

IN THE SUPREME COURT OF THE STATE OF NEVADA

THE STATE OF NEVADA,

Appellant,

vs.

TATIANA LEIBEL,

Respondent,

_____ /

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Clerk of Supreme Court

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

RECORD ON APPEAL

VOLUME 20

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

IN PROPER PERSON

THE STATE OF NEVADA

DOUGLAS COUNTY DISTRICT ATTORNEY

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Douglas County
District Court Clerk

BOBBIE R. WILLIAMS

CLERK

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR DOUGLAS COUNTY

HONORABLE NATHAN TOD YOUNG, DISTRICT JUDGE

STATE OF NEVADA,

Plaintiff,

vs.

TATIANA LEIBEL,

Defendant.

TRANSCRIPT OF PROCEEDINGS

Post-Conviction Hearing

Thursday, November 15, 2018

Minden, Nevada

Reported by: Susan Kiger, CCR 343

CAPITOL REPORTERS (775) 882-5322

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APPEARANCES:

For the State: MATTHEW JOHNSON, ESQ.
Deputy District Attorney
Minden, Nevada

For the Defendant: JOHN MALONE, ESQ.
MARK MAUSERT, ESQ.
Attorneys at Law
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The Defendant: Tatiana Leibel

Also Present: Tatiana Iacona, Certified Interpreter
Zoya Spivakovsky, Certified
Interpreter

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1 DOUGLAS COUNTY, NEVADA, NOVEMBER 15, 2018, A.M. SESSION

2 -000-

3 THE COURT: This is Case 14-CR-62B, Tatiana
4 Leibel versus State of Nevada. Mr. Johnson is here for the
5 State. Mr. Malone is here with -- representing Ms. Leibel.

6 And, Mr. Malone, are you going to have co-counsel
7 today? Because it was a little bit of a mystery to me last
8 time, but are you going to be participating --

9 MR. MAUSER: Yes, sir. I'm just going to --
10 I'll be participating, talking to John. I don't think I'll be
11 directly participating.

12 MR. MALONE: That's correct, and I've previously
13 filed a notice of appearance for Mr. Mausert.

14 THE COURT: Yeah, Mr. Mausert is welcome to be
15 here. He -- when you were ill last time, I really wasn't
16 certain what role he would have, but he was certainly
17 welcome --

18 MR. MALONE: His primary role that day was to
19 drive me down here because I was incapable of doing so.

20 MR. MAUSER: I used to be a taxi driver, Judge.

21 MR. MALONE: We had talked -- we've talked about
22 the case before, and he volunteered to help, and I accepted
23 his help. But it's really just going to be help.

24 THE COURT: Yeah. Perfectly fine with me.

1 Ms. Leibel is here. Good morning to you.
2 And we have two interpreters, which I would like
3 to have sworn now, please. The other --
4 THE COURT CLERK: Do you solemnly --
5 THE COURT: Both interpreters, I believe. Do we
6 have more than one interpreter?
7 INTERPRETER SPIVAKOVSKY: Here is the other
8 interpreter.
9 THE COURT: I knew she was here.
10 (The interpreters were sworn.)
11 THE COURT: Now, I'm going to have both of you
12 state your names for the record, please.
13 INTERPRETER SPIVAKOVSKY: Good morning, Your
14 Honor. Zoya, Z-O-Y-A, Spivakovsky. S-P-I-V-A-K-O-V-S-K-Y.
15 I'm a Judicial Council of California certified interpreter.
16 My certification number is 301037.
17 THE COURT: Thank you.
18 INTERPRETER IACONA: Tatiana Iacona.
19 T-A-T-I-A-N-A. I-A-C-O-N-A. Certified Russian Interpreter,
20 Certification 301252. Good morning.
21 THE COURT: Thank you, ma'am.
22 Now, what -- the record won't reveal this, but
23 I'm going to make clear that this is what's going to happen.
24 The interpreters are free to substitute in and out as they

1 need. It's my anticipation that they will probably take up a
2 role interpreting at about 20 minutes at a time, 15 to
3 20 minutes, and can just substitute in and out seamlessly
4 without me making a break in the record indicating that we've
5 changed interpreters. If there's a problem and we have an
6 issue, I would just ask you to let me know.

7 For counsel, I want all counsel to recognize and
8 remember that it is more difficult for an interpreter to keep
9 up with you, as it is for the reporter, if you are reading a
10 document. I ask you to remember someone has to repeat in a
11 different language everything that you say. And so I ask you
12 to remember to please speak in a loud, clear voice. But also,
13 please don't give me long narratives. Okay? Give -- parse it
14 up a little bit -- and it may take us a little longer today,
15 but that's fine -- so that the interpreters can keep up with
16 us. I recognize that they are very skilled and they are very
17 experienced and they are good at what they do. But let's not
18 make their jobs harder. Okay? Thank you very much.

19 Now, having said all of that, Mr. Malone, are you
20 prepared to proceed, sir?

21 MR. MALONE: I am, Your Honor. There are -- we
22 do have three witness in the courtroom right now. I have a
23 fourth one who's coming a little bit later. I'm just going to
24 ask for the rule of exclusion.

1 THE COURT: Okay. That's quite fine.

2 Now, everyone who is a witness in this case has
3 to leave the courtroom except for -- who is your first -- do
4 you want to make an opening statement?

5 MR. MALONE: I do.

6 THE COURT: Okay. Everyone who's a witness has
7 to go and wait outside. Now, there are chairs out there.
8 There's also -- in my office, my secretary has coffee. You
9 may be waiting around for a while, so if you want a cup of
10 coffee, you're certainly welcome to have a cup. But you're
11 not allowed to stay in the room, and you're not allowed to
12 discuss your testimony with each other. In fact, you may not
13 discuss your testimony with anyone other than the attorneys
14 you see, the three attorneys in the room right now.

15 So from this point forward, please go outside.
16 Please don't wander too far because we may need you at any
17 time. Thank you very much.

18 MR. MALONE: Your Honor, may I ask that Natasha
19 Kharikova remain in the courtroom?

20 THE COURT: She's your first witness?

21 MR. MALONE: No, she is not my first witness, but
22 there has been a motion filed to exclude her testimony as an
23 expert witness.

24 THE COURT: And I've seen the motion, and I'm not

1 going to rule on the motion until you try to lay a foundation.

2 MR. MALONE: Okay. Thank you.

3 THE COURT: I'm not going to rule based on the
4 pleadings. You can try to lay a foundation, and we'll see.
5 We'll see how it goes. So she needs to go out.

6 MR. MALONE: Yes.

7 THE COURT: Everyone identified their witnesses
8 and neith- -- none of you still have a witness sitting in the
9 courtroom; is that --

10 MR. JOHNSON: That's correct, Your Honor.

11 MR. MALONE: Correct, Your Honor.

12 THE COURT: Okay.

13 MR. MALONE: Sitting in the courtroom are a
14 family friend, Nancy Strayer, and Lana Leibel.

15 THE COURT: Yes. Thank you.

16 MR. MALONE: Your Honor, Tatiana Leibel's
17 attorney in this case had a couple of very important jobs to
18 do. She could go and bring in witnesses, bring in evidence,
19 and establish her case. She could exclude or attempt to
20 exclude or object on all the process available to an attorney,
21 to evidence that came in through witnesses or other means from
22 the State. She also had an absolute duty to ensure that he --
23 she had clear, adequate communication with her client, Tatiana
24 Leibel.

1 Your Honor, we are going to show four different
2 points, four different instances in this -- in the trial case
3 where those standards were not met, where mistakes, or
4 oversight caused that attorney's performance to fall below an
5 objective standard of reasonableness.

6 The first one would be starting with the case,
7 the assessment as to what language skills or impediments
8 Ms. Leibel had. The Court paid for interpreters throughout
9 the trial. The Court had interpreters throughout the trial,
10 some of which are here today. The problem is you're going to
11 hear testimony from Kris Brown, the chief attorney -- the --
12 the first chair of that trial, that in -- there was never an
13 interpreter present during her private conversations, her
14 consultations with Ms. Leibel over the almost a year of her
15 representation.

16 You're going to hear testimony from Kay Ellen
17 Armstrong. Ms. Armstrong was appointed as SCR 250 counsel by
18 a previous -- by Judge Gibbons, I believe. And so she had a
19 very limited role in representing Ms. Leibel and she had
20 concerns about Ms. Leibel's ability to speak English, her
21 ability to sp- -- to understand English, her ability to relate
22 and discuss important concepts. Concepts, rules, procedures,
23 and assess information that would be important for her to make
24 critical decisions in her own case. That didn't happen. It

1 didn't happen because those interpreters were never there.

2 I spoke about bringing in evidence. You're going
3 to hear testimony today, primarily from Ms. Brown, that there
4 were many -- numerous, numerous red flags regarding Harry
5 Leibel's mental and physical condition. You're going to hear
6 that he was sick. He was a cancer survivor with very serious,
7 very serious ramifications from his corrective -- his cancer
8 surgery and from the illnesses that he experienced. You're
9 going to hear testimony from Ms. Brown that she was aware of
10 the closing of his social circle. In other words, he couldn't
11 go out. He couldn't travel. He couldn't go to the place --
12 do the things that he had done before. He expressed numerous
13 times how upset he was and sad he was and how he was losing
14 his zest for life and living. We did hear test- -- you heard
15 testimony at the trial about how everybody enjoyed Harry
16 Leibel's company. They enjoyed talking to him. They loved
17 his broad range of interests and what they described as his
18 love of life. Unfortunately, as sometimes happens, people
19 with physical conditions and age, that diminishes, and there
20 was evidence that was available to Ms. Brown that she did not
21 act on.

22 We are going to suggest that what should have
23 been done and what was reasonable to do was to have a
24 psychiatrist or a psychologist go over this bucket of

1 evidence, this panoply of evidence regarding Harry's mental
2 and physical state and be able to explain to a trier of fact,
3 to the jury in the case, what that leads to, whether or not
4 that leads to suicidal ideation, whether that leads to
5 depression. And psychiatrists do this. They are able to go
6 and do postmortem psychological evaluations. It's a standard
7 part of the practice. A preparation of that -- of a report
8 like that and testimony from that expert would have helped the
9 jury to gain an understanding of what Harry Leibel -- whether
10 Harry Leibel was prone to kill himself. This is a simple --
11 it's a binary case: He either killed himself or Tatiana
12 killed him. They were -- those were the only two people in
13 the house. There was no debate about that. So his mental
14 state and his -- whether or not he had the mental issues that
15 would have caused him to take his own life are vitally
16 important.

17 The other thing that an attorney needs to do is
18 keep out bad evidence. There are two instances in this trial
19 that weren't handled adequately. Sharon Oren is a gun store
20 owner up in Reno. You saw his testimony. He known -- knew
21 the Leibels from doing business with them. He actually sold
22 the gun that Harry took -- that -- that took Harry's life.
23 The gun involved in this case came from that store. Sharon
24 Oren got up on the stand and testified -- you're going to

1 learn that it was out of the blue -- testified that he had --
2 first, it starts out he had concerns about Harry, had concerns
3 about Harry's safety, and the marriage, and the next thing is
4 he -- that he told Harry on two different occasions that
5 Tatiana was going to kill him.

6 You're going to learn that Ms. Brown had no
7 information that that testimony was going to come in. She did
8 have a report. She had a report from the detective -- from
9 Douglas County Sheriff's Office, from the detectives that
10 interviewed Sharon Oren. It wasn't a stunning, great, glowing
11 opinion about Ms. Leibel, but it did not mention anything
12 about telling Harry that she was going to kill him or a basis
13 for that kind of opinion.

14 So, when that came in, it was handled
15 incorrectly. There was no motion -- there had been an order
16 granted by this Court, a stipulation for in limine motions
17 regarding prior backed -- or bad act evidence or other act
18 evidence, that there would be a Petrocelli hearing before that
19 evidence was brought in. It wasn't. It came out like that
20 (Indicating). It came out in sort -- in a blind-side move.
21 And the objection from Ms. Brown was relevance, which the
22 Court, I would say rightly, did not grant. You overturned the
23 objection. Overruled the objection.

24 The proper objection should have been this

1 violates the Court's order that prior bad act evidence, other
2 act evidence be subject to a Petrocelli hearing to determine
3 its admissibility. There's case law on point with similar
4 facts that have overturned cases where -- not -- not quite in
5 this situation -- where it didn't come in, but where the Court
6 had previously ruled in Petrocelli that threats -- threats to
7 a decedent should not be used in the trial in another case.
8 It's *Walker* -- the cite is *Walker v. State*. I do have copies
9 for everyone.

10 There's one other instance, as well, that should
11 have been handled with an in limine motion. It was a -- the
12 neighbor of the Leibels. Lawrence Kerney lives a couple of --
13 lives right next door, I believe, in the next house over. And
14 he was allowed to testify -- he did testify that a year and a
15 half before, he had heard a large -- a long argument or an
16 argument. That testimony -- a loud argument between the
17 Leibels, excuse me, between the two of them. He described it
18 as a "my way or the highway" argument. He didn't feel there
19 was physical violence involved, but it was presented as a
20 large -- an argument that the neighbor could hear that
21 reflected on the Leibels' marriage. And the implication is
22 that it was bad enough that maybe it could lead to violence,
23 or that was the milieu that it was presented to in the trial.
24 It was not objected to at all. It wasn't subject to

1 Petrocelli. It wasn't subject to a prior court hearing to
2 rule on admissibility. It just came in, and that came in
3 without objection.

4 So, I come to the final -- well, one of the final
5 issues is counsel's obligation to produce mitigation evidence
6 or evidence that goes and challenges the State's case. The
7 Court sought -- well, David Billau was here earlier. He was
8 the noticed defense expert in the trial of this matter. He is
9 a former sheriff -- he is a former supervisor at the Washoe
10 County Sheriff's Office, worked in the Crime Lab, has
11 extensive experience in investigating crimes both here and in
12 California, and has certifications or had certifications in
13 various specialties. Well, he was allowed to testify
14 initially. And then Ms. Brown asked him questions regarding
15 trajectory. You recall the State presented extensive evidence
16 from Matthew Noedel regarding gunshot trajectory and
17 speculation or opinion as to how a shooting would have
18 occurred in this case. Mr. Billau was objected to by the
19 State and his testimony kept out because of improper notice.

20 So what you're going to do today -- hopefully
21 what we are going to do today is have Mr. Billau testify,
22 explain to the Court what he would have testified had he been
23 allowed to, and how the facts as he sees them -- problems with
24 the State's investigation and conclusions, his own analysis of

1 ballistics, trajectory, the circumstances of the shooting and
2 the death -- lead to a different conclusion than the State
3 presented to the jury. A conclusion that Harry Leibel shot
4 himself.

5 So we have a failure to present evidence
6 regarding mental condition, Harry Leibel's propensity to
7 pro- -- to -- or propensity or the possibility that he
8 deliberated and deliberately killed himself rather than was
9 murdered; David Billau's testimony regarding how that could
10 have taken place; and then deficiencies in counsel's
11 management of evidence, keeping evidence out.

12 And then I think primarily we have -- we have a
13 very, very serious situation regarding interpreters. We are
14 going to hear -- you're going to hear testimony from
15 Natasha -- hopefully, we'll hear testimony from Natasha
16 Kharikova regarding her investigation in the case and her
17 conclusions regarding -- she's going to testify, if allowed,
18 that Tatiana Leibel required the services of an interpreter in
19 every conversation.

20 And, Your Honor, that's going to be our case. We
21 are going to be asking you to go and find that this trial was
22 not conducted in a manner that was fair to Tatiana Leibel.

23 The Court, as an outside observer, didn't get --
24 it's like an egg. The Court is looking at the shell, the

1 outside of something, but you don't know that, when she's
2 speaking to her attorney, she doesn't have an interpreter.
3 The Court doesn't know that. The Court doesn't know that --
4 about the police reports that are filed and the gaps in
5 evidence, the things that just come up in trial. That's the
6 job of the attorney.

7 Here, that wasn't done well enough to go and
8 respect Ms. Leibel's Sixth Amendment privilege -- Sixth
9 Amendment right. Sixth Amendment right to fair, reasonably
10 competent counsel. Thank you.

11 THE COURT: Thank you, sir. Do you have an
12 opening statement you would like to make, Mr. Johnson?

13 MR. JOHNSON: I'll reserve, Your Honor.

14 THE COURT: All right. At this point, sir, you
15 may call your first witness.

16 There should be water in both of those.

17 MR. MALONE: I do -- I do have water. I'm
18 figuring out how to use the...

19 THE COURT: Sure.

20 MR. MALONE: Mr. Mausert, would you go get the --

21 MR. JOHNSON: Is it okay if I occasionally use
22 this?

23 THE COURT: Absolutely.

24 MR. JOHNSON: I don't trust myself knocking all

1 that over.

2 THE COURT: So it's all set.

3 MR. MALONE: So, Your Honor, the defense calls
4 its first witness, Kris Brown. I'm not sure if I'm defense in
5 this.

6 THE COURT: You're the Petitioner.

7 MR. MALONE: I'm the Petitioner?

8 THE COURT: The Petitioner.

9 MR. MALONE: The Petitioner will be calling Kris
10 Brown.

11 THE COURT: All right. I believe she did file a
12 petition, sir.

13 MR. MALONE: So long ago.

14 (The witness was sworn.)

15 THE COURT: Ms. Brown, would you come up and have
16 a seat on the witness stand, please.

17 Ma'am, there is fresh water in the pitcher there.
18 Feel free to help yourself.

19 THE WITNESS: Thank you.

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KRISTINE BROWN,

having been first duly sworn; was examined
and testified as follows:

DIRECT EXAMINATION

BY MR. MALONE:

Q. Ma'am, would you state your first and last name.

A. Kristine Brown.

Q. Would you spell your last name? Well, spell your
entire name for the court reporter, please.

A. K-R-I-S-T-I-N-E, B-R-O-W-N.

Q. And, Ms. Brown, were you lead trial counsel at
the murder trial of Tatiana Leibel?

A. I was.

Q. Okay. And you did have co-counsel?

A. I did.

Q. And who was that?

A. Jamie Henry.

Q. But as the -- as lead counsel, you were in charge
of strategic decisions --

A. Yes.

Q. -- in the case?

Okay. And you were the primary trial attorney?

A. I was.

1 Q. And early in the representation, did you have
2 another attorney assigned to the matter?
3 A. Kay Ellen Armstrong.
4 Q. And would you say why she was assigned?
5 A. She was assigned prior to a determination of
6 whether or not it would be a death penalty case.
7 Q. So she was SCR 250 counsel?
8 A. Yes.
9 Q. And she handled the case through the preliminary
10 hearing?
11 A. Yes.
12 Q. And then notice was given by the State that they
13 would not be seeking the death penalty?
14 A. That's correct.
15 Q. And so she was relieved of representation by the
16 Court?
17 A. Yes.
18 Q. Okay. And then you were assigned -- you were
19 eventually assigned a second chair. Correct?
20 A. Yes.
21 Q. Jamie Henry?
22 A. Yes.
23 Q. Okay. Now, you consulted with -- you had
24 numerous conversations with Ms. Leibel. Correct?

1 A. Correct.

2 Q. And she was in custody for most of those

3 conversations or all of them?

4 A. All of them.

5 Q. All of them.

6 Did you ever use the services of a

7 Russian/English interpreter --

8 A. Not as --

9 Q. -- for those conversations?

10 A. Not for those conversations, no.

11 Q. And not -- and for -- let's just be clear, none

12 of them?

13 A. None of them.

14 Q. And neither did Ms. Henry?

15 A. No.

16 Q. Okay. Now, during the course of your preparation

17 for trial, you learned a lot about Harry Leibel. Correct?

18 A. Yes.

19 Q. And would it be fair to say that he had some

20 underlying psychological issues? Let me rephrase that.

21 You did learn that he'd made threats of suicide

22 in the past. Correct?

23 A. Correct.

24 Q. And you learned that from Ms. Leibel?

1 A. Yes.

2 Q. And you learned that from her daughter, Chaya

3 Anna Leibel?

4 A. I don't remember it specifically from Chaya Anna.

5 Q. If you can give me one moment, please.

6 MR. MALONE: Court's indulgence, Your Honor.

7 THE COURT: Uh-huh.

8 MR. MALONE: Should I provide the Court with a

9 copy of the Douglas County Sheriff's report?

10 THE COURT: You -- you don't have to give me a

11 copy. But if you're going to show something to her, I would

12 like you to have it marked.

13 MR. MALONE: Okay.

14 THE COURT: If you're -- are you going to offer

15 it into evidence?

16 MR. MALONE: Yes, I think I eventually will. I

17 think I will.

18 THE COURT: You need to have it marked first.

19 MR. MALONE: Petitioner's 1 or A?

20 THE COURT: So in this court, we go just with

21 numbers, 1 through 25 million. Okay? And nobody is

22 Petitioner's because neither side owns an exhibit once you

23 give it to the clerk; it's the Court's exhibit. And I think

24 that that keeps any inference of either the State or the

1 Petitioner actually vouching for an exhibit in front of a
2 jury. And that's the process that we use.

3 MR. MALONE: Thank you.

4 THE COURT: So exhibits are just numbered.

5 (Exhibit 1 marked for identification.)

6 BY MR. MALONE:

7 Q. Ms. Brown, I'm going to hand you what's been
8 marked as Exhibit 1. And I'm going to draw you a --

9 MR. MALONE: Oh, Your Honor?

10 THE COURT: Sir?

11 MR. MALONE: If I could have one moment, please.

12 THE COURT: Yes.

13 MR. MALONE: I grabbed the wrong paper. I
14 apologize.

15 THE COURT: That's okay.

16 THE COURT CLERK: I still need that back.

17 THE COURT: Sir, you had that marked as an
18 exhibit, though. So it no longer belongs to you. You might
19 end up not offering it, but you had it marked, and it's mine.

20 MR. MALONE: Thank you.

21 THE COURT: If it was marked in error, I'll allow
22 you to withdraw it. Do you want to withdraw that? Because
23 there's no testimony about it.

24 MR. MALONE: I may introduce it in the future, so

1 I'll follow the Court's directive regarding that. And I'm
2 going to find my glasses.

3 MR. MAUSER: Here.

4 MR. MALONE: No, I've got -- those are not mine.
5 And, Ms. Clerk, I'd ask that this be marked as
6 Exhibit 2.

7 (Exhibit 2 marked for identification.)

8 BY MR. MALONE:

9 Q. Ms. Brown, this is an investigation report
10 regarding an interview with Chaya Anna Leibel. Correct?

11 A. I don't know.

12 Q. Okay. Do -- you haven't -- oh, you don't have it
13 in front of you.

14 MR. MALONE: This is not starting out like -- in
15 a polished way, Your Honor.

16 THE COURT: Well, we'll polish as we move along,
17 sir. And a polished presentation would be to hand it to the
18 witness and ask her what it is as opposed to having the
19 attorney identify it.

20 MR. MALONE: Thank you. Point taken.

21 THE WITNESS: And I don't think this is a
22 sheriff's office report. I think it may be an investigate --
23 it may have been an investigator's report.

24 ///

1 BY MR. MALONE:

2 Q. Do you believe it was your investigator?

3 A. I believe.

4 Q. And that would be Dustin Gray?

5 A. Yes.

6 Q. And so have you -- do you -- have you seen this
7 report before?

8 A. I believe so.

9 Q. Okay. I'm going to draw your attention to page 2
10 of that report. Okay. The second paragraph, would you read
11 that into the record, please?

12 THE COURT: No, sir, she will not. It's not in
13 evidence.

14 MR. MALONE: Oh. Your Honor --

15 BY MR. MALONE:

16 Q. So this is a report that was prepared by your
17 investigator, Dustin Gray?

18 A. I believe it is, just based on the format of it.

19 Q. Okay. Well, and you -- you reviewed numerous
20 reports prepared by Mr. Gray. Correct?

21 A. Yes.

22 Q. Okay. So you're familiar with his format?

23 A. Yes.

24 Q. Okay. The information that you've been able to

1 read -- have you read the entire report at this point in time?

2 A. No.

3 Q. Okay. I'd ask you to read through it.

4 A. (The witness complies.)

5 Okay.

6 Q. So does reading the entire report refresh your
7 memory regarding who wrote it?

8 A. I can't say for certain. I'm assuming it was
9 Dustin.

10 Q. Okay. Were you familiar with the facts related
11 in this report?

12 A. Yes.

13 Q. Okay. None of them come as a surprise to you?

14 A. No.

15 Q. Okay. So, you believe you read this report as
16 part of your preparation for Ms. Leibel's trial?

17 A. Yes.

18 MR. MALONE: Your Honor, we would ask that it be
19 admitted for the purpose of demonstrating what information
20 Ms. Brown had at her disposal when she prepared for trial and
21 when she decided what witnesses to call in her case.

22 THE COURT: Mr. Johnson?

23 MR. JOHNSON: Your Honor, it is double hearsay if
24 it's not introduced for the truth of the matter asserted. I

1 just want to be clear about which claim he's -- the petitioner
2 is claiming it's relevant to, because much of it doesn't seem
3 to be relevant to any of the claims that are in the petition.
4 So I -- I would object to it as hearsay, with double hearsay.
5 But if it is relevant, it's just to -- goes to knowledge, not
6 to the truth of the matter asserted, then my objection would
7 only be relevance depending on which claims --

8 THE COURT: Overruled. It's admitted.

9 MR. MALONE: Thank you, Your Honor.

10 (Exhibit 2 admitted into evidence.)

11 BY MR. MALONE:

12 Q. So, Ms. Brown, I'm going to draw your attention
13 to paragraph 2 of page 2. Would you please read that into the
14 record?

15 A. "Chaya Anna stated Harry was a habitual marijuana
16 smoker and would smoke every day in the morning and in the
17 evening to help him with pain -- his pain. Chaya Anna stated
18 she witnessed this and was told directly by Harry that it
19 would really help with the pain that he was in."

20 Q. And did that comport with other evidence that you
21 were privy to in this case?

22 A. Yes.

23 Q. Okay. Do you recall what -- whether Harry Leibel
24 had a toxicology report prepared --

1 A. Yes.

2 Q. -- with his autopsy?

3 A. Yes.

4 Q. And do you remember if he had any level of THC,
5 or the active ingredient of marijuana, in his system at the
6 time of his death?

7 A. Yes. He was positive for marijuana.

8 Q. Do you recall the level?

9 A. I don't.

10 Q. Okay. I'll come back to that.

11 So, that paragraph does -- you were able to
12 validate the information regarding his marijuana smoking with
13 other evidence and information you have?

14 A. Yes.

15 Q. Okay. Now, I'm going to ask you to refer down to
16 level -- to paragraph 4 of page 2.

17 A. Okay.

18 Q. Would you please read that information into the
19 record?

20 A. "Chaya Anna knew a lot about Harry's medical
21 condition because she was around a lot and would talk to Harry
22 almost every day on the phone along with her mother. Chaya
23 Anna stated he was in great pain when she saw him or would be
24 around him. She recalled Harry was always complaining about

1 the kidney stones and the pain he was in constantly."

2 Q. Now, same question: Were you able to verify this
3 with other information that you had at your disposal?

4 A. Yes.

5 Q. Okay. I'm going to direct your attention to
6 paragraph 5.

7 A. Okay.

8 Q. And if you would read that into the record.

9 A. "Chaya Anna recalled December conversations with
10 Harry telling her 'Don't be sad that I can't walk you down the
11 aisle.' Chaya Anna stated this made her very upset to see
12 that Harry was giving up on life because of the pain."

13 Q. Okay. And there is not a year in front of
14 December. Do you have -- are you able to explain what year
15 that would have been?

16 A. I'm assuming it would have been the
17 December 2013, preceding the February where Harry died.

18 Q. Harry died on February 23rd, 2014?

19 A. (The witness nods.)

20 Q. February 23rd; is that correct?

21 A. Yes. Uh-huh.

22 Q. Next paragraph, please. I think that is
23 paragraph 6.

24 A. "Chaya Anna stated he was in pain because of the

1 bladder that was fake, the surgery, and the cancer. She also
2 stated it was because the kidney stones he had constant -- he
3 had constantly. Chaya Anna stated he was always using the
4 bathroom and couldn't travel because he would have to stop all
5 the time to use the restroom."

6 Q. In the course -- does that comport with other
7 evidence that you were able to accumulate or access during
8 your preparation?

9 A. I believe so, yes.

10 Q. And I may be using different words when I'm
11 saying if you were aware of those things. But they mean --
12 assume that they mean the same thing, that you corroborated
13 that evidence or that information --

14 A. Yes.

15 Q. -- please.

16 If you can move on to the next paragraph.

17 A. "Chaya Anna was told by Harry that he was pooping
18 blood and the pain was intense. Chaya Anna recalled Harry
19 telling her that if he ended up in as much pain as his father,
20 he would not take that kind of pain and 'deal with it.'"

21 Q. And the "deal with it" is in quotes?

22 A. Yes.

23 Q. Indicating that was a quote from Harry's own
24 mouth, essentially?

1 A. I'm assuming so, yes.

2 Q. Okay. And next paragraph, please, if you don't
3 mind. And that -- for the record that's 8, paragraph 8.

4 A. "Chaya Anna felt that Harry shot himself with
5 Tatiana at the house because he didn't want to be left alone
6 and didn't want to die alone."

7 Q. And then the next page would be par- -- page 3
8 and the final paragraph.

9 A. "Chaya Anna thought that the only reason she
10 could see or feel that Harry would have shot himself would
11 have been because of the pain he was in. Chaya Anna stated
12 she could see and feel the pain that Harry was in when she was
13 there in December. She stated the pain only got worse as time
14 went on in conversations with Harry and Tatiana every day over
15 the phone after she left."

16 MR. MALONE: I'm sorry, Your Honor, I just -- my
17 hip sometimes causes me some pain, but then it goes back in.
18 Apologies.

19 THE COURT: You don't owe an apology, sir. If
20 you need something, then please let me know.

21 MR. MALONE: I don't need anything. I probably
22 actually need to actually take care of myself a little better.
23 I'm ignoring it.

24 ///

1 BY MR. MALONE:

2 Q. So did you ever speak with Chaya Anna yourself?

3 A. I believe she spoke mostly with Jamie Henry
4 concerning possible testimony. I spoke with her on occasion
5 or e-mails with her just concerning other issues.

6 Q. Now, she did not testify at the trial. Correct?

7 A. Correct.

8 Q. Okay. If called as a witness, she would have
9 been able to -- you would have expected her to testify
10 consistent with your investigator's report?

11 A. Yes.

12 Q. And have we concluded at this point in time this
13 is your investigator's report?

14 A. Yes.

15 Q. And I'm sorry, I realize I'm speaking too
16 quickly.

17 MR. JOHNSON: Your Honor.

18 THE COURT: Sir?

19 MR. JOHNSON: I don't want to delay the hearing
20 any longer, but I just -- I don't want to object too much
21 leading, but I think, at some point, I'd object to leading the
22 witness through this entire testimony.

23 THE COURT: Well, when you do object, I'll rule
24 on it.

1 MR. JOHNSON: Okay. Thanks, Your Honor.

2 BY MR. MALONE:

3 Q. Are you -- are you familiar with page 1 of this
4 report?

5 THE COURT: Which is Exhibit 2; is that correct?

6 MR. MALONE: Oh, this is Exhibit -- Exhibit 2.

7 THE WITNESS: Yes.

8 BY MR. MALONE:

9 Q. Okay. And would you please explain your
10 understanding of family members' description of the Leibel
11 marriage?

12 A. Well, I'm not sure if all family members have the
13 same opinion.

14 Q. Okay. Chaya Anna Leibel's -- would it be fair to
15 say that Chaya Anna Leibel described the marriage as happy for
16 the most part?

17 A. For the most part.

18 Q. Okay. Did she describe any physical violence in
19 the home?

20 A. No physical violence that I recall.

21 Q. Okay. In fact, did she deny any physical
22 violence?

23 A. I can't say whether she was specifically
24 questioned about it. I know she discussed arguments.

1 Q. Okay. And do you recall the nature of those
2 arguments?

3 A. I believe most of them, they were financial
4 arguments, arguments concerning Lana.

5 Q. Okay.

6 A. The money that Tatiana was spending on Lana. I
7 believe there were arguments concerning the amount of time
8 Tatiana stayed away from home.

9 Q. Okay. And that was when she was attending UNR?

10 A. It was the years after she graduated but was
11 still going to Reno.

12 Q. Okay. Now, if -- how did Chaya Anna describe her
13 mother's feelings towards Harry Leibel?

14 A. She said her mother loved him.

15 Q. Okay. And treated him kindly?

16 A. Yes.

17 Q. And took care of him?

18 A. And took care of him.

19 MR. MALONE: And, Your Honor, or Ms. Clerk if I'd
20 move for admission of 2, Exhibit 2.

21 THE COURT: You've already done that. It's
22 already admitted.

23 THE COURT CLERK: Yes, it is.

24 MR. MALONE: Thank you. That was my question if

1 I had or not.

2 THE COURT: I wouldn't have allowed all of those

3 questions otherwise.

4 BY MR. MALONE:

5 Q. Oh, excuse me. Now, do you -- do you know a

6 person of -- of the name of Chris Hedrick?

7 A. Yes.

8 Q. Okay. Who is that?

9 A. That was a friend of Harry's.

10 Q. And do you know if Chris Hedrick and Harry smoked

11 marijuana together?

12 A. Yes.

13 Q. Okay. And do you know whether or not Harry

14 bought marijuana from Mr. Hedrick?

15 A. It was my understanding that he bought his

16 marijuana from Mr. Hedrick.

17 Q. Okay.

18 MR. MALONE: Madam Clerk, I ask that this be --

19 Ms. Clerk?

20 THE COURT CLERK: That's fine.

21 MR. MALONE: Ms. Clerk, would you please mark

22 this as Exhibit 3.

23 (Exhibit 3 marked for identification.)

24 ///

1 BY MR. MALONE:

2 Q. And, Ms. Brown, I'm going to hand you a copy of
3 what's been marked as Exhibit 3.

4 THE COURT: And the record will reflect he's
5 actually handed her Exhibit 3, not a copy thereof.

6 MR. MALONE: Oh, yes.

7 THE WITNESS: Okay. Yes.

8 THE COURT: Mr. Malone, you don't know me, but I
9 tend to try to be a stickler for the record.

10 MR. MALONE: I appreciate it, Your Honor. And
11 I'm not trying to --

12 THE COURT: I know you're not, but I may make
13 those points as we go through this case.

14 MR. MALONE: I appreciate it. Thank you.

15 BY MR. MALONE:

16 Q. Are you familiar with that exhibit?

17 A. Yes, I am.

18 Q. Okay. And can you please inform the Court of
19 what it is?

20 A. That's the Douglas County Sheriff's Office report
21 concerning their interview with Chris Hedrick.

22 Q. And this is a report that was produced to you in
23 discovery?

24 A. Yes.

1 Q. Okay. So you reviewed this report before the
2 case went to trial?

3 A. Yes.

4 Q. Okay. Now, I'm going to ask you to, read in --

5 MR. MALONE: Well, Your Honor, I would ask that
6 that be admitted into evidence, Exhibit 3.

7 MR. JOHNSON: Objection. Hearsay.

8 MR. MALONE: Your Honor, it's not presented for
9 the truth of the matter asserted. It's merely presented to
10 show what information Ms. Brown had at her disposal when she
11 prepared for trial, which she just --

12 THE COURT: Overruled.

13 MR. MALONE: Thank you.

14 (Exhibit 3 admitted into evidence.)

15 BY MR. MALONE:

16 Q. I'm going to ask you to refer to page 3. The
17 pages are not -- page 1 is numbered, but it doesn't appear
18 that -- it doesn't appear that the subsequent pages are
19 numbered. But to your knowledge, those appear to be in page
20 number order --

21 A. Yes.

22 Q. -- in terms of reading the breaks in the
23 paragraphs?

24 A. Yes.

1 Q. Okay. So page 3, full paragraph 3.
2 A. Full paragraph 3?
3 Q. Uh-huh.
4 A. The one that starts out, "'Harry,' my friend"?
5 Q. Yes. And that "Harry" is in quotes. Correct?
6 A. Correct.
7 Q. Okay. And are you familiar -- are you familiar
8 with that statement?
9 A. Yes. This is from texts between Harry and Chris.
10 Q. Okay. Would it be fair to describe this as a
11 final text from Chris to Harry? Is that your understanding?
12 A. It -- I believe it was a text after Harry was
13 dead.
14 Q. Okay. And it was -- if you can read that into
15 evidence. And, please, describe the quotations marks when you
16 read in, as to the segment that is a quote from Chris
17 Hedrick's texts.
18 A. Okay. Quote, "'Harry, my friend. You have left
19 me without saying good-bye. The good moments we've had and
20 your truths of life and people that we've had in our universe
21 good and bad. I knew a month ago something wasn't right and
22 felt you were going to be on your journey to another world.'"
23 End of quote.
24 "Chris said because Harry had talked about dying,

1 which he had never done before, Chris said he thought Harry
2 was into astrology and he talked about graduating from the
3 seven different lifetimes. Harry said after, he was on top of
4 his game on graduating into the next life which was the
5 afterlife. Chris further explained that Harry talked about
6 being in the last stage of life and that he was going into the
7 next stage, which was eternal life. Chris said he thought
8 Harry wanted to be there because he was in so much pain.
9 Chris said he wasn't sure where this ideology -- ideology came
10 from."

11 Q. If you can move to the next paragraph, please.

12 A. "I asked Chris what he believed Harry met when
13 they talked about" --

14 THE COURT: Ms. Brown, could I ask you to go
15 slower, please. There is an interpreter here, and I just want
16 her to be able to keep up with you, ma'am.

17 THE WITNESS: Yes, Your Honor.

18 "I asked Chris what he believed Harry meant when
19 they talked about this ideology. Chris said he believed Harry
20 had done everything and was ready to move on to the next
21 stage. I told Chris it sounded to me like Harry had just come
22 to terms with his own mortality, and Chris agreed."

23 BY MR. MALONE:

24 Q. And are you aware whether -- if you can move down

1 to 6, paragraph 6, and read that into the record.

2 A. When it said, "Chris said he was in Tahoe"?

3 Q. Yes.

4 A. "Chris said he was in Tahoe on the day of the
5 incident and added that he drove past the house and saw the
6 yellow sheriff's tape up and decided to keep on driving
7 because he had marijuana in the car for Harry."

8 Q. Now, was Chris Hedrick called as a witness in the
9 trial?

10 THE INTERPRETER: I'm sorry, I didn't hear.

11 BY MR. MALONE:

12 Q. Was Chris Hedrick called as a witness in the
13 trial?

14 A. No. He was subpoenaed, and we decided not to
15 call him.

16 Q. Okay. I'm going to ask you as well, did you ever
17 have a psychiatrist or psychologist or mental health expert
18 review some -- any of the evidence in this case?

19 A. No.

20 Q. Okay. None of the evidence regarding suicidal
21 ideations -- are you familiar -- you know what suicidal
22 ideation is?

23 A. Yes.

24 Q. Having -- and for the -- so the record is clear,

1 that is -- is it your understanding that that is having
2 thoughts of suicide?

3 MR. JOHNSON: Objection. Leading.

4 MR. MALONE: Your Honor --

5 THE COURT: Overruled.

6 THE WITNESS: Yes, I understand that.

7 BY MR. MALONE:

8 Q. Okay. So that's the common meaning of that term?

9 A. I assume so.

10 Q. Okay. Or that's your understanding?

11 A. That's my understanding.

12 Q. Are you familiar with the use of psychiatrists in
13 court?

14 A. Yes.

15 Q. Okay. Have you called them ever?

16 A. Yes.

17 Q. Okay. Did you call one in this case?

18 A. No.

19 Q. Okay.

20 THE COURT: Sir?

21 MR. JOHNSON: If I could ask him to move a little
22 bit so I can see the witness.

23 THE COURT: Sure. Sure. Counsel are free to
24 move about the courtroom in any way that they need and make

1 yourself comfortable. If you can't see the witness, you're --

2 MR. JOHNSON: He was doing fine before. I
3 couldn't see, Your Honor, but I -- I just --

4 THE COURT: Why would you want to? So -- I
5 understand. Thank you.

6 MR. MALONE: And, Your Honor, I do tend to move
7 around a little bit.

8 THE COURT: You're welcome to.

9 MR. MALONE: I may freeze a little bit --

10 MR. JOHNSON: It's fine.

11 THE COURT: Mr. Johnson, you're free to move
12 about, too.

13 MR. MALONE: And if I can grab a Kleenex from the
14 court reporter. Thank you.

15 Your Honor, there is -- I do -- a lot of the
16 courts that I work in understand that I had -- I did have a
17 cancer scare -- well, I had cancer of my tongue 20 years ago,
18 and there are times when my speech is not as clear as I would
19 like. But that is --

20 THE COURT: I've had no difficulty understanding
21 you, sir. If I do, I'll let you know.

22 MR. MALONE: It may be a psychological thing for
23 me. I don't want to -- I've notice I've slurred a couple of
24 words, and when I get tired, that happens more.

1 THE COURT: Mr. Malone, you and everyone else in
2 this room should be as comfortable here as you can be --
3 MR. MALONE: Thank you.
4 THE COURT: -- under the circumstances that we
5 find ourselves. So, if there are things that you need, or if
6 you need a break, you would simply advise me.
7 MR. MALONE: I'm fine. It just makes me more
8 comfortable if you understand -- I -- I notice my -- my speech
9 defect more than probably anyone else.
10 THE COURT: I haven't noticed it at all.
11 MR. MALONE: Thank you.
12 THE COURT: So please feel free to proceed.
13 MR. MALONE: Thank you.
14 BY MR. MALONE:
15 Q. So, Ms. Brown, you knew that you could retain an
16 expert to assess Harry's mental condition. Correct?
17 A. Yes.
18 Q. Okay. Did you do research into that?
19 A. No.
20 Q. Okay. Have you, in the course of your practice,
21 become familiar with a process called a psychological autopsy?
22 A. No.
23 Q. Okay. Now, did you have an opportunity --
24 opportunity to refresh your recollection regarding this

1 sheriff's office report, Exhibit 3?

2 A. Yes.

3 Q. Okay. It also talks about -- does it talk about
4 the relationship that Chris Hedrick observed between Tatiana
5 and Harry?

6 Well, I'm going to address -- I'm going to ask
7 you to look at page 4.

8 A. Okay.

9 Q. Second full paragraph.

10 A. "I told Chris that Darla"?

11 Q. Yes.

12 And do you know who Darla is? I'm sorry. I'm
13 sorry to interrupt. Are you familiar with Darla?

14 A. I'm trying to remember who -- was it one of the
15 other daughters, Harry's daughters?

16 THE COURT: Well, you don't get to ask him
17 questions, ma'am.

18 THE WITNESS: No, I don't remember for sure.

19 BY MR. MALONE:

20 Q. Do you recall calling any of Harry's ex-wives as
21 witnesses or any of -- do you recall any of Harry's wives or
22 ex-wives being called as witnesses in the trial?

23 A. Not specifically, no.

24 Q. Okay. Okay. If you can read the paragraph in

1 without further interruption from counsel.

2 A. "I told Chris that Darla and Cheron had told me
3 that Harry had a sharp tongue that could cut you up verbally
4 with his words. Chris said he never witnessed any of that.
5 Chris said that when Harry would smoke marijuana, he would be
6 less picky, less irritable, and able to tolerate the
7 situations. Chris added that he could see Harry getting
8 Tatiana so 'pissed off,'" and that's in quotes, "but he
9 couldn't see her grabbing a gun and shooting him, but maybe
10 throwing a pot at him."

11 THE INTERPRETER: I'm sorry. "Maybe throwing"?

12 THE WITNESS: A pot at him.

13 "Chris said if Harry doesn't get his way, he's a
14 spoiled little brat. Chris added, 'It's his way or the
15 highway.' Chris said that the only part about Harry -- that
16 was the only part about Harry he didn't care for."

17 BY MR. MALONE:

18 Q. And the sentence, "It's his way or the highway,"
19 is that in quotes?

20 A. That's in quotes.

21 Q. Next paragraph, please.

22 A. "I asked Chris about another part of the text
23 that was sent on 2-24-14 that read, quote, 'This world wasn't
24 right for you'" -- oh, "'This world wasn't right for your

1 soul. I couldn't say why, but I did see it.'" End of quote.

2 "Chris said that he just didn't think Harry was
3 happy. I asked Chris if that was the entire time with Harry
4 or had it progressed over time. Chris told me it had
5 progressed over time. I asked Chris when he started noticing
6 that Harry wasn't happy. Chris said it was no more than a
7 year ago."

8 Q. Next paragraph, please.

9 A. "I asked Chris if Harry ever talked to him about
10 his medical issues. Chris said he talked a lot about his
11 stomach issues and that he was in a lot of pain. I asked
12 Chris if he thought the amount of pain was in good
13 cause" -- "was in good cause him to take his life" -- "own
14 life. Chris said no. I asked Chris if Harry ever talked
15 about the pain being too much for him to handle and Harry
16 talking about taking his own life. Chris said no. I asked
17 Chris if Harry ever talked about suicide in general terms.
18 Chris said no."

19 Q. Next paragraph, please.

20 A. "I asked Chris, since he knew Harry so well, what
21 it would take for Harry to take his own life. Chris said if
22 Harry got news that he was terminally ill, he believes Harry
23 may do something at that point to not prolong the pain. Chris
24 said because Harry dealt with major" --

1 THE INTERPRETER: I'm sorry. "Chris said"? What
2 was the last?

3 THE WITNESS: "Chris said because Harry dealt
4 with major pain. I asked Chris if, based on Harry's religious
5 beliefs, he still thought Harry would take his own life if he
6 thought he was terminally ill. Chris said from what he's been
7 taught about all religions is you will never make it to heaven
8 if you commit suicide. Chris said, with that in mind, he
9 believed Harry would take his own life" -- "would not take his
10 own life and would deal with the suffering."

11 BY MR. MALONE:

12 Q. The last e-mail that Chris wrote that we've read
13 into the record, that did start out with, "Harry, you left
14 without saying good-bye." Correct?

15 A. Yes. And that was a text.

16 Q. A text. Thank you.

17 Ma'am, if I could have Exhibit 3 back. Thank
18 you.

19 A. Uh-huh.

20 MR. MALONE: Ms. Clerk, I'm going to ask that
21 this be marked as 4.

22 THE COURT CLERK: Uh-huh.

23 (Exhibit 4 marked for identification.)

24 MR. MALONE: May I approach the witness,

1 Your Honor?

2 BY MR. MALONE:

3 Q. Ms. Brown, I'm going to have -- I'm going to hand
4 you what's been marked as Exhibit 4.

5 A. Okay.

6 Q. Do you recognize that document?

7 A. I believe that that's Dustin Gray's report
8 concerning the interview with Lana.

9 Q. Okay. And that is Lana Raymo?

10 A. Yes.

11 Q. And who is Lana Raymo?

12 A. That's Tatiana's oldest daughter.

13 Q. Okay. And does she go by any other names that
14 you know of?

15 A. I just knew her as Lana, I believe.

16 Q. Okay. I'm going to -- have you had an
17 opportunity to just review that quickly?

18 A. Yes.

19 Q. I'm going to ask you, please, to read into the
20 record --

21 THE COURT: You mean after it's admitted?

22 MR. MALONE: Yes, Your Honor. I'm sorry.

23 Your Honor, I would ask that this be admitted.

24 It is for -- not for the purpose of the truth of the matter

1 asserted in the report, but just, once again, to illustrate
2 what information that Ms. Brown had at her disposal during the
3 preparation of her case.

4 MR. JOHNSON: No objection with that
5 representation.

6 THE COURT: Then 4 is admitted.

7 (Exhibit 4 admitted into evidence.)

8 MR. MALONE: Thank you.

9 BY MR. MALONE:

10 Q. Would you please read the -- I think it's
11 paragraph 6, starting with, "Ms. Raymo." Well, they all start
12 with "Ms. Raymo." "Ms. Raymo indicated."

13 A. "Ms. Raymo indicated that if Harry was in
14 pain" --

15 THE INTERPRETER: I'm sorry, Your Honor. If the
16 witness would slow down, I would appreciate it.

17 THE WITNESS: I'm sorry.

18 THE COURT: Thank you.

19 THE WITNESS: "Ms. Raymo indicated that if Harry
20 was in pain or not doing very well" -- there's a little
21 Defendant sign, "would always stay near him and help him.
22 Harry couldn't go on trips or be far from a bathroom due to
23 his surgery and false bladder. Ms. Raymo stated after the
24 cancer and the surgery for the bladder, Harry was in constant

1 pain and wouldn't go far from the house."

2 BY MR. MALONE:

3 Q. The next paragraph, there is a quote that it is
4 reported to be from -- do you understand -- do you have any
5 information as to where that quote is? It's in italics, in
6 quotations?

7 A. I believe that was when -- the morning that Harry
8 was killed or died, Tatiana Leibel had texted Lana, "I'm still
9 at home. I have an uncomfortable situation."

10 Q. And that's a quote that you are familiar with
11 from other discovery. Correct?

12 A. Yes.

13 Q. You were able to view -- were you able to
14 view cell phone downloads and texts?

15 A. Yes.

16 Q. Okay. And would you please -- is it fair to say
17 that many of the words -- the words contained in that sentence
18 are spelled -- misspelled?

19 A. Yes.

20 Q. Okay. "Uncomfortable," in like -- it's like the
21 fourth or fifth word, it's actually separated into two words.
22 Would you please spell that as it's spelled in the actual text
23 that you viewed?

24 A. O-N C-O-N-F-O-T-O-B-O-L.

1 Q. And actually the O-N, then a space. Correct?
2 A. Yes.
3 Q. And then it moves on to C-O-N-F-O-T-O-B-O-L.
4 Correct?
5 A. Correct.
6 Q. And that's a very difficult spelling of
7 "uncomfortable." Correct?
8 Well, never mind.
9 A. I would say it's wrong.
10 Q. Yeah.
11 Moving on to the next -- the -- the three words
12 after, "I." Are you able to decipher those?
13 A. "I explain little bit later."
14 Q. Okay. And would you please spell, "explain," as
15 spelled in the text.
16 A. E-K-S-P-E-L-E-N.
17 Q. Okay. Next word?
18 A. L-E-L-B-E-T.
19 Q. Okay. And that's "li'l bit"?
20 A. Yes.
21 Q. Next word?
22 A. L-E-I-T-E-R.
23 Q. And that would be "later"? You assume "later"?
24 A. That's how I sound it out.

1 Q. Okay. Okay. Next paragraph, please.

2 A. "Ms. Raymo took that to mean that Harry was not
3 feeling well and that Defendant was making excuses not come
4 out and visit her or help her out as indicated. Ms. Raymo
5 stated she texted about eight minutes later asking, 'I need to
6 know what's going on. Are you coming or not, because I
7 already told her my moving out. I'm here with here and need
8 to know.'"

9 THE INTERPRETER: I'm sorry, "I'm here with"?

10 THE WITNESS: "With here" is -- it's a --

11 THE INTERPRETER: Okay.

12 THE WITNESS: "Miss Raymo stated she did not hear
13 back from Defendant."

14 BY MR. MALONE:

15 Q. If you could move on to the next page, which
16 would be page 2.

17 MR. JOHNSON: Your Honor, I'm assuming there's
18 going to be questions about these items that are going to be
19 read into the record later. If there's not questions, I just
20 object to the best evidence. This has already been admitted
21 into evidence. This Court can read the paragraphs just as
22 well. But I'm assuming there's going to be some questions
23 afterwards; that's why I haven't objected to the reading it in
24 the record.

1 THE COURT: Well, when you get around to
2 objecting, you let me know. Otherwise, we'll just move on.
3 Okay?

4 Go ahead.

5 MR. JOHNSON: Okay.

6 BY MR. MALONE:

7 Q. Paragraph 3, page 2.

8 A. "Ms. Raymo stated over the last six months she
9 was told by the Defendant that Harry was pissing blood and in
10 great pain due to kidney stones and the bladder issues."

11 THE COURT: So, Mr. Malone, the objection that
12 Mr. Johnson is not making is that I can read these things.
13 You've admitted them into evidence, and I can read them and
14 you can argue about them. If you're just having this witness
15 read documents that are in evidence, I'm not certain why
16 you're doing that.

17 MR. MALONE: Your Honor, I'm -- well, out of an
18 abundance of caution, perhaps, I would -- they are in
19 evidence. The Court can read them. What I'm trying to
20 demonstrate --

21 THE COURT: I do read all of the evidence that
22 you admit, sir. So if -- so if you have some question about
23 the fact that this word is misspelled or that word is
24 misspelled, you can have the witness confirm that, if you want

1 to. But I -- I understand that --

2 MR. MALONE: I think that what my -- one of my
3 concerns is the purpose of this evidence is to demonstrate
4 what Ms. Brown thought during her preparation of the case.

5 THE COURT: So I'll assume you'll be asking her
6 some questions about that.

7 MR. MALONE: And, Your Honor, I think I have in
8 the past with -- for instance, with Chris Hedrick's
9 statements, whether or not that form -- would form the -- I'm
10 going to eventually ask does that -- she talked about the
11 inferences towards suicide in his statements and whether or
12 not she decided to call an expert witness to assess those.

13 THE COURT: So she said she didn't.

14 MR. MALONE: She did not.

15 THE COURT: And she had subpoenaed Mr. Hedrick
16 and then didn't call him.

17 MR. MALONE: Correct. So those go to my basis of
18 there were witnesses that should have been called that were
19 not.

20 THE COURT: Okay.

21 MR. MALONE: There was evidence that would have
22 supported the introduction of expert testimony --

23 THE COURT: I understand why you're doing this.
24 My point is that it spends a lot of time just having the

1 witness read something into the record that's already in the
2 record.

3 MR. MALONE: Okay.

4 THE COURT: If you have questions about it, I
5 would encourage you to ask those questions.

6 MR. MALONE: I can do that. I -- as I said, I
7 was working out of an abundance of caution.

8 THE COURT: Caution is not always a bad thing.
9 Go ahead.

10 BY MR. MALONE:

11 Q. If you read down, other paragraphs in this
12 report, do they indicate that Harry was in pain?

13 A. Mostly it's --

14 Q. Well --

15 A. It indicates Ms. Leibel told Lana that he was in
16 pain.

17 Q. Paragraph 3, that is information that Harry was
18 in pain. Correct?

19 A. Paragraph 3?

20 Q. Correct.

21 A. "She was told by the Defendant that Harry" --

22 Q. No. If you -- I'm not going to require you to
23 read it through.

24 A. Okay.

1 Q. But there are indications and you had knowledge
2 that Harry was in pain. Correct?

3 A. Most of the information was --

4 Q. If you can -- did you understand my question,
5 ma'am?

6 MR. MALONE: Your Honor, I am going to ask her to
7 read it in.

8 THE COURT: So here is the question: Did --
9 did -- did -- you had this report before trial?

10 THE WITNESS: Yes.

11 THE COURT: And did this report provide you with
12 information that Mr. Leibel was in pain?

13 THE WITNESS: Yes.

14 THE COURT: Do you have another question?

15 BY MR. MALONE:

16 Q. Did this report provide you with information
17 that, quote, "Harry was pissing blood," end quote?

18 A. Yes.

19 Q. Okay. Did you have evidence before trial that
20 Harry had had a life-threatening cancer?

21 A. Yes.

22 Q. Did you have information that the surgery to
23 treat that cancer left him somewhat disabled?

24 A. Yes.

1 Q. Did you understand that he no longer had a
2 bladder?
3 A. Yes.
4 Q. Okay. That he had some reconstitution -- another
5 organ was converted into his bladder?
6 A. Yes.
7 Q. And that he was incontinent?
8 A. Yes.
9 Q. That he was unable to maintain an erection
10 from -- since the surgery?
11 A. Yes.
12 Q. That his ability to consort with his wife in the
13 fullest sense of the word -- in other words, have a sexual
14 relationship -- was obliterated --
15 A. Yes.
16 Q. -- because of that surgery?
17 A. Yes.
18 Q. Okay. Did you have an opportunity to look at the
19 couch that Harry -- that was in the living room?
20 A. Yes.
21 Q. Okay. And was -- did the couch show signs of --
22 that perhaps Harry was incontinent?
23 A. I didn't notice.
24 Q. Okay. You didn't notice the couch?

1 A. I didn't notice any indication of somebody being
2 incontinent being on that couch.

3 Q. You didn't notice -- did you notice stains on the
4 couch?

5 A. Well, yeah.

6 Q. Okay. Fairly significant ones?

7 A. Well, there was blood on it.

8 Q. Other than that?

9 A. It was a stained couch.

10 Q. Okay. By things other than blood?

11 A. Yes.

12 Q. Okay. Pretty dirty couch?

13 A. Yes.

14 Q. And it was -- it stuck out because it was very
15 different from the other furnishings in the house. Correct?

16 A. I don't recall it being different.

17 Q. Do you recall photographs of the house?

18 A. Yes.

19 Q. What -- how -- would you describe the house as
20 being exceptionally clean?

21 A. No.

22 Q. No?

23 Would it refresh your recollection to observe
24 photographs of the house?

1 A. My recollection is based on the trip we made
2 once -- after everything was out of the house.

3 Q. But you did have photographs of the house that
4 did have the furnishings in it. Correct?

5 A. Yes.

6 Q. Okay. And you reviewed those photographs as part
7 of your preparation for this case?

8 A. Yes.

9 Q. Okay. And is it your recollection that the
10 house, as depicted in the photographs, was clean and orderly?

11 A. Yes. It was orderly.

12 Q. And clean?

13 A. Yes.

14 Q. Okay. Feel free if you don't understand my
15 question to ask.

16 Would it be fair to say that the couch stuck out
17 like a sore thumb, so to speak, because of its condition?

18 MR. JOHNSON: Objection. Leading.

19 MR. MALONE: I'm going to -- Your Honor, I'm
20 going to ask for permission to lead.

21 THE COURT: Well, I don't actually think that was
22 leading, and so the objection is overruled. But to an extent,
23 sir, Ms. Brown is not necessarily a friendly witness. I
24 don't -- I would not say that she is a hostile witness. But

1 I'm -- she -- this process is one which questions the level of
2 legal services that she provided. And so, to an extent, that
3 puts her a bit on the defensive, although I expect her to
4 testify honestly. And so, I'm going -- if there's a little
5 bit of almost cross-examination here, I'm going to allow it,
6 just for purposes of this hearing.

7 But there's no objection pending now because I've
8 ruled. So go for it.

9 MR. MALONE: Thank you.

10 Madam Clerk, I'm going to ask -- or, ma'am, I
11 mean -- Ms. Clerk, I would ask you to mark this as Exhibit --

12 THE COURT CLERK: 5.

13 MR. MALONE: 5.

14 (Exhibit 5 marked for identification.)

15 MR. MALONE: Thank you.

16 THE COURT: And, Counsel, do you expect Ms. Brown
17 to be on the stand for a little while?

18 MR. MALONE: Yes, Your Honor.

19 THE COURT: So here is where we are. I always
20 take a break mid-morning for the clerk and for the court
21 reporter. I usually do that about 10:30, and it's a 15-minute
22 break. But if we do it right at 10:30, it tends to chop
23 things up for the morning, and then you come back and there's
24 only an hour and 15 minutes left. So we are going to take a

1 15-minute break now.

2 MR. MALONE: Thank you, Your Honor.

3 THE COURT: And everyone can be at ease for
4 15 minutes.

5 And, Ms. Brown, I will remind you that the rule
6 of exclusion has been invoked, and I know that you know what
7 that means.

8 THE WITNESS: Yes.

9 THE COURT: So you have been reminded, ma'am.
10 And I will see everyone at 10:35 approximately.
11 Thank you. Roughly.

12 (A break was taken.)

13 THE COURT: Ms. Brown, I will remind you that
14 you're still under oath. Everyone is almost in place.
15 Everyone is in place, and we -- you may have a seat, and we
16 will resume. So, thank you.

17 MR. MALONE: Thank you, Your Honor.

18 BY MR. MALONE:

19 Q. Ms. Brown, I'm going to ask you to view what's
20 been marked as Exhibit 5.

21 A. Okay.

22 Q. Are you familiar with that picture?

23 A. Yes.

24 Q. If I can have it back, please.

1 And this picture depicts the couch in the Leibel
2 residence. Correct?

3 A. Yes.

4 Q. And is it your -- do you have knowledge of
5 whether or not Harry was sitting on this couch on this
6 viewer's left position at the time of his death?

7 A. That was my understanding.

8 Q. And the couch is -- not to mention blood stains,
9 but there's black staining throughout the seat of the couch.
10 Right?

11 A. I don't know if that's staining or where.

12 Q. You've seen the couch. Right?

13 A. Yes.

14 MR. MALONE: Your Honor, I'm going to ask that
15 this be admitted as Exhibit 5.

16 MR. JOHNSON: No objection, Your Honor. It's
17 already --

18 THE COURT: Five is admitted.

19 (Exhibit 5 admitted into evidence.)

20 BY MR. MALONE:

21 Q. But it's fair to say the picture depicts what it
22 depicts. Right?

23 A. Yes.

24 Q. And if someone's view is that that's a dirty

1 couch, it's a dirty couch?

2 A. So --

3 THE COURT: In that person's view.

4 MR. MALONE: Correct, Your Honor.

5 BY MR. MALONE:

6 Q. We talked earlier about your knowledge of Harry's

7 use of marijuana. Correct?

8 A. Yes.

9 MR. MALONE: Ma'am, if I could have this marked

10 as Exhibit 6.

11 (Exhibit 6 marked for identification.)

12 BY MR. MALONE:

13 Q. Ms. Brown, I'm asking to hand you what's been

14 marked as Exhibit 6. Tell me if you're familiar with that

15 document.

16 A. That would be the toxicology report --

17 Q. And that was --

18 A. -- from the autopsy.

19 Q. Sorry.

20 And this was a document that was produced to you

21 in discovery?

22 A. Yes.

23 Q. And it was part of the Douglas County Sheriff's

24 Office case file. Correct?

1 A. Yes.

2 Q. And does it refresh your recollection as to the
3 level of marijuana or med- -- THC that was in Harry's blood at
4 the time of his death?

5 A. Yes.

6 Q. Okay. And please tell me what that is.

7 A. The Delta-9 THC is 20 nanograms per milliliter.

8 Q. Thank you. If I can have that back.

9 MR. MALONE: Your Honor, I ask this be marked
10 as -- or admitted as Exhibit 6.

11 MR. JOHNSON: No objection.

12 THE COURT: Six is admitted.

13 (Exhibit 6 admitted into evidence.)

14 BY MR. MALONE:

15 Q. And, Ms. Brown, are you familiar with the legal
16 limit of marijuana for driving here in Nevada?

17 A. Yes.

18 Q. Okay. And what is that?

19 A. Two nanograms per milliliter.

20 Q. Excuse me?

21 A. Two.

22 Q. Two. So at the time of his death, would it be
23 your understanding that Harry's THC level was ten times the
24 legal limit?

1 A. Yes.

2 Q. Okay.

3 THE COURT: That's an interesting phrase.

4 MR. MALONE: Excuse me?

5 THE COURT: I said that's an interesting phrase.

6 There's no such thing as a legal limit there.

7 MR. MALONE: Or presumpt- -- I can rephrase.

8 BY MR. MALONE:

9 Q. Nevada has DUI laws that set presumptive limits

10 for drugs and alcohol, correct, for the purpose of driving?

11 A. Not presumptive.

12 Q. Presumptive.

13 Not presumptive?

14 A. No.

15 Q. Okay. How would you -- well, you were --

16 MR. MALONE: I would have the Court take judicial

17 notice of NRS 484C.110. And I do have a copy of the statute.

18 So --

19 THE COURT: Sir, there's a limit as to how much

20 marijuana you can have in your bloodstream when you drive.

21 Okay?

22 MR. MALONE: That -- that's the question.

23 BY MR. MALONE:

24 Q. How much blood -- how much marijuana can you have

1 in your bloodstream at the time that you're driving?

2 A. Less than two nanograms per milliliter.

3 Q. Okay. Thank you.

4 MR. MALONE: Madam Clerk.

5 (Exhibit 7 marked for identification.)

6 MR. MALONE: Your Honor, I don't think I asked
7 for admission of the last exhibit.

8 THE COURT: Which number?

9 THE COURT CLERK: It's 6, and it was admitted.

10 THE COURT: Six was admitted.

11 MR. MALONE: Six was admitted. Thank you. I --

12 THE COURT: We are up to speed.

13 MR. MALONE: Okay.

14 THE COURT: Somewhat.

15 MR. MALONE: I'm moving a little faster.

16 THE COURT: You're doing fine.

17 BY MR. MALONE:

18 Q. Are you familiar with this document? You can
19 just, I think, look at the top and it will refresh your
20 recollection, perhaps.

21 A. The paramedic's report from when they were
22 called.

23 Q. And was that produced to you in discovery?

24 A. Yes.

1 Q. Okay. And if I can have that back for one
2 moment, ma'am.

3 Are you familiar with the contents of the report?

4 A. Um --

5 Q. Let me rephrase -- let me withdraw that question.

6 In this report, it reports that Ms. Leibel
7 informed paramedics that Harry Leibel had been threatening to
8 commit suicide. Correct?

9 A. I don't recall.

10 Q. If you can read the first paragraph and see if
11 that refreshes your recollection.

12 THE COURT: This is exhibit what?

13 MR. MALONE: Seven, I believe.

14 MR. JOHNSON: And the first paragraph of page 3,
15 is that what we are referring to?

16 THE COURT: It's not in evidence?

17 MR. MALONE: Your Honor --

18 BY MR. MALONE:

19 Q. So you recognize this is a document you have
20 relied on in discovery?

21 MR. MALONE: I ask that it be admitted.

22 THE COURT: Objection?

23 MR. JOHNSON: Hearsay, Your Honor.

24 THE COURT: Overruled. It's admitted.

1 (Exhibit 7 admitted into evidence.)
2 THE WITNESS: Yes.
3 BY MR. MALONE:
4 Q. So, let me -- let me ask the question again.
5 Based on this report or according to this report, Ms. Leibel
6 reported to the paramedics that her husband had been
7 threatening suicide?
8 A. Yes.
9 Q. Thank you.
10 MR. MALONE: Did I hand back the copy of 7 to
11 you?
12 THE COURT CLERK: I don't have 7.
13 MR. MALONE: Okay. Did we mark 7?
14 THE COURT CLERK: We did. She doesn't have it?
15 MR. MALONE: Ma'am, do you have 7.
16 THE WITNESS: I don't have 7.
17 MR. MALONE: Your Honor, do you want me to find 7
18 before we proceed?
19 Do you have 7?
20 MR. JOHNSON: I think you're holding 7.
21 MR. MALONE: Did we mark this?
22 THE COURT CLERK: On the back. Is it on the
23 back?
24 THE WITNESS: Check Mr. Mausert.

1 MR. MALONE: Mr. Mausert, do you have what's been
2 marked as 7?
3 THE COURT CLERK: It would be on the back of the
4 document.
5 MR. MAUSERT: No, it's not.
6 MR. MALONE: Ms. Brown, you do not have 7?
7 THE DEFENDANT (In English): I see you have it in
8 this file. Yes, here.
9 MR. MALONE: I apologize, Your Honor. I would
10 ask for the admission of 7.
11 THE COURT CLERK: It's already been admitted.
12 THE COURT: It's already been admitted, sir.
13 MR. MALONE: Thank you. I --
14 Ma'am, can I have this marked as 8.
15 (Exhibit 8 marked for identification.)
16 BY MR. MALONE:
17 Q. All right. I'm going to have -- hand you what's
18 been marked as 8. Would you review that and see if you're
19 familiar with that document?
20 A. I -- it appears to be one of the investigative
21 reports from the Leibel case.
22 Q. Okay. And that was produced to you during
23 discovery?
24 A. Yes.

1 Q. Okay. And I'm going to draw your attention to
2 page 3, paragraph 4. And is it your understanding that that
3 paragraph states that Ms. --
4 MR. JOHNSON: Your Honor, the exhibit hasn't been
5 admitted yet.
6 MR. MALONE: Oh, I would ask it be admitted.
7 THE COURT: Sustained.
8 MR. MALONE: I would ask that Exhibit 8 be
9 admitted. But --
10 THE COURT: And, again, it's offered just for the
11 information that Ms. Brown had, not for the truth of its
12 contents; is that right?
13 MR. MALONE: Correct, Your Honor.
14 THE COURT: Objection is overruled. It's
15 admitted.
16 (Exhibit 8 admitted into evidence.)
17 BY MR. MALONE:
18 Q. So, I'm just going to ask you to read the first
19 two sentences of paragraph 4 -- 5.
20 A. Five?
21 Q. One, two, three -- full 4.
22 A. Full four. "I asked Leibel if the deceased had
23 ever threatened suicide in the past. She stated the deceased
24 on -- had, on several occasions, made suicidal statements."

1 Q. Next sentence?

2 A. "She stated the deceased had gone as far as

3 pointing a loaded gun at his own head."

4 Q. Thank you. Now, if I can have the exhibit back.

5 So, Ms. Brown, you had several different

6 potential witnesses who described suicidal behavior on the

7 part of Harry Leibel. Correct? Okay.

8 A. That was Tatiana's statement.

9 Q. That -- you had several statements from different

10 witnesses that explained that Harry Leibel had exhibited

11 suicidal behavior in the past?

12 A. I had several statements from several people.

13 Q. You had several statements from different

14 potential witnesses that described suicidal behavior by Harry

15 Leibel?

16 A. Yes.

17 Q. Thank you. And you didn't call any of those

18 witnesses. Right?

19 MR. JOHNSON: I didn't hear that, Your Honor.

20 THE COURT: Do you have an answer to that

21 question? A verbal answer, ma'am?

22 THE WITNESS: I didn't call the witnesses you've

23 mentioned, no.

24 ///

1 BY MR. MALONE:

2 Q. Okay. Did you call -- you didn't call any

3 witnesses that described suicidal behavior on the part of

4 Harry Leibel, did you? Yes or no?

5 A. I can't recall.

6 Q. You can't recall what witnesses you called in

7 your trial?

8 A. Not specifically, no.

9 Q. We have a record of the trial, though. Correct?

10 A. Excuse me?

11 Q. We do have a record of the trial.

12 A. You have my record of the trial.

13 Q. I said "we." We -- the Court would have a record

14 of the trial and what witnesses were called.

15 A. The Court would have a record, yes.

16 Q. Thank you.

17 MR. MALONE: Permission to treat Ms. Brown at

18 this time as a hostile witness.

19 THE COURT: Well, sir, I've already told you you

20 can question her as you want.

21 MR. MALONE: Thank you.

22 THE COURT: And there's no objection. So I'm not

23 going to make rulings forecasting what may or may not happen.

24 MR. MALONE: Thank you.

1 THE COURT: So go ahead and ask your questions as
2 you want. And I've explained the position that you and
3 Ms. Brown have relative to this proceeding.
4 BY MR. MALONE:
5 Q. So you've already testified as well that you did
6 not retain an expert to determine Harry Leibel's psychological
7 condition prior to his death. Correct?
8 A. Correct.
9 Q. Okay. And that witness would have been able --
10 it's your understanding of the law, isn't it, that that
11 witness would have had access to any information that you
12 wanted them to review. Correct?
13 A. Yes.
14 Q. Including hearsay statements?
15 A. Yes.
16 Q. Out-of-court statements?
17 A. Yes.
18 Q. And you're familiar with -- familiar with all of
19 the statements that we've just discussed this morning.
20 Correct?
21 A. Yes.
22 Q. Those were at your fingertips or you had access
23 to them?
24 A. Yes.

1 Q. Correct?

2 Okay. Do you recall bringing a motion in limine

3 to prevent the introduction of prior bad acts in this case?

4 A. Yes.

5 Q. And there was a court ruling on that?

6 A. Yes.

7 Q. Pursuant to stipulation --

8 A. I don't --

9 Q. -- by the -- okay. But you did have an order

10 preventing the interdiction of -- introduction of prior bad

11 act evidence or other act evidence in the trial without the

12 Petrocelli hearing. Correct?

13 A. Yes.

14 Q. Okay. So that meant that that -- any evidence of

15 that type -- and you're familiar with those forms of evidence.

16 Correct?

17 A. Yes.

18 Q. Okay. Sharon Oren's testimony that -- you recall

19 his testimony?

20 A. Yes.

21 Q. Okay. And you recall having a police report of

22 his testimony?

23 A. Yes.

24 Q. Okay. Not his testimony. You had a police

1 report that described his statement. Correct?

2 A. Yes.

3 Q. Now, it's correct that he testified very

4 differently at trial from what he had reported to the police.

5 Correct?

6 A. He made -- testified to --

7 Q. Yes or no, ma'am.

8 A. Yes.

9 Q. Thank you.

10 Do you have a clear recollection of what his

11 testimony was?

12 A. In general, yes.

13 Q. Okay. So, he testified that he warned Harry

14 Leibell at -- on two different occasions that he thought she

15 would kill him?

16 A. Yes.

17 Q. And that testimony came as a surprise to you?

18 THE COURT: "He thought she." Would you, please,

19 just for the record, use names.

20 BY MR. MALONE:

21 Q. That Sharon Oren -- and Sharon Oren is a gun

22 dealer in Reno; is that correct?

23 A. Yes.

24 Q. Okay. And he knew the Leibells?

1 A. Yes.

2 Q. He knew them from selling them guns?

3 A. Yes.

4 Q. And you're aware that he sold the gun that took

5 Harry's life --

6 A. I don't --

7 Q. -- to Harry?

8 A. I don't recall specifically that, no.

9 Q. Okay. But he had sold them numerous guns?

10 A. Yes.

11 Q. Do you recall how many guns were in the Leibel

12 house?

13 A. Lots.

14 Q. Lots. Over 30. Correct?

15 A. Yes.

16 Q. A significant number?

17 A. Yes.

18 Q. And they were everywhere? Well, they were --

19 they were throughout the house. Correct?

20 A. I recall two locations, yes.

21 Q. Do you recall a practice that Harry -- that you

22 learned -- did you ever receive information that Harry would

23 hide or secret guns around the house in clocks and other

24 places?

1 A. I don't recall that.

2 Q. But you were able to -- you do know that there
3 were a large number of guns?

4 A. Yes.

5 Q. Okay. So, is your -- is it your understanding
6 that Mr. Oren became social friends with the Leibels?

7 A. I don't recall.

8 Q. Okay. But he did have a business relationship
9 with them?

10 A. Yes.

11 Q. Okay.

12 MR. MALONE: Your Honor, I -- this is part of the
13 tran- -- the rough draft transcript that I was -- that was
14 prepared in this case. I don't know if I should mark it as an
15 exhibit because it's already part of the Court record, but it
16 is a directed shot of what I think is important in that
17 transcript. Should I mark it as an --

18 THE COURT: Why don't you do that --

19 MR. MALONE: Okay.

20 THE COURT: -- and show it to counsel when you do
21 that.

22 MR. MALONE: And for the record, this has been
23 marked as Exhibit 9.

24 (Exhibit 9 marked for identification.)

1 MR. MALONE: For the record, this is a rough
2 draft jury trial transcript from Friday, January 30th, 2015.
3 Your Honor, do you have an objection --
4 THE COURT: Mr. Johnson, do you -- do you agree
5 that that's part of the record in this case?
6 MR. JOHNSON: It is part of the record,
7 Your Honor. Of course, it's not the complete record of the
8 testimony.
9 THE COURT: No, but -- but -- and we have the
10 complete record, obviously, but he wants to refer to part of
11 it and -- just to keep the record clear. Do you have any
12 objection with -- to this?
13 MR. JOHNSON: No, Your Honor. My understanding
14 is that the complete transcript was already admitted as an
15 exhibit by either myself or you, and so you already have
16 access to it.
17 THE COURT: Yes, and I -- and I do. But he wants
18 to point out just one part, and this --
19 MR. JOHNSON: And I have no objection to that,
20 Your Honor.
21 THE COURT: This will narrow it down. So go
22 ahead.
23 (Exhibit 9 admitted into evidence.)
24 MR. MALONE: Thank you, Your Honor. And,

1 Your Honor, do you have any objection to me reading that part
2 of the transcript in?

3 THE COURT: Well, now it's admitted. And so you
4 can question the witness.

5 MR. MALONE: May I read it?

6 THE COURT: Go ahead and let me see if there's an
7 objection, see how that works.

8 BY MR. MALONE:

9 Q. Are you also -- And this is on line 10, page 35:

10 "Question: Are you also familiar with Tatiana
11 Leibel?" That is a question from the prosecutor.

12 "Answer: I am."

13 "Question: And how familiar are you with her?"

14 "Answer: Through Harry. So, you know, I met
15 both of them at the same time, and most of our interaction,
16 majority of them were together through the family lives."

17 "Question: Did Harry's death surprise you?"

18 "Answer: No."

19 "Question: Were you becoming," hyphen, "did you
20 have concerns for Harry during the latter portions of his
21 life?"

22 Then, "MS. BROWN: Objection as to --"

23 "THE COURT: What is the objection?"

24 "MS. BROWN: As to his concerns, the relevance of

1 his concerns."

2 Now, Ms. Brown, you didn't -- had no idea what
3 was going to come next, did you?

4 A. Not really, no.

5 Q. Okay. But your Spidey sense or your -- the hairs
6 on the back of your neck were going up. Right?

7 A. Yes.

8 Q. Okay.

9 "THE COURT" --

10 THE COURT: Figuratively, sir. Go ahead.

11 MR. MALONE: Okay.

12 BY MR. MALONE:

13 Q. "THE COURT: The relevance? Okay. Why is that
14 relevant?

15 Then this is the prosecutor:

16 "MR. GREGORY: Because he is going to be,"

17 hyphen, "he's going to give background as to what his

18 concerns were that shed light on what was going

19 on in Harry's life that he's aware of."

20 Ruling by the Court: "I'll overrule it, but

21 you're going to have to tie it in."

22 Okay. I'm going to skip ahead a little bit.

23 MR. JOHNSON: I'm going to object to his reading

24 the rest of the transcript since there's no question actually

1 pending.

2 MR. MALONE: Well, I'm going -- it can form the
3 basis of a question, Your Honor.

4 THE COURT: I'm sure there's going to be a
5 question somewhere.

6 MR. MALONE: Okay.

7 BY MR. MALONE:

8 Q. Would it be -- well:

9 "Were you having concerns for Harry towards the
10 end of his life?"

11 "ANSWER: Yes. Yes, I did."

12 "QUESTION: What types of concerns?"

13 "ANSWER: I was pretty -- "I pretty much was
14 afraid for his life," answer. And there's no
15 objection after that.

16 Okay. Why --

17 "QUESTION: Okay. Why was that?"

18 "ANSWER: Unfortunately, seeing what was going on
19 in his life in the past, I would say almost
20 couple of years, and that I've seen with my eyes
21 and I heard from him, unfortunately," comma, "and
22 the writing was on the wall."

23 Then intersect -- interruption by a juror saying
24 they're having -- "I am having trouble hearing what he's

1 saying."

2 "Sir, you're going to have to sit up, okay" --
3 this is the Court -- "up, okay, and put your --
4 understand that there's a microphone right in
5 front of you. And I'm going to ask you to speak
6 a little bit louder, if you would, please."

7 "THE WITNESS: Sure."

8 "THE COURT: Thank you. Would you repeat your
9 answer?"

10 "THE WITNESS: Yes. Unfortunately, because of my
11 interaction with Harry in the past couple of
12 years, the writing was pretty much on the wall,
13 so..."

14 "QUESTION (BY MR. GREGORY:) Explain that. I
15 don't know what that means."

16 "ANSWER: Looking at the relationship between
17 Harry and Tatiana, conversations I had with Harry
18 regarding their marriage and their current
19 situation, like I said, the concerns were
20 definitely there."

21 "QUESTION: What were you worried about was going
22 to" -- "what were your" -- there's a typo or --
23 "What were your worried about was going to
24 happen?"

1 Objection by Ms. Brown: "Objection. Relevance."
2 Sustained by the Court: "I'm going to sustain
3 that and not on the relevance, but it's
4 speculation. And I'm not going to," hyphen,
5 "you're going to have to go to some specific
6 incident or something like that."
7 Ms. Brown, I'm going to ask you, at that point,
8 did you think that perhaps a hearing outside the presence of
9 the jury would be warranted?
10 A. I didn't think about it, no.
11 Q. No? You didn't react to that? You -- you
12 understand what you could have done. Right? That you could
13 have objected and asked for --
14 MR. JOHNSON: Objection. Leading.
15 MR. MALONE: I'm leading.
16 THE COURT: That's --
17 MR. JOHNSON: Well, I --
18 THE COURT: Wait a minute. Wait a minute.
19 That's -- the objection to leading is overruled. And, so --
20 MR. JOHNSON: Objection to form of the question,
21 Your Honor. It's -- he's making a statement, not a question.
22 THE COURT: It's a question.
23 Go ahead.
24 You're overruled.

1 BY MR. MALONE:

2 Q. As a lawyer, you could have asked for a hearing
3 outside the presence of the jury. Correct?

4 A. I don't know that I could have or not.

5 Q. You couldn't -- okay. That stands on its own.
6 You didn't know that you could do that?

7 A. I know there are situations where you can ask for
8 a --

9 Q. I just -- I think you've answered. Thank you.

10 THE COURT: Well, sir, you also then made, you
11 know, your own commentary and editorial comment after that.

12 MR. MALONE: And I apologize to the Court. I
13 think that that -- I was a little surprised. And that was my
14 reaction and I would withdraw that. That's not my --

15 THE COURT: She's given an answer, and maybe
16 there will be some cross-examination on that point, maybe
17 there won't. We'll see.

18 MR. MALONE: I'll -- I'm going to reask the
19 question.

20 BY MR. MALONE:

21 Q. You're aware you could ask for -- ask for a
22 hearing outside the presence of the jury. Correct?

23 A. I'm aware in situations you can ask for a hearing
24 outside the presence of the jury.

1 Q. Are you aware -- do you believe that you could
2 have -- could have -- could have, meaning you had an option at
3 that point in time, to ask for a hearing outside the presence
4 of the jury?

5 A. I -- I -- I'm not sure I'm following your
6 question.

7 Q. Do you believe that when -- do you believe
8 that -- there has been a series of questions asked up until
9 that point. Correct?

10 A. Correct.

11 Q. And you've testified that those caused you some
12 concern?

13 A. Yes.

14 Q. Okay. And that means that you felt that -- that
15 there might be some bad evidence coming. Correct?

16 A. Yes.

17 Q. Okay. And you had a motion in limine that had
18 been granted?

19 A. As to bad acts concerning Tatiana.

20 Q. Well, yes. Bad acts.

21 A. Concerning Tatiana's bad acts.

22 Q. Well, are you aware that -- that further on -- do
23 you recall the -- how the testimony went on?

24 A. And that's why I was objecting.

1 Q. For relevance.

2 Okay. What I'm specifically asking -- you've
3 answered -- I don't know if you've directly answered me on
4 whether or not you felt you could ask for a hearing outside
5 the presence of the jury to explore this issue outside the
6 presence of the jury.

7 A. No, I was not thinking of a hearing outside the
8 presence of the jury in that context.

9 Q. That wasn't my question, though. My question was
10 were you aware that you had the option of asking for a hearing
11 outside the presence of the jury?

12 A. I don't know that I did.

13 Q. Okay. This was a dangerous situation for an
14 attorney to be in. Right?

15 A. Yes.

16 Q. Okay. What came next was nothing that you knew
17 about. Right?

18 A. Right.

19 Q. It wasn't in -- you had a statement from Sharon
20 Oren. Correct?

21 A. Correct.

22 THE COURT: I apologize. I -- I -- that
23 statement -- that question threw me off. "It wasn't in -- you
24 had a statement." Would you repeat your question.

1 BY MR. MALONE:

2 Q. There was no -- okay. It's correct that,
3 eventually, Sharon Oren testified that he warned Harry twice
4 that Tatiana was going to kill him?

5 A. Yes.

6 Q. Okay. And you had no foreknowledge of that
7 statement or testimony by Sharon Oren?

8 A. Correct.

9 Q. It wasn't in the Douglas County Sheriff's Office
10 report?

11 A. Correct.

12 Q. Okay. So -- well, let's go on.

13 I'm going to go back to line 19:

14 "THE COURT: I'm going to sustain that, but not
15 on the relevance, but it's speculation. And I'm
16 not going to -- you're going to have to go to
17 some specific incident or something like that."

18 And then, "QUESTION (BY MR. GREGORY): Okay.

19 Did you give Harry any warnings?"

20 Okay. You didn't object there. Correct?

21 A. No.

22 Q. Okay. The answer was, "Yes."

23 "QUESTION: What were those warnings?"

24 No objection there. Right?

1 THE INTERPRETER: I'm sorry, Counsel. Again, if
2 you could just slow down. Thank you.
3 BY MR. MALONE:
4 Q. No objection at that point. Correct?
5 A. Correct.
6 Q. Okay. So I'm going to repeat line 2 of page 38:
7 "What were those warnings?"
8 "ANSWER: I told him that he basically needs to
9 get away from Tatiana, lock the door, get a
10 divorce attorney, because I think she will kill
11 him."
12 And then you, "MS. BROWN: Objection."
13 Then, "THE COURT: It is -- okay. It is
14 important that if you want to object, that you need to state a
15 legal basis for that objection as opposed to just the fact
16 that you object to it. So do you have a legal basis that you
17 would like to object to that testimony on?"
18 "MS. BROWN: Again, it's relevance."
19 Is that correct?
20 A. Yes. And speculation.
21 Q. So you had -- and you had a ruling from the Court
22 not allowing prior bad act evidence in without a Petrocelli
23 hearing. Right?
24 A. As to Tatiana.

1 Q. Well, there's been testimony from Mr. Oren at
2 that point in time that he has felt a need to warn his friend
3 that his wife is or will or may kill him. Right?

4 A. Yes.

5 Q. Okay. So it's a reference to a danger that
6 Mr. Oren feels is posed by Tatiana?

7 A. Yes.

8 Q. Okay. And at no point in time did you ask for a
9 hearing outside the presence of the jury?

10 A. No.

11 Q. Okay. And at that point in time, if you had
12 asked questions of Mr. Oren or later on, it could have just
13 gotten deeper and worse for you. Correct?

14 A. Yes.

15 Q. So you let it go?

16 A. Yes.

17 Q. But if you had gotten a hearing outside the
18 presence of the jury, if your objection had been -- you could
19 have objected, "Your Honor, this appears to be a violation of
20 the Court's previous order requiring Petrocelli hearings
21 before the introduction of prior bad act evidence" -- you
22 would have had a hearing outside the presence of the jury
23 where you would have been -- had been -- you would have been
24 able to explore that and demonstrate to the Court --

1 MR. JOHNSON: Objection.
2 MR. MALONE: -- potentially --
3 MR. JOHNSON: Compound, compound, compound
4 question.
5 MR. MALONE: Yeah. Okay. There wasn't --
6 THE COURT: Sustained.
7 MR. MALONE: Okay. I withdraw it. I withdraw
8 it. It was long and rambling.
9 BY MR. MALONE:
10 Q. There wasn't an objection for violation of the
11 prior bad act order. Correct? Yes or no?
12 THE COURT: The record reflects there was not an
13 objection based on that.
14 THE WITNESS: Correct.
15 BY MR. MALONE:
16 Q. And let's just be clear: You didn't know this
17 was coming. Right?
18 A. Correct.
19 Q. Okay. Was it something you would have liked to
20 keep out as an experience -- as an experienced defense
21 attorney, is this testimony that you would have liked to keep
22 out?
23 A. Yes.
24 Q. Okay. That witness -- it's fair to say that that

1 witness called your client a potential murderer. Correct?

2 A. Correct.

3 Q. When she was on trial for murder?

4 A. Correct.

5 Q. Okay. So that testimony directly related to
6 Ms. Leibel. Correct?

7 A. Correct.

8 MR. MALONE: Too many copies.

9 THE COURT: Are you done with that one?

10 MR. MALONE: Oh, yes.

11 THE COURT: Let me have it. Oh, I want the real
12 exhibit.

13 MR. MALONE: This is the real exhibit.

14 THE COURT: Okay. In the future, you're going to
15 only have the witness testify from the real exhibit and not
16 copies thereof.

17 MR. MALONE: I apologize. I handed the wrong one
18 over.

19 BY MR. MALONE:

20 Q. Do you recall a witness that was called by the
21 State by the name of Lawrence Kerney?

22 A. No. No.

23 Q. No. Okay.

24 MR. MALONE: I apologize, Ms. Brown, I'm going to

1 back up and go back to Mr. Oren.

2 MR. MALONE: Ma'am, I'd ask this to be marked as
3 the next.

4 (Exhibit 10 marked for identification.)

5 MR. MALONE: Exhibit 10.

6 BY MR. MALONE:

7 Q. Ms. Brown, I'm handing you a document that's been
8 marked as Exhibit 10.

9 A. Okay.

10 Q. And this is as Douglas County Sheriff's Office
11 report?

12 A. Yes.

13 Q. And it's an interview with the neighbors of the
14 Leibels -- oh, no. Sorry. Sorry. Sorry. Sorry. Sorry.
15 Sorry.

16 This is an interview of Sharon Oren. Correct?

17 A. Correct.

18 Q. Okay. And you had an opportunity to review this
19 before trial?

20 A. Yes.

21 Q. Okay. And this is a report that you referred to
22 in your earlier testimony?

23 A. Yes.

24 Q. And this is a report that does not mention any

1 intention or opinion that Ms. Leibel --

2 THE COURT: Wait a minute.

3 MR. JOHNSON: Your Honor, it needs to be admitted
4 first.

5 THE COURT: That's sustained.

6 MR. MALONE: I am sorry. Your Honor, I would ask
7 that it be admitted.

8 MR. JOHNSON: No objection.

9 BY MR. MALONE:

10 Q. Okay. This is a document --

11 THE COURT: Ten?

12 THE COURT CLERK: Yes.

13 THE COURT: Ten is admitted.

14 (Exhibit 10 admitted into evidence.)

15 BY MR. MALONE:

16 Q. -- you relied upon in the preparation of the
17 trial?

18 A. Yes.

19 Q. Okay. And this is a report that does not mention
20 that Sharon Oren had concerns that Tatiana Leibel could
21 shoot -- kill Harry. Correct?

22 A. Correct.

23 Q. Okay. Thank you.

24 Now, I'm going to go back to my question about

1 the -- about Lawrence Kerney.

2 A. Okay.

3 Q. Okay? Are you -- were you familiar with any
4 reports regarding a canvass of the Leibels' neighbors?

5 A. I recall that it was done.

6 Q. Okay. Do you recall a neighbor testifying at
7 trial that he heard an argument between the Leibels?

8 A. I believe so, yes.

9 Q. Okay. And that neighbor did testify at trial?

10 A. I recall a neigh- -- neighbor testifying at
11 trial.

12 Q. Okay. One neighbor. Correct? One neighbor?

13 A. I recall a neighbor that testified at trial.

14 Q. Okay. And that neighbor, do you recall the
15 substance of the testimony?

16 A. Not specifically, no.

17 Q. In general?

18 A. Concerning an argument that he heard and -- an
19 attempt to make a statement concerning what was said.

20 Q. Do you recall when that argument was reported to
21 have taken place?

22 A. I don't.

23 MR. MALONE: Court's indulgence, please.

24 THE COURT: Certainly.

1 MR. MALONE: I'm going to ask that this be marked
2 as --

3 THE COURT CLERK: Eleven.

4 MR. MALONE: -- 11.

5 (Exhibit 11 marked for identification.)

6 BY MR. MALONE:

7 Q. Ms. Brown, are you familiar with this report?

8 THE COURT: Are you going to have an objection to
9 it?

10 MR. JOHNSON: I -- other than hearsay, no.

11 THE COURT: Okay. It's not offered for the truth
12 of the matter asserted therein, is it?

13 MR. MALONE: No, it is not.

14 THE COURT: So the objection is overruled and,
15 with no other objection, 11 is going to be admitted.

16 I'm going to tell you this right now: Counsel
17 are ordered to meet and confer during the lunch break to
18 review whatever exhibits either side has going forward so that
19 if there are not going to be objections, we can move through
20 foundation more quickly. And that's the order.

21 So go ahead.

22 MR. MALONE: Thank you, Your Honor.

23 THE COURT: I don't know how long that will take
24 you, but it will take whatever time you need to get it done.

1 Thank you very much.

2 MR. MALONE: Your Honor, I would ask that -- for
3 the admission of 11.

4 THE COURT: I already admitted it just now.

5 MR. MALONE: Thank you.

6 (Exhibit 11 admitted into evidence.)

7 BY MR. MALONE:

8 Q. Okay. I'm going to ask -- going to direct your
9 attention to page 2, bottom paragraph, starting with -- at 4,
10 5, 6 --

11 THE COURT REPORTER: I'm sorry --

12 THE INTERPRETER: I'm sorry, Your Honor. It's
13 really hard to hear.

14 THE COURT: You're voice got a little soft there,
15 sir.

16 MR. MALONE: At 4, 5, 6, "KENTWAY: We contacted
17 Lawrence Kerney."

18 Does that refresh your recollection as to who
19 testified at trial?

20 Your Honor, can I ask for the Court to take
21 judicial notice of Lawrence Kerney being a witness called by
22 the State at the trial of Tatiana Leibel?

23 MR. JOHNSON: No objection, Your Honor.

24 THE COURT: I would call that a must. Yes.

1 BY MR. MALONE:

2 Q. And, Ms. Brown, you can -- you can continue
3 reading, if you wish.

4 Mr. Kerney testified at trial that he heard an
5 argument --

6 A. Yeah. I --

7 Q. -- between the Leibels?

8 A. Yes. And I -- yes.

9 Q. Okay. Thank you. And you did not ask for a
10 Petrocelli hearing before the admission of Mr. Kearney's
11 testimony?

12 A. No.

13 Q. No.

14 Is it fair to say that the argument was used by
15 the State to show a negative light of the Leibels'
16 relationship?

17 A. That would probably be fair.

18 Q. Thank you.

19 MR. MALONE: I'm going to ask that this be marked
20 as 12.

21 THE COURT CLERK: Uh-huh.

22 (Exhibit 12 marked for identification.)

23 MR. JOHNSON: No objection to 12 being admitted,
24 Your Honor.

1 THE COURT: Thank you, sir. Twelve is admitted.

2 MR. MALONE: Thank you.

3 (Exhibit 12 admitted into evidence.)

4 BY MR. MALONE:

5 Q. At some point in time, did you receive
6 communications from the Russian consulate?

7 A. Yes.

8 Q. And those communications dealt with interpreter
9 issues in court?

10 A. There were several communications, and one of
11 them did deal with the interpreter problems.

12 Q. And that was the communication on January 13th,
13 2015. Correct?

14 A. Correct.

15 Q. And in that essentially -- let me -- I'll
16 paraphrase, but it said that --

17 THE COURT: Is that Exhibit 13?

18 MR. MALONE: That is Exhibit 13.

19 THE WITNESS: I have 12.

20 THE COURT CLERK: It's 12.

21 MR. MALONE: Oh, 12.

22 THE COURT: It's 12. Sorry. I apologize.

23 BY MR. MALONE:

24 Q. -- that you'd learned that Tatiana had contacted

1 the consulate about interpretation issues. Correct?

2 A. Her daughter had.

3 Q. Okay. Wait. I apologize. I believe that's

4 correct. Okay.

5 So you did learn that there had been a complaint

6 about translation?

7 A. Correct.

8 Q. Okay.

9 MR. MALONE: And, Your Honor, I know that this is

10 part of the Court record, but I would ask to mark and admit

11 the order regarding the motion in limine regarding uncharged

12 misconduct and collateral offenses. I don't need to admit it,

13 but it may be useful as it will be easily obtained by the

14 Court. You wouldn't have to look for it.

15 THE COURT: An order that I entered?

16 MR. MALONE: Correct. I can either admit it or

17 not.

18 MR. JOHNSON: Your Honor, it's already part of

19 the court record.

20 MR. MALONE: I -- I agree.

21 THE COURT: It is -- it is part of the record.

22 You can refer to it already.

23 MR. MALONE: I'm not going to refer to it. I

24 just --

1 THE COURT: Okay.

2 MR. MALONE: I didn't know if it would be
3 helpful.

4 If I can have one moment, please.

5 THE COURT: Yeah.

6 MR. MALONE: Got you.

7 BY MR. MALONE:

8 Q. During -- during your preparation for trial, you
9 did learn that Harry Leibel did not like to be left alone.
10 Correct?

11 A. Yes.

12 Q. He wanted Tatiana to be with him?

13 A. Yes.

14 Q. Okay. And that he would get agitated or upset if
15 she were to leave for a trip, say?

16 A. Yes.

17 Q. Okay. And he wasn't allowed -- he wasn't able to
18 go on, say, a drive to San Diego?

19 A. I don't know about abilities so much as not
20 wanting to.

21 Q. Okay. Not wanting to.

22 And it's your understanding that part of that not
23 wanting to was based on his medical conditions?

24 A. That's a possibility, yes.

1 Q. Well, you -- you learned that he had bloody
2 stool. Correct?
3 A. Yes.
4 Q. That he had bloody urine?
5 A. I don't recall the bloody urine..
6 Q. No? Do you recall the statement by Lana Raymo?
7 THE INTERPRETER: I'm sorry. "Do you recall" --
8 MR. MALONE: The statement by Lana Raymo
9 regarding bloody urine.
10 THE WITNESS: Not right off the top of my head.
11 BY MR. MALONE:
12 Q. And you knew he had kidney stones?
13 A. Yes.
14 Q. And you knew he was in what's been described by
15 other -- by potential witnesses as constant pain, that he was
16 in constant pain?
17 A. Yes.
18 MR. MALONE: Court's indulgence for one moment,
19 please.
20 THE COURT: Absolutely.
21 BY MR. MALONE:
22 Q. You learned during your preparation for trial
23 that Harry had not had contact with his biological daughter.
24 Correct?

1 A. For a period of time, yes.
2 Q. About five years?
3 A. Yes.
4 Q. Is that correct?
5 And he had grandchildren by that daughter?
6 A. I believe so.
7 Q. And what was your understanding on the basis for
8 that -- there was a break at some point.
9 I withdraw the previous questions.
10 THE COURT: Okay. Start over.
11 BY MR. MALONE:
12 Q. Is it your understanding that there was an
13 acrimonious break five years before his death?
14 A. Yes.
15 Q. Okay. Do you recall learning that a letter had
16 been written by Cheron -- his daughter's name -- his
17 biological daughter's name was Cheron Bartee. Correct?
18 A. Yes.
19 Q. Or is Cheron Bartee.
20 A. Yes.
21 Q. Do you recall receiving information that she had
22 written him a letter saying she hoped he died?
23 A. I remember a letter. I --
24 Q. Like that?

1 A. Yes.

2 Q. Okay. Very close to that?

3 A. Yes.

4 Q. And then it's your -- is it your understanding
5 that they did not have any communication for the next five
6 years?

7 A. Yes.

8 Q. And they never had any -- they never met again
9 for five years?

10 A. That was my understanding, yes.

11 Q. Okay. And you recall that the break was
12 partially attributed to her relationship? It was a marriage?

13 A. Yes.

14 Q. Okay. And did you learn that he objected to her
15 marrying a person of African American descent?

16 A. Yes.

17 Q. Okay. You learned that his relationship with his
18 son Justin was better?

19 A. Yes.

20 Q. Okay. And they would meet about once a year?

21 A. Yes.

22 Q. It would be fair to say he was isolated from his
23 biological children. Correct? Somewhat?

24 A. Somewhat, yes.

1 Q. Totally from Cheron?
2 A. Yes.
3 Q. And not so many meetings with Justin?
4 A. Yes.
5 Q. Okay. And you learned during the course of your
6 preparation that Harry really didn't like to be left alone.
7 Right?
8 MR. JOHNSON: Asked and answered.
9 THE WITNESS: Yes.
10 THE COURT: Sustained.
11 MR. MALONE: Thank you.
12 BY MR. MALONE:
13 Q. Did you ever check with a psychologist or a
14 psychiatrist whether that posed a psychological fear for
15 Harry?
16 A. No.
17 Q. Okay. That maybe that, in coordination with his
18 pain -- you would say he socially -- you learned that he had
19 been -- that he was socially isolated to a certain extent.
20 Right?
21 A. I don't -- I don't recall that being the
22 situation.
23 Q. Okay. You don't recall the statements of Hedrick
24 saying that he didn't get out?

1 A. But I was familiar with the friendships they did
2 have.
3 Q. Okay. But that those friendship -- but Harry had
4 remained at home more over the previous year. Correct?
5 A. Yes.
6 Q. Okay. And that was something that could have
7 been explored with a psychiatrist. Right?
8 A. I didn't see it -- I didn't see him as isolated.
9 Q. Okay. Chris Hedrick said that he was isolated
10 and not -- he spent too much time alone. Correct?
11 A. I don't recall if -- Chris Hedrick may have said
12 that.
13 Q. Okay. So we have -- he self-medicated, right,
14 with marijuana?
15 A. Yes.
16 Q. He had expressed suicidal thoughts. Correct?
17 A. Right.
18 Q. You had information regarding that?
19 A. Yes.
20 Q. Correct?
21 You had statements from his friends that said
22 that he appeared to be depressed or not happy?
23 A. From some of them.
24 Q. Uh-huh. And you had statements from some friends

1 that said he was really in pain? Friends and family.
2 A. Yes.
3 Q. Okay. And that that pain had been getting worse?
4 A. Yes.
5 Q. And that symptoms like bloody urination and
6 bloody stool had started coming?
7 A. Yes.
8 Q. And you knew that, in the previous six months, he
9 had been diagnosed with melanoma?
10 A. I recall a cancer.
11 Q. Yeah. Cancer on his nose. Correct?
12 A. Yes.
13 Q. So he had a reoccurrence of cancer?
14 A. Yes.
15 Q. Right? In the short time preceding his death?
16 A. Yes.
17 Q. Okay. And do you recall learning that the
18 bladder cancer and subsequent surgery were extremely traumatic
19 for him?
20 A. Yes.
21 Q. Okay.
22 MR. MALONE: Thank you. Pass the witness,
23 Your Honor.
24 THE COURT: Sir.

CROSS-EXAMINATION

BY MR. JOHNSON:

Q. Ms. Brown, what was your overall trial strategy for Tatiana's defense?

A. The -- more focusing on the bad police work.

Q. And what do you mean by that? What --

A. That there had been immediate determination that it was a homicide, that they didn't explore the options of a suicide.

Q. And let's start with the -- with these pretrial conferences. When you spoke with Tatiana, which language did you speak with her in?

A. English.

Q. And all of your meetings with her, what language did she communicate with you in?

A. English.

Q. And at any time during your conversations with you -- with her, did you ever reach an impasse where you couldn't communicate -- where you couldn't understand what she was saying or at least ask further questions to clarify what she was saying?

A. No.

Q. Did there ever reach a time where Ms. Leibel communicated to you that she wasn't able to understand what

1 you were saying?

2 A. There would be times where she would say, "I
3 don't understand," and then we could discuss it further.

4 Q. And after that, when she told you that, was there
5 any time where you couldn't clarify what you meant and she
6 still said she wasn't able to understand?

7 A. No.

8 Q. Was there any time during your attorney-client
9 meetings where -- was there any time during your
10 attorney-client meetings where Ms. Leibel ever asked for an
11 interpreter during those attorney-client meetings?

12 A. No. I had asked her that -- when we first met if
13 she would be -- feel more comfortable with an interpreter.
14 And she said no.

15 Q. Said no. Approximately how many times would you
16 say you met with her?

17 A. Between 50 and a hundred.

18 Q. And so during all 50 or a hundred times, you
19 never had a point --

20 THE DEFENDANT (In English): What?

21 BY MR. JOHNSON:

22 Q. -- where you reached an impasse and weren't able
23 to communicate?

24 A. No.

1 Q. Were her responses to your questions or
2 conversation what you would anticipate the response would be
3 if she understood the question?

4 A. Yes.

5 MR. MALONE: Objection.

6 Well, no. Never -- withdrawn.

7 THE COURT: Okay.

8 BY MR. JOHNSON:

9 Q. You applied for an interpreter after the
10 preliminary hearing; is that correct? Sorry. Sorry. You had
11 an interpreter at the preliminary hearing. Correct?

12 A. Correct.

13 Q. And then the case was bound over to District
14 Court. Right?

15 A. Correct.

16 Q. And at that time, you applied for appointment of
17 interpreter for all of the further proceedings after that; is
18 that correct?

19 A. Yes.

20 Q. And during that time, you actually -- in support
21 of your application, you filled out an affidavit; is that
22 correct?

23 A. Yes.

24 Q. And in that affidavit, you told the Court that

1 Ms. Leibel's primary language is Russian but she speaks
2 English as a second language. Correct?

3 A. Correct.

4 Q. And you told the Court that she speaks in
5 conversational English. Correct?

6 A. Correct.

7 Q. And you told the Court that she has difficulty
8 understanding some words and phrases. Correct?

9 A. Correct.

10 Q. And she often doesn't know the English word or
11 phrase.

12 A. Correct.

13 Q. Correct?

14 But you said in private conversation, we were
15 able to work through these difficulties. Correct?

16 A. Correct.

17 Q. But what was the reason that you wanted the
18 interpreter for the court proceedings?

19 A. Because there wouldn't be an opportunity, if she
20 didn't understand something, to stop the court proceedings so
21 that we could discuss it without breaking the flow of the
22 court proceedings.

23 Q. All right. Okay. And an interpreter was granted
24 for that?

1 A. Yes.

2 Q. And all of the court proceedings, a

3 Russian-to-English and English-to-Russian interpreter was

4 available. Correct?

5 A. There was one occasion when we were doing motion

6 hearings in this court where we used the telephone

7 interpreter, and that was the one that raised the problem with

8 the embassy.

9 Q. Okay. And so that's the one that's referred to

10 in Exhibit 12, the e-mail?

11 A. Yes.

12 Q. And so you were actually contacted by the Russian

13 embassy about that phone interpretation problem. Correct?

14 A. Yes. Because Tatiana could not understand that

15 clearly.

16 Q. And in response to the embassy's concern, you

17 actually said, "She actually speaks English quite well."

18 Correct?

19 A. Correct.

20 Q. Was there any time in your approximately 50 to a

21 hundred different meetings with her where you were concerned

22 that you might need an interpreter for your attorney-client

23 meetings?

24 A. No.

1 Q. If you had been concerned, would you have
2 requested an interpreter?

3 A. Yes.

4 Q. Do you recall how many -- so Ms. Armstrong was
5 the 250-appointed attorney?

6 A. Yes.

7 Q. And she was only there until after -- until the
8 preliminary hearing concluded. Correct?

9 A. Correct.

10 Q. And at that time, the State had said they are not
11 pursuing the death penalty and so she fell off the case?

12 A. Correct.

13 Q. And she was there for approximately a month?

14 A. Something like that, yes.

15 Q. Do you recall approximately how many times
16 Ms. Armstrong was present in your meetings?

17 A. I don't recall.

18 Q. And typically, when you're preparing for a
19 preliminary hearing, what's the focus of what you're trying to
20 prepare for at the preliminary hearing?

21 A. I'm not sure I understand the question.

22 Q. If -- if there is --

23 THE COURT: I don't know that there's typical
24 preparation in a preliminary hearing.

1 MR. JOHNSON: Sure.

2 THE COURT: And it may be quite different in a
3 drug possession case as opposed to a Category A, first-degree
4 murder.

5 MR. JOHNSON: I understand, Your Honor. I'll ask
6 a different question.

7 BY MR. JOHNSON:

8 Q. Do you recall during your conversations that
9 Ms. Armstrong was present for what your meetings centered
10 around?

11 A. Not specifically, no.

12 Q. Okay. Um, during those meetings that
13 Ms. Armstrong was present for, did you have any -- any
14 difficulty understanding Ms. Leibel?

15 A. No.

16 Q. Did she communicate to you she had any difficulty
17 understanding you?

18 A. No.

19 Q. Do you recall what language Ms. Leibel spoke with
20 her husband in?

21 A. I believe it was English.

22 Q. Do you recall whether Ms. Leibel went to -- had
23 any formal education after high school?

24 A. Yes. She was college-educated.

1 Q. And where did she go to school at?

2 A. She went to UNR.

3 Q. And do you recall what positions in the United
4 States that she had held, where she worked?

5 A. I believe that she was an intern at the
6 legislature at one point, state legislature.

7 Q. Okay. Now, did there come a point in time during
8 your attorney-client meetings where you discussed whether or
9 not it would be appropriate for Ms. Leibel -- you gave advice
10 to Ms. Leibel about whether or not she should testify?

11 A. We discussed it, yes.

12 Q. And is it true that you advised her that you
13 didn't think it was in her best interest to testify?

14 A. Correct.

15 Q. And is it true that -- that you thought that she
16 would be convicted if she testified?

17 A. My concern was more with the relation -- prior
18 bad act stuff is basically it.

19 Q. Sure. And did you have any concerns -- well,
20 first of all, were you aware there was allegations from her
21 ex-husband that they had entered into a sham marriage?

22 A. Yes.

23 Q. Did you have concern that that might --

24 MR. MALONE: Objection. Calls for -- this -- if

1 I could take the witness on voir dire?

2 Well, did you have --

3 THE COURT: Wait a minute.

4 MR. MALONE: My objection is it calls for
5 speculation regarding the ex-husband and whether or not that
6 would come directly into court without any pretrial hearings.
7 I mean, it -- it calls for speculation that, if she testified,
8 she would be impeached by any type of evidence like that that
9 couldn't have been prevented.

10 THE COURT: Well, here's what you all are going
11 to do. You can go ahead and voir dire the witness for a
12 moment --

13 MR. MALONE: Ma'am, did --

14 THE COURT: -- and I'll see if that really is
15 relevant.

16

17 VOIR DIRE EXAMINATION

18 BY MR. MALONE:

19 Q. Do you recall the name of the ex-husband?

20 A. No.

21 Q. Okay. Did you have any knowledge that he was set
22 to be called as a witness by the State?

23 A. He was on a witness list.

24 Q. He was on the witness list?

1 A. (The witness nods.)

2 Q. Was he in -- was he here in Northern Nevada, to
3 your knowledge?

4 A. Not to my knowledge.

5 MR. MALONE: Okay. Nothing further.

6 THE COURT: So you are withdrawing --

7 MR. MALONE: I'll withdraw the objection. We
8 can...

9 THE COURT: Sir, would you repeat your question,
10 please.

11 MR. JOHNSON: Yes, Your Honor.

12 THE COURT: Thank you.

13 CONTINUED CROSS-EXAMINATION

14 BY MR. JOHNSON:

15 Q. Did you have information -- were you provided
16 with information that Ms. Leibel's ex-husband had alleged that
17 they had entered into a sham marriage?

18 A. Yes.

19 Q. Did that enter into your decision to advise
20 Ms. Leibel not to testify?

21 A. That was one of the things.

22 Q. Did you receive information that there were
23 allegations that Ms. Leibel had engaged in fraud and
24 embezzlement with Harry's accounts?

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1 A. Yes.

2 Q. Did that information enter into your decision to
3 advise Ms. Leibel not to testify?

4 A. That was among one of the many things, yes.

5 Q. Did you receive information that allegations from
6 more -- one or more witnesses that Ms. Leibel had falsely
7 stated that she was Jewish?

8 A. Yes.

9 Q. Did that enter into your decision to advise
10 Ms. Leibel that she shouldn't testify?

11 A. Yes.

12 Q. Did you receive information that Ms. Leibel was
13 told by the -- the Pain Institute that she would no longer be
14 a patient because they were concerned that she was abusing
15 morphine?

16 A. Yes.

17 Q. Did that enter into your decision to advise
18 Ms. Leibel not to testify?

19 A. Yes.

20 Q. Was there anything else that entered into your
21 decision to advise Ms. Leibel that she -- you didn't think it
22 was in her best interest to testify?

23 A. There was a whole -- there was lots of
24 information that she was going to Reno quite often. Her

1 explanation had been, I -- even starting with the
2 investigators that she was doing graduate work at UNR. We did
3 not find any evidence that she was doing graduate work at UNR.
4 So it was a compilation of the mystery disappearance, plus
5 that she had led people to believe something was false.

6 Q. Did you receive any information about her
7 visiting pawn shops in Reno?

8 A. I knew there were pawn slips. There were casino
9 cards, things like that.

10 Q. And did you receive information about her pawning
11 some items from the home?

12 A. Yes, I do recall that.

13 Q. And did you receive information that she had been
14 cut off financially by Harry?

15 A. Yes.

16 Q. And did that play into your decision not to --
17 advise her not to testify?

18 A. Yes.

19 Q. Now, I wanted to talk for a moment about -- now,
20 we had some questions about Mr. Sharon -- Sharon Oren's
21 testimony, the gun dealer.

22 A. Yes.

23 Q. And there were some questions to you about prior
24 bad acts, the fact that Mr. Oren had said -- it was Exhibit 9

1 was actually admitted. But he made a statement -- he made a
2 statement to the effect of, "I thought she was going to kill
3 him"?
4 A. Correct.
5 Q. Is that a prior bad act?
6 A. No.
7 MR. MALONE: Objection. Calls for a legal
8 conclusion.
9 MR. JOHNSON: Your Honor, it goes to --
10 THE COURT: Well, in this witness's mind. So the
11 objection is overruled.
12 BY MR. JOHNSON:
13 Q. Why do you believe that's not a prior bad act,
14 the statement -- the opinion of Mr. Oren that he thought she
15 was going to kill him? Why did you believe that wasn't a
16 prior bad act?
17 MR. MALONE: Misstates the testimony. The
18 testimony was that he warned Harry twice that she was going to
19 kill him, as well as he thought that he was going to kill
20 him -- she was going to kill him.
21 THE COURT: Well, your objection is overruled.
22 Go ahead, ma'am.
23 THE WITNESS: Okay. I don't see it as a prior
24 bad act because it's, what -- what was in Mr. Oren's mind, not

1 what -- anything Tatiana had done.

2 BY MR. JOHNSON:

3 Q. And he didn't say that was Tatiana's statement,
4 did he?

5 A. No.

6 Q. He said that was what he believes, right?

7 A. Correct.

8 Q. So he didn't say anything about something that
9 Tatiana had did -- done that was bad?

10 A. Correct.

11 Q. So that didn't involve the motion in limine at
12 all?

13 A. No.

14 Q. Or the Court's ruling?

15 A. No.

16 Q. Approximately, how many cases would you say you
17 have done in your career either as a prosecutor or a defense
18 attorney? If you wanted to estimate. I don't want an exact
19 number.

20 A. Done as in...

21 Q. I'm sorry. As either -- how many cases have you
22 been either the lead prosecutor or the lead defense attorney
23 over your career?

24 A. Are you talking trials or just cases in general?

1 Q. Just cases in general.
2 A. Thousands.
3 Q. And how many would you say that you actually did
4 either a bench trial or a jury trial?
5 A. Couple hundred.
6 Q. And in addition to those, how many would you say
7 that you've observed or been a part of? In addition to all
8 the ones you said you did, you know --
9 A. Uh-huh.
10 Q. -- you observed or been a part of.
11 A. I -- I'm not sure what you mean.
12 Q. Maybe you were second chair. Maybe -- what was
13 your position as a prosecutor before you left the prosecutor's
14 office?
15 A. I was a deputy District Attorney for years. And
16 the last few years I was a chief criminal deputy.
17 Q. So you supervised other deputies in their --
18 THE COURT: And that was in the Washoe County
19 District Attorney's Office; is that correct?
20 THE WITNESS: Douglas.
21 THE COURT: Well, in Douglas. But you were up in
22 Washoe before that?
23 THE WITNESS: Previously, I was in Washoe.
24 Washoe.

1 BY MR. JOHNSON:

2 Q. Right. And in all of hundreds and thousands of
3 cases, have you ever done a psychological autopsy?

4 A. No.

5 Q. In all of those hundreds and thous- -- well, I --
6 hundreds or thousands of cases, had you ever seen someone else
7 do a psychological autopsy?

8 A. No.

9 Q. And that involves both attorneys you supervised?

10 A. Yes.

11 Q. And that involved your time at the Washoe County
12 DA's office?

13 A. Yes.

14 Q. And the Douglas County DA's office?

15 A. Yes.

16 Q. Now, we spoke a little bit -- or that you were
17 asked some questions a little about by Chaya Anna Leibel and
18 some of her --

19 THE COURT: Sir, I believe that's pronounced
20 "Haiana" [phonetic].

21 MR. JOHNSON: Chaya- -- I apologize, Your Honor.

22 BY MR. JOHNSON:

23 Q. But Chaya Anna --

24 THE COURT: It is spelled with a C-H, but it's

1 pronounced "Haiana."

2 MR. JOHNSON: It still is mostly my fault, as
3 you've -- recall from the past, Your Honor.

4 THE COURT: We'll get through it.

5 MR. JOHNSON: Chaya Anna Leibel.

6 BY MR. JOHNSON:

7 Q. Is there a reason you didn't call Chaya Anna as a
8 witness?

9 A. Ms. Henry was the one that talked to her most.
10 But her -- her impression was that she was -- felt closer to
11 Harry than she did to Tatiana. But also, she had information
12 concerning checks that Tatiana had forged. And we were
13 just -- there was lots of doors we were just afraid to open
14 up.

15 Q. You were asked some questions about Lana Raymo,
16 one of the other daughters. Were there some reason that you
17 didn't -- is there any reason that you didn't call her as a
18 witness?

19 A. She really didn't have that much more information
20 to add to what -- the main part was those texts between her
21 and Tatiana the morning that Harry was -- had died. There
22 wasn't much more around that that would have been helpful.
23 Also in the discovery, I had found one affidavit that she had
24 filled out saying that Tatiana -- and it was, I think, for a

1 purchase of a car or something. And it was an affidavit where
2 she was saying she was part of this company that Tatiana ran.
3 And there was a hundred thousand -- Tatiana had made a salary
4 of \$100,000 a year. In my opinion, it was a false affidavit;
5 so I didn't know if -- we had thousands of documents. I
6 didn't know if the DA had specifically noticed that one. But
7 it was just another thing.

8 Also, one of the big things was we were trying to
9 keep the focus on Tatiana as loving and always wanting to be
10 there to help Harry and take care of him. But with Tat- -- or
11 with Lana, the plan seemed to be that Tatiana, the morning
12 that Harry died, she was leaving to come visit Lana. And it
13 wasn't for a weekend; it was, "We are going to rent apartments
14 and then we are going to be away for months." So just that --
15 opening up that testimony kind of would blow away our "close
16 family."

17 Q. And you read through a lot of Exhibit 4 on direct
18 examination. And would it be fair to say that almost all of
19 the paragraphs here were relating Tatiana's hearsay to Lana?

20 A. Yes.

21 THE COURT: Ma'am, if you don't remember what
22 Exhibit 4 is, you're more --

23 MR. JOHNSON: I'm sorry. Exhibit 4 is her
24 statement that we went through.

1 THE WITNESS: Lana's statement.
2 THE COURT CLERK: That's --
3 THE WITNESS: Yes. That little triangle sign is
4 for Defendant. So Defendant was saying. "Defendant told her.
5 Defendant told her."
6 BY MR. JOHNSON:
7 Q. And did you anticipate any objections if you
8 tried to elicit those statements?
9 A. Yes.
10 Q. And did you think those would be sustained?
11 A. Yes.
12 Q. As an attorney with your experience, are you
13 familiar with the effects of marijuana on the human body?
14 MR. MALONE: Objection. I think that goes
15 outside her expertise unless he can establish some other
16 training.
17 THE COURT: I'm not sure being an attorney gives
18 you that frame of reference, sir.
19 MR. JOHNSON: Fair enough.
20 THE COURT: But --
21 MR. JOHNSON: Fair enough, Your Honor. I'll ask
22 a different question.
23 THE COURT: Okay.
24 ///

1 BY MR. JOHNSON:

2 Q. Do you know whether marijuana affects
3 coordination?

4 A. I wouldn't -- yes.

5 Q. Did you have any concerns that if you emphasize
6 marijuana, it would hurt your case?

7 A. In some degree, yeah.

8 Q. Was part of the State's argument that it was
9 impossible for Mr. Leibel to balance this weapon and shoot
10 himself?

11 A. Yes.

12 Q. Was it possible that emphasizing marijuana might
13 help their case?

14 A. Yes.

15 Q. Did you notice whether, in your interactions with
16 Ms. Leibel, she was engaged with what was going on during the
17 course of your meetings with her and during the trial?

18 A. Yes. And that -- when I would go to talk to
19 Tatiana, she had copies of all the discovery, and she would
20 have notes in the margins and -- so that we could sit down and
21 discuss the reports and was able to say, "But this person said
22 this, and this person said this, so they don't match."

23 And so she was very involved in examining reports
24 and comparing testimony and -- and things like that. So it

1 wasn't that she was merely sitting there going "Yes, yes,
2 yes." She was very active and involved in her case.

3 Q. And were you able to answer all of her questions
4 that she had from those notes in the margin?

5 A. Yes.

6 Q. So there were some questions to you about
7 Mr. Leibell being isolated?

8 A. Yes.

9 Q. You recall those?

10 A. Yes.

11 Q. Did you also have information that he had a lot
12 of friends that he hung out with?

13 A. Yes. I know -- I mean, just from the information
14 I had, Chris Hedrick visited him a lot. There was the
15 Rajacics. There were another couple and I can't remember
16 their name, but it was -- people were coming to the house if
17 he wasn't out socializing. But he had contacts either in
18 person, verbally by phone.

19 Q. And he was even friends with his gun dealer?

20 A. Yes.

21 Q. So --

22 A. Lots of gun dealers.

23 Q. -- he socialized with him all the time?

24 A. (The witness nods.)

1 Q. So you didn't believe that he was -- the
2 evidence -- what you knew showed that he was isolated?

3 A. I didn't -- I -- he may have stayed at home, but
4 I believe he had contact with the -- his friends.

5 Q. I want to talk a little bit for a moment about
6 Mr. Billau's -- you engaged Mr. Billau as an expert witness;
7 is that correct?

8 A. Yes.

9 Q. If I'm pronouncing his name right.

10 A. Yes.

11 Q. And after speaking with Mr. Billau about the
12 case, your strategy was that Mr. Billau didn't think there was
13 enough information to draw a conclusion about trajectory;
14 isn't that correct?

15 A. That's correct.

16 Q. And, in fact, when the State objected to some
17 questions about Mr. Billau, you told the Court that you
18 weren't introducing his opinions about trajectory. You wanted
19 him to testify that there wasn't enough information for the
20 State's expert to make his trajectory-related conclusions.
21 Correct?

22 A. Correct.

23 Q. And the Court actually sus- -- overruled the
24 objection because that was an appropriate use of the

1 testimony. Correct?

2 A. Correct.

3 Q. So you were actually able to ask Mr. Billau all

4 the questions you wanted to ask related to the insufficiency

5 of the evidence available?

6 MR. MALONE: Your Honor, objection. It misstates

7 the record. The record -- the Court has the record where --

8 of the trial.

9 THE COURT: Well, you'll get to address her

10 again, sir.

11 BY MR. JOHNSON:

12 Q. So you were actually able to ask all of the

13 questions to Mr. Billau about whether there was insufficient

14 evidence to draw a trajectory-related conclusion. Correct?

15 A. I felt so, yes.

16 Q. And do you recall Mr. Billau actually saying he

17 didn't believe there was sufficient evidence to make a

18 trajectory-related conclusion?

19 A. Yes.

20 Q. When you spoke with Mr. Billau prior to his

21 testimony, did he ever tell you something different that he

22 didn't think there was enough evidence to draw a

23 trajectory-related conclusion?

24 A. Did he ever tell me something different from

1 that?

2 Q. Yes. Did he ever tell you, "No, I can draw a
3 trajectory-related conclusion"?

4 A. No. There was no way to -- he couldn't do that.

5 Q. So, at the time, he told you he couldn't.

6 THE COURT: How much more do you have to go, sir?

7 MR. JOHNSON: I might have a few more questions,
8 Your Honor. It might be more than five minutes. I --

9 THE COURT: Well, what -- here is my question.
10 If you're focused, right, on Mr. Billau, and that's going to
11 be the end of your questions, we'll go on. But if you have
12 other areas that you want to explore, it seems like now might
13 be a good --

14 MR. JOHNSON: I do. And I hate to inconvenience
15 Ms. Brown, but I do have some other areas to go into. So it
16 might be good to take a lunch break.

17 THE WITNESS: I took -- I cleared the day. I'm
18 good.

19 THE COURT: Ms. Brown, I know you were
20 subpoenaed, but I appreciate that courtesy.

21 And we are going to take our lunch break now
22 because it is important that we recognize the work that the
23 clerk and the court reporter are doing and that they need a
24 break as we go through the day. I don't know if Ms. Brown

1 feels like she needs one. We are going to take a lunch
2 recess, and we'll be back in session at 1:30.

3 And, Ms. Brown, I would remind you, ma'am, that
4 the rule of exclusion has been invoked. And you know exactly
5 what that means.

6 THE WITNESS: I do.

7 THE COURT: So I would ask you to honor that.

8 Thank you. We will be in recess until 1:30.

9 Thank you, everyone.

10 (A lunch recess was taken.)

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1 DOUGLAS COUNTY, NEVADA, THURSDAY, NOVEMBER 15, 2018,

2 P.M. SESSION

3 -oOo-

4 THE COURT: Hello everyone. Please have a seat.
5 Ms. Brown, would you return to the stand, please.

6 THE WITNESS: I will, Your Honor.

7 THE COURT: We are back in session in 14-CR-62B.
8 Okay. Everyone is here who was here previously. We may have
9 some other people here.

10 MR. MALONE: Sir, there's only a new observer.

11 THE COURT: Okay. Well, the courtroom is open to
12 the public. That's the United States of America. So there we
13 go.

14 And are you ready to proceed, sir?

15 MR. MALONE: I'm ready to proceed, Your Honor. I
16 do have one -- I'll take care of that later. I just noticed
17 that Ms. Leibel has belly chains and cuffs on.

18 THE COURT: Uh-huh. I notice that sometimes.

19 MR. MALONE: Can I make a motion to have that
20 removed.

21 THE COURT: Is there any reason why she needs to
22 be restrained, Deputy?

23 THE BAILIFF: Your Honor, the only reason is we
24 are care and custody for the prison, and they usually leave

CAPITOL REPORTERS (775) 882-5322

1 them in restraints. I have no problem taking her out.

2 THE COURT: I would appreciate it if you would do
3 that. Thank you, sir. And then should any security concerns
4 arise, you may take any emergent measures that you need to
5 take, obviously. And if there's something that you want to
6 deliberate about or ask me about, you're welcome to do that,
7 sir.

8 THE BAILIFF: It should be fine, Your Honor.

9 THE COURT: Yes, sir.

10 The record will reflect I have complete
11 confidence in the security provided to the Court by the
12 Douglas County Sheriff's Office.

13 Are you ready to go forward, sir?

14 MR. JOHNSON: Yes, Your Honor.

15 THE COURT: Would you please resume your
16 examination.

17 Ms. Brown, I would just remind you, ma'am, that
18 you're under oath.

19 THE WITNESS: Yes, sir.

20 THE COURT: Thank you.

21 CONTINUED CROSS-EXAMINATION

22 BY MR. JOHNSON:

23 Q. Ms. Brown, do you recall reviewing an interview
24 that was done shortly after on February 23rd of 2018 by the

1 sheriff's office of Ms. Leibel?

2 A. The interview of the sheriff's --

3 THE COURT: Mr. -- wait a minute. If you have an
4 objection, you need to let me know because doing this is not
5 much.

6 MR. MALONE: I believe the date was stated wrong.
7 He said 2018.

8 THE COURT: He did say 2018. I thought that was
9 a new --

10 MR. MALONE: That was a -- incorrect. I believe
11 it was 2014. Well, let me --

12 THE COURT: Take your time. Take your time.
13 Let's strike that question and you ask the one you mean to
14 ask.

15 MR. JOHNSON: 20- -- 2015.

16 THE COURT: I'm going to advise --

17 MR. JOHNSON: February 23rd.

18 THE COURT: Mr. Johnson, I'm going to advise
19 everyone that we are going to go forward and finish this
20 hearing today even if it is past 5:00.

21 Thank you.

22 BY MR. JOHNSON:

23 Q. Mr. Brown, I misspoke. Do you recall, on
24 February 23rd of 2014, reviewing an interview that took place

1 on that -- on that date by the Douglas County Sheriff's Office
2 of Ms. Leibel?

3 A. Yes.

4 Q. Do you remember that it was eight hours long?

5 A. Yes.

6 Q. And did you file a Motion to Suppress either that
7 interview or the interview that took place the following day?

8 A. No.

9 Q. And was there a reason that you did not file a
10 Motion to Suppress that interview?

11 A. I -- rather than Ms. Leibel testifying, I left
12 open having that introduced by the State if they wanted to.

13 Q. Did you think potentially that that interview
14 might be helpful to your case?

15 A. I think it would be helpful in just her demeanor
16 during the interviews, her helpfulness and just the immediacy
17 of the situation as opposed to actual testimony, you know, a
18 year and a half later or a year later.

19 Q. And she voluntarily spent eight hours speaking
20 with the Douglas County Sheriff's Office?

21 A. Yes.

22 Q. And do you think that could be used to your
23 benefit?

24 A. Yes.

1 Q. And did that play into your decision not to file
2 a Motion to Suppress?

3 A. Yes.

4 Q. And do you recall if that interview is in -- was
5 in English?

6 A. It was in English.

7 MR. JOHNSON: Your Honor, that concludes my
8 questions for cross. I know I said I might be asking more
9 questions, and I was wrong. I apologize.

10 THE COURT: Sure. You know, our tactics and
11 strategies evolve as cases move forward.

12 Go ahead, sir.

13 REDIRECT EXAMINATION

14 BY MR. MALONE:

15 Q. Ms. Brown, regarding that interview, it was
16 actually a positive interview for the defense?

17 A. I --

18 THE INTERPRETER: I'm sorry, "was actually"?

19 MR. MALONE: And, Your Honor, I'm losing my
20 voice. I know the court reporter has asked me to speak up.
21 I'm going to really try, but I can feel my throat
22 constricting.

23 THE COURT: We'll be recessed for one minute.
24 Everyone stay right where you are.

1 (Whereupon the Court briefly left the bench.)

2 THE COURT: Mr. Malone, please approach the
3 bench.

4 MR. MALONE: Thank you, Your Honor.

5 THE COURT CLERK: I'll just have to move a
6 microphone.

7 THE INTERPRETER: And it's actually when --
8 Counsel, when you turn away when it's the hardest. So even if
9 you spoke softly but towards -- at least I see where I could
10 see you in profile, it would be a great deal.

11 THE COURT: If anyone else is having a sore
12 throat, just let me know. Mr. Malone was just provided with a
13 few Jolly Ranchers.

14 Go ahead, sir.

15 BY MR. MALONE:

16 Q. Now, when you reviewed that video of that
17 interview, you reviewed a disk. Correct? A recording?

18 A. Yes.

19 MR. MALONE: Your Honor, I would like to mark
20 this disk. I can represent to the Court that it's a copy of
21 the disk that was provided to me by Ms. Brown. I did review
22 it. It has -- it's an accurate copy of the interview that
23 Ms. Leibel had with -- on two different occasions with
24 sheriff's detectives. So I would ask that we --

1 THE COURT: Well, I don't know if the other side
2 knows that.

3 MR. JOHNSON: This wasn't one of the ones that we
4 reviewed during the -- the -- but --

5 THE COURT: You can have anything marked, but...
6 Mr. Johnson?

7 MR. JOHNSON: I want to make sure I understood
8 what was represented. This is the February --

9 THE COURT: Why don't you --

10 MR. JOHNSON: -- 23rd and the February 24th
11 interviews?

12 MR. MALONE: They were provided to the defense on
13 one disk.

14 THE COURT: Okay.

15 MR. MALONE: And I believe -- and, yes.

16 THE COURT: All right. And as an officer of the
17 court, that -- you're telling me that's what it is, you
18 provided it?

19 MR. JOHNSON: As long as it's the complete
20 recording of both, I don't have an objection. If it's a
21 partial recording, I would ask the whole thing be --

22 THE COURT: Have they been edited?

23 MR. MALONE: No.

24 THE COURT: Okay. Then there we go. Whatever

1 the next number is, ma'am.

2 THE COURT CLERK: 13.

3 THE COURT: 13.

4 (Exhibit 13 marked for identification.)

5 MR. MALONE: I'd ask that it be admitted, Your
6 Honor, as a true and accurate representation of the interview
7 by Ms. Leibel.

8 THE COURT: Okay. That's a --

9 MR. JOHNSON: Your Honor, if we could just --
10 never mind, Your Honor. That's fine. It has the date on
11 there, on the recording.

12 THE COURT: 13 is admitted.

13 (Exhibit 13 admitted into evidence.)

14 BY MR. MALONE:

15 Q. And, Ms. Brown, that interview was so positive in
16 your view that you attempted to get it admitted as a completed
17 statement, correct, under that doctrine?

18 A. I -- I think overall it was positive.

19 Q. Okay. But -- and then in trial, you did attempt
20 to get that admitted. Correct?

21 A. Yes.

22 Q. In complete?

23 A. Yes.

24 Q. In its complete nature?

1 A. Yes.

2 MR. MALONE: And, Your Honor, I also -- I
3 would -- I also ask to mark and admit a transcript of that
4 interview.

5 MR. JOHNSON: I wasn't aware of that, either,
6 Your Honor. I object to that as best evidence rule. I think
7 the video is the best evidence. I don't believe it's a
8 certified transcriber; I think it was the sheriff's office
9 that did the transcription; so I think the best evidence is
10 the actual video and not the transcript.

11 MR. MALONE: Best evidence rule is inapplicable,
12 Your Honor. It would go to the contents of a document such as
13 a contract or something like that.

14 THE COURT: Well, here is the thing. What
15 Mr. Malone wants to do is to take -- take a portion of the
16 disk, which is the recording of the interview, and somehow go
17 to a transcript so that we don't have to sit here and review
18 the entire disk. Now, I'll let you look at this transcript
19 and see if you think it's not accurate. But for purposes of
20 making this hearing work today, it -- this is a transcript
21 that I believe -- I believe, that your office produced to the
22 defense. Is that not right?

23 MR. JOHNSON: That's correct, Your Honor.

24 THE COURT: During the trial.

1 MR. JOHNSON: I believe it was produced by the
2 Douglas County Sheriff's Office.
3 THE COURT: Okay. To your office.
4 MR. JOHNSON: Correct.
5 THE COURT: Which was then produced to the
6 defense.
7 MR. JOHNSON: Correct.
8 THE COURT: Okay. I'm going to allow you to use
9 it because he's going to refer to just individual pages, and
10 then we won't have to sit and watch two hours' or three hours'
11 worth of -- of a recording that will make it hard for us to
12 get through. Unless you have some reason to believe that the
13 transcript is not accurate.
14 MR. JOHNSON: To the extent this goes to the
15 argument about the ability to speak English, I think that
16 actually viewing the video is the best evidence because of the
17 audio quality and the transcription. If the questioning is
18 not related to that, then I don't have the -- the same
19 objection to reviewing it. But I think if we are going to
20 whether or not the -- the transcript versus the video is
21 evidence that she does not adequately speak English, I do
22 think the video is the best evidence based on my reading of
23 the transcript and watching of the video.
24 THE COURT: And that may be true, sir.

1 So what's the purpose that you want to introduce
2 this in for? What issue?

3 MR. MALONE: Your Honor, it goes -- it -- number
4 one, it's been referred to under cross-examination by the
5 State; so I would like the entire portion introduced.

6 THE COURT: What issue are you --

7 MR. MALONE: Your Honor, her ability to
8 comprehend and speak English and her necess- -- the necessity
9 for her to have the services of a Russian interpreter. I
10 believe that a copy of the transcript was already attached to
11 a defense motion at one point in time; so the Court would have
12 access to it perhaps. But I want to make sure that the Court
13 has all the information available regarding that subject.

14 And I'm not going to take very long. I'm not
15 going to ask hardly more than one question.

16 THE COURT: I will allow you to use that
17 transcript to ask your question, then. Let's see what it is.

18 MR. MALONE: Okay.

19 THE COURT: Go for it.

20 BY MR. MALONE:

21 Q. Ms. Brown, I'm going to show you -- you're
22 familiar -- are you familiar with this transcript?

23 A. I recall reading a transcript three years ago.

24 Q. Okay. So you -- you're familiar with this

1 transcript?

2 A. I'm familiar with the names that I see in that
3 transcript.

4 Q. Does it appear to be the transcript that you
5 read -- that you read and reviewed in preparation for your
6 trial?

7 A. I can't say that. I'm sorry. That's, you know,
8 what, two inches thick, and you're showing me a couple of
9 pages.

10 Q. No, I'm showing -- Ms. Brown, my question was --

11 THE COURT: Is there a particular page that you
12 want her to review and ask her if she recalls that?

13 MR. MALONE: I want -- well, I was first going to
14 ask her if she agrees that this is a transcript she reviewed
15 in the prep- -- preparation of the trial.

16 THE COURT: Then she's going to have to look at
17 the entire transcript to know that.

18 MR. MALONE: I can have her look at one page,
19 Your Honor.

20 BY MR. MALONE:

21 Q. Okay. Will you look at that page. And I would
22 like you to especially go and look at the answers that
23 Ms. Leibel gave to the questions that were asked by the
24 Douglas County Sheriff's detective.

1 A. (Witness complies.)
2 Okay.
3 Q. Okay.
4 MR. MALONE: And, for the record, this is Page
5 Number 112 of a document that is headed "Douglas County
6 Sheriff's Department Interview Transcripts," and I believe the
7 District Attorney -- it does have a case number on it.
8 If I can have this one page marked.
9 (Exhibit 14 marked for identification.)
10 BY MR. MALONE:
11 Q. So, are you familiar with this?
12 THE COURT: Which is Exhibit 14?
13 MR. MALONE: This is Exhibit 14.
14 BY MR. MALONE:
15 Q. With this page?
16 A. No, I cannot --
17 THE COURT: Let her say.
18 THE WITNESS: -- say I am familiar with anything
19 in that document.
20 BY MR. MALONE:
21 Q. Did you -- Okay. Let me ask you then. If it's
22 represented to you that this is -- well, this is a document --
23 that this is a document you produced to me?
24 A. And that may very well be.

1 Q. It references your case that you tried to a
2 verdict in this courtroom?

3 A. And I don't see how that's means anything in the
4 question of "do you recognize this?"

5 Q. How many interviews did Ms. Leibel give to
6 Washoe -- to Douglas County sheriff's officers that you're
7 aware of? How many interviews did she give?

8 A. She gave two.

9 Q. Okay. And she -- and you remember the date that
10 she gave her interview?

11 A. I remember one was the same day as the -- Harry
12 died and the other one was -- was the next day.

13 MR. MALONE: Your Honor, I'm going to ask the
14 Court to take -- this has been -- I don't believe there's an
15 objection by the State to the providence of this transcript or
16 the foundational aspects of its introduction as a piece of
17 evidence.

18 THE COURT: Well, there's a -- clearly there's a
19 problem with the foundation from this witness. And you're the
20 only one who's told me what it is, and you're not a witness.
21 And so, here's the problem: You may -- I don't know -- be
22 able to speak with counsel for a moment. I'm assuming that
23 counsel did what I told him to do at lunchtime and meet and
24 confer regarding your -- the exhibits that you intend to be

1 offered in this case. You can show it to him, and maybe he
2 will agree it's a portion of that transcript and try to move
3 this along. Otherwise, it sounds to me like you need to queue
4 up the disk and go to the point that you want me to look at if
5 you can't get that admitted.

6 MR. MALONE: Your Honor, the -- all I want to
7 do -- what this transcript does, it was relied -- the
8 transcript and the video illustrate, in a very dramatic
9 fashion, Ms. Leibel's facility with the English language, and
10 that's what I'm introducing it for.

11 THE COURT: Well, you're not introducing it yet.

12 MR. MALONE: I understand.

13 THE COURT: So.

14 MR. MALONE: Well, let me -- let me try this
15 again.

16 BY MR. MALONE:

17 Q. You just testified that you did review a video of
18 Ms. Leibel's interview with Douglas County sheriff's officers.
19 Correct?

20 A. Correct.

21 Q. Okay. But you don't remember it?

22 A. Not specifically, no.

23 Q. Do you -- did you read the transcript of that
24 same interview?

1 A. Yes, I did.

2 Q. Okay. And you matched them together, as you
3 should have done, in preparation for the trial. Correct?

4 A. Yes, and there were mistakes.

5 Q. There were some mistakes. Correct?

6 A. Yes.

7 Q. But they're -- I'm not asking you about mistakes.
8 I'm asking you if you read the transcript.

9 A. I did read the transcript.

10 Q. Okay. But now, you can't recognize the -- this
11 transcript. Right?

12 A. What I'm saying is that is a transcript that is,
13 like I said, two inches thick.

14 Q. I'm --

15 A. For me to say --

16 Q. -- asking you --

17 THE COURT: Ma'am, just a minute. He's asking
18 you about that one page. Do you recognize that one page,
19 ma'am?

20 THE WITNESS: No.

21 THE COURT: Then there's your answer.

22 BY MR. MALONE:

23 Q. Do you recognize any pages in here?

24 A. I can recognize the names. I can recognize

1 the -- if I read through it, I can -- I recognize that's
2 probably my highlighting. If I read through it, I could say
3 "Yes, this is the gist of what was said during that
4 interview." But to be shown one page -- and I'm not trying to
5 avoid reading your page out loud if that's what you want.
6 What I'm saying is you can't put this document in front of me
7 and say, "Do you recognize this" without me having a chance to
8 review it.

9 Q. I'm asking you if you recognize this transcript
10 as a document you reviewed in preparation for court?

11 THE COURT: She's answered your question, sir.

12 MR. MALONE: And that answer is no, you didn't
13 recognize it.

14 THE WITNESS: I don't.

15 THE COURT: Now, I've given you three different
16 options.

17 MR. MALONE: Okay. Sorry, Your Honor.

18 THE COURT: I said I've given you two different
19 options, or you can just decide not to proceed. But you --
20 clearly, this witness is not going to be able to lay that
21 foundation.

22 BY MR. MALONE:

23 Q. Ma'am, I'm going to show you this one page that I
24 showed you previously. Has marked previously and not -- it's

1 not been admitted at this point in time.

2 THE COURT: No, but it's been marked, so you're
3 going to have to give it to the clerk when you're done.

4 MR. MALONE: Thank you.

5 THE COURT: Unless you want to withdraw it.

6 MR. MALONE: I will give it to the clerk.

7 THE COURT: There you go.

8 BY MR. MALONE:

9 Q. So, Ms. Brown, did you appeal the issue of Sharon
10 Oren's statement regarding fears and warnings -- fears that
11 Tatiana Leibel would kill Harry? Did you appeal that issue?

12 A. No.

13 Q. Did you appeal the issue --

14 MR. JOHNSON: Your Honor, I'm going to object.
15 This is outside the scope of the petition that was filed.
16 These questions -- no appellate and, in fact, assistant
17 appellate argument was made in the petition.

18 MR. MALONE: I can move right there.

19 BY MR. MALONE:

20 Q. You couldn't appeal it, could you? No objection
21 was made that was relevant? Relevant.

22 A. I made objections.

23 Q. You did not make an objection that it violate --
24 that it violated a signed court order to hold a Petrocelli

1 hearing, did you?

2 A. No, I did not.

3 Q. You did not make that objection?

4 A. I didn't.

5 Q. And that was the only objection that could have

6 been appealed. Correct?

7 A. No.

8 Q. On that issue?

9 A. No.

10 Q. What would have been relevance -- relevance? You

11 think you could have said that the judge ruled erroneously

12 that it was a relevant statement?

13 A. In speculation, yeah.

14 Q. What?

15 A. In speculation.

16 Q. There -- well, the testimony was that he warned

17 Harry Leibel. That is not speculative, is it? "I told this

18 man these words." Is that speculation?

19 A. No, but there was some that was speculation.

20 Q. Let me -- let me say. You didn't appeal that

21 statement?

22 A. I did not appeal that issue, no.

23 Q. You did not preserve the objection, did you? An

24 objection that could have been there?

1 A. I did.
2 Q. You did preserve it?
3 A. Yes.
4 Q. And you didn't appeal it?
5 A. No.
6 Q. How about the --
7 MR. JOHNSON: Same objection about the appeal
8 part.
9 THE COURT: That's sustained.
10 MR. MALONE: Your Honor, it goes to the ability
11 to preserve an objection at trial for the purpose of appeal.
12 THE COURT: She told you she preserved it, so...
13 BY MR. MALONE:
14 Q. How did you preserve it?
15 A. I objected.
16 Q. And you're saying that the correct objection was
17 relevance and speculation?
18 A. Yes.
19 Q. Okay. I -- are you denying that there was a
20 court order that precluded the introduction of prior bad act
21 or other act evidence? You admit that that is correct.
22 Right?
23 A. There is a court order, yes.
24 Q. Ma'am, if you can answer a question yes or no,

1 that would be better.

2 THE COURT: Sir, she answered you "yes," which
3 you --

4 MR. MALONE: She did not answer "yes," Your
5 Honor.

6 THE COURT: She did. She said there was a --
7 there was a court order.

8 MR. MALONE: But it was the court order that --
9 that the nature of the court order. She answered that there
10 was a court order. I don't need to fight over it, but the
11 witness is being evasive, Your Honor, and I would --

12 THE COURT: I don't know that she is because I
13 think that her perspective is, sir -- and I may be in error in
14 my perception of how this testimony is -- from the prior
15 evidence is that she did not view that material as a prior bad
16 act that was prohibited to be introduced from the pretrial
17 order, and that she viewed that evidence to be something other
18 than a prior bad act to which she objected based on relevance
19 and speculation.

20 Now, Ms. Brown, have I misperceived your
21 testimony?

22 THE WITNESS: No, Your Honor. That's correct.

23 THE COURT: That's the status of the record. So
24 you can ask whatever other question you want now.

1 MR. MALONE: I don't need to argue about that,
2 Your Honor. Sorry.
3 THE COURT: That's okay. It's just a question of
4 whether that is a -- falls within the prior bad act --
5 MR. MALONE: And I think that --
6 THE COURT: -- issue.
7 MR. MALONE: -- that is a question of law, and
8 I'm not going to argue with that.
9 THE COURT: Okay.
10 MR. MALONE: With the finder of fact or the
11 finder of law, the determination of law.
12 THE COURT: Yes, sir. That's probably good.
13 MR. MALONE: Your Honor, I apologize. I've got
14 something grinding in my teeth. Like maybe --
15 THE COURT: It's probably a Jolly Rancher.
16 MR. MALONE: No. Like I chipped a tooth. That's
17 why I keep pausing.
18 THE COURT: You chipped a tooth on the Jolly
19 Rancher I gave you?
20 MR. MALONE: We'll see you in court, Your Honor.
21 MR. JOHNSON: Your Honor, fortunately direct
22 appeal is over.
23 THE COURT: Yeah --
24 ///

1 BY MR. MALONE:

2 Q. Ms. Brown, this was your first defense murder
3 case that was taken to trial. Correct?

4 A. That was taken to trial, yes.

5 Q. Okay. And you have -- it's your first,
6 first-chair murder trial. Correct?

7 A. Yes.

8 Q. And that includes both prosecutions and defense.
9 Correct?

10 A. Yes.

11 Q. Okay.

12 A. That went to trial.

13 Q. To trial. To trial, meaning before a jury and to
14 a verdict?

15 A. To a verdict, yes.

16 Q. Okay. And if this had been a death penalty case,
17 you would not have been allowed to try it. Correct?

18 A. Not as first chair.

19 Q. Correct. You would have had to have 250 counsel?

20 A. (The witness nods.)

21 THE COURT: Unless the Court found that she was
22 qualified otherwise --

23 MR. MALONE: Correct.

24 THE COURT: -- which is a provision within

1 Rule 250.

2 MR. MALONE: And then she would be 250-qualified
3 through that provision.

4 BY MR. MALONE:

5 Q. But you were not -- you've not been found to be
6 250-qualified. Correct?

7 A. Correct.

8 Q. The point my -- the point of my question is that
9 Kay Ellen Armstrong was your 250 counsel?

10 A. Yes.

11 Q. Okay. Are you familiar with her CV?

12 A. No.

13 Q. You never reviewed it?

14 A. I believe it was given to me, but I haven't
15 reviewed it.

16 Q. You didn't review it at the time?

17 A. No.

18 Q. Okay. Are you familiar with her reputation?

19 A. Yes.

20 Q. Okay. And her reputation is a good one?

21 A. Yes.

22 Q. Okay. In fact, exemplary. Correct?

23 A. Correct.

24 Q. And would you agree that, had the case proceeded

1 as a death penalty case, she would have been the primary
2 attorney involved. Correct?

3 A. Yes.

4 MR. JOHNSON: Objection. Relevance.

5 THE COURT: What is the relevance?

6 MR. MALONE: I'm actually just trying to build up
7 Kay Ellen Armstrong as a witness, who I'm going to call next.

8 THE COURT: The Court is familiar with
9 Ms. Armstrong.

10 MR. MALONE: Thank you.

11 Thank you, Ms. Brown.

12 THE WITNESS: Thank you.

13 THE COURT: Recross?

14 MR. JOHNSON: No, Your Honor.

15 THE COURT: Ms. Brown, thank you. You are
16 released.

17 THE WITNESS: Thank you.

18 THE COURT: Do you intend to recall her, either
19 one of you?

20 MR. MALONE: I would like her available and held
21 to her subpoena.

22 THE COURT: Ms. Brown, it's a good thing that you
23 blocked off your whole day. Please stand by.

24 THE WITNESS: May I go to my office subject to

1 recall if I keep my phone handy?

2 THE COURT: If you keep your phone handy and
3 you're available to be here within a ten-minute period.

4 THE WITNESS: Okay. I'll make sure Ms. Kirshner
5 has my cell phone.

6 THE COURT: Yes, ma'am.

7 I'm going to let her go to her office.

8 MR. JOHNSON: That's -- I'm fine with that, Your
9 Honor.

10 THE COURT: Just a few blocks away.

11 MR. MALONE: I -- for the record, I don't
12 anticipate calling her, but I want to -- I don't know if I'm
13 going to run up against something that is unanticipated.

14 THE COURT: Ms. Brown, would you do me the
15 courtesy of calling my office just before 5:00 today to make
16 certain that you're not needed because your home is a long way
17 away.

18 THE WITNESS: It is.

19 THE COURT: And I would hate for you to head that
20 way.

21 THE WITNESS: Okay. Thank you, Your Honor.

22 THE COURT: Sir, whom would you like to call
23 next?

24 MR. MALONE: Kay Ellen Armstrong. I thought I

1 got a visual from the bailiff, Your Honor.

2 THE COURT: My vision was elsewhere.

3 Ms. Armstrong, would you come in.

4 Please, would you pause right there and raise

5 your right hand.

6 (The witness was sworn.)

7 THE COURT: Ma'am, would you please come up and

8 have a seat. There's some water there, if you would like.

9 THE WITNESS: Thank you, Your Honor.

10

11 KAY ELLEN ARMSTRONG,

12 having been first duly sworn, was examined

13 and testified as follows:

14

15 DIRECT EXAMINATION

16 BY MR. MALONE:

17 Q. Would you please state your name?

18 A. Yes. Kay Ellen Armstrong.

19 Q. And, ma'am, will you please spell your last name

20 for the record.

21 A. A-R-M-S-T-R-O-N-G.

22 Q. And I'm going to ask you to spell your first name

23 too, because --

24 THE COURT: Sir?

1 Oh, you're kind of in his vision. Would you mind
2 moving over to your right a little bit there. There you go.

3 THE WITNESS: K-A-Y.

4 BY MR. MALONE:

5 Q. And, ma'am, did you ever represent Tatiana
6 Leibel?

7 A. Yes, I did.

8 Q. Did you -- do you observe her in the courtroom?

9 A. Yes.

10 Q. Okay. And will you describe where she's sitting?

11 A. Yes. She's in -- at the table with the earphones
12 on in the middle seat.

13 THE COURT: The record will reflect that she has
14 identified Ms. Leibel.

15 BY MR. MALONE:

16 Q. And, ma'am, you were appointed as SCR 250 counsel
17 to her murder case. Correct?

18 A. Yes.

19 Q. Okay. You're death penalty-qualified?

20 A. Yes.

21 Q. And your second chair was Kristine Brown.

22 Correct?

23 A. Yes.

24 Q. Now, what aspect of the trial did -- of the