on January the 30th.
8 Q. If you can't tell, don't guess.
9 A. Yeah.
10 Q. Okay.
11 A. That's not correct. It looks like my name,
12 but apparently it's not.
13 MR. GREGORY: Okay. Thank you. I have
14 nothing further.
15 MS. BROWN: No questions, Your Honor.
16 THE COURT: Mr. Barden, thank you for being
17 here. Enjoy your retirement.
18 THE WITNESS: Thank you.
19 MR. GREGORY: Now, Your Honor, I'll like to
20 recall Mr. Noedel.
21 THE COURT: Okay. Sir, I would remind you
22 that you're still under oath.
23 THE WITNESS: Yes, sir.
24 THE COURT: Thank you.

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1 FURTHER EXAMINATION
2 BY MR. GREGORY:
3 Q. Mr. Noedel, if that particular gun, you
4 talked about how gases escape out of that cylinder to the
5 extent that it stippled you when you shot the gun. If
6 that cylinder were laying on a couch like that, would you
7 expect to be able to find any kind of those gases on the
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15 blanket that was laying on this couch?
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17 Q. Showing you Exhibit Number 146. First, if
18 you could describe where did that examination take place?
19 A. That also took place here in this building in
20 the utility room or examination room that they have
21 available downstairs.
22 Q. Okay. And if you could look at this exhibit
23 and let me know if that's the -- what it is.
24 A. Yes. This is the exhibit that I examined

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1 that day here in the building, and this is a blanket that
2 had been draped over the arm of the couch at the time of
3 the initial scene processing. It's captured in
4 photographs of the original scene, and it was tucked in
5 and over the arm and involved with the seat that was
6 adjacent to the bullet path.
7 MR. GREGORY: Move for the admission of 146.
8 MS. BROWN: No objection.
9 THE COURT: 146 is admitted.
10 Q. (BY MR. GREGORY:) What were your
11 observations regarding that blanket?
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13 using the photographs of the scene documentation to show
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20 the cylinder gap gases, the evidence of a deposit of soot
21 from the cylinder gap which can look like a stripe of
22 black or dark-colored soot material. Doing that
23 visually, I didn't see anything, but there were some
24 stains here and there, so it went one step further, and

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2 will reveal the vaporous lead and the types of materials
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5 those chemical, and then didn't find any deposits that
6 are consistent with cylinder gap or that would indicate
7 that a firearm was adjacent or laying on the blanket that
8 was over the arm of the couch.
9 MR. GREGORY: Thank you. Nothing further.
10
11 RECROSS EXAMINATION
12 BY MS. BROWN:
13 Q. Are you referring to laying on the couch or
14 blanket of the couch when it was fired?
15 A. Correct. Yes. At the time it was fired,
16 there were no cylinder gap gases on the blanket while it
17 was on the couch.
18 MS. BROWN: Okay. Thank you. I have nothing
19 further.
20 THE COURT: Redirect?
21 MR. GREGORY: No, Your Honor. Thank you.
22 THE COURT: Mr. Noedel, thank you. Is he
23 finally released?
24 MR. GREGORY: Yes, Your Honor.