

1 to that, Mr. Peterson?

2 MR. PETERSON: Judge, again, that's not  
3 entirely correct. There are no documents of a restoration  
4 because they are automatic. She doesn't have to apply.

5 There are persons in the State of Florida  
6 who would have to apply for restoration of civil rights.  
7 For example, felons who go to prison. You need an  
8 application process for those persons.

9 However, persons who serve the sentence  
10 imposed by them, or are granted final release or receive  
11 pardons, et cetera, these persons are automatically  
12 restored. And the case statute from Florida Statutes  
13 940.05, and there's a case interpreting it that says:

14 "Civil rights shall be automatically  
15 reinstated, except the right to possess or own a firearm  
16 which shall be specifically withheld. Under that  
17 provision of the clemency rules, restoration of civil  
18 rights would be automatic following completion of service  
19 of sentence by one who so completed sentence on or after  
20 November 1, 1975."

21 THE COURT: How do we explain this Jeanette  
22 Cools, the coordinator of the Office of Clemency in  
23 Florida saying Ms. Barrs' rights have not been restored?

24 MR. PETERSON: I don't know because I  
25 haven't spoken with this person. My understanding is,

1 she's a records custodian. I assume she checked her  
2 records and saw there were no documents saying that, and  
3 reported back saying there are no documents restoring  
4 that.

5 But in the case of an automatic restoration  
6 of rights, what documents would there be to find?

7 MR. COLUCCI: If she went to vote in  
8 the State of Florida, Your Honor, they have a computer  
9 system. They could check to see if her civil rights have  
10 been restored, provided she disclosed she was a convicted  
11 felon. And they would know that she's not entitled to  
12 vote. They would also know that she's not entitled to  
13 carry a firearm.

14 THE COURT: Now, there's two different  
15 things. Specifically, they take exception to firearms,  
16 right?

17 MR. COLUCCI: That's right. But I'm  
18 going to direct the Court to Page 7 of our brief.

19 MR. PETERSON: We're still past the  
20 part of the seven-day issue. None of this goes to the  
21 seven-day issue.

22 THE COURT: Page 7?

23 MR. COLUCCI: Page 7. In the middle of  
24 that Page at Line 14, if the Court is on the same page, it  
25 shows a Florida statute with a 2004 date.

1 And it says, "Any person who has been  
2 convicted of a felony may be entitled to the restoration  
3 of all rights of citizenship enjoyed by him or her prior  
4 to the conviction if the person has -- and then those are  
5 the things that apply, which would apply to Karen Barrs.

6 The problem is, she hasn't gone through the  
7 procedure of the application process.

8 And as far as the Clerk -- if the issue is  
9 if Exhibit A, the questioning of Exhibit A is the  
10 dispositive issue for this motion, I would invite  
11 Mr. Peterson to call the State of Florida and to provide  
12 us with proof that her civil rights under any scenario  
13 have been restored.

14 Certainly, there has to be some document  
15 somewhere. She went to jail. She did jail time. She was  
16 convicted of a felony. I provided all those records to  
17 the Court. If her civil rights were restored anywhere,  
18 then Mr. Peterson can find those and provide those to the  
19 Court.

20 I contacted the State of Florida and I'm  
21 telling you, as far as we know her civil rights have not  
22 been restored.

23 If I could address the voting issue, just  
24 like the Jury Commissioner issue, they rely on the  
25 representations of the person applying or registering to

1 vote. I've provided you with the voter registration  
2 application in my paperwork as well.

3 THE COURT: Where are you referring to?

4 MR. COLUCCI: I'm going to look for it,  
5 Your Honor. It is Exhibit E. And in Exhibit E -- if you  
6 found it?

7 THE COURT: Yes.

8 MR. COLUCCI: In the lower right-hand  
9 box as you're looking at the document it says, "I declare  
10 under penalty of perjury that the foregoing is true and  
11 correct."

12 And above that it says, "I am not laboring  
13 under any felony conviction or other loss of civil rights  
14 which would make it unlawful for me to vote."

15 They rely on her representation. They  
16 don't check. The same with the Jury Commissioner. The  
17 Jury Commissioner relied on her representations she was  
18 not a convicted felon.

19 When they send out the jury summons -- and  
20 I'm sorry to jump around. Slow me down if you feel it  
21 necessary. When they send out the jury summons they say  
22 if you've been convicted of a felony, it's one of the  
23 problems you have with your qualifications.

24 You can telephonically respond to the Jury  
25 Commissioner and let her know whether or not you've been

1 convicted of a felony. I did a check, and you have an  
2 affidavit. She did not respond telephonically that she  
3 had been convicted of a felony, even though in her  
4 affidavit she said that she did.

5 Secondly, she said she filled out a jury  
6 questionnaire indicating she was an ex-felon. She did  
7 not. She did not disclose it in a jury information sheet.

8 And what's really interesting is, that we  
9 have three documents, four documents attached to the  
10 affidavit from the Jury Commissioner where Ms. Barrs did  
11 call in. And she called to continue her jury service  
12 date. And she never once mentioned during that time that  
13 she was a convicted felon or had a problem with a felony  
14 conviction.

15 THE COURT: All right. Well, let me  
16 inquire. And you're correct that she has, in fact, in  
17 Florida maintained that she was not a felon for the  
18 purpose of acquiring her registration as a voter.

19 In her affidavit -- did she file an  
20 affidavit?

21 MR. PETERSON: She did, Judge. I  
22 actually spoke with her.

23 THE COURT: Does it indicate that she  
24 was under the belief that she was absolved of this by  
25 virtue of what she read?

1 MR. PETERSON: Absolutely. In fact, it  
2 was a great shock to her to hear these allegations made.  
3 She's a registered nurse. She's voted for some time. She  
4 obviously is not an expert in the legal field.

5 Nevertheless, she indicated to me that she  
6 called in to the Jury Commissioner and she spoke with a  
7 person on the phone. She indicated to them she had  
8 something, that it was 20 years old. They said: Was it  
9 in Nevada? She said: No. And they said: Come on down  
10 and report for service.

11 She also says she filled out a jury  
12 questionnaire. I and Mr. Colucci, both parties have  
13 subpoenaed, and there are no, apparently, written  
14 questionnaires for any of the jurors.

15 So to say that it's not present, I don't  
16 think it means it wasn't filled out. We don't have those  
17 documents from the Jury Commissioner in whatever state  
18 they may be.

19 Nevertheless, we're still getting past this  
20 seven-day issue. There's nothing that we've heard about  
21 this that gets us past the statutory seven-day prohibition  
22 against a motion for a new trial.

23 Because if we're going to talk about the  
24 question of her being a proper juror, now the question  
25 becomes, once we get past that seven-day issue to talk

1 about the merits, clearly, this is not an intentional  
2 concealment on her part.

3 She was very willing to talk about her son  
4 who is in custody in the State Prison, and had been for a  
5 long period of time. She believed that the Judge knew  
6 about anything she had in her past. That's what she  
7 related to me.

8 And, in addition, it certainly is unique to  
9 me to hear the Defense claim that there's a person on the  
10 jury with a prior felony. That's normally the State's  
11 concerns. We don't want persons who have criminal records  
12 on the jury. It's certainly a unique position for me to  
13 be in that situation.

14 In any event, it's not intentional  
15 concealment, and I don't believe there's anything here  
16 that shows there's any prejudice to the verdict that was  
17 rendered at all.

18 So I think we still have the seven-day  
19 issue, Judge. You know my position regarding this juror,  
20 and submit it to the Court on that.

21 THE COURT: Well, Mr. Colucci, let me  
22 ask you a question as a general proposition. I know you  
23 have a function here to defend your client, and I respect  
24 that. Maybe this is a rhetorical question.

25 But as I understand what's being requested

1 here, you're asking me to overturn the Supreme Court of  
2 the State of Nevada when they made the determination that  
3 in a situation very similar to this, although more severe,  
4 in my judgement, and a juror lies about a relative being  
5 murdered, that to me suggests more of a bent one way or  
6 the other than having suffered a --

7 MR. COLUCCI: He just didn't disclose  
8 it.

9 THE COURT: Well, he failed to disclose  
10 that. I misspoke. That to me is a more severe abrogation  
11 of their responsibility, than someone who is convicted 20  
12 years ago of a bad check or something. I believe it  
13 wasn't a violent offense.

14 But the Supreme Court says eight days  
15 doesn't matter. And then they set the reasoning behind it  
16 which is legitimate, in my view, and if I might be so bold  
17 as to agree with the Supreme Court and give my stamp of  
18 approval.

19 You can't work these things to death with  
20 these jurors indeterminately. I mean, jurors get berated  
21 enough by the time they have rendered verdicts, and then  
22 they go out in the hall and they go through another trial,  
23 essentially, something we don't encourage.

24 But aside from my view one way or the other,  
25 the Supreme Court has addressed this issue, I think. What



1 am I supposed to say? They didn't mean that, we're going  
2 to make it two months and eight days, whatever, and keep  
3 going?

4 MR. COLUCCI: No. I don't believe the  
5 Supreme Court has addressed this issue. The Supreme Court  
6 addressed an issue where a qualified juror had a bias that  
7 was not disclosed. But that juror had qualified as a  
8 juror. That person was in the box legitimately.

9 Ms. Barrs was not in the box legitimately,  
10 before you even get to the bias, or the prejudice, or the  
11 nondisclosure, or the misconduct, or the standards that go  
12 with all of that.

13 You have to determine was this a valid  
14 verdict? Was this a jury? The Constitution of the United  
15 States and the Constitution of Nevada, this man is  
16 entitled to a jury of 12 people, not 11. She was not  
17 before 176.515 even kicks in, she was not.

18 And let me say something if I could, Judge,  
19 and I don't mean to hold you up. If I could just say one  
20 more thing. If the Court would look at -- you know, we're  
21 taking her word that this wasn't intentional concealment.

22 But if you look at the affidavit of the Jury  
23 Commissioner which is very, very clear, and we have  
24 exhibits. We have three or four people that she's  
25 supposedly had contact with. We have documented the

1 contact with people in the Jury Commissioner's office.

2 She didn't tell anybody, and nobody  
3 remembers her telling anybody that she had a felony  
4 conviction. She's the only one that remembers talking to  
5 three or four people that don't remember talking to her.

6 And they take notes on why she couldn't  
7 come. Her mother had Alzheimer's disease, was busy at  
8 work, had another problem. They document that. If she  
9 said: I have a felony conviction, which is so important  
10 to them, that would have been documented in their notes.

11 THE COURT: Well, did she say she told  
12 them?

13 MR. PETERSON: She says on the  
14 Centofanti matter she informed them: Yes, I have a felony  
15 that's 20 years old. Because, apparently, you have to  
16 push a button when you phone in on the phone-in system.  
17 And they asked her: Is it in Nevada? No.

18 Did you go to prison for it? No.

19 Have you had anything else?

20 And she said no.

21 I, mean, the funny thing that I guess  
22 what Mr. Colucci is alleging by this, that there are other  
23 times that she's called in and had her jury service  
24 rescheduled. To my mind, that shows she believes she is  
25 eligible for jury service.

1                   Because if you want an easy way out of jury  
2 service, just admit you're a felon, for goodness sake.  
3 She obviously believes she has the right to do this. She  
4 votes. I mean, we're talking about intentional  
5 concealment, or Mr. Colucci is.

6                   She's rescheduling jury service and willing  
7 to show up and serve. I mean, in my experience persons  
8 who want out of jury service, that's a substantial portion  
9 of the population that don't want to serve and find it an  
10 announce.

11                   Here she is willing to serve. That  
12 indicates in my mind that she believes she has the right  
13 to serve, and I believe that goes to the intention of the  
14 concealment issue.

15                   THE COURT: Now, there is, I think,  
16 something to be said about an indication at one point that  
17 she told these people that she had this problem 20 years  
18 ago, and then perhaps a record showing the absence of  
19 such. That's something worth discussing, I guess.

20                   I'm not particularly taken aback by the fact  
21 that she was consistent in her denial of her criminal  
22 record. If she firmly believed it was absolved, that she  
23 had no duty to divulge, it would be consistent.

24                   And I'm not so sure, candidly, how many  
25 people really understand what a pardon or what a

1 restoration of civil rights or some of those things really  
2 means. Can you go to an employer and fill out an  
3 application that says you've been arrested of a felony,  
4 and you say no?

5 Can you go and buy a gun and say no? Can  
6 you go to vote? I don't know if a lot of people  
7 understand that, even lawyers, frankly, because it varies  
8 so much among the states. But that doesn't surprise me  
9 that she was consistent in that.

10 Now, if there's some argument that she did  
11 divulge that and then somebody said she didn't, then that  
12 goes to veracity.

13 MR. COLUCCI: That's different. See,  
14 she wasn't consistent, because supposedly she told the  
15 Jury Commissioner and told members of the Jury  
16 Commissioner's office that she did have a felony  
17 conviction. Nobody seems to remember it.

18 And as far as telephonically, they keep a  
19 record if there's a telephonic -- if they push the button  
20 and indicate they're a convicted felon, then there's a  
21 record of that.

22 Judge, just read the Jury Commissioner's  
23 affidavit and compare it to the affidavit of Karen Barrs.  
24 You're going to see that she just is not being truthful  
25 and candid.

1                   Even in the voir dire Mr. Peterson picked up  
2 on her hesitation in response to your question, has any  
3 member of your family, you or any member of your family  
4 ever had contact with the criminal justice system.

5                   Even Mr. Peterson himself picked up on her  
6 hesitation. And then she gave him some story: I was  
7 hesitating because I know I could be a good juror. I  
8 don't have the record in here, Judge, but I'll make one  
9 other representation to you, and that's this.

10                  She had to apply for a nursing license, and  
11 because of all of the laws protecting confidentiality in  
12 the medical profession, we were unable to get her  
13 application for her nursing license. But she did disclose  
14 the felony conviction on the nursing license.

15                  And one other thing.

16                  THE COURT: How do you know that?

17                  MR. COLUCCI: Because I talked to the  
18 attorney for the Nursing Board, and he refused to give me  
19 the license. But I sent up a subpoena to ask for the  
20 information, and the best he would do for me is tell me on  
21 that one issue, yes or no, had she applied, had she  
22 disclosed a felony conviction? Yes, she did.

23                  And I did put in the opposition, not that,  
24 but I did put in the opposition that she in 1998 had  
25 applied for records from her criminal case. And I don't

1 know why, but I have a certified document that's not  
2 attached to our motion, I have it in my file. She did  
3 apply for the record of her criminal case.

4 THE COURT: In Florida?

5 MR. COLUCCI: In Florida in 1998. So  
6 she knew she had a felony conviction.

7 THE COURT: Did she acquire it; do you  
8 know?

9 MR. COLUCCI: That I don't know. The  
10 only notes that the Clerk has is a letter requesting  
11 copies for that particular case, the criminal case, the  
12 same copies that I provided to the Court.

13 MR. PETERSON: And I can give you some  
14 information on that, Judge. In speaking with her I said:  
15 Did this matter come up at your nurse licensure?

16 And she said: Yeah. And, frankly, that's  
17 one of the reasons why I thought this was all put to bed,  
18 is because I told the licensing board about that. It  
19 didn't become a problem. I was able to get my nursing  
20 license.

21 To her that process was another reason why  
22 she thought she didn't have problems as a result of what  
23 happened 20 year ago in Florida for a bad check.

24 THE COURT: Now, Mr. Colucci, arguendo,  
25 let's assume that she is not legally impaneled as a juror,

1 what does that mean?

2 MR. COLUCCI: I think you just resolved  
3 the case, Judge. If she was not legally impaneled, then  
4 only 11 people sat on that jury. And my client is  
5 entitled to have 12 qualified jurors to make a decision,  
6 not in a robbery case, not in a dope case, but in a first  
7 degree murder case.

8 He's facing life without the possibility of  
9 parole. I think the case is serious. I think he's  
10 entitled to the full benefit of the law. I think he has a  
11 constitutional right to have 12 qualified jurors.

12 And, frankly, I have to take exception. If  
13 she was consistent in denying that she had a felony  
14 conviction because she felt it had been sealed, expunged  
15 or restored, then why did she have to tell it to the Jury  
16 Commissioner?

17 If you take what she said as true, she  
18 disclosed it because she knew she had the conviction. If  
19 you take what the Jury Commissioner says is true, she  
20 never disclosed anything on the four occasions she had  
21 contact with their office.

22 MR. PETERSON: Judge, their vehicle is  
23 a motion for a new trial, and there's no other vehicle for  
24 it. The vehicle for a motion for a new trial indicates  
25 what the time limits are. And Mr. Colucci wants to make

1 show of it's not a drug case, it's not a burglary case,  
2 it's a murder case.

3 Well, the Depasquale case I mentioned to the  
4 Court is a capital case. And that motion was one day  
5 late, and the Court upheld the District Court's denial of  
6 it because it's outside the time period.

7 Submit it to the Court.

8 THE COURT: Well, in my view, frankly,  
9 in that case there is a much more serious misstatement or  
10 omission. Here the defendant is being found guilty of a  
11 capital murder by a juror whose family member has been  
12 murdered which, obviously, if it goes against anyone, goes  
13 against the defendant.

14 Here we have a felony that I'm not sure  
15 prejudices anybody, a paper crime 20 years old.

16 How does that prejudice you, counsel?

17 MR. COLUCCI: I don't have to show  
18 prejudice.

19 THE COURT: Well, I'm asking you.

20 MR. COLUCCI: How does it prejudice?

21 Well, if you take that together with the  
22 fact that she didn't disclose the truth to the Jury  
23 Commissioner, that she came into this Court and didn't  
24 disclose it to this Court.

25 THE COURT: And would your position be,



1 again, this is just hypothetically, if a juror is found to  
2 have honestly made a mistake in evaluating whether or not  
3 their record had been expunged; in other words, they  
4 wouldn't have to disclose under these circumstances, and  
5 it's later found that, in fact, they are wrong, does that  
6 mean that it invalidates the entire proceeding?

7 MR. COLUCCI: Well, let me just -- I'm  
8 trying to think of a really good example.

9 THE COURT: Mine is pretty good.

10 MR. COLUCCI: Well, if I tell you the  
11 top of your water thing is white and I truly believe it's  
12 white, does that make it white? It's still black.

13 THE COURT: You've read prophecies.  
14 You're answering a question with a question.

15 MR. COLUCCI: I'm sorry about that. If  
16 she's not qualified in the first instance, she's not  
17 qualified all the way down the road. That's our position.

18 THE COURT: So there's a glitch in the  
19 proceedings, and someone that answers their questions  
20 under the mistaken belief that they are no longer a felon  
21 or whatever might be the circumstance, then all that goes  
22 on, the weeks, maybe months that goes on in trial can all  
23 be set aside, and many thousands and thousands of dollars  
24 of tax-payers' money is all just pooped away because there  
25 was this omission.

1 Is that your position?

2 MR. COLUCCI: We call that the  
3 appellate process, Judge.

4 THE COURT: I have several other things  
5 that I could call it, but I'll tell you this. I am not  
6 convinced that there was, number one, anything that even  
7 remotely approaches an inequity or injustice by virtue of  
8 this scenario that I'm being presented with having to do  
9 with this jury.

10 And I don't fault you for bringing it up,  
11 certainly. But we are working this to death. We have  
12 gone all over these jurors and we're just taking a little  
13 piece here, and a little piece there, and on total it  
14 doesn't amount to much at all, in my view. But that's on the  
15 merits.

16 I don't think that we have jurisdiction, and  
17 I am so finding. So we have those two things to pose to  
18 whatever appellate proceedings you might want to take it  
19 to.

20 Now, what else do we have? Do we have a  
21 sentencing date?

22 MR. COLUCCI: We have sentencing date  
23 which is tomorrow. And if the Court -- if I could just be  
24 heard on that for one moment.

25 Based on the Court's decision, I am planning

1 on filing a writ with the Supreme Court, and they may  
2 decide to rule on the merits, or they may not. And I  
3 would ask that the sentencing date be put off for a week  
4 so I can get the writ up to the Supreme Court.

5 THE COURT: Well, there's no way the  
6 Supreme Court is going to answer it in time.

7 MR. COLUCCI: They may issue a stay,  
8 they may not.

9 MR. PETERSON: Judge, I think the  
10 matter should move forward, in all honesty. Sentencing  
11 the defendant after the denial of the motion for a new  
12 trial certainly doesn't interfere with whatever appellate  
13 rights he might feel he has on this particular motion.

14 If he's sentenced and somehow Mr. Colucci  
15 persuades them that a new trial motion should have been  
16 granted, it's all undone and we go back to the beginning.  
17 There's no need to delay.

18 All that does is, in the event Mr. Colucci  
19 loses his motion, we just sort of sat around for a long  
20 time not doing anything. There's no legal impediment  
21 going forward with the sentencing.

22 It doesn't change his posture at all. All  
23 it does is, in the event his writ for a petition is  
24 denied, now the defendant has been sentenced and his  
25 appellate rights begin to run.

1 THE COURT: Well, one way or the other  
2 it doesn't make any difference to me. I don't know.

3 Is it going to serve a purpose?

4 MR. COLUCCI: Your Honor, I would like  
5 to get this Court's findings on the motion for a new  
6 trial, including a ruling on the other issues we've raised  
7 about the T-shirt, and the sleeping juror, and the other  
8 issues, and the gun experiment that we put forth.

9 THE COURT: I'm finding that you don't  
10 have standing, and so that's the primary ruling of the  
11 Court.

12 I mean, I'm not going to say you don't have  
13 a right to any hearing and, by the way, let's have a  
14 hearing. Because, candidly, if you have a right to a  
15 hearing based on what you're suggesting here, I'd have to  
16 have all those people in here and we'd have to have a  
17 hearing because there's so many factual contentions here.

18 And I would concede that readily. And if  
19 the Supreme Court says a hearing is needed, that's what  
20 we'll do, in my view.

21 But as I look at some of those things,  
22 again, I don't mean to be unpleasant about it, but  
23 nothing -- what was it Justice Mulder used to say? And I  
24 don't mean to be trite, but he would say this on the  
25 record. He would say, "Counsel, you're fly-specking."

1                   And what he was meaning is, you take a  
2 little here and little there and you try to make this big  
3 thing out of it. And that's what we're doing here, it  
4 looks like, because here's a little something on a  
5 T-shirt. Here's a guy that dozes off a little bit.

6                   Now, granted, that's not something we want  
7 to see. But let's face it, five weeks of trial, people  
8 are human. We don't expect -- I think there was some  
9 suggestion the guy was tapping him on occasion. I don't  
10 know what the facts are.

11                   But one juror that perhaps is inattentive a  
12 total of maybe two minutes in five weeks, whatever we're  
13 talking about, is not a major thing. Now, granted, it's  
14 important, but you have to balance these things.

15                   And when I looked at all this, I was not  
16 taken aback by this terrible specter of some injustice  
17 being done.

18                   MR. COLUCCI: Judge, just as a side  
19 note with respect to the T-shirt issue, the fact that  
20 somebody comes in and wears a T-shirt in the courtroom  
21 that says, "What does a murderer look like," and is  
22 sitting as a juror is not a small matter. That's not  
23 fly-specking.

24                   THE COURT: I don't think anybody saw  
25 that.

1 MR. PETERSON: No one saw it. It's a  
2 T-shirt, it's a name of a song of a local band. This kid  
3 was wearing the band's T-shirt, it said on the back near  
4 the belt. Apparently some other juror saw it and said:  
5 You know what, Chris, that's a silly thing to wear given  
6 the trial we're in, cover it up. No one noticed it.

7 The sleeping issue is something that neither  
8 Mr. Bloom, who was sitting where Mr. Colucci is, nor  
9 myself, nor Ms. Goettsch, nor the other Defense trial  
10 counsel from the Special Public Defender's office,  
11 Ms. Navarro.

12 Mr. Centofanti apparently never noticed it,  
13 and the Court never saw it, the Court's staff never  
14 noticed it. No one ever made any objection or record  
15 about any of that. I never saw it.

16 The jurors when we talked to them said:  
17 Yeah, Chris nodded, but Matthew sat next to him and nudged  
18 him and woke him up, and it was apparently immediate.

19 THE COURT: All right. So Friday the  
20 10th is out next date.

21 MR. COLUCCI: Your Honor, may I submit  
22 an order? I'll pass it by Mr. Peterson, but I'd like to  
23 get to the Court as soon as possible on the denial of the  
24 motion. |

25 THE COURT: You may.

1 MR. COLUCCI: Thank you very much.

2 THE COURT: Sorry you had to wait.

3 Court's adjourned.

4

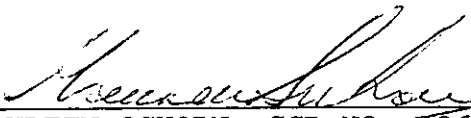
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6 ATTEST: Full, true and accurate transcript of  
7 proceedings.

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MAUREEN SCHORN, CCR NO. 496, RPR

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**ORDER**

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FILED

SEP 2 9 14 AM '04

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CLERK

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,  
Plaintiff,

-vs-

ALFRED P. CENTOFANTI, III,  
#1730535

Defendant.

Case No. C172534  
Dept No. XIV

## ORDER DENYING DEFENDANT'S MOTION FOR NEW TRIAL

DATE OF HEARING: 8/26/04  
TIME OF HEARING: 9:00 A.M.

THIS MATTER having come on for hearing before the above entitled Court on the 26th day of August, 2004, the Defendant not being present, represented by CARMINE COLLUCCI, Esq., the Plaintiff being represented by DAVID ROGER, District Attorney, through CLARK PETERSON, Chief Deputy District Attorney, and the Court having heard the arguments of counsel and good cause appearing therefor,

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1 IT IS HEREBY ORDERED that the Defendant's Motion for New Trial, shall be, and  
2 it is denied, on jurisdictional grounds because it does not allege newly discovered evidence  
3 regarding the Defendant and was filed more than seven (7) days after the verdict in this case.  
4 NRS 176.515(4).

5 DATED this 1st September  
6 day of ~~August~~, 2004.

7   
8 DISTRICT JUDGE

9  
10 DAVID ROGER  
11 DISTRICT ATTORNEY  
12 Nevada Bar #002781

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14 BECKY GOETTSCH  
15 Deputy District Attorney  
16 Nevada Bar #006316  
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1 JOCP

2 DAVID ROGER

3 Clark County District Attorney

4 Nevada Bar #002781

5 200 South Third Street

6 Las Vegas, Nevada 89155-2212

7 (702) 455-4711

8 Attorney for Plaintiff

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CLERK

DISTRICT COURT  
CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,

10 Plaintiff,

11 -vs-

12 ALFRED PAUL CENTOFANTI, III,  
13 #1730535

14 Defendant.

Case No: C172534

Dept No: XIV

## JUDGMENT OF CONVICTION (JURY TRIAL)

The Defendant previously entered plea(s) of not guilty to the crime(s) of MURDER WITH USE OF A DEADLY WEAPON (Category A Felony), in violation of NRS 200.010, 200.030, 193.165, and the matter having been tried before a jury, and the Defendant being represented by counsel and having been found guilty of the crime(s) of FIRST DEGREE MURDER WITH USE OF A DEADLY WEAPON (Category A Felony - NRS 200.010, 200.030, 193.165); and thereafter on the 4th day of March, 2005, the Defendant was present in Court for sentencing with his counsel, CARMINE J. COLUCCI, ESQ., and good cause appearing therefor,

THE DEFENDANT HEREBY ADJUDGED guilty of the crime(s) as set forth in the jury's verdict and, in addition to the \$25.00 Administrative Assessment Fee, the Defendant is sentenced as follows: to LIFE WITHOUT THE POSSIBILITY OF PAROLE plus an equal

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1 and consecutive LIFE SENTENCE WITHOUT THE POSSIBILITY OF PAROLE for use of  
2 a deadly weapon. Defendant will received (374) days credit for time served.

3 DATED this 9th day of March, 2005.

4   
5 DISTRICT JUDGE 8

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*Shelly L. Mangione*  
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1 NOAS  
2 CARMINE J. COLUCCI, ESQ.  
3 CARMINE J. COLUCCI, CHTD.  
4 Nevada Bar No. 000881  
5 629 South Sixth Street  
6 Las Vegas, Nevada 89101  
7 (702) 384-1274  
8 Attorney for Defendant

DISTRICT COURT

CLARK COUNTY, NEVADA

10 THE STATE OF NEVADA, ) CASE NO. C172534  
11 ) DEPT NO. XIV  
12 Plaintiff, )  
13 vs. )  
14 ALFRED PAUL CENTOFANTI, III, )  
15 Defendant. )  
16 \_\_\_\_\_ )

**NOTICE OF APPEAL**

18 Notice is hereby given that the Defendant, ALFRED PAUL CENTOFANTI, III,  
19 hereby appeals to the Supreme Court of Nevada from this court's Judgment of  
20 Conviction (Jury Trial) filed on March 11, 2005, in the above-entitled action.

22 DATED this 23<sup>rd</sup> day of March, 2005.

CARMINE J. COLUCCI, CHTD.

*Carmine J. Colucci*

26 CARMINE J. COLUCCI, ESQ.  
27 Nevada Bar No. 0881  
28 629 South Sixth Street  
Las Vegas, Nevada 89101  
Attorney for Defendant

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AFFIDAVIT

STATE OF NEVADA }  
COUNTY OF CLARK } ss:

DIANA MILLER, being first duly sworn, deposes and says:

1. That I am a resident of Clark County, Nevada and that I served as a juror in State of Nevada v. Alfred P. Centofanti, III., Case No. C172534.

2. That neither before nor during deliberation did any juror discuss conducting any test, experiment, or reenactment regarding the evidence.

3. That juror Wheeler never mentioned during deliberation any experience shooting a weapon.

4. That my verdict was not affected by any clothes worn by any other juror during the trial.

5. That during the trial I was not aware of whether other jurors may or may not have been sleeping during the course of the trial.

6. That at no time during deliberations did any juror indicate that they had missed evidence or were unable to deliberate because they were sleeping.

I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

Executed on

5-August-2004  
(Date)

*Diana E. Miller*  
DIANA MILLER

BG/mmw

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AFFIDAVIT

STATE OF NEVADA }  
COUNTY OF CLARK } ss:

CAREN BARRS, being first duly sworn, deposes and says:

1. That I am a resident of Clark County, Nevada and that I served as a juror in State of Nevada v. Alfred P. Centofanti, III., Case No. C172534.

2. That neither before nor during deliberation did any juror discuss conducting any test, experiment, or reenactment regarding the evidence.

3. That Juror Wheeler never mentioned during deliberation any experience shooting a weapon.

4. That my verdict was not affected by any clothes worn by any other juror during the trial.

5. That during the trial I was not aware of whether other jurors may or may not have been sleeping during the course of the trial.

6. That at no time during deliberations did any juror indicate that they had missed evidence or were unable to deliberate because they were sleeping.

7. That I was convicted of a felony involving bad checks over twenty (20) years ago in Florida.

8. That when I called into the jury commissioner and was quizzed over the telephonic information system, I pushed the number indicating that I did in fact have a felony conviction.

9. That I have never been convicted of anything in Nevada.

10. That I also indicated in writing to the jury commissioner that I did have a felony conviction in Florida in excess of twenty (20) years ago.

11. That I have had my rights restored as a result of that felony conviction and I am allowed to vote and maintain my nursing license.

12. That due to the fact that I had already disclosed this information on two (2)

1 occasions, I was under the impression that the Court and parties knew from my prior  
2 disclosure that I did have a felony conviction.

3 13. That I did not intentionally conceal my felony conviction from the Court or the  
4 parties.

5 I declare under penalty of perjury under the law of the State of Nevada that the  
6 foregoing is true and correct.

7  
8 Executed on Aug. 6 2004  
9 (Date)

Caren Barrs  
CAREN BARRS



0001  
CARMINE J. COLUCCI, ESQ.  
CARMINE J. COLUCCI, CHTD.  
Nevada Bar #000881  
629 South Sixth Street  
Las Vegas, Nevada 89101  
(702) 384-1274  
Attorney for Defendant,  
ALFRED P. CENTOFANTI III

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*Shirley L. Thompson*  
CLERK

DISTRICT COURT  
CLARK COUNTY, NEVADA

STATE OF NEVADA,

Plaintiff,

vs.

ALFRED P. CENTOFANTI III,

Defendant.

CASE NO. C172534

DEPT NO. XIV

Date of Hearing: 8/26/04

Time of Hearing: 9:00 a.m.

DEFENDANT'S EX PARTE MOTION AND ORDER TO JURY COMMISSIONER  
TO RELEASE JUROR INFORMATION FOR JUROR NUMBER THREE  
IN STATE OF NEVADA V. ALFRED PAUL CENTOFANTI, III

Upon the ex parte application of the Defendant, PAUL CENTOFANTI III, by and through his attorney, CARMINE J. COLUCCI, ESQ., of the law firm of CARMINE J. COLUCCI, CHTD., the Defendant seeks an order from this Court authorizing the Clark County Jury Commissioner to release to defense counsel all information about Juror Number Three, Caren Barrs, date of birth June 23, 1946, so that the defense may respond to the assertions by the State in their Opposition to the defense Motion for New Trial.

**MEMORANDUM OF POINTS AND AUTHORITIES**

Between March 15, 2004, and April 15, 2004, this case was tried in Department XIV of the Eighth Judicial District Court. The jury returned a verdict of guilty of First Degree Murder on April 15, 2004. Juror Number Three seated

1 on this jury was Caren Barrs. After the conviction, the jurors were investigated  
2 by new defense counsel and it was learned that Ms. Barrs had in fact been  
3 convicted of a felony in Pinellas County, Florida in 1980. This was a felony  
4 conviction for Obtaining Property in Return for Worthless Check. The state has  
5 asserted that pursuant to Florida law, after a period of twenty (20) years, a felon's  
6 Civil Rights are restored.

7 The state has asserted that they conducted their own investigation into the  
8 juror's felony conviction and learned that the juror had disclosed her felony  
9 conviction when she called into the jury commissioner and answered the  
10 questions on the telephonic information system. The state asserts that upon Ms.  
11 Barrs' receipt of her jury summons, she called in as instructed and disclosed that  
12 she did have a felony conviction. The state has asserted that she also disclosed  
13 this information on her questionnaire to the jury commissioner. The Jury  
14 Commissioner or their representative then allegedly inquired of this potential juror  
15 as to whether or not she had any felony convictions in Nevada. The state asserts  
16 that after a negative response, the Jury Commissioner or representative told Ms.  
17 Barrs that she should in fact show up in court. The state has asserted that when  
18 she arrived in court she assumed that all parties were aware of her prior felony  
19 conviction and did not offer the information during the jury selection process  
20 despite this Court's inquiry.

21 The defense has brought a motion for a new trial based on jury misconduct  
22 alleging the defendant is entitled to a new trial due to the fact that a juror on the  
23 case was a convicted felon and failed to disclose this information to the Court. In  
24 order to be able to fully support the allegations made in its Motion for a New Trial,  
25 and to refute the allegations made by the state in its opposition to that motion, the  
26 defense is seeking the release of the information provided to the Jury  
27 Commissioner by juror Caren Barrs which has already been provided to the state  
28

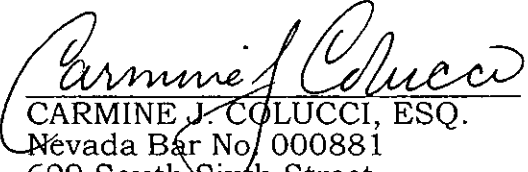
1 and used in their opposition to the defense Motion for New Trial.

2 CONCLUSION

3 Based upon the foregoing, the defense request that the Court order the Jury  
4 Commissioner to release any information provided to the jury commissioner by  
5 Juror Number Three, identified as Caren Barrs.

6 DATED this 17<sup>th</sup> day of August, 2004.

7 CARMINE J. COLUCCI, CHTD.

8  
9   
10 CARMINE J. COLUCCI, ESQ.  
11 Nevada Bar No. 000881  
12 629 South Sixth Street  
13 Las Vegas, Nevada 89101  
14 Attorney for Defendant


15 ORDER

16 IT IS HEREBY ORDERED that all information regarding Juror Number  
17 Three, Caren Barrs, in the case of State of Nevada v. Alfred P. Centofanti III, be  
18 provided by the Jury Commissioner to Carmine J. Colucci, Esq., attorney for the  
19 defendant.

20 DATED this 18 day of August, 2004.

21 DONALD M. MOSLEY  
22 DISTRICT JUDGE

23 CARMINE J. COLUCCI, CHTD.

24   
25 CARMINE J. COLUCCI, ESQ.  
26 Nevada Bar No. 000881  
27 629 South Sixth Street  
28 Las Vegas, Nevada 89101  
Attorney for Defendant

1                                    CERTIFICATE OF FACSIMILE TRANSMISSION

2            I hereby certify that service of DEFENDANT'S EX PARTE MOTION AND  
3 ORDER TO THE JURY COMMISSIONER TO RELEASE JUROR INFORMATION  
4 FOR JUROR NUMBER THREE IN STATE OF NEVADA V. ALFRED PAUL  
5 CENTOFANTI III was made this \_\_\_\_ day of August, 2004, by facsimile  
6 transmission to:

7 is hereby acknowledged this \_\_\_\_ day of August, 2004.

8            Becky Goettsch  
9            Deputy District Attorney  
10           200 South Third Street  
11           Las Vegas, NV 89155  
12           Attorney for Plaintiff  
13           Facsimile No. 384-0146

14           \_\_\_\_\_  
15           An employee of  
16           Carmine J. Colucci, Chtd.

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DAVID ROGER  
CLARK COUNTY DISTRICT ATTORNEY

23 CERTIFIED COPY  
24 DOCUMENT ATTACHED IS A  
FEDERAL BUREAU OF INVESTIGATION

4

1 REPL  
2 CARMINE J. COLUCCI, ESQ.  
3 CARMINE J. COLUCCI, CHTD.  
4 Nevada Bar #000881  
5 629 South Sixth Street  
6 Las Vegas, Nevada 89101  
7 (702) 384-1274  
8 Attorney for Defendant,  
9 ALFRED P. CENTOFANTI III

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*Shirley B. Rungius*  
CLERK

DISTRICT COURT  
CLARK COUNTY, NEVADA

STATE OF NEVADA,

Plaintiff,

vs.

ALFRED P. CENTOFANTI III,

Defendant.

CASE NO. C172534

DEPT NO. XIV

Date of Hearing: 8/26/04  
Time of Hearing: 9:00 a.m.

**REPLY TO STATE'S OPPOSITION TO DEFENDANT'S MOTION FOR NEW TRIAL**

COMES NOW, the Defendant, ALFRED P. CENTOFANTI III, by and through his attorney, CARMINE J. COLUCCI, ESQ., of the law firm of CARMINE J. COLUCCI, CHTD., who now files this Reply to the State's Opposition to the Defendant's Motion for New Trial.

This reply is based upon the points and authorities submitted herewith, the exhibits attached hereto, and all papers, pleadings and court records on file

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1 herein.

2 DATED this 24<sup>th</sup> day of August, 2004.

3 CARMINE J. COLUCCI, CHTD.

4   
5 CARMINE J. COLUCCI, ESQ.  
6 Nevada Bar No. 000881  
7 629 South Sixth Street  
8 Las Vegas, Nevada 89101  
9 Attorney for Defendant

10 **MEMORANDUM OF POINTS AND AUTHORITIES**

11 **I.**

12 **THE DEFENDANT WAS NOT A QUALIFIED JUROR AS HER**  
13 **CIVIL RIGHTS WERE NEVER RESTORED**

14 The state concedes that the Centofanti case juror Caren Barrs was  
15 convicted in Florida of a felony which occurred in 1980. At the time that she was  
16 convicted, she lost her civil rights including the right to serve as a juror in Florida  
17 until those civil rights were restored. The state at page 5 of its opposition has  
18 asserted **as fact**, "THE DEFENDANT IS NOT ENTITLED TO A NEW TRIAL BASED  
19 ON A PRIOR FELONY CONVICTION OF CAREN BARRS BECAUSE HER CIVIL  
20 RIGHTS HAVE BEEN RESTORED, ENTITLING HER TO SERVE ON A JURY, AND  
21 SHE DID NOT COMMIT MISCONDUCT DURING VOIR DIRE." Attached hereto as  
22 Exhibit A is a certified document from the Office of Executive Clemency of the  
23 State of Florida, Florida Parole Commission, which unequivocally shows that **Ms.**  
24 **Barrs has not had her civil rights restored in Florida.** Since 1980 she has not  
25 been qualified to be a juror in Florida and she has therefore not qualified to sit as  
26 a juror in Nevada at the time that the Centofanti matter was tried.

27 The state has also asserted as fact that Ms. Barrs' civil rights were restored  
28 after twenty years by law in Florida. They have asserted in their Ex Parte Motion  
and Order to Jury Commission to Release Juror Information for Juror Number

1 Three in State of Nevada v. Alfred Paul Centofanti III, at page two, "Pursuant to  
2 Florida law, after a period of twenty (20) years, a felon's Civil Rights are restored."  
3 This is also not true.

4 The state has cited no statute or case law as authority for this proposition  
5 which the defense asserts is not the state of the law in Florida. The pertinent  
6 Florida law and article of the Florida constitution concerning the suspension and  
7 restoration of civil rights are set forth below:

8 **Fla. Stat. § 944.292 Suspension of civil rights.**

9 (1) Upon conviction of a felony as defined in s. 10, Art X of the State  
10 Constitution, the civil rights of the person convicted shall be  
11 suspended in Florida until such rights are restored by a full pardon,  
conditional pardon, or restoration of civil rights granted pursuant to  
s. 8, Art. IV of the State Constitution.

12 (2) This section shall not be construed to deny a convicted felon  
13 access to the courts, as guaranteed by s. 21 Art. I of the State  
Constitution, until restoration of her or his civil rights.

14 **Fla. Stat. § 944.293 Initiation of restoration of civil rights.**

15 With respect to those persons convicted of a felony, the following  
16 procedure shall apply: Prior to the time an offender is discharged  
from supervision, an authorized agent of the department shall obtain  
17 from the Governor the **necessary application and other forms**  
18 **required for the restoration of civil rights.** The authorized agent  
shall assist the offender in completing these forms and shall ensure  
that the application and all necessary material are forwarded to the  
19 Governor before the offender is discharged from supervision.  
(Emphasis added)

20 **Art. IV, Section 8, Fla. Const.**

21 1. (a) Except in cases of treason and in cases where impeachment  
22 results in conviction, the governor may, by executive order filed with  
the custodian of state records, suspend collection of fines and  
forfeitures, grant reprieves not exceeding sixty days and, with the  
23 approval of two members of the cabinet, grant full or conditional  
pardons, restore civil rights, commute punishment, and remit fines  
24 and forfeitures for offenses.

25 (b) In cases of treason the governor may grant reprieves until  
26 adjournment of the regular session of the legislature convening next  
after the conviction, at which session the legislature may grant a  
27 pardon or further reprieve; otherwise the sentence shall be executed.



1 (c) There may be created by law a parole and probation commission  
2 with power to supervise persons on probation and to grant paroles or  
3 conditional releases to persons under sentences for crime. The  
4 qualifications, method of selection and terms, not to exceed six years,  
5 of members of the commission shall be prescribed by law.

6 Attached hereto as Exhibit B is a copy of the Restoration of Civil Rights  
7 Application presently in use in Florida. The state has not asserted, nor has the  
8 defense investigation disclosed that Ms. Barrs has properly applied for and had  
9 her civil rights restored through the process required by Florida law. In fact, in  
10 Exhibit A it is stated that an application for restoration is not even pending.

## 11 II.

### 12 **JUROR BARRS DID COMMIT MISCONDUCT BEFORE AND** 13 **DURING VOIR DIRE AND AFTER TRIAL WAS CONCLUDED**

14 What is also abundantly clear is that although Ms. Barrs swears under oath  
15 that she did, she never disclosed her felony conviction to the Clark County Jury  
16 Commissioner. See the affidavit of the Clark County Jury Commissioner attached  
17 hereto as Exhibit C. To make matters worse, after the trial was concluded, Ms.  
18 Barrs was not truthful in her affidavit which is attached to the state's opposition,  
19 when she said she disclosed her felony conviction to the Jury Commissioner, and  
20 she was not truthful when she told the prosecutor, Becky Goettsch, that her civil  
21 rights had been restored 20 years ago. See copy of Ms. Barrs' affidavit which is  
22 attached hereto as Exhibit D.

23 To compound the previously mentioned intentional concealment, Ms. Barrs  
24 claims that since she disclosed her conviction to the Clark County Jury  
25 Commissioner, **by telephone, verbally and in writing**, which she never did, she  
26 felt that she was not required to mention it to the court even when directly asked.  
27 She goes on to state in her affidavit, declaring under penalty of perjury, that her  
28 statements therein were true, "That I have had my rights restored as a result of  
that felony conviction and I am allowed to vote and maintain my nursing license!"

1 This statement insinuates that she took some affirmative action to get her rights  
2 restored even though the state claims that her rights were automatically restored.  
3 Neither of these statements is true.

4 In her Voter Registration application, dated March 16, 2000 which is  
5 attached hereto as Exhibit E, Ms. Barrs declared under penalty of perjury that,  
6 "I am not laboring under any felony conviction or other loss of civil rights which  
7 would make it unlawful for me to vote." This was also not true. If she has voted,  
8 she has voted unlawfully. If she has concealed her conviction from the registrar  
9 of voters, why would she reveal it to the Jury Commissioner? She knew or should  
10 have known that her record was not sealed or expunged and that her civil rights  
11 were not restored as she contacted the clerk in Florida to get copies of her record  
12 in 1998.

13 Even the prosecutor, Clark Peterson, picked up on Ms. Barrs' reluctance to  
14 disclose her conviction and present status when he conducted his voir dire of her.  
15 See transcript of Voir Dire at pp. 71-72 of Exhibit C to the Defendant's Motion for  
16 a New Trial. If all of the parties were supposedly "aware of her conviction" why  
17 would the Court feel the need to explicitly ask her a question whose purpose was  
18 partly to discover the very thing that she intentionally concealed?

19 The state has asserted in their opposition to Defendant's Motion for New  
20 Trial, at p. 6, that Ms. Barrs did not commit misconduct during voir dire. They  
21 bolster this assertion by stating: "When she (Barrs) arrived in court she assumed  
22 that all parties were aware of her prior felony conviction and did not **offer** the  
23 information during the jury selection process." Who advised Ms. Barrs that as a  
24 prospective juror in a murder case, she was allowed to disclose whatever  
25 information that she felt like offering? She was asked a direct question in voir dire  
26 by this Court.

27 The state then offers the explanation that she telephonically disclosed, in  
28

1 person and then **“wrote down the information on the Jury Commissioner**  
2 **information sheet.”** As previously mentioned, there was no writing or other  
3 method of disclosure so this apparent assertion of fact is false. So Ms. Barrs not  
4 only did not “offer” this information, she made the conscious and intentional  
5 decision not to disclose it. Nevertheless, she did intentionally disclose her son’s  
6 information (See pp. 62-64 of Exhibit C to the Defendant’s Motion for a New Trial).

7 While the defense asserts that since Ms. Barrs was objectively and therefore  
8 legally never a qualified juror, and that no further inquiry needs to be made for  
9 the Defendant’s motion to be granted on that ground alone, this Court should  
10 recognize that the defense is entitled to honest answers to voir dire questions  
11 especially when they are asked by this Court. The Nevada Supreme Court has  
12 held that “where a juror has failed to reveal potentially prejudicial information  
13 during voir dire, the relevant inquiry is whether the juror is guilty of intentional  
14 concealment . . . .” *Canada v. State*, 113 Nev. 938, 944 P.2d 781 (1997).  
15 Conviction of a felony is potentially prejudicial information. The Nevada Supreme  
16 Court held in *Canada* that the trial court abused its discretion by failing to find  
17 that the juror had intentionally concealed important information during voir dire  
18 when in fact he did.

19 Now the State seeks to justify the act of intentional concealment by Ms.  
20 Barrs, asserting that she “assumed” her civil rights were restored under a Florida  
21 law when they were not and because she mistakenly “assumed” that all parties  
22 (and the Court?) were aware of her felony conviction. Why she made these  
23 incorrect “assumptions” is unknown but the facts are unrefutable – Caren Barrs  
24 is a convicted felon whose civil rights have not been restored in Florida. Nevada  
25 cannot restore the civil rights of a felon convicted and disenfranchised under  
26 Florida law. See Op. Atty Gen. Nev. 146, 96-27 (1996) attached hereto as Exhibit  
27 F.  
28

1 The state has conceded that since the felony conviction was in Florida and  
2 not Nevada, the Court must look to Florida law to see if Florida automatically  
3 restored her rights. See page 5 of the state's opposition. Obviously her civil rights  
4 were not restored although they **may** have been if she had filed the necessary  
5 application and the appropriate Florida state government agency had determined  
6 that she met the qualifications. However, these two steps must be taken first.

7 Ms. Barrs made contact with the Pinellas County criminal court on July  
8 20, **1998**, eighteen years after her conviction in order to obtain copies of  
9 documents from her case. It would probably take an evidentiary hearing in order  
10 to discern exactly why she wanted those copies but it may very well have been so  
11 that she could start the restoration of civil rights application process which  
12 Florida law requires and which she apparently never completed. Fla. Stat.  
13 §940.05 (2004) states:

14 **Fla. Stat. § 940.05 (2004)**

15 Any person who has been convicted of a felony **may** be entitled to the  
16 restoration of all the rights of citizenship enjoyed by him or her prior  
to conviction if the person has:

- 17 (1) Received a full pardon from the board of pardons;  
18 (2) Served the maximum term of the sentence imposed upon him or  
her; or  
19 (3) Been granted his or her final release by the Parole Commission.  
(Emphasis added)

20 This contact with the clerk in Pinellas County shows that in 1998 she had  
21 some concern about her felony conviction and this contact provided her with an  
22 opportunity to get documentary or verbal confirmation on the status of the  
23 restoration of her civil rights. If the defense could obtain this information without  
24 any court orders, certainly Ms. Barrs could get it. It is obvious that this  
25 conviction, up to today, is a matter of public record and has not been sealed or  
26 expunged under Florida law and her civil rights have not been restored.

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III.

**JUROR WHEELER DID CONDUCT A FIREARM TEST**

With respect to the statements of juror Josh Wheeler to the state's investigator which conflict with the statements contained in the Defendant's original motion, the defense is prepared to offer the testimony of Mike Pfriender in order to rebut Mr. Wheeler's latest statements and to prove the accuracy of the defense's assertions regarding the shooting test conducted by him. There were two interviews with Mr. Wheeler. One was recorded and one was not. See the affidavit of Mike Pfriender attached hereto as Exhibit G.

IV.

**DEFENDANT IS ENTITLED TO A NEW TRIAL DUE TO THE INAPPROPRIATE CONDUCT OF OTHER JURORS**

With respect to the inappropriately lettered tee shirt worn by the juror which was mentioned in the Defendant's initial moving papers, the defense is prepared to bring in several witnesses who saw him wearing the shirt before the case was ever submitted to the jury. Most of the other jurors also saw the shirt that said "Do you know what a Murderer looks like?" See the affidavits of the jurors attached to the state's opposition. This shows his inability to take this case seriously, which is a violation of his oath, and his decision predisposition. It was unbelievably inappropriate given the gravity and gruesomeness of the case and shows that this juror was unfit for service. Further, the jury foreman, Nancy Gordinier, in her affidavit, claims that she brought this to the bailiff's attention. It is unknown if the Court was made aware of it, but this act of immaturity and conscious disregard for the seriousness of the proceedings by this juror would, at least, have required his removal from the jury.

The defense is also prepared to present witnesses who saw two of the jurors sleeping during the case for periods of time which had to have an impact on their

1 ability to remember and to consider the evidence presented to them. An inquiry  
2 must be made in this area in order to insure that the Defendant was given due  
3 process and a fair trial as guaranteed under the Fifth, Sixth and Fourteenth  
4 Amendments to the Constitution of the United States.

5 **V.**

6 **DEFENDANT'S MOTION IS NOT UNTIMELY**

7 The defense asserts that NRS 176.515 does not even apply to this situation.  
8 This was misconduct which facilitated the seating of a person who was not even  
9 qualified to be a juror in the first instance. She was not even a juror at the time  
10 of her initial concealments. But even juror misconduct should not be protected  
11 by this statute. If this Court determines that juror misconduct which occurs  
12 during a trial is subject to this statute, the conduct in this case must be viewed  
13 as a continuing pattern of concealment which commenced when she responded  
14 to the jury summons and continued through all of her contact with the Jury  
15 Commissioner and then even with this Court up to today. She signed her affidavit  
16 in support of the state's opposition on August 6, 2004, still asserting as under  
17 oath, statements which the attached exhibits clearly show are untrue. Neither  
18 this "juror" or the state ever bothered to check the accuracy of these important  
19 statements which are asserted under oath as true.

20 As set forth above, juror Barrs intentionally engaged in a pattern of non-  
21 disclosure. Initially neither this Court, the state or defense had any reason to  
22 suspect that she would engage in activity that would violate her oath as a  
23 venireman and then as a juror. The state now asserts a position where it asks  
24 this Court to reward this deception by upholding this juror's fitness to serve on  
25 this jury as a result of her being untruthful with this Court or anyone connected  
26 with this case. NRS 176.515 was not enacted for this purpose.

27 This intentional concealment made the discovery of her prior felony  
28

1 conviction virtually impossible during the seven (7) days following the verdict. The  
2 defense does not have unfettered access to a person's local criminal history or  
3 scope or the National Criminal Information Center (NCIC) data base as the state  
4 does. Even if it did, Ms. Barrs' conviction may not have been discovered because  
5 it was a Florida conviction **and** it is assumed that Ms. Barrs did not register in  
6 Nevada as a convicted felon. Therefore, this is not the type of situation  
7 contemplated and therefore covered under the above referenced statute.

8 Although the defense is not conceding this, this issue could conceivably  
9 come under the section of NRS 176.515, relating to newly discovered evidence  
10 which sets forth a two (2) year time limitation. But the defense asserts that if the  
11 juror was not legally qualified in the first instance, this deficiency cannot be cured  
12 by the passage of time especially where deception and concealment from everyone  
13 prevented discovery even by the most diligent inquiry.

14 Further, the Defendant's constitutional right to due process and the right  
15 to a fair trial would be violated by holding him to a legal standard that he could  
16 not have possibly met. This is not like the late discovery of a witness or some  
17 documentary evidence which the defense should have discovered through normal  
18 investigation. This juror's intentional non-disclosure caused this Court and all  
19 parties not to challenge her qualifications. In the civil arena, this action would be  
20 considered fraud. Can this Court hold the defense to a higher standard in  
21 requiring it to discover this felony conviction than the Jury Commissioner whose  
22 duty it is to screen jurors or to the higher standard then this Court even though  
23 the Court asked the direct question or the state who has access to scope and  
24 NCIC? To do so would be to defy common sense as well as the principles of due  
25 process and fundamental fairness.

26 For the above stated reasons, the defense asserts that this Court cannot  
27 reward fraudulent concealment of information required to be disclosed in response  
28


1 to this Court's own question and in response to her oath to answer truthfully all  
2 questions put forth to her. There is no law which authorizes a juror to pick and  
3 choose what information not to disclose when asked a direct question by the  
4 Court or by the parties which absolutely probes her qualifications to be a juror.  
5 Someone other than the defense should have the obligation to determine whether  
6 a juror is legally even eligible to sit as a juror. Everyone assumes that the Jury  
7 Commissioner only calls up qualified candidates for jury service. Apparently, she  
8 too must rely upon the honesty of those called up.

9 CONCLUSION

10 Because this juror intentionally concealed her felony conviction from the  
11 Jury Commissioner and then claimed that she had advised the Jury  
12 Commissioner, telephonically, verbally and in writing, when it is clear that she did  
13 not do so, and for all of the above stated reasons as well as those raised in the  
14 initial moving papers in this motion, the Defendant asserts that he was denied his  
15 right to be tried by twelve "qualified" jurors and that his constitutional rights  
16 under the Constitution of the United States to due process and a fair trial as  
17 guaranteed under the Fifth, Sixth and Fourteenth Amendments were violated and  
18 therefore the Defendant's Motion for a New Trial should be granted.

19 DATED this 24th day of August, 2004.

20 CARMINE J. COLUCCI, CHTD.

21  
22   
23 CARMINE J. COLUCCI, ESQ.  
24 Nevada Bar No. 000881  
25 629 South Sixth Street  
26 Las Vegas, Nevada 89101  
27 Attorney for Defendant  
28



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DAVID ROGER  
CLARK COUNTY DISTRICT ATTORNEY

12

# EXHIBIT A



EB BUSH, GOVERNOR, CHAIRMAN  
CHARLES CRIST, ATTORNEY GENERAL

TOM GALLAGHER, CHIEF FINANCIAL OFFICER  
CHARLES H. BRONSON, COMMISSIONER OF AGRICULTURE  
MRS. JANET H. KEELS, COORDINATOR

PHONE: 850/488-2952

# OFFICE OF EXECUTIVE CLEMENCY

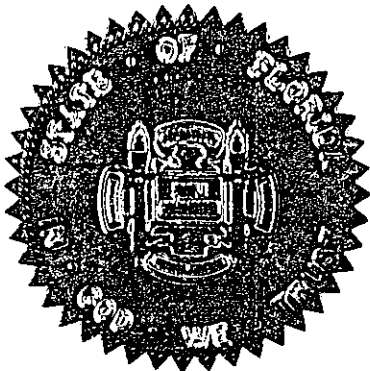
2601 BLAIRSTONE ROAD  
BUILDING C. ROOM 229  
TALLAHASSEE, FLORIDA 32399-2450

STATE OF FLORIDA,  
COUNTY OF LEON.

I HEREBY CERTIFY that I, Janet H. Keels, am Coordinator of the Office of Executive Clemency of the State of Florida which is located in the Florida Parole Commission. I further certify that this seal is the official seal of the Florida Parole Commission. As Coordinator of the Office of Executive Clemency, I am custodian of the records of the clemency office. The Office of Executive Clemency is the custodian of and has access to all records of civil rights restorations in the State of Florida.

I have made a thorough search of the clemency records and there is no record of restoration of civil rights; specific authority to sit as a juror, to vote, to receive, possess or transport in commerce a firearm, or a pardon of any kind, having been granted by the Governor and Cabinet of the State of Florida to a **CAREN BARRS, DOB 06/23/1946**, in connection with her felony conviction in the State of Florida.

Therefore, I certify that the civil rights of **CAREN BARRS** have not been restored. In addition, there is no application pending for clemency at this time for the above-named person.



Janet H. Keels, Coordinator  
Office of Executive Clemency  
of the State of Florida  
Florida Parole Commission

August 17, 2004

# EXHIBIT B

OFFICE OF EXECUTIVE CLEMENCY  
2601 Blairstone Road  
Building C, Room 229  
Tallahassee, FL 32399-2450  
Phone 850-488-2952

INFORMATION AND INSTRUCTIONS ON APPLYING FOR RESTORATION OF CIVIL RIGHTS

(If you are applying for other types of clemency, please see instructions for applying for clemency.)

**THIS PROCESS IS NOT AN ADVERSARIAL PROCEDURE AND YOU DO NOT NEED AN ATTORNEY TO REPRESENT YOU.**

It is important that the completed application form be entirely legible; therefore, please print or type. It should be fully and accurately completed.

The Executive Clemency Board will consider, but not be limited to, the following factors when determining whether to grant an applicant restoration of civil rights:

- (1) The nature of the offense;
- (2) Whether the applicant has any history of mental instability, drug or alcohol abuse;
- (3) Whether the applicant has a prior or subsequent criminal record, including traffic offenses;
- (4) The applicant's employment;
- (5) Whether the applicant is current or delinquent on child support requirements;
- (6) Letters submitted in support of, or opposition to, the grant of executive clemency.

The information which we request from you on the application form, and if you are interviewed by a Parole Examiner of the Florida Parole Commission, is needed to help provide the basis of an informed judgment as to whether or not you should be granted restoration of civil rights. This is our only purpose in asking you to complete and sign the application and requesting that an investigation be made. You are under no obligation to furnish any information. However, unless you do provide us with this information, we will be unable to process your application.

In making inquiries with respect to these matters, the Florida Parole Commission may interview you, persons who execute character affidavits or who write letters of reference concerning you, neighbors, employers, and other individuals who may be able to provide relevant information concerning you. While such inquiries are made discreetly and a reasonable effort is made not to disclose the reason for the investigation, we cannot assure that under no circumstances will the nature of the inquiry become known to some of the persons interviewed.

The Investigator will request you sign a notarized release statement to facilitate such investigation,

however, it may not be necessary to make contact with all individuals listed in such release statement. Pursuant to the Privacy Act of 1974, Chapter V, Section 552a, you will need to authorize any criminal justice agency, police department, sheriff's office, Federal or State agency, to make full disclosure and furnish copies of any information in its possession to any authorized Investigator of the Florida Parole Commission, as to your past and present background; and further authorize any and all physicians, hospitals, clinics, public health authorities and others to furnish full information about your physical and mental history and condition.

Executive clemency files are maintained to provide for the exercise of the Governor and Cabinet's constitutional clemency power and are, of course, routinely made available to them, members of their staff and other officials concerned with these proceedings. After the Board either grants or denies an application, an Order is prepared as to each grant of clemency and a copy of each order is maintained in the Office of Executive Clemency as an official record. Upon specific request, we advise anyone who asks whether a named person has applied for, been granted or denied clemency. Disclosures of the contents of Executive Clemency files to anyone may be made by the Governor when the disclosure is required by law or the ends of justice.

**PLEASE NOTE:** All information submitted to the Office of Executive Clemency becomes the property of this office and will not be returned. Please keep copies of any paperwork you think you may need in the future.

# EXHIBIT C

1 AFFT  
2 CARMINE J. COLUCCI, ESQ.  
3 CARMINE J. COLUCCI, CHTD.  
4 Nevada Bar #000881  
5 629 South Sixth Street  
6 Las Vegas, Nevada 89101  
7 (702) 384-1274  
8 Attorney for Defendant,  
9 ALFRED P. CENTOFANTI III

DISTRICT COURT  
CLARK COUNTY, NEVADA

STATE OF NEVADA,	)	CASE NO. C172534
Plaintiff,	)	DEPT NO. XIV
vs.	)	
ALFRED P. CENTOFANTI III,	)	Date of Hearing: 8/26/04
Defendant.	)	Time of Hearing: 9:00 a.m.

AFFIDAVIT OF JUDY ROWLAND IN SUPPORT OF REPLY TO  
OPPOSITION TO DEFENDANT'S MOTION FOR NEW TRIAL

STATE OF NEVADA )  
COUNTY OF CLARK ) ss:

I JUDY ROWLAND, being first duly sworn, deposes and says:

1. That I am the Clark County Jury Commissioner.
2. That on August 19, 2004, I received a court order directing me to give juror information about former juror Caren Barrs to Carmine J. Colucci, Esq., the defendant's counsel in this case.
3. That Mr. Colucci requested that I advise him about whether former juror Caren Barrs had ever advised me or any members of my staff about her felony conviction in Florida, prior to her jury service in the Centofanti trial.
4. That I have searched our telephone records, computer records, spoke with all of the representatives of my office who had contact with her and have



1 checked for any writings that she or anyone else might have tendered to us and  
2 am satisfied that despite having contact with our office on three (3) occasions  
3 when she requested a change in her jury service reporting date, before her jury  
4 service and despite having access to me and my representatives during the term  
5 of her jury service, she did NOT disclose to us that she had a felony conviction.

6 5. That the four pages attached hereto collectively as Exhibit 1, titled Pool  
7 Summary Report Participant Detail, show the dates that she called, the dates that  
8 her service dates were deferred to and under NOTES any important information  
9 that she provided to us.

10 6. That I have reviewed her affidavit dated August 6, 2004, which is  
11 attached to the State's Opposition to Defendant's Motion for New Trial and based  
12 upon our records and the recollections of our representatives, I have concluded  
13 that she could not have and did not respond on our telephonic information system  
14 indicating that she had a felony conviction.

15 7. That Ms. Barrs did not indicate to us, in writing, on a jury information  
16 sheet that she had a felony conviction prior to her scheduled jury service.

17 8. That Ms. Barrs was not given and therefore did not complete a verbal,  
18 computer, telephone or paper questionnaire wherein she disclosed her felony  
19 conviction to us.

20 9. That we take it very seriously when a potential juror advises us that he  
21 or she has a felony conviction and upon being so advised we investigate further  
22 and document any information provided to us for possible disclosure to the court.

23 10. That no one in our office ever advised Ms. Barrs that her felony conviction  
24 would be disclosed to the court, the state or the defense by us since we did not  
25 know about her felony conviction.

26 11. That Ms. Barrs was clearly advised both by the printed material on the  
27 jury summons and telephonically that a felony conviction was important to  
28

1 disclose as it could disqualify a person from jury service.

2 12. That all juror information about Ms. Barrs was previously provided to the  
3 district attorney's office pursuant to this Court's previously issued order.

4 DATED this 24 day of August, 2004.

5  
6 Judy Rowland  
7 JUDY ROWLAND

8 SUBSCRIBED and SWORN to before  
9 me this 24 day of August, 2004.

10 Pamela J. Hatty  
11 NOTARY PUBLIC in and for said  
12 County and State

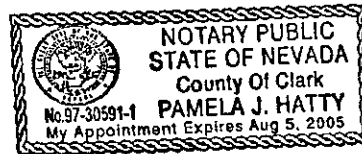


EXHIBIT 1

**Pool Summary Report  
Participant Detail**

Date: 8/20/04

Time: 1:39 PM

**INACTIVE**

**Current Status**

Last Name: **BARRS** Participant No: 100224264  
First Name: **CAREN** Pool No: 001030921  
Responded: **Responded** User Edt: admnjs10 Jurisdiction Code: DISTRICT  
Next Report Date: Pool Type: PETIT  
Status: **Deferred** Pool Seq: 0874 Regular  
Room: Event No: Return Date: 9/30/2003  
No Attendances: 2 No AWOL: Times Deferred: 1  
Notes: DR APPOINTMENT 8/21

**FTA**

FTA Status	No. FTA	No. Show Cause	No. Warrants Printed
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**Birthstone**

Address: 8734 WARTAGN MEADOWS  
City: LAS VEGAS State: NV  
Zip: 89131- Mileage:  
Home Phone: 702-240-2866 Work Phone: 702-604-3940 Local:  
Occupation: NURSE DOB: 6/23/1946 Gender: Female  
Voter Reg No: Court Emp:  
Drivers Licence: State:

**Disqualified/Excused**

Disqualified: Date:  
Excused: \* Date: 8/21/2003 Accept: Yes Deferred To: 10/2/2003

**Pool Summary Report  
Participant Detail**

Date: 8/20/04

Time: 1:39 PM

**INACTIVE**

**Current Status**

Last Name: **BARRS** Participant No: 100224264  
First Name: **CAREN** Pool No: 001031004  
Responded: **Responded** User Edt: admnjs10 Jurisdiction Code: DISTRICT  
Next Report Date: Pool Type: PETIT  
Status: **Deferred** Pool Seq: 0030 Regular  
Room: Event No: Return Date: 10/2/2003  
No Attendances: 2 No AWOL: Times Deferred: 2  
Notes: BUSY WORK 9/30

**FTA**

FTA Status	No. FTA	No. Show Cause	No. Warrants Printed
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**Birthstone**

Address: 8437 WARTAGN MEADOWS STREET  
City: LAS VEGAS State: NV  
Zip: 89131- Mileage:  
Home Phone: 702-240-2866 Work Phone: 702-604-3940 Local:  
Occupation: NURSE DOB: 6/23/1946 Gender: Female  
Voter Reg No: Court Emp:  
Drivers Licence: State:

**Disqualified/Excused**

Disqualified: Date:  
Excused: \* Date: 9/30/2003 Accept: Yes Deferred To: 12/10/2003

Pool Summary Report  
Participant Detail

Date: 8/20/04

Time: 1:39 PM

INACTIVE

Current Status

Last Name: **BARRS** Participant No: 100224264  
First Name: **CAREN** Pool No: 001031210  
Responded: **Responded** User Edt: admnjS03 Jurisdiction Code: DISTRICT  
Next Report Date: Pool Type: PETIT  
Status: **Deferred** Pool Seq: 0027 Regular  
Room: Event No: Return Date: 12/10/2003  
No Attendances: 2 No AWOL: Times Deferred: 3  
Notes: BUSY WORK 9/30  
MOM HAS ALZHEIMERS IN NY MUST GO GET HER IN ALZHEIMERS  
HOME 12-2

FTA

FTA Status	No. FTA	No. Show Cause	No. Warrants Printed
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Birthstone

Address: 8437 WARTAGN MEADOWS STREET  
City: LAS VEGAS State: NV  
Zip: 89131-  
Home Phone: 702-240-2866 Work Phone: 702-604-3940 Local: Mileage:  
Occupation: NURSE DOB: 6/23/1946 Gender: Female  
Voter Reg No: Court Emp:  
Drivers Licence: State:

Disqualified/Excused

Disqualified: Date:  
Excused: \* Date: 12/2/2003 Accept: Yes Deferred To: 3/15/2004

**Pool Summary Report  
Participant Detail**

Date: 8/20/04

Time: 1:39 PM

**ACTIVE**

**Current Status**

Last Name: **BARRS** Participant No: 100224264  
First Name: **CAREN** Pool No: 001040314  
Responded: **Responded** User Edt: admnjs07 Jurisdiction Code: DISTRICT  
Next Report Date: **3/15/2004** Pool Type: PETIT  
Status: **Juror** Pool Seq: 0285 Regular  
Room: **DEPT. 14** Event No: **C172534** Return Date: 3/15/2004  
No Attendances: 23 No AWOL: Times Deferred: 3  
Notes: BUSY WORK 9/30  
MOM HAS ALZHEIMERS IN NY MUST GO GET HER IN ALZHEIMERS  
HOME 12-2

**FTA**

FTA Status	No. FTA	No. Show Cause	No. Warrants Printed
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**Birthstone**

Address: 8437 WARTAGN MEADOWS STREET  
City: LAS VEGAS State: NV  
Zip: 89131- Mileage:  
Home Phone: 702-240-2866 Work Phone: 702-604-3940 Local:  
Occupation: NURSE DOB: 6/23/1946 Gender: Female  
Voter Reg No: Court Emp:  
Drivers Licence: State:

**Disqualified/Excused**

Disqualified:	Date:		
Excused:	Date:	Accept:	Deferred To:

# EXHIBIT D



AFFIDAVIT

STATE OF NEVADA }  
COUNTY OF CLARK } ss:

CAREN BARRS, being first duly sworn, deposes and says:

1. That I am a resident of Clark County, Nevada and that I served as a juror in State of Nevada v. Alfred P. Centofanti, III., Case No. C172534.

2. That neither before nor during deliberation did any juror discuss conducting any test, experiment, or reenactment regarding the evidence.

3. That Juror Wheeler never mentioned during deliberation any experience shooting a weapon.

4. That my verdict was not affected by any clothes worn by any other juror during the trial.

5. That during the trial I was not aware of whether other jurors may or may not have been sleeping during the course of the trial.

6. That at no time during deliberations did any juror indicate that they had missed evidence or were unable to deliberate because they were sleeping.

7. That I was convicted of a felony involving bad checks over twenty (20) years ago in Florida.

8. That when I called into the jury commissioner and was quizzed over the telephonic information system, I pushed the number indicating that I did in fact have a felony conviction.

9. That I have never been convicted of anything in Nevada.

10. That I also indicated in writing to the jury commissioner that I did have a felony conviction in Florida in excess of twenty (20) years ago.

11. That I have had my rights restored as a result of that felony conviction and I am allowed to vote and maintain my nursing license.

12. That due to the fact that I had already disclosed this information on two (2)

1 occasions, I was under the impression that the Court and parties knew from my prior  
2 disclosure that I did have a felony conviction.

3 13. That I did not intentionally conceal my felony conviction from the Court or the  
4 parties.

5 I declare under penalty of perjury under the law of the State of Nevada that the  
6 foregoing is true and correct.

7  
8 Executed on Aug. 6, 2004  
9 (Date)

Caren Barrs  
CAREN BARRS

# EXHIBIT E

# Voter Registration Application

State of Nevada

BARRS, CAREN C  
AFF: AHA 0654321

REG: 0669328

Application is  
complete!

## \*\*OFFICE USE ONLY\*\*

CANCELLED:

INACTIVE:

RECEIVED FROM:

- ☐ agency  
☐ field registrar  
☐ mail  
☐ other

Precinct Code: 6019

Received/Witnessed by

you must vote in person at the next election, unless you have your absent ballot request notarized or comply with other provisions of state law (NRS 293.272).

0651679 6054 Use pen-please print clearly-black ink preferred

1 Reason(s) for registration: ☐ new registration ☒ address change ☐ party change ☐ name change

2 Mr. Mrs. Miss Ms. First Name CAREN Middle Name C Last Name Barrs Jr. Sr. II III IV

3 Address Where You Live (not a post office box) IMPORTANT! You may not list your address as a business unless you actually reside there. Apt.# City Zip Code

3153 Mediterranean Dr Las Vegas NV 89117

4 Address Where You Get Your Mail (if different from #3) Apt.# City Zip Code

5 Birth Date (mo/day/yr) 6/23/46 6 Place of Birth (State or Country) Cayuga County, NY (Auburn) NY Social Security, Nevada Driver's License, or Identification Card Number (required) 8 Telephone Number (optional) 7022409579

9 Party Registration (check only one box)  
☒ Democratic Party  
☐ Republican Party  
☐ Green Party  
☐ Independent American Party  
☐ Libertarian Party  
☐ Natural Law Party  
☐ Reform Party  
☐ No Party Affiliation (Nonpartisan)  
☐ Other Party (write on line below)  
Important:  
If you do not affiliate with either the Democratic or Republican political party, you will receive a Nonpartisan Ballot and will not be allowed to vote for party candidates at the PRIMARY ELECTION. Registering "nonpartisan" means you have no political party affiliation.

10 "I swear or affirm that:  
• I am a citizen of the United States;  
• on the date of the next election I will have attained the age of 18 years;  
• I will have continuously resided in the State of Nevada, in my county at least 30 days and in my precinct at least 10 days before the next election;  
• the present address listed herein is my sole legal place of residence and I claim no other place as my legal residence; and  
• I am not laboring under any felony conviction or other loss of civil rights which would make it unlawful for me to vote."

"I declare under penalty of perjury that the foregoing is true and correct"

Executed on: March 16 2000 (date)

11 Name and Address on Your Last Voter Registration:  
First Name Last Name  
Street Name and Number  
City/State/Zip

Caren Barrs

SIGNATURE OF APPLICANT REQUIRED!

(Application No.) AHA 654321

12 IMPORTANT! If you are assisting a person to register to vote by mail and you are NOT a field registrar or an employee of a voter registration agency, you MUST complete the following. Failure to do so is a felony.

CERTIFIED COPY  
DOCUMENT ATTACHED IS A  
TRUE AND CORRECT COPY  
OF THE ORIGINAL ON FILE

Name (print)  
Street Name and Number

Signature

City/State/Zip

Prescribed by Secretary of State  
NRS 293.507, NRS 293.5235, NRS 293.524  
EL313 (rev. 7/96)

AUG 19 2000

Annal L Long  
REGISTRAR

171

# EXHIBIT F

1 of 100 DOCUMENTS

OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF NEVADA

OPINION No. 96-27

*1996 Nev. AG LEXIS 27; 1996 Op. Atty Gen. Nev. 146*

September 25, 1996

**SYLLABUS:**

[\*1]

**CIVIL RIGHTS; FELONS; VOTING:** Felons convicted in a Nevada district court may have their civil rights restored pursuant to NRS. Nevada can only restore the civil rights of Nevada felons. Federal felons may have their civil rights restored only by presidential pardon. Whether Nevada must afford full faith and credit to the restoration of civil rights by a foreign jurisdiction depends on the individual circumstances.

**REQUESTBY:**

The Honorable Stewart L. Bell  
Clark County District Attorney  
500 South Grand Central Parkway  
Post Office Box 552215  
Las Vegas, Nevada 89155-2255

**OPINIONBY:**

FRANKIE SUE DEL PAPA, Attorney General  
CHARLES HILSABECK, Deputy Attorney General, Litigation Division

**OPINION:**

You have requested an opinion on the "correct course of action" to take on the request of a Clark County resident who is a federal felon convicted in the United State District Court, Southern District of New York, who wishes to regain the right to vote. Your inquiry raises several questions.

**QUESTION ONE**

How do Nevada felons (felons convicted in a Nevada district court) obtain restoration of their civil rights?

**ANALYSIS**

Article 2, § 1 of the Nevada Constitution states: "no person who has been or may be convicted [\*2] of treason or felony in any state or territory of the United States, unless restored to civil rights" may vote. There are several statutory mechanisms in place for restoration of civil rights to Nevada felons depending on whether the felon is on probation, receives a pardon, successfully completes probation, or serves a sentence.

*NRS 176.227* provides for the restoration of civil rights of a convicted person after honorable discharge from probation by the district court where the felon was convicted. If the convicted person was granted an honorable discharge from probation, has not previously been restored to his civil rights, and is not convicted of any offense greater than a traffic violation within six months after the discharge, he may apply to the Division of Parole and Probation for restoration of civil rights. The Division of Parole and Probation then petitions the court in which the applicant was

convicted for restoration of the convicted person's civil rights. If the Division refuses to petition the court, the convicted person may petition the district court in which the conviction was obtained directly for restoration of his civil rights.

Pursuant to *NRS 213.090*, the Nevada [\*3] Board of Pardons Commissioners may restore civil rights of felons at the time a pardon is granted or at a later date. If restoration of civil rights is granted at a date subsequent to the pardon, the applicant shall not have been convicted of any offense greater than a traffic violation within five years after the pardon was granted. If the Board of Pardons Commissioners refuses to restore the applicant's civil rights, the applicant may petition the district court in which the conviction was obtained for an order directing the Board of Pardons to grant such restoration.

The Nevada Parole Board, pursuant to *NRS 213.155*, may restore a paroled prisoner to his civil rights at expiration of his parole. If the convicted person did not receive a restoration upon expiration of his parole, and has not been convicted of an offense greater than a traffic violation within five years after completion of parole, he may apply to the Parole Board for restoration of his civil rights. If the Parole Board refuses to restore the applicant's civil rights, the applicant may petition the district court in which the conviction was obtained for an order directing the Parole Board to grant such restoration. [\*4]

The Division of Parole and Probation may restore a convicted person's civil rights after his sentence has been served pursuant to *NRS 213.157*. If the convicted person has not been convicted of any offense greater than a traffic violation within five years of his release, he may apply to the Division for restoration of his civil rights. Upon submission of proof that the convicted person meets the criteria for restoration of his civil rights, the Division of Parole and Probation shall petition the district court in which the conviction was obtained for restoration of the applicant's civil rights. If the Division of Parole and Probation refuses to submit such a petition, the applicant may directly petition the district court in which the conviction was obtained for an order directing the Division of Parole and Probation to grant such restoration.

#### CONCLUSION TO QUESTION ONE

Depending on the status of the convicted person, restoration of civil rights may be obtained for Nevada felons from the district court in which the felon was convicted, the Board of Pardons or the Parole Board.

#### QUESTION TWO

Can Nevada restore civil rights of felons who were not convicted in a Nevada district [\*5] court?

#### ANALYSIS

The statutory language referred to in Question One limits authority of the Board of Pardons Commissioners, the Board of Parole Commissioners, and the Nevada district courts to restoring the rights of Nevada felons only. It is almost axiomatic that a state's ability to pardon and restore civil rights is limited to convicted persons over which the state has jurisdiction. This proposition is buttressed by the opinion of the U.S. Supreme Court in *Beecham v. U.S.*, *U.S.* , 114 S. Ct. 1669 (1994). *Beecham* involved federal felons who obtained state restorations of their civil rights and were subsequently convicted of being felons in possession of firearms in violation of 18 U.S.C.A. § 922(h) (1994).

The question before the Supreme Court in *Beecham* was "*Which jurisdiction's law is to be considered in determining whether a felon 'has had civil rights restored.'*" *Beecham*, 114 S. Ct. at 1670 (emphasis added).

The *Beecham* Court went on to hold:

Throughout the statutory scheme, the inquiry is: Does the person have a qualifying conviction on his record? Section 922(g) imposes a disability on people who "have been convicted." The choice-of-law [\*6] clause defines the rule for determining "what constitutes a conviction." The exemption clause says that a conviction for which a person has had civil rights restored "shall not be considered a conviction." Asking whether a person has had civil rights restored is thus just one step in determining whether something should "be considered a conviction." By the terms of the choice-of-law clause, *this determination is governed by the law of the convicting jurisdiction.*

This interpretation is supported by the fact that the other three procedures listed in the exemption clause--*pardons, expungements, and set-asides--are either always or almost always* (depending on whether one considers a federal grant of habeas corpus to be a "set aside," a question we do not now decide) *done by*

*the jurisdiction of conviction.* That several items in a list share an attribute counsels in favor of interpreting the other items as possessing that attribute as well. *Dole v. Steelworkers*, 494 U.S. 26, 36, 110 S.Ct. 929, 934-935, 108 L.Ed.2d 23 (1990); *Third Nat. Bank in Nashville v. Impac Limited, Inc.*, 432 U.S. 312, 322, 97 S.Ct. 2307, 2313, 53 L.Ed.2d 368 (1977); *Jarecki v. G.D. Searle [\*7] & Co.*, 367 U.S. 303, 307, 81 S.Ct. 1579, 1582, 6 L.Ed.2d 859 (1961).

*Beecham*, 114 S. Ct. at 1671 (emphasis added). See also *U.S. v. Jones*, 993 F.2d 1131 (4th Cir. 1993) (state's post-conviction restoration of rights scheme cannot eliminate prior federal conviction as prior conviction for federal offense as being a felon in possession of a firearm); *U.S. v. Dupaquier*, 74 F.3d 615, 617 (5th Cir. 1996) (the federal court looks to state law to determine whether a defendant's civil rights were restored); and *U.S. v. Lowe*, 50 F.3d 604 (8th Cir. 1995) (Minnesota lacks authority to restore civil rights of Minnesota resident convicted in another state).

*Beecham* involved a violation of federal firearms laws. However, the rationale of *Beecham* and its application to voting rights cases is supported by a lack of authority or rationale for deviating from it.

#### CONCLUSION TO QUESTION TWO

Because of Nevada's express statutory language and the rationale of the *Beecham* line of cases, Nevada can only restore the civil rights of Nevada felons.

#### QUESTION THREE

How do federal felons obtain restoration of their civil rights?

#### ANALYSIS

There does not appear [\*8] to be a procedure under federal law for restoring a federal felon's civil rights. See *United States v. Geyler*, 932 F.2d 1330, 1333 (9th Cir. 1991); *Beecham*, at 1671-72. In a footnote, the *Beecham* Court stated:

We express no opinion on whether a federal felon cannot have his civil rights restored under federal law. This is a complicated question, one which involves the interpretation of the federal law relating to federal civil rights, see U.S. Const., Art. I, Sec. 2, cl. 1 (right to vote for Representatives); U.S. Const., Amdt. XVII (right to vote for Senators); 28 U.S.C. Sec. 1865 (right to serve on a jury); consideration of the possible relevance of 18 U.S.C. Sec. 925(c) (1988 ed., Supp. IV), which allows the Secretary of the Treasury to grant relief from the disability imposed by Sec. 922(g); and the determination whether civil rights must be restored by an affirmative act of a government official, see *United States v. Ramos*, 961 F.2d 1003, 1008 (CA1), cert. denied, 506 U.S. , 113 S.Ct. 364, 121 L.Ed.2d 277 (1992), or whether they may be restored automatically by operation of law, see *United States v. Hall*, 20 F.3d 1066 (CA10 1994). We do not [\*9] address these matters today.

*Id.* at 1672, n. 2.

#### CONCLUSION TO QUESTION THREE

The only method available for a federal felon to obtain restoration of his civil rights appears to be a presidential pardon pursuant to U.S. Const., art II, § 2; authority of the President as Chief Executive, 28 U.S.C. §§ 509 and 510 (1993); and 28 C.F.R. 0.35 and 1.1 (1993).

#### QUESTION FOUR

Is Nevada required to give full faith and credit to restorations of civil rights by other states?

#### ANALYSIS

The Full Faith and Credit Clause of the United States Constitution provides: "Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof." U.S. Const. art. IV, § 1.



The purpose of the Full Faith and Credit Clause is to preserve rights acquired or confirmed under public acts or judicial proceedings of one state by requiring recognition of their validity in other states. *16A Am. Jur. 2d Constitutional Law* § 863 (1995). However, "the Full Faith and Credit Clause does not compel 'a [\*10] state to substitute the statutes of other states for its own statutes dealing with a subject matter concerning which it is competent to legislate.'" *Sun Oil Co. v. Wortman*, 108 S. Ct. 2117, 2122 (1988), quoting *Pacific Employers Ins. Co. v. Industrial Accident Comm'n*, 59 S. Ct. 629, 632 (1939). Nor is a state required to enforce a law obnoxious to its public policy. *Griffin v. McCoach*, 313 U.S. 498 (1941), citing *Bradford Electric Co. v. Clapper*, 286 U.S. 145 (1932); *Hartford Indemnity Co. v. Delta Co.*, 292 U.S. 143 (1934).

A split of authority exists regarding recognition of acts of clemency by sister states. There is authority that, under the Full Faith and Credit Clause, one state need not recognize a pardon issued by a sister state for an offense committed in that sister state. See *Carlesi v. New York*, 233 U.S. 51 (1914) (a presidential pardon operated only with regard to the sovereign that issued it); *Thrall v. Wolfe*, 503 F.2d 313 (7th Cir. 1974), cert. denied, 420 U.S. 972 (1975) (U.S. not required to recognize state pardon); *White v. Thomas*, 660 F.2d 680 (5th Cir. 1981), cert. denied, 455 U.S. 1027 (1982) (Texas sheriff not barred from [\*11] firing a deputy who failed to indicate at the time of hire that he had been convicted of a felony in California even though that conviction was later expunged); *Yaconvone v. Bolger*, 645 F.2d 1028, cert. denied, 454 U.S. 844 (1981) (U.S. Postal Service in deciding whether to employ someone convicted of shoplifting in Vermont was not required to recognize Vermont's pardon of the offense); *Groseclose v. Plummer*, 106 F.2d 311 (9th Cir.), cert. denied, 308 U.S. 614 (1939) (California not required to recognize Texas pardon); *Delehant v. Board of Police Standards and Training*, 855 P.2d 1088 (Or. 1993) (Oregon not required to recognize Idaho's expunction of defendant's Idaho conviction); *State v. Edmondson*, 818 P.2d 855, cert. quashed, 818 P.2d 419 (N.M. 1991) (New Mexico not required to recognize Texas expunction of defendant's Texas conviction).

Other courts, however, have ruled that the law of comity requires that states recognize a sister state's restoration of a convicted person's civil rights. See *Wickizer v. Williams*, 173 S.W. 288 (Tex. Ct. App. 1914) (pardon for felony committed in Mississippi by Mississippi authorities removes disability of person [\*12] to sit on jury in Texas); *U.S. v. McMurrey*, 827 F.Supp. 424 (S.D. Tex. 1993) (U.S. required to recognize Governor of Oklahoma's pardon of defendant's prior Oklahoma conviction); *People v. Willis*, 435 N.Y.S.2d 655 (N.Y. App. Div. 1982) (New York would not consider a Texas felony conviction for enhancement purposes where Texas would not use the same conviction for enhancement under Texas law).

In determining whether the statute of a state under which foreign rights arose or the law of the forum should control in matters involving policy and conflicting interests, the rule is fairly well settled that different considerations usually apply where the statute creating a foreign right, which it is claimed should be given effect, is set up by way of defense to an asserted liability, from those where merely affirmative rights are claimed under a foreign statute. . . . In both the conflict is to be resolved not by giving automatic effect to the full faith and credit clause, compelling the courts of each state to subordinate its statutes to those of the other, but by appraising the governmental interests of each jurisdiction and turning the scale of decision according to their weight.

[\*13]

*16A Am. Jur. 2d Constitutional Law* § 867 (1995) (footnotes omitted).

As a general rule, recognition will be required, unless the matter involves local sovereignty over purely local questions, such as criminal or penal laws, or the statute conflicts with a statute or policy of the forum state and the governmental interests of the forum state in the persons, property, or events in the state involved in the litigation outweigh the governmental interests of the foreign state for whose statute recognition is sought.

*Id.* at § 868 (footnote omitted).

Recognition of restoration of civil rights almost always involves affirmative rights that are claimed under a foreign statute. Therefore, the question of whether Nevada must recognize a sister state's restoration of a convicted person's civil rights is determined by weighing the governmental interests of Nevada and the foreign state. Several factors are relevant to this process including what jurisdiction restored the civil rights, whether the restoration of civil rights was

pursuant to some affirmative act or by operation of law, the interest of the foreign state in having Nevada recognize its restoration, and Nevada's [\*14] interest in not recognizing the restoration.

Restoration of civil rights of a felon who was convicted in that state's courts would tend to support extending full faith and credit to that state's restoration. If the restoring state purports to restore the civil rights of a felon who was *not* convicted within that jurisdiction, it would present a strong argument for nonrecognition under the full faith and credit clause. See *Beecham*, 114 S. Ct. at 1671 and Question Two.

Judgments of other states are almost always given recognition under the full faith and credit clause. Under full faith and credit principles, if the court that issued the judgment had jurisdiction to render the judgment, other states are obligated to recognize the judgment. *Underwriters Nat. Assur. Co. v. North Carolina Life & Acc. & Health Ins. Guaranty Assn.*, 102 S. Ct. 1357 (1982). Therefore, if a state restores the civil rights of one of its felons by way of an affirmative act that results in a judgment or a finding by a tribunal, board or commission, rather than by mere operation of law, a stronger argument is presented for recognition.

The jurisdiction that originally imposed the disabilities on the [\*15] convicted felon has strong interests in whether those disabilities are removed or remain with the felon. Certainly, there are situations where the convicting jurisdiction would desire to have the disabilities associated with a felony conviction removed. For example, if the convicting state issued the felon a pardon based on information that the convicted person was actually innocent of the crimes he was convicted of, the convicting state would have a strong interest in restoring the convicted person's civil rights and remove any stigma that person might have for the unjust conviction.

A jurisdiction that purports to restore the civil rights of a felon who was not convicted in that jurisdiction and did not impose the disabilities associated with being a convicted felon on that person, has little, if any, governmental interest in removing those disabilities. Likewise, that jurisdiction's governmental interest in having that person vote in Nevada is nonexistent.

Nevada's interest in carefully scrutinizing another state's restoration of civil rights to a convicted felon is founded in Nevada's Constitution. Nevada's constitutional mandate that "no person who has been or may be convicted [\*16] of treason or felony in any state or territory of the United States, unless restored to civil rights" may vote, expresses Nevada's very strong interest in keeping convicted felons from voting. Nev. Const. art. 2, § 1. Nevada's interest in not recognizing another state's restoration of civil rights is especially strong where the restoration is relevant only to rights exercised in, and relating to, Nevada, such as voting in state elections.

Although the National Voter Registration Act of 1993, 42 U.S.C. § 1973gg-6, prohibits felons from voting, the right to vote is primarily a function of a state's prerogative. Certainly, a state may decide who votes in its own state elections. If one state has the prerogative to allow federal felons to vote in its elections, then Nevada certainly can just as surely prevent federal felons from voting in its elections unless their civil rights have been restored.

When all of the factors mentioned above are weighed and evaluated, the conclusion is that Nevada is not bound to recognize another state's statute authorizing federal felons or out-of-state felons to vote in that state's elections as having restored the convicted felon's constitutional rights [\*17] pursuant to the full faith and credit clause for two primary reasons: (1) Pursuant to *Beecham*, states do not have jurisdiction to remove disabilities imposed by the federal government or by other states; and (2) such statutes are not restorations at all. Rather, statutes that merely authorize federal and out-of-state felons to vote do only that. Such statutes clearly do not purport to restore civil rights.

#### CONCLUSION TO QUESTION FOUR

Nevada should give full faith and credit to restorations of civil rights where certain criteria are met. The restoring jurisdiction must have also been the convicting jurisdiction. The restoration must purport to be just that, a restoration of the convicted person's civil rights, and meet all the constitutional and statutory requirements of the restoring jurisdiction. Nevada must not have any overriding reason, such as a public policy set out in a statute or Nevada's Constitution, for not recognizing the restoration. If all these questions can be answered affirmatively, then Nevada should recognize a restoration of civil rights by a foreign jurisdiction.

#### QUESTION FIVE

What is the "correct course of action" to take on the request of a [\*18] Clark County resident to regain the right to vote who is a federal felon convicted in federal district court?

#### ANALYSIS

As stated above in Question One, the Nevada Constitution prohibits felons from voting unless they have had their civil rights restored. Nev. Const. art. 2, § 1. The federal felon in question has supplied documentation that on November 16, 1977, he was convicted of a felony in the United States District Court-Southern District of New York. This person served his sentence at the Federal Prison Camp at Lompoc, California, and was released to the Central District of California where he was under special parole supervision with the U.S. Probation Office for the Central District of California. This person has supplied documentation that he was successfully discharged from parole supervision on October 3, 1985.

The federal felon claims that his civil rights have been restored by New York State and relies on a New York statute that states in pertinent part:

No person who has been convicted in a federal court, of a felony, or a crime or offense which would constitute a felony under the laws of this state, shall have the right to register for or to vote at any election [\*19] unless he shall have been pardoned or restored to the rights of citizenship by the president of the United States, or his maximum sentence of imprisonment has expired, or he has been discharged from parole.

*N.Y. Election Law § 3 (Consol. 1995).*

The statutory language quoted above does not purport to restore the civil rights of federal felons as required by the Nevada Constitution. The language of the statute itself contemplates the distinction between a pardon or a restoration of rights and merely expiring a sentence or being discharged from parole. The cited language simply allows federal felons who have been pardoned or restored or who have expired their sentences or who have been discharged from parole to vote in New York. The statute does not purport to confer any rights that would be associated with a restoration of rights.

The federal felon argues that his rights were restored by the State of New York even though he was convicted in federal court. Pursuant to the rationale of *Beecham*, New York was without jurisdiction or authority to restore his civil rights. Hence, recognition of his "restoration" is not required. *See* Question Two. Moreover, since the language [\*20] of the New York Statute does not even purport to constitute a restoration of the convicted person's civil rights, a full faith and credit issue is not presented. There is no restoration of civil rights to recognize or not recognize.

In order for this person to vote in Nevada, he must obtain a restoration of his civil rights from the jurisdiction that convicted him--federal authorities. He will need to seek a presidential pardon, which is admittedly an exacting and time-consuming process. Nevada could allow this person, and others similarly situated, to vote if the language in Nevada's Constitution were modified and Nevada enacted statutory language similar to that found in the New York statute relied on by the federal felon. However, at present, this person is not qualified to vote in Nevada.

#### CONCLUSION TO QUESTION FIVE

The proper course of action in this person's case is to direct him to the United States Pardon Office. The Clark County Registrar of Voters should not allow him to register to vote until he has obtained restoration of his civil rights from federal authorities.

# EXHIBIT G

1                    AFFIDAVIT OF MIKE PFRIENDER IN SUPPORT OF REPLY  
2                    TO STATE'S OPPOSITION TO DEFENDANT'S MOTION FOR NEW TRIAL

3       STATE OF NEVADA        )  
4       COUNTY OF CLARK       ) ss:

5                    MIKE PFRIENDER, being first duly sworn, deposes and says:

6                    1. That affiant is the Las Vegas Branch Manager of Frasco Investigative  
7                    Services and a private investigator duly licensed by the State of Nevada, and has  
8                    personal knowledge of all matters set forth herein except for those stated upon  
9                    information and belief and is competent to testify thereon.

10                   2. That at the request of defense counsel, affiant has engaged in the post-  
11                   trial investigation into various matters relating to the instant case including the  
12                   backgrounds of several jurors.

13                   3. That on June 23, 2004, affiant conducted the second interview, this time  
14                   by telephone, with former juror Josh Wheeler.

15                   4. That Mr. Wheeler would not consent to this interview being tape recorded  
16                   and therefore it was not.

17                   5. That affiant asked Mr. Wheeler why he went shooting during the trial  
18                   and he stated the following:

19                   My dad had the gun out cleaning it and I asked him how long it  
20                   would take him to empty it and he said 5 seconds.

21                   I didn't tell him what kind of gun was involved, but we both said let's  
22                   go try it and that's how it happened. It was purely coincidental. I  
23                   mean my dad knew what was going on and I really didn't talk to him  
24                   about the case. I may have mentioned 2.3 seconds to him, but I don't  
25                   really remember.

26                   6. That the above is what Josh Wheeler told affiant and from the tone of his

27                   // // // //

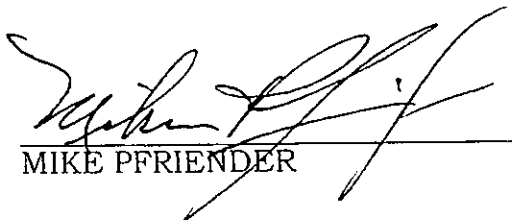
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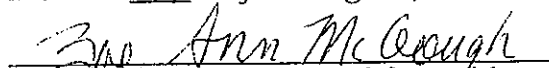
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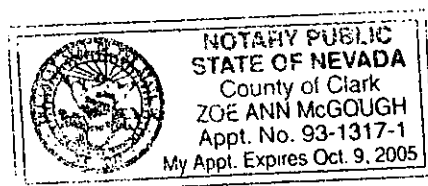
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1 conversation it was apparent to affiant that he had conducted his own test despite  
2 using a different firearm to do so.

3  
4   
MIKE PFRIENDER

5 SUBSCRIBED and SWORN to before  
6 me this 24 day of August, 2004.

7   
8 NOTARY PUBLIC in and for said  
9 County and State



1 ERR  
2 CARMINE J. COLUCCI, ESQ.  
3 CARMINE J. COLUCCI, CHTD.  
4 Nevada Bar #000881  
5 629 South Sixth Street  
6 Las Vegas, Nevada 89101  
7 (702) 384-1274  
8 Attorney for Defendant,  
9 ALFRED P. CENTOFANTI III

FILED

AUG 24 4 31 PM '04

*Shirley S. Rungius*  
CLERK

DISTRICT COURT  
CLARK COUNTY, NEVADA

STATE OF NEVADA,

Plaintiff,

vs.

ALFRED P. CENTOFANTI III,

Defendant.

CASE NO. C172534

DEPT NO. XIV

Date of Hearing: 8/26/04  
Time of Hearing: 9:00 a.m.

NOTICE OF CLERICAL ERROR AND/OR ERRATA

PLEASE TAKE NOTICE that the Restoration of Civil Rights Application was inadvertently omitted from Exhibit B to Defendant's Reply to State's Opposition to Defendant's Motion for New Trial. Said application is attached hereto.

DATED this 24<sup>th</sup> day of August, 2004.

CARMINE J. COLUCCI, CHTD.

*Carmine J. Colucci*  
CARMINE J. COLUCCI, ESQ.

Nevada Bar No. 000881  
629 South Sixth Street  
Las Vegas, NV 89101  
Attorney for Defendant

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DAVID ROGER  
CLARK COUNTY DISTRICT ATTORNEY

2



## RESTORATION OF CIVIL RIGHTS APPLICATION

Restoration of Civil Rights restores the right to vote, serve on a jury, hold public office.  
(Certain types of employment may require restoration of civil rights prior to application in compliance with Florida Statutes)

(Please check the box that applies)

- ☐ Restoration of Civil Rights for Florida Conviction
- ☐ Restoration of Civil Rights in Florida for Federal, Military or Out-of State Conviction

Please Print or Type.

Name When Convicted: \_\_\_\_\_

Current Name: \_\_\_\_\_

Other Names Used: \_\_\_\_\_

Date of Birth: \_\_\_\_\_ Race: \_\_\_\_\_ Sex: \_\_\_\_\_

Social Security No.: \_\_\_\_\_ Driver License No.: \_\_\_\_\_

Prison or Probation No. (if known): \_\_\_\_\_

Home Address: \_\_\_\_\_

(Street)

(City)

(State)

(Zip)

Mailing Address: \_\_\_\_\_

(Street)

(City)

(State)

(Zip)

Home Telephone No.: \_\_\_\_\_ Daytime Telephone No.: \_\_\_\_\_

E-mail Address: \_\_\_\_\_

What was the crime for which you were sentenced or placed on probation? \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(Signature)

(Date)

Attorney Name, Address & Telephone Number: (NOTE: You do not need an attorney for this process.)

\_\_\_\_\_

\_\_\_\_\_

NOTE: This application form is available on the internet at [www.state.fl.us/fpc/exclem.html](http://www.state.fl.us/fpc/exclem.html).  
If seeking other forms of clemency, please use form 1501.

Mailing address: Office of Executive Clemency  
2601 Blairstone Road, C-229  
Tallahassee, FL 32399-2450

Form ADM 1501A (3/02)

**COPY**

DISTRICT COURT  
CLARK COUNTY, NEVADA

**FILED**

AUG 30 1 24 PM '04

\* \* \* \*

*Shirley A. Kingma*  
CLERK

STATE OF NEVADA, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
ALFRED P. CENTOFANTI III, )  
 )  
Defendant. )

Case No. C172534  
Dept. XIV

REPORTER'S TRANSCRIPT  
OF  
STATE'S MOTION TO COMPEL AUDIO TAPED INTERVIEW/  
DEFENDANT'S MOTION FOR A NEW TRIAL

BEFORE THE HONORABLE DONALD M. MOSLEY

DISTRICT JUDGE

Taken on Thursday, August 26, 2004

At 9:00 a.m.

**APPEARANCES:**

For the State: CLARK PETERSON, ESQ.  
Deputy District Attorney

For the Defendant: CARMINE J. COLUCCI, ESQ.

Reported by: Maureen Schorn, CCR No. 496, RPR

1 LAS VEGAS, NEVADA. THURSDAY, AUGUST 26, 2004, 9:00 A.M.

2 \* \* \* \*

3  
4 THE COURT: C172534, State  
5 versus Alfred P. Centofanti, III. The record will reflect  
6 the presence of the defendant custody. Mr. Colucci is  
7 Defense counsel, Mr. Peterson is here for the State.

8 This matter is on for a motion to compel  
9 audio taped interview, and for motion for a new trial.

10 As to the former, I understand that there  
11 was some sort of a taped interview by your investigator,  
12 Mr. Colucci?

13 MR. COLUCCI: Your Honor, the tape and  
14 the transcript of that interview have been previously  
15 supplied to the District Attorney's office.

16 THE COURT: In their entirety?

17 MR. COLUCCI: In their entirety.

18 MR. PETERSON: Judge, that's correct.  
19 We're in receipt of that. I should probably file a copy  
20 of it with the Court. I had a copy made.

21 Our motion is mute since it's been provided.  
22 The reason it was requested is, we had concerns about the  
23 investigation into the juror.

24 As the Court may recall, starting back after  
25 trial I received a phone call from an alternate juror, the

1 male alternate juror who indicated to me someone contacted  
2 him representing himself as a member of the District  
3 Attorney's office, an affiliate.

4 I indicated there's no such person. I  
5 subsequently contacted this investigator and he mentioned  
6 Mr. Colucci had substituted in. I contacted Mr. Colucci  
7 and we were able to sort of resolve any potential problems  
8 that there may have been.

9 I should note in subsequently investigating  
10 this motion, at least two other jurors who actually served  
11 as jurors felt that they were somewhat misled by this  
12 individual as to who he worked for until the  
13 actual -- either the tape started rolling, or the  
14 questioning began.

15 And the reason we requested this taped  
16 statement is because in interviewing one of the jurors,  
17 Joshua Wheeler, he's telling me: Look, I never said any  
18 of those things that is in that investigator's affidavit.

19 We requested the taped statement, and the  
20 taped statement certainly does not back up the allegations  
21 that are made in the investigator's statement. The  
22 investigator then has an affidavit indicating, yeah, those  
23 tapes were made in a later untaped statement with this  
24 juror, which the juror has denied by affidavit.

25 And, in fact, the comments that are referred

1 to in that taped statement by the investigator, sort of an  
2 interesting spin on what's actually said in the taped  
3 transcript.

4 But as far as our motion to compel those,  
5 Mr. Colucci was kind enough to provide them and we  
6 certainly appreciate that.

7 THE COURT: Is this investigator  
8 present?

9 MR. COLUCCI: He is.

10 THE COURT: Well, so far I've heard  
11 three allegations. One is, he's representing himself to  
12 be a District Attorney representative. Then he's  
13 represented himself falsely as to what was said on the  
14 tape. And then he's putting his own spin on the tape.

15 Are those the three things you're  
16 suggesting?

17 MR. PETERSON: Yes; with the second one  
18 not quite as strongly as the Court has just put it.

19 THE COURT: Well, that doesn't please  
20 me, particularly. Now, I realize I've heard one side of  
21 the thing.

22 MR. COLUCCI: If the Court will look at  
23 the transcript provided to you, you'll see that the first  
24 thing the investigator does is clearly say who he works  
25 for, and what his purpose is in conducting the

1 investigation.

2 THE COURT: Mr. Peterson said that this  
3 was divulged, but prior to that, as I understood it.

4 MR. PETERSON: That's correct, Judge.  
5 The male alternate indicated that this person represented  
6 himself on the phone as working with the office of the DA.

7 Two of the other jurors who actually served,  
8 both Josh Wheeler and Matt -- his last name escapes me.  
9 Josh Wheeler is certainly a younger juror, and I  
10 understand mistakes are made there.

11 But Matt was the individual who worked with  
12 the camera crew with one of the local news agencies, is  
13 certainly not a neophyte to the Court process. He  
14 indicated that he felt similarly, that he had not had full  
15 disclosure.

16 He was told before being interviewed by this  
17 investigator that he did work with the Defense, but he  
18 felt like it had been certainly kept purposely vague prior  
19 to their meeting together.

20 And that's the information I learned from  
21 that juror. We subsequently interviewed them after this  
22 motion was brought forward. But that's the situation as  
23 it stands today.

24 The Court may recall that I was at a point  
25 of -- which I did not do after I spoke with Mr. Colucci.

1 He said he would talk to his investigator and the matter  
2 will be handled.

3 But it was my intention to request the Court  
4 to actually send out a neutral letter to the jurors saying  
5 there's no one from the DA's office that's trying to  
6 contact you, and to instruct them that you can speak or  
7 not speak with anyone as you wish.

8 Because it was my concern that improper  
9 contact was maybe being made based on the phone call I got  
10 from an alternate juror saying someone was representing  
11 they were from the District Attorney's office.

12 THE COURT: Let's put that issue aside  
13 for just a moment here. Before we go into the merits of  
14 the matters, there's an argument that it's not timely.  
15 That seems to be straightforward.

16 Mr. Colucci, what's your view of this?

17 MR. COLUCCI: Your Honor, I have two  
18 problems with that argument. The first problem is, that  
19 in order for a juror to sit as a juror, the juror must be  
20 qualified as a juror.

21 Now, one of the qualifications for being a  
22 juror is that you don't have any felony conviction, or if  
23 you do, your civil rights have been restored. That is  
24 prior to being put on the jury panel.

25 So in order to qualify to sit on the jury in

1 the first instance, you have to be a qualified juror. I  
2 think, clearly, we have shown that she's not a qualified  
3 juror.

4 Now, you can't fix that. That happened  
5 before. I don't know that 176.515 even applies. Because  
6 before you get to 176.515, you have to get to the  
7 qualification for sitting as a juror, and she doesn't  
8 qualify as a juror.

9 The second problem I have is, that this  
10 conviction and nonrestoration of civil rights was  
11 concealed from everyone. Now, whether it was concealed  
12 intentionally or not intentionally, it doesn't matter. It  
13 was concealed.

14 How can someone be required to show  
15 something or prove something within a seven-day time  
16 period when it's been intentionally concealed, or even  
17 mistakably concealed, which I'm not ready to concede at  
18 this point.

19 If the Court has gone through the motion,  
20 you know the reasons why I'm saying that. So we've had an  
21 impediment placed in front of us. The Court has had an  
22 impediment placed in front of it because you asked: Has  
23 anyone in your family, have you or anyone in your family  
24 ever been involved in the criminal justice process as a  
25 defendant or as a witness.



1                   She had no problem disclosing her son's  
2 problem, but she hesitated and she did not, quote, offer  
3 the information in response to your question.

4                   So for us to be held to a standard where we  
5 have to find out this information within that seven-day  
6 time period, I don't think the Legislature intended to  
7 reward somebody for lying to the Court, not being  
8 forthcoming with the Jury Commissioner, not being  
9 forthcoming with the District Attorney, and then  
10 subsequent to all of that, file an affidavit saying her  
11 civil rights have been restored when, in fact, they  
12 absolutely have not, according to the records that we were  
13 provided from the State of Florida.

14                   THE COURT: Well, the problem,  
15 Mr. Colucci, is that simply stated, and I'll grant you  
16 what I'm about to say is rather simplistic, but simply  
17 stated, the law clearly indicates a motion for a new trial  
18 absent new evidence, and that's a different situation, has  
19 to be within seven days of the finding of guilt.

20                   This has been over two months and seven  
21 days. And, again, simply stated, if we're not going -- if  
22 we are going to ignore a rule, why do we have it?

23                   It doesn't say seven days unless there's  
24 something wrong with the jury, or seven days unless, as  
25 you know, in the law oftentimes there is where you knew or

1 should have known, such as defrauding or someone secreting  
2 a situation, and all those kinds of provisions, and we're  
3 aware of that.

4 There's nothing like that written in the law  
5 here. And, obviously, this is so you can't four years  
6 from now have a new trial and everybody is gone, the  
7 witnesses, and it's just over. So that's the problem.

8 Go ahead.

9 MR. COLUCCI: If there's some  
10 irregularity with the jury proceeding or system, or  
11 irregularity in the court proceedings, then discovery  
12 within the seven days, I think, falls within that statute.

13 But before we get to 176.515, you've got  
14 206.010, the qualification.

15 THE COURT: Are you saying there was no  
16 trial because the juror was not properly impaneled?

17 MR. COLUCCI: Judge, let me ask you a  
18 question hypothetically. If you try to run for office and  
19 were convicted of a felony and you were elected to the  
20 office, and subsequently they found out that you were  
21 convicted a felony and did not have your civil rights  
22 restored, would all of your judgements be valid if you  
23 were not qualified to sit in that position in the first  
24 instance?

25 And that's what I'm saying about the juror.

1 The juror was not entitled to be on the panel; therefore,  
2 only 11 people, 11 qualified jurors heard this case.

3 THE COURT: All right. Well, I  
4 understand your argument. I understand that that goes to  
5 the merits, primarily. But how does it relate back to  
6 ignoring the time division?

7 MR. COLUCCI: Isn't there also a  
8 statute that says he's entitled to be tried by 12 jurors,  
9 and the jury verdict has to be unanimous? And that would  
10 be 12 people. Neither of those occurred.

11 She wasn't a juror. She shouldn't have been  
12 sitting.

13 THE COURT: Let's assume that. What  
14 does that do to the time constraints that would militate  
15 against the requirement that something of this nature  
16 should have been brought within seven days?

17 MR. COLUCCI: Because that, I think,  
18 violates the spirit of the Constitution of the United  
19 States and the Constitution of this state. I think it  
20 takes precedent over a seven-day time period.

21 Is it more important we do the seven-day  
22 thing, or is it more important that we give people in this  
23 country a fair trial with qualified jurors?

24 Otherwise, we could have a jury panel full  
25 of ex-felons who have not had their civil rights restored,

1 and they could sit in there and make a decision. And  
2 because I don't question the jurors and nobody questions  
3 the panel, you did, but nobody really thinks the Jury  
4 Commissioner is going to send a person, an ex-felon  
5 without their civil rights restored to sit as a member.

6 This is effectively what you could have, is  
7 12 people without their civil rights restored. They come  
8 from other jurisdictions where I don't have access to  
9 NCIC. I don't know what the records are. I can't get  
10 them that fast. I can't get them with a push of a button  
11 like the District Attorney's office.

12 I have to go through all the investigative  
13 procedures to get the information, and seven days is not  
14 reasonable. We need to have 12 qualified jurors because  
15 that's what the law is.

16 There are three or four statutes covering  
17 this that I think supersedes the seven-day rule, which I'm  
18 not conceding even applies in this case because she is not  
19 a juror.

20 THE COURT: You gave me an example of a  
21 situation. Let me give you one. Is there any rule that  
22 years later can you come in and say: Yes, this juror  
23 wasn't qualified, he lied or she lied or whatever, and  
24 let's invalidate the trial and try to go over it, and it  
25 would be impossible.

1 So where is the limit?

2 MR. COLUCCI: I don't know. But what  
3 if six months after the Court enters a judgment they find  
4 that the Judge shouldn't be sitting as a Judge. He didn't  
5 go to law school and he has a felony conviction.

6 Would they set aside those judgements?  
7 Would he be qualified to make those judgements in the  
8 first instance?

9 This juror was not qualified to make the  
10 judgement that she made and, therefore, there were not 12  
11 jurors in the box. There were only 11; 11 and a person  
12 who did not have their civil rights restored.

13 THE COURT: Mr. Peterson, anything  
14 further?

15 MR. PETERSON: Judge, just as a  
16 predicate, Your Honor, it's an out-and-out incorrect  
17 assertion to say she did not have her civil rights  
18 restored. The felony is from 20 years ago in Florida.  
19 Certainly, none of the parties knew about it.

20 By operation of Florida law passed in 1975,  
21 when a person completes their probationary sentence, their  
22 civil rights, other than possessing a gun, shall be  
23 automatically reinstated. Automatically reinstated.

24 When Mr. Colucci says the documents we have  
25 show she's not reinstated, it's because there's no

1 petition for reinstatement filed. None of those things  
2 were done in her case, because she's automatically  
3 reinstated. She votes. She has a nursing license.

4 So when we pose these hypotheticals about a  
5 jury with a person who wasn't qualified to sit, that's  
6 just, frankly, it's not true. Karen Barrs was qualified  
7 to sit as a juror.

8 But beyond that, the Court hit on the matter  
9 that's the most important, the inquiry into new trial  
10 motions. And that's the vehicle that's been brought by  
11 the defendant. It's his only vehicle for a new trial is  
12 by statute by 176.515, strictly construes the seven-day  
13 time bar.

14 A death penalty case, the guy files one  
15 eight days after the verdict. The Court said, no, that's  
16 not good enough.

17 THE COURT: Excuse me. Are you  
18 referring to a case?

19 MR. PETERSON: Yes, sir. It's in our  
20 moving papers.

21 MR. COLUCCI: Your Honor, I am going to  
22 concede that. That's exactly right.

23 THE COURT: Is that a Nevada case?

24 MR. PETERSON: Yes, sir.

25 MR. COLUCCI: Yes.

1 MR. PETERSON: Depasquale,  
2 D-e-p-a-s-q-u-a-l-e versus State, 106 Nevada 843.

3 Essentially, this Court loses jurisdiction  
4 to even consider a motion for a new trial that is filed  
5 outside of that seven days. It is a strictly construed  
6 rule.

7 The concern that the Court has is stated  
8 somewhat succinctly in the various case law when they talk  
9 about the problem of going years later, or other time  
10 later to look back on trials and cast aspersions on jury  
11 selections, et cetera.

12 "Let it once be established that jurors  
13 would be harassed and beset by the defeated party in an  
14 effort to secure from them evidence of the facts which  
15 might establish misconduct sufficient to set aside a  
16 verdict. If evidence thus secured can be thus used, the  
17 result would be to make what was intended to be a private  
18 deliberation, the constant subject of public investigation  
19 to the destruction of all frankness and freedom of  
20 discussion in confidence."

21 That's the United States Supreme Court in  
22 McDonald versus Plets (phonetic.) There are statutory  
23 time limits. He hasn't met them and, essentially, that's  
24 a threshold showing.

25 I am perfectly comfortable that we win on

1 the merits of this as well, given the response that the  
2 State has filed. But as a threshold matter, this motion  
3 is outside of this Court's jurisdictional ability to even  
4 consider it.

5 THE COURT: Now, you've alluded to a  
6 Nevada case.

7 MR. PETERSON: Yes.

8 THE COURT: That was after this case?

9 MR. PETERSON: Let me double-check.

10 No. Depasquale is a 1990 case. It's a  
11 first degree murder death-sentence case. Eight days after  
12 the final verdict the defendant filed a motion for a new  
13 trial.

14 "The District Court declined to hear it for  
15 untimeliness, and the Nevada Supreme Court held that the  
16 defendant missed the seven-day deadline by filing it one  
17 day late, and it was not error to refuse to consider it."

18 THE COURT: And this was the basis for  
19 the new trial, was the jury misconduct?

20 MR. COLUCCI: Yes.

21 MR. PETERSON: I don't recall what the  
22 basis was in Depasquale. I believe it was one of the  
23 bases.

24 MR. COLUCCI: Yes. And what happened  
25 in that case is, one of the jurors was not truthful during



1 the voir dire. But the distinguishing thing about that  
2 case is, that juror was qualified in the first instance to  
3 sit there, and that's what made it juror misconduct.

4 In this case --

5 THE COURT: Excuse me. What's the  
6 distinction in that case?

7 MR. COLUCCI: Ms. Barrs wasn't  
8 qualified to sit as a juror.

9 THE COURT: In that case you say the  
10 juror was qualified?

11 MR. COLUCCI: Was qualified.

12 THE COURT: What was the factual  
13 situation?

14 MR. COLUCCI: He did not disclose to  
15 the parties that someone in his family had been murdered  
16 and he had a prejudice against people that commit murders,  
17 and so he wasn't a fair juror.

18 THE COURT: That would seem to be much  
19 more damning than a person who had a felony 20 years ago  
20 which was very likely absolved.

21 MR. COLUCCI: Well, it wasn't very  
22 likely resolved, because Mr. Peterson said the right  
23 thing. She had to apply. There's a procedure to follow  
24 in Florida.

25 MR. PETERSON: That's not what I said.

1 MR. COLUCCI: He mentioned the word  
2 "application."

3 THE COURT: I thought it was automatic.

4 MR. PETERSON: It is automatic. She  
5 doesn't have to apply after 1975. What I said is,  
6 Mr. Colucci said there is no application. Correct,  
7 because it's unneeded.

8 By executive clemency rules promulgated  
9 in Florida in 1975, upon the completion of your  
10 probationary period you automatically have your civil  
11 rights restored, other than the right to own a firearm.  
12 That would require application.

13 Ms. Barrs' conviction was in 1980. By  
14 executive clemency rules in Florida, her civil rights are  
15 restored. She is not a felon.

16 MR. COLUCCI: Her civil rights are not  
17 restored. Exhibit A to our opposition is a certificate  
18 from the Department of Clemency, or the Department of  
19 Parole and Probation in the State of Florida. It clearly  
20 says her civil rights have not been restored in the State  
21 of Florida.

22 Now, let me tell you why the automatic  
23 restoration would occur if it she followed the correct  
24 procedure. One, apply; two, be qualified. If you apply  
25 and you're qualified, then after a short determination

1 without a hearing they are automatically restored.

2 If you would look at our Exhibit A to our  
3 latest opposition, it clearly shows that what I've just  
4 told you is absolutely correct. That's Exhibit A to our  
5 opposition, our reply to the State's opposition to the  
6 defendant's motion for a new trial.

7 And it says at the bottom of the certificate  
8 that, "I certify that the civil rights of Karen Barrs have  
9 not been restored. In addition, there is no application  
10 pending for clemency at this time for the above-named  
11 person."

12 Now, if it could be any more clear than  
13 that, I don't know how it could be. And I also submitted  
14 to the Court as Exhibit B, the instructions for an  
15 application to have your civil rights restored.

16 And we submitted a separate document which  
17 was the truthful application. Both of those are presently  
18 in use in the State of Florida. If it was an automatic  
19 restoration, they don't need instructions, and they don't  
20 need the application.

21 And Karen Barrs could not sit in a jury in  
22 the State of Florida. She's not qualified. And if she's  
23 not qualified in Florida, she's not qualified in the State  
24 of Nevada.

25 THE COURT: All right. What do you say

1 call it in the blood spatter vernacular, that could have  
2 created that blood when she was not at all on the ground,  
3 head hitting the ground, for example, creating a splatter,  
4 something they call satellite blood, blood dripping into  
5 other blood creating droplets and he will testify.

6 You will have to listen to all that  
7 expertise and make a determination as to whether or not  
8 she was down on the ground or not and put it together as  
9 to what happened on December 20th.

10 The people were allowed a few moments of  
11 kind of conclusionary summation in their opening  
12 statement.

13 I hope I'm allowed the same when I tell you  
14 that I believe that the evidence will show by the time  
15 you're finished with the case, by the time that we have  
16 finished our presentation on behalf of Mr. Centofanti,  
17 that in his eyes and what is an objective determination is  
18 that there was a very genuine and very real fear of deadly  
19 force violence from from Gina Centofanti towards Chip  
20 Centofanti and that his action and his conduct and that  
21 split two seconds, three seconds of explosion was very  
22 much an act of self-defense, justifiable self-defense  
23 under those circumstances.

24 I ask you to keep open open mind until we've  
25 presented all the evidence in this case. Thank you very

1 much.

2 THE COURT: Thank you, Mr. Bloom.

3 (Whereupon, the Court admonished the jury.)  
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1 MOT  
2 CARMINE J. COLUCCI, ESQ.  
3 CARMINE J. COLUCCI, CHTD.  
4 Nevada Bar #000881  
5 629 South Sixth Street  
6 Las Vegas, Nevada 89101  
7 (702) 384-1274  
8 Attorney for Defendant,  
9 ALFRED P. CENTOFANTI III

FILED

JUN 28 4 48 PM '04

*Shirley B. Rungius*  
CLERK

DISTRICT COURT  
CLARK COUNTY, NEVADA

STATE OF NEVADA,

Plaintiff,

vs.

ALFRED P. CENTOFANTI III,

Defendant.

CASE NO. C172534

DEPT NO. XIV

Date of Hearing: 7-8-04  
Time of Hearing: 9:00 am

MOTION FOR A NEW TRIAL

COMES NOW, the Defendant, ALFRED P. CENTOFANTI III, by and through his attorney, CARMINE J. COLUCCI, ESQ., of the law firm of CARMINE J. COLUCCI, CHTD., and moves this Court for an order setting aside the jury verdict of April 16, 2004, and granting the defendant a new trial for the reasons set forth herein.

This motion is made and based upon the Points and Authorities submitted herewith, the pleadings on file herein together with the affidavit of Mike Pfriender

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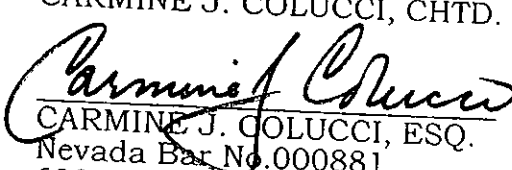
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MC

1 attached hereto.

2 DATED this 28<sup>th</sup> day of June, 2004.

3 CARMINE J. COLUCCI, CHTD.

4  
5   
6 CARMINE J. COLUCCI, ESQ.  
7 Nevada Bar No. 000881  
8 629 South Sixth Street  
9 Las Vegas, Nevada 89101  
10 Attorney for Defendant

11 **NOTICE OF MOTION**

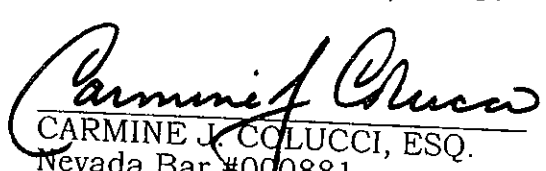
12 TO: THE STATE OF NEVADA; Plaintiff; and

13 TO: DAVID ROGER, DISTRICT ATTORNEY, its Attorney.

14 YOU AND EACH OF YOU WILL PLEASE TAKE NOTICE that the undersigned  
15 will bring the foregoing Motion on for hearing before this Court at the Courtroom  
16 of the above-entitled Court on the 8 day of July, 2004, at the hour of 9:00  
17 a.m. of said day, or as soon thereafter as Counsel may be heard.

18 DATED this 28<sup>th</sup> day of June, 2004.

19 CARMINE J. COLUCCI, CHTD.

20   
21 CARMINE J. COLUCCI, ESQ.  
22 Nevada Bar #000881  
23 629 South Sixth Street  
24 Las Vegas, Nevada 89101  
25 Attorney for Defendant

26 **POINTS AND AUTHORITIES**

27 I.

28 **STATEMENT OF THE ISSUES**

A. Whether the defendant is entitled to a new trial based upon juror misconduct for not disclosing her prior involvement in the criminal justice process as a defendant which included a felony conviction which would have

1 precluded her from meeting the statutory requirements in order to sit as a  
2 qualified juror in the instant case?

3 B. Whether the defendant is entitled to a new trial based upon juror  
4 misconduct because juror Joshua Wheeler performed his own firearm testing  
5 experiment during the trial?

6 C. Whether the defendant is entitled to a new trial based upon juror  
7 misconduct as a result of juror Chris Kelly coming to court and sitting on the jury  
8 while wearing a tee shirt that read "Do you know what a murderer looks like?"

9 D. Whether the defendant is entitled to a new trial based upon juror  
10 misconduct as a result of two or more jurors sleeping during the presentation of  
11 testimony during the trial in this case?

12 **II.**

13 **STATEMENT OF FACTS**

14 Prior to the commencement of the trial in the instant case, prospective  
15 jurors were sent notices about their future jury service. With each notice,  
16 prospective jurors were each sent an informational sheet which contained  
17 information about the parking facilities, general jury information and about the  
18 qualifications for jury service including four of the mandatory requirements. One  
19 of the stated qualifications stated was: "You must be without a felony conviction."  
20 See Exhibit A attached hereto.

21 In response to the notice, juror Caren Barrs was required to telephonically  
22 contact the Jury Commissioner's office and to respond to various qualification  
23 questions. One of the questions that required her response was whether she had  
24 a felony conviction.

25 On March 22, 2004, the jury trial of the defendant commenced. Voir dire  
26 was conducted by the Court and by counsel for the respective parties. A jury was  
27 selected from the panel furnished through the Clark County Jury Commissioner's  
28



1 office. The jury trial proceeded after the jury was selected and impaneled. On  
2 April 16, 2004, the jury returned with its verdict of guilty of First Degree Murder  
3 and With Use of a Deadly Weapon in the Commission of a Crime. Sentencing is  
4 presently scheduled for July 9, 2004.

5 In May, 2004, the defendant decided to discharge his trial counsel and to  
6 retain the undersigned as new counsel. Sentencing was originally scheduled for  
7 May 28, 2004, but was continued until July 9, 2004, by stipulation of the parties  
8 as an accommodation to new defense counsel so that he could obtain the files  
9 from the defendant's trial counsel.

10 **III.**

11 **ARGUMENT**

12 **A. DEFENDANT IS ENTITLED TO A NEW TRIAL BASED UPON JUROR**  
13 **MISCONDUCT FOR NOT DISCLOSING HER PRIOR INVOLVEMENT IN THE**  
14 **CRIMINAL JUSTICE PROCESS AS A DEFENDANT WHICH INCLUDED A**  
15 **FELONY CONVICTION AND WHICH WOULD HAVE PRECLUDED HER FROM**  
16 **MEETING THE STATUTORY REQUIREMENTS IN ORDER TO SIT AS A**  
17 **QUALIFIED JUROR IN THE INSTANT CASE.**

18 During a review of the pleadings and transcripts of the defendant's case and  
19 after interviewing various people who had attended the trial, defendant's counsel  
20 decided to investigate the backgrounds of the jurors. During the course of this  
21 investigation, it became apparent that at least one juror had an undisclosed felony  
22 conviction which precluded her from meeting the statutory requirements for being  
23 a person qualified to sit on a jury. NRS 6.010 states in pertinent part as follows:

24 **6.010 Persons qualified to act as jurors.**

25 Except as otherwise provided in this section, every qualified elector of  
26 the State, whether registered or not, who has sufficient knowledge of  
27 the English language, and who has not been convicted of treason, a  
28 **felony**, or other infamous crime, and who is not rendered incapable  
by reason of physical or mental infirmity, is a qualified juror of the  
county in which he resides. A person who has been convicted of a  
**felony** is not a qualified juror of the county in which he resides until  
his civil right to serve as a juror has been restored pursuant to NRS  
176A.850, 179.285, 213.090, 213.155 or 213.157. (Emphasis added)

1 It is clear from a review of this statute, that, in order to qualify to be a juror,  
2 the prospective juror must not have a felony conviction which has not been  
3 expunged or sealed or must otherwise qualify under NRS 176A.850. The certified  
4 documents submitted herewith, show that Caren Barrs, a member of the jury  
5 impaneled in the instant case, was a convicted felon. She also had a  
6 misdemeanor conviction which she also failed to disclose to the court or counsel.

7 Further, since the defense investigator was easily able to obtain certified  
8 court documents evidencing this juror's felony and a misdemeanor conviction,  
9 without a court order, it was evident that Barrs' convictions were not sealed or  
10 expunged. Additionally, during the defense investigator's interview with Barrs,  
11 she acknowledged the felony conviction and that she had not sealed her record,  
12 had not had the conviction expunged or had her civil rights restored pursuant to  
13 Florida law or NRS 176A.850. She was therefore ineligible, by statute, to sit as a  
14 juror and deliberate in this case as she had not met the requirements of NRS  
15 176A.850 or NRS 6.010 (See certified copies of Florida court documents attached  
16 hereto as Exhibit B).

17 It is also clear that she could not have been truthful with the Jury  
18 Commissioner as each prospective juror is asked via the phone survey whether he  
19 or she has a felony conviction prior to being ordered to report for service. Ms.  
20 Barrs must have answered the pertinent question by indicating that she did not  
21 have a felony conviction in order to be included in the jury pool without being  
22 subjected to further inquiry about this. Apparently, relying on the truthfulness  
23 of the survey response, the Jury Commissioner did not attempt to verify her  
24 response to the felony conviction question.

25 Prior to the commencement of voir dire, the court clerk administered the  
26 oath to the panel of prospective jurors using the language set forth in NRS 16.030  
27 (5) which states in pertinent part as follows:  
28

1 **NRS 16.030. Drawing and examination of jurors; administration**  
2 **of oath or affirmation.**

3 ...  
4 5. Before persons whose names have been drawn are examined as  
5 to their qualifications to serve as jurors, the judge or his clerk shall  
6 administer an oath or affirmation to them in substantially the  
7 following form:

8 Do you, and each of you, (solemnly swear, or affirm under the  
9 pains and penalties of perjury) that you will well and truly answer all  
10 questions put to you touching upon your qualifications to serve as  
11 jurors in the case now pending before this court (so help you God)?

12 After this oath was given, during the voir dire conducted on March 16,  
13 2004, this Court gave Ms. Barrs another opportunity to mention her prior  
14 criminal history, including her felony conviction. She was asked:

15 THE COURT: Have you or a close friend or family member ever been  
16 involved in the criminal justice process, either in prosecuting a case, or as  
17 a witness, **or as a defendant?** (Emphasis added) (See Reporter's Transcript  
18 attached hereto as Exhibit C at p. 62)

19 A review of her responses to the question asked by this Court, shows that  
20 she evaded a direct response about her own record by responding to the Court's  
21 question above by talking about her son's New York case. (See Exhibit C at p. 63).  
22 She did not at any time mention anything about her own record. She also avoided  
23 mentioning that she ever lived in Florida, the actual location of her felony  
24 conviction, by responding to another of this Court's questions as set forth below:

25 THE COURT : And he (her son) moved to New York at some point ?

26 PROSPECTIVE JUROR BARRS : No I'm originally from New York State,  
27 and we moved out here, and he and his other brother stayed in New  
28 York State. One son came out here with us.

In *Meyer v. State* 119 Nev. Advance Opinion 61 (Dec. 19, 2003) the Nevada  
Supreme Court stated:

Jurors who fail to disclose information or give false information  
during voir dire commit juror misconduct, which, if discovered after  
the verdict, may be grounds for a new trial under the standards  
established for juror misconduct during voir dire as opposed to  
misconduct that occurs during deliberations.

1 The felony conviction of Caren Barrs was not discovered until after the jury  
2 verdict was rendered. It was not disclosed to the Court prior to jury service, as  
3 required by law, despite this Court's specific inquiry. Juries must consist of 12  
4 jurors except as provided in NRS 175.021, which is inapplicable. NRS 175.481  
5 requires the verdict to be unanimous. Therefore, the defendant is entitled to have  
6 the jury verdict vacated, as it was not rendered by twelve "qualified" jurors as  
7 required by statute and he is also entitled to a new trial.

8 **B. DEFENDANT IS ENTITLED TO A NEW TRIAL BASED UPON JUROR**  
9 **MISCONDUCT BECAUSE JUROR JOSHUA WHEELER PERFORMED HIS OWN**  
10 **FIREARM TESTING EXPERIMENT DURING THE TRIAL.**

11 Once the jury selection process is completed, the clerk administers the oath  
12 which the jurors took pursuant to NRS 16.070:

13 **NRS 16.070 Jury to be sworn; court may order jury into custody**  
14 **of officer.**

15 1. As soon as the jury is completed, the judge or his clerk shall  
16 administer an oath or affirmation to the jurors in substantially the  
17 following form:

18 Do you, and each of you, (solemnly swear, or affirm under the  
19 pains and penalties of perjury) that you will well and truly try the case  
20 now pending before this court and a true verdict render according to  
21 the evidence given (so help you God)?

22 ...

23 During the initial interview of Joshua Wheeler which was conducted by  
24 licensed investigator Mike Pfriender on June 21, 2004, juror Joshua Wheeler told  
25 him that he went shooting with his father sometime between the third week and  
26 fourth week of the trial. Juror Wheeler concluded from this shooting session that,  
27 "it would be impossible for it to come on a target all six times in under four  
28 seconds even. It would be real tough." This comment was made in reference to  
the testimony of the firearms experts and the theory that the defendant had fired  
his weapon in an extremely rapid fire manner but was still able to hit the decedent  
with every shot.

1 In the follow-up interview of June 24, 2004, juror Wheeler advised the  
2 investigator that he and his father went shooting and the reason that they did so.  
3 He stated that he specifically wanted to go out and see how many seconds that it  
4 took to empty the gun he was shooting. See the affidavit of Mike Pfriender  
5 attached hereto. That constituted an improper experiment and at the very least  
6 constituted improper consideration of extrinsic evidence by juror Wheeler and  
7 perhaps the other members of the jury if he shared it during deliberations.  
8 Whether juror Wheeler alone or if other members of the jury considered this  
9 extrinsic "evidence," consideration at all constitutes a violation of the defendant's  
10 right to be present and to confront the witnesses against him which Wheeler now  
11 had become. *Barker v. Nevada*, 95 Nev. 309, 594 P.2d 719 (1979). Joshua  
12 Wheeler violated the terms of the jurors' oath by rendering his decision partially  
13 based on evidence that was not presented to him in court. The conduct of juror  
14 Wheeler met the two-prong test for a new trial as set forth in *Meyer v. State, supra*,  
15 in that the misconduct occurred (the independent juror test) and it involved a  
16 material issue in the case that undermined the defense's theory. In *Meyer*, the  
17 Nevada Supreme Court cites *U.S. v. Navarro-Garcia*, 926 F.2d 818 (9<sup>th</sup> Cir. 1991).

18 When extrinsic evidence is presented to a jury that is considering a  
19 criminal case, the defendant is entitled to a new trial 'if there exists  
20 a reasonable possibility that the extrinsic material could have affected  
21 the verdict.'

22 Therefore this juror's conduct constituted juror misconduct entitling the  
23 defendant to the relief sought herein.

24 **C. DEFENDANT IS ENTITLED TO A NEW TRIAL BASED UPON JUROR  
25 MISCONDUCT AS A RESULT OF JUROR CHRIS KELLY COMING TO COURT  
26 AND SITTING ON THE JURY WHILE WEARING A TEE SHIRT THAT READ "DO  
27 YOU KNOW WHAT A MURDERER LOOKS LIKE."**

28 During the trial, juror Chris Kelly went to court dressed in a shirt which  
bore the writing, "Do you know what a murderer looks like?" In light of the  
seriousness of the charges and the right of the defendant to a fair trial, this type

1 of activity was very inappropriate, highly prejudicial and constituted juror  
2 misconduct. This also violated the spirit of the juror's oath set forth in NRS  
3 16.070.

4 Dressing in this type of attire evidences a lack of respect for the court  
5 process. It also is evidence that juror Chris Kelly failed to take his oath and duties  
6 as a juror seriously. Apparently he thought that this was a joke as he wore the  
7 shirt bearing this message while he was seated one day in the jury box. It also  
8 shows that juror Kelly had formulated the opinion that the defendant was a  
9 murderer.

10 It is unknown by the defense whether this behavior was ever brought to the  
11 Court's attention as it should have been by someone involved in this case.  
12 Apparently this juror was never chastised for wearing this shirt nor was he  
13 admonished about his duty not to formulate an opinion before the trial was over.  
14 The shirt was worn to be "spiteful" as juror Josh Wheeler put it. This shirt's  
15 message and this juror's actions evidence either his enmity or his bias against the  
16 defendant, that he had made up his mind prior to having this case submitted to  
17 the jury and that he did not take his duties seriously. Any one of these mental  
18 attitudes constituted the denial of the defendant's constitutional rights to due  
19 process of law and a fair trial. This juror misconduct also entitles the defendant  
20 to the relief sought herein.

21 **D. DEFENDANT IS ENTITLED TO A NEW TRIAL BASED UPON JUROR**  
22 **MISCONDUCT AS A RESULT OF TWO OR MORE JURORS SLEEPING DURING**  
23 **THE PRESENTATION OF TESTIMONY DURING THE TRIAL IN THIS CASE.**

24 The failure to stay awake and alert during the trial constitutes a violation  
25 of a juror's duty under NRS 16.070 also. The defense only learned about this  
26 misconduct recently. This conduct was confirmed by juror Josh Wheeler. See the  
27 Affidavit of Mike Pfriendr attached hereto.

28 At this time, it is not known how often and for what periods of time the

1 jurors slept or whether they slept at the same time. Perhaps an evidentiary  
2 hearing is required in order to make that determination. Josh Wheeler admitted  
3 to the investigator that he and Chris Kelly (juror with "the tee shirt") slept during  
4 portions of the trial.

5 The jurors' failure to pay full time and attention violated the defendant's  
6 right to due process of law and a fair trial as guaranteed under the Fifth  
7 Amendment, Sixth Amendment and Fourteenth Amendment of the Constitution  
8 of the United States.

9 Sleeping through a trial, thereby missing testimony deprives a juror of the  
10 ability to participate in a meaningful way in the deliberations which can result in  
11 the permanent deprivation of a person's liability. However, NRS 50.065 seems to  
12 preclude a juror from testifying about the deliberative process unless influenced  
13 by outside forces. *Echaravarria v. State*, 108 Nev. 734 at 741, 839 P.2d 589  
14 (1992), *Reibel v. State*, 106 Nev. 258 at 263, 790 P.2d 1004 (1990) and *Barker*,  
15 *supra*. Nevertheless, the defendants rights under the Constitution of the United  
16 States would supersede the limitations imposed by the state statute and case law  
17 cited above. Therefore, for the above-stated reasons, the defendant is entitled to  
18 a new trial.

#### 19 CONCLUSION

20 Under both state and federal law for the reasons set forth above, the  
21 defendant is entitled to have the jury verdict in this case set aside and must be

22 // // // //

23 // // // //

24 // // // //

25 // // // //


26 // // // //

27 // // // //

1 granted a new trial.

2 DATED this 28th day of June, 2004.

3 CARMINE J. COLUCCI, CHTD.

4  
5   
6 CARMINE J. COLUCCI, ESQ.  
7 Nevada Bar No. 000881  
8 629 South Sixth Street  
9 Las Vegas, Nevada 89101  
10 Attorney for Defendant  
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AFFIDAVIT IN SUPPORT OF MOTION FOR NEW TRIAL

STATE OF NEVADA )  
COUNTY OF CLARK ) ss:

MIKE PFRIENDER, being first duly sworn, deposes and says:

1. That he is the Las Vegas Branch Manager of Frasco Investigative Services and a private investigator duly licensed by the State of Nevada, and has personal knowledge of all matters set forth herein except for those stated upon information and belief and is competent to testify thereon.

2. That at the request of defense counsel, affiant has engaged in the post-trial investigation into various matters relating to the instant case including the backgrounds of several jurors.

3. That during the course of his investigation, affiant became aware that juror Caren Barrs had a criminal history which included a possible felony conviction.

4. That in an attempt to carefully document the existence of the felony conviction, affiant secured a copy of certain public records from the State of Florida which are attached as Exhibit B to defendant's motion for a new trial.

5. That affiant verified that these records pertained to this juror by conducting a personal and telephone interview with her.

6. That during a phone interview with Ms. Barrs, she admitted that she had a felony conviction in Florida and that it had not been sealed or expunged.

7. That affiant believes that Caren Barrs may have another misdemeanor conviction which was not disclosed prior to or during the juror qualification or selection (voir dire) process.

8. That affiant also interviewed juror Joshua Wheeler who stated that during the time he served as a juror, he and his father went shooting for the specific purpose of conducting a firearms test which related to testimony of

1 prosecutors and defense witnesses.

2 9. That when questioned about this, juror Wheeler stated "My dad had the  
3 gun out cleaning it and I asked him how long it would take to empty it and he said  
4 five (5) seconds! I didn't tell him what kind of gun was involved, but we both said  
5 'Let's go try it' and that's how it happened. It was purely coincidental. I mean my  
6 dad knew what was going on and I really didn't talk to him about the case. I may  
7 have mentioned 2.3 seconds to him but I don't really remember."

8 10. That juror Wheeler conducted his own firearm testing in order to confirm  
9 or to rebut the testimony of the expert witnesses on shooting speed and accuracy.

10 11. That Wheeler also stated that based on his own tests, using a .357  
11 Magnum handgun, he formed an opinion on the shooting speed and accuracy as  
12 it related to the acts of the defendant and this helped him formulate an opinion  
13 about the defendant's intent.

14 12. That Wheeler also stated what he and other jurors saw during the trial,  
15 juror Chris Kelly wear a tee shirt that he purchased during trial which Wheeler  
16 characterized as "It being quite spiteful." The tee shirt had writing on it that said,  
17 "Do you know what a murderer looks like?"

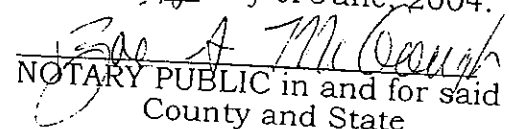
18 13. That juror Wheeler told affiant that as soon as juror Kelly came into  
19 contact with the other jurors that they all noticed it and reacted to it.

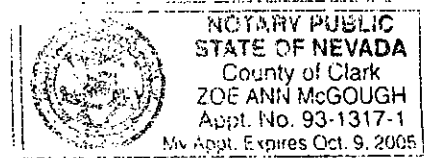
20 14. That juror Wheeler also stated that at various times during the trial, that  
21 both he and juror Chris Kelly slept.

22 15. That juror Wheeler went on to say that during the trial, juror Caren Barrs  
23 took a lot of notes and other jurors relied on her notes in coming to a decision.

24  
25   
MIKE PFRIENDER

26 SUBSCRIBED and SWORN to before  
me this 28 day of June, 2004.

27   
28 NOTARY PUBLIC in and for said  
County and State

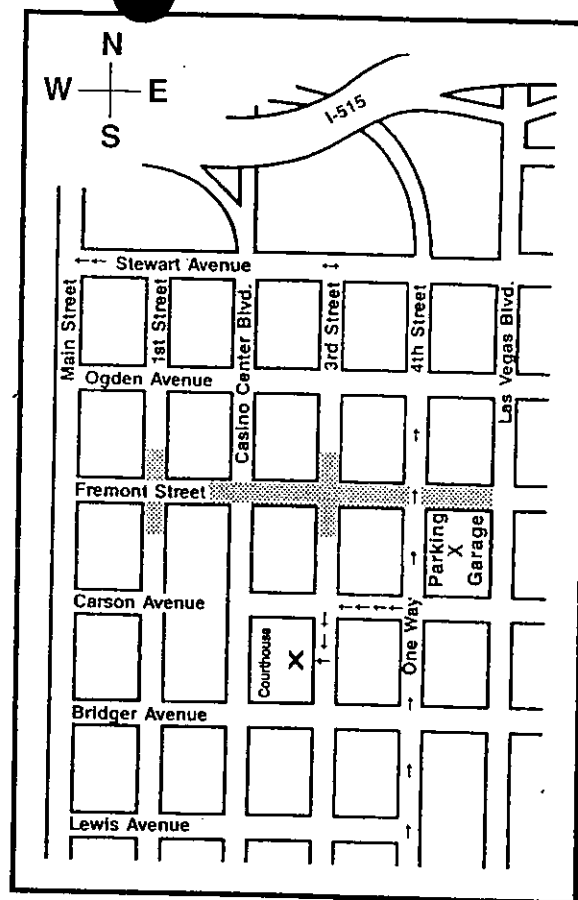


# EXHIBIT A

**PRE-PAID PARKING AT**  
**425 FREMONT STREET, ENTER FROM 4TH STREET**

**PARKING FACILITIES**

On your reporting date and while serving, parking is pre-paid at 425 Fremont Street. Bring your parking stub with you to Jury Services for validation. Maximum vehicle height is 8'2". If you require handicapped parking or your vehicle is over 8'2", please tell the parking attendant. We are unable to pay for parking in restricted areas, timed areas, or at parking meters.



**JURY INFORMATION**

**YOUR EMPLOYER IS REQUIRED BY NEVADA STATE LAW, NRS 6.190, TO ALLOW YOU, AS A PROSPECTIVE JUROR, THE TIME OFF TO PARTICIPATE IN THE JURY PROCESS. AN EMPLOYER'S FAILURE TO COMPLY MAY RESULT IN A CIVIL ACTION AGAINST THE EMPLOYER.**

On your scheduled **APPEARANCE DAY**, report to the Clark County Courthouse, main entrance, located at 200 South Third Street, and follow the signs to Jury Services. Please be seated until your number is called.

**PROPER CLOTHING** is required. No shorts, halter tops, muscle shirts, hats, or jogging suits are permitted. A suit and tie are not required.

**BEVERAGES AND SNACKS** may be purchased at the snack bar on breaks or during lunch. These items may not be taken into the courtroom. The Clark County Courthouse is a **NO SMOKING** building. Break and lunch times are determined by the Court.

**ON THE FIRST DAY OF SERVICE YOU MUST BE PREPARED TO REMAIN AT THE COURTHOUSE UNTIL 5:00 P.M.** You are welcome to bring a book, magazine, or personal work with you. However, local newspapers are not permitted.

Each person summoned to report is entitled to a fee of \$40 for each day after the second day of jury selection and, if sworn as a juror, is entitled to a fee of \$40 for each day of service. Mileage is reimbursed at 36.5 cents a mile for each mile traveled if the residence is 65 or more miles from the place of trial.

**QUALIFICATION REQUIREMENTS FOR JURY SERVICE:**

- 1) You must be a citizen of the United States.
- 2) You must be 18 years of age or older.
- 3) You must be a resident of Clark County.
- 4) ~~You must be without a felony conviction~~

# EXHIBIT B

COUNTY COURT  
PINELLAS COUNTY, FLORIDA

STATE OF FLORIDA  
VS.

CAREN BAERS

Sex F

Add 1315 W. 19th St. # 11

( ) St. Petersburg Traffic Division

( ) Clearwater Traffic Division

CHARGE Aggravated Battery on Person for  
harmless choice

CASE NO. CAC 80004650 AND

AGENCY REPORT NO.

( ) Traffic (Citation No.)

( ) Misdemeanor

( ) Felony

( ) Municipal Ord. Viol.

OFFENSE OCCURRED IN:

( ) No. County

( ) So. County

( ) On Warrant

Capias

( ) On View

( ) St. Petersburg

( ) Other

COMPLAINT

BEFORE ME, A NOTARY PUBLIC, personally appeared Det. L. F. Morrell  
who, being duly sworn, says that on the 25 day of Jun A.D. 19 80  
Pinellas County, Florida, on CAREN BAERS did: as

Arrested on Circuit Capias

FILED

contrary to (statute) (Ordinance) 832.03 in such case made Complaint against the peace  
and dignity of the STATE OF FLORIDA (N.C.I.C. Code No. 2406)  
Sworn to and Subscribed before me this 25 day of Jun 19 80

W. P. Plakke  
Notary Public

Seal

M. J. D.  
Affiant

P.S.D.  
(Affiant's address or agency)

My commission expires Notary Public for the State of Florida  
Commission Expires 1-1-1981

BOOKING ADVISORY

JAIL (located) Pinellas Co DATE 1-25-80 TIME 11:00 AM/PM  
I HEREBY CERTIFY THAT the above named Defendant has been advised by me that he has a right to coun-  
sel and if unable to afford counsel, that one will be provided to him at no charge.

AMOUNT OF BOND/S \$ 250 ARRESTING/BOOKING OFFICER M. J. D.

Bonded 25 day of Jun 19 80, at 11:00 AM/PM By Self

HEARING DATE/TIME 11:00 LOCATION Self  
I, (Bondsman) (Print) HEREBY AGREE TO HAVE (Defendant) (Print)  
present at advisory hearing noted below, and understand said hearing is within 72 hours from the time of arrest.  
Dondsman Signature DATE

ADVISORY AND SOLVENCY HEARING

The above named Defendant came before me for Advisory and Solvency hearing on the 25 day of Jun, 19 80, at 11:00 AM/PM, and was advised by me of the charge against him, his right to remain silent, that any statements by him may be used against him, his right to counsel, and, if he is financially unable to afford counsel, that counsel forthwith will be appointed; of his right to communicate with his counsel, family or friends, and that reasonable implementation will be afforded him to contact the foregoing.

I FURTHER CERTIFY THAT:

- ( ) a. Defendant has advised the Court that he has retained counsel or will retain counsel, and the Court investigated Defendant's solvency and found the Defendant solvent and financially able to secure counsel.
- ( ) b. The Court investigated Defendant's solvency and appointed the Public Defender to represent Defendant.
- ( ) c. The Defendant waived the right to counsel at the first appearance only.
- ( ) I hereby waive my right to counsel at the first appearance only.
- ( ) I, having been found solvent and financially able to secure counsel, I hereby waive counsel until my attorney files an appearance in this case or until I file a written request for a review of my solvency and ability to secure counsel.

BOND ACTION  
TAKEN, if any

Defendant's Signature  
JUDGE

I HEREBY ACKNOWLEDGE RECEIPT OF A COPY OF THE FOREGOING COMPLAINT AND ADVISORY

STATE OF FLORIDA - PINELLAS COUNTY  
I hereby certify that the above named Defendant is a true and correct copy of the original filed among the files and  
Date 14 day of June 19 80  
Address 1315 W. 19th St. # 11  
Pinellas County, Florida



Barrel  
Clerk of Circuit Court

IN THE CIRCUIT COURT  
FOR PINELLAS COUNTY, FLORIDA

CASE NO. CRC 8000465CFANO

SPN: 87081

STATE OF FLORIDA

vs.

CAREN BARRS

CAPIAS

TO ALL AND SINGULAR THE SHERIFFS OF THE STATE OF FLORIDA, GREETING:

THESE ARE TO COMMAND YOU as you have heretofore been commanded  
to take CAREN BARRS ..... if she .....  
be found in your County, and her ..... safely keep, so that you have  
her ..... body before the Judge of the above Court, at the Court-

house in Clearwater, Pinellas County, INSTANTER, to answer an Inform-  
ation found and now pending in said Court for said County, for  
OBTAINING PROPERTY IN RETURN FOR WORTHLESS CHECK (832.05); BOND SET AT \$250.00  
INCLUDING SURCHARGE

and have then and there this writ, with due return of your action  
endorsed thereon.

WITNESS, HAROLD MULLENDORE, is Clerk  
of the Court, and the seal of said  
Court at Clearwater, this 22nd  
day of ..... January, 19.80..

HAROLD MULLENDORE  
As Clerk of the Court

By: *Shirley A. Merrifield*  
As Deputy Clerk

(SEAL)

STATE OF FLORIDA - PINELLAS COUNTY  
I hereby certify that the foregoing is a true copy  
as the same appears among the files and  
records of this court.

To 14 days June 2004

By: *John F. DeBlaker*  
Deputy Clerk

CT CR 1

IN THE CIRCUIT COURT  
FOR PINELLAS COUNTY, FLORIDA

CASE NO. CRC 8000465CFANO

SPN: 87081

CARE  
STOV

STATE OF FLORIDA

vs.

CAREN BARRS

FILED

JAN 28 1980

HAROLD MULLENDORE  
CLERK OF COURT

Deputy Clerk

80 JAN 23 91 1 46  
PINELLAS CO. FL  
CLERK OF COURT

TO ALL AND SINGULAR THE SHERIFFS OF THE STATE OF FLORIDA, GREETING:

THESE ARE TO COMMAND YOU as you have heretofore been commanded  
to take CAREN BARRS ..... if she .....  
be found in your County, and her ..... safely keep, so that you have  
her ..... body before the Judge of the above Court, at the Court-  
house in Clearwater, Pinellas County, INSTANTER, to answer an Inform-  
ation found and now pending in said Court, for said County, for  
OBTAINING PROPERTY IN RETURN FOR WORTHLESS CHECK (832-06) BOND SET AT \$250.00  
INCLUDING SURCHARGE

and have then and there this writ, with due return of your action  
endorsed thereon.

WITNESS, HAROLD MULLENDORE, as Clerk  
of the Court, and the seal of said  
Court at Clearwater, this 22nd .....  
day of ..... January ...., 19.80..

HAROLD MULLENDORE  
As Clerk of the Court

(SEAL)

By: *Shirley A. Merrifield*  
As Deputy Clerk

STATE OF FLORIDA - PINELLAS COUNTY  
I hereby certify that the foregoing is a true copy  
of the same as it appears among the files and  
records of this court.



CT CR 1

14 June 1984

JOY ANNE BLAKER  
Deputy Clerk



WARRANT IN RELATION SHEET

To be furnished by the investigating officer/agency.

\* DEFENDENT'S FULL NAME: Cohen Barry

ALIAS: \_\_\_\_\_

LAST KNOWN ADDRESS: 551 N. 53rd Ave., Clwk

PLACE OF EMPLOYMENT: Morton Plant Hospital

AGE: 33 DOB: 6-23-46 HT. \_\_\_\_\_ WT. \_\_\_\_\_

EYES: \_\_\_\_\_ OTHER FEATURES: \_\_\_\_\_

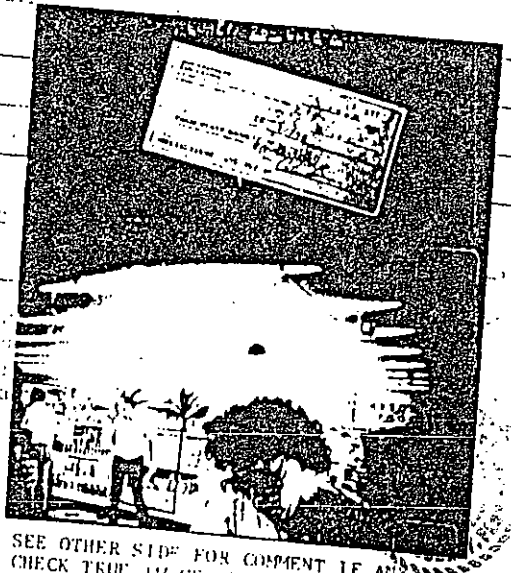
SSN: 078-36-9043

ARRESTING AGENCY: \_\_\_\_\_

PHOTO AVAILABLE: \_\_\_\_\_

IF OUT ON BOND, AMOUNT: \_\_\_\_\_

OTHER INFORMATION: \_\_\_\_\_



STATE OF FLORIDA - DALLAS COUNTY  
I hereby certify that this is a true copy  
of the same as appears among the files and  
records of the court.

14 June 1946  
J. J. BLAKER  
Clerk of Circuit Court  
Deputy Clerk

SEE OTHER SIDE FOR COMMENT IF ANY  
CHECK TRUE PLACE FOR CARRY REVERSE

FILED  
JUL 7 1980  
HAROLD MULLENDORE  
CLERK CIRCUIT COURT  
Deputy Clerk

CASE NO. CRC 80-465 CFANO

· vs.

CAREN BARRS

OBTAINING PROPERTY IN RETURN FOR

SPN 87081

WORTHLESS CHECK

JUDGMENT AND SENTENCE

~~JUDGMENT AND SENTENCE~~

The defendant, being present, and with counsel, \_\_\_\_\_ Warren LaPray  
upon being caused to stand before the bar in the custody of the Sheriff, the Court pronounced  
the following Judgment, to-wit:  
You, \_\_\_\_\_ Caren Barrs  
and advisedly entered a plea of (guilty) \_\_\_\_\_, having intelligently, understandingly  
~~by my jury:~~ (~~XXXXXXXXXXXX~~) (~~XXXXXXXXXXXX~~) to the crime (~~XXXXXXXXXXXX~~) of  
~~OBTAINING PROPERTY IN RETURN FOR WORK~~

Obtaining property in return for worthless check

IN RETURN FOR WORTHLESS CHECK  
as (charged) (incurred) in the information filed herein; and having now identified yourself  
to the Court as the defendant named herein; and saying nothing in bar or preclusion why the  
judgment ~~and sentence~~ of the law should not now be pronounced against you, the Court hereby  
adjudges you to be guilty, ~~and the following sentence be pronounced~~  
~~XXXX FURTHER XXXX ORDERED AND ADJUDGED THE XXXX~~

The defendant is advised of his right to appeal and of his right to have counsel for appeal purposes.

The defendant is remanded to the custody of the Sheriff.

DONE AND ORDERED this 2nd day of July, 1980 in open Court, in Clearwater, Florida.

Left four fingers

Left thumb

Judge of the Circuit Court

Right thumb

four fingers

Impressions made by J. F. Ecker  
Deputy Sheriff  
going fingerprints on this Judgment are the  
same, and that they were  
made, in open court, the 2nd day of

I hereby certify that the above and foregoing fingerprints on this Judgment are the fingerprints of the defendant Caren Barra, and that they were placed thereon by said defendant in my presence, in open court, the 2nd day of July, 1980.

Impressions made by Sgt. Ecker  
Deputy Sheriff

STATE OF FLORIDA - FRANKLIN COUNTY  
 There is a true and correct copy of the same appears among the files and records of this court.

CT-CR 27  
Revised

14 June 04

W. L. FLAKER  
Bar of Circuit Court

Deputy Clerk

000

*Bryson*

DATE: *7/2/80*

BUD CALDWELL  
CLERK'S ACCOUNTING

Please furnish an itemized statement of all costs of Prosecution  
in the following case.

Case No.	Defendant	St. Petersburg - <u>Clearwater</u>	Amount
<i>80-465 CF</i>	<i>Caren Barrs</i>		
<i>87081</i>			<i>NONE</i>

*Hy Roney*  
*7/3/80*

INFORMATION *\$20.00*

TOTAL *\$20.00*

FILED  
JUL 7 1980  
MAX J. MULENDORE  
CLERK CIRCUIT COURT  
*S. H. [Signature]* Deputy Clerk

CT CR 61

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Date:  
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STATE OF FLORIDA,

Plaintiff

In the CIRCUIT

Court

CAREN BARRS

of PINELLAS

County, Florida

SPN 87081

Defendant

Case No. CRC 80-465 CFANO

CTC 80-1547 MMANO

Caren Barrs

This cause coming on this day to be heard before me, and you, the defendant, being now present before me, and you

ENTERED A PLEA OF GUILTY TO

having: ~~ENTERED A PLEA OF GUILTY TO~~  
~~RECEIVING PROPERTY IN RETURN FOR WORTHLESS CHECK~~  
~~AND WITH COUNSEL, WARREN LAFRAY~~

the offense of OBTAINING PROPERTY IN RETURN FOR WORTHLESS CHECK; the defendant being present and with counsel, Warren LaFray

the court hereby adjudges you to be guilty of said offense; and

It appearing to the satisfaction of the Court that you are not likely again to engage in a criminal course of conduct, and that the ends of justice and the welfare of society do not require that you should suffer the penalty authorized by law;

Now, therefore, It is ordered and adjudged that the imposition of sentence is hereby withheld, and that you are hereby placed on probation for a period of FOUR YEARS \* under the supervision of the Department of Corrections and its Officers, such supervision to be subject to the provisions of the laws of this State.

It is further ordered that you shall comply with the following conditions of probation:

- (1) Not later than the fifth day of each month, you will make a full and truthful report to your Probation Officer on the form provided for that purpose.
- (2) You will pay the State of Florida the amount of Ten Dollars (\$10.00) per month toward the cost of your supervision unless otherwise waived in compliance with Florida Statutes.
- (3) You will not change your residence or employment or leave the county of your residence without first procuring the consent of your Probation Officer.
- (4) You will neither possess, carry or own any weapons or firearm without first securing the consent of your Probation Officer.
- (5) You will live and remain at liberty without violating any law. A conviction in a court of law shall not be necessary in order for such a violation to constitute a violation of your probation.
- (6) You will not use intoxicants to excess; nor will you visit places where intoxicants, drugs or other dangerous substances are unlawfully sold, dispensed or used.
- (7) You will work diligently at a lawful occupation and support any dependents to the best of your ability, as directed by your Probation Officer.
- (8) You will promptly and truthfully answer all inquiries directed to you by the Court or the Probation Officer, and allow the Officer to visit in your home, at your employment site or elsewhere, and you will comply with all instructions he may give you.
- (9) You will enroll, participate in and successfully complete any program or rehabilitative activity, residential or otherwise, your probation officer may so direct.
- (10) You will serve in a Community Correctional Facility operated by the Department of Corrections for a term of 120 DAYS. You will surrender yourself to the custody of the Sheriff no later than 12:00 Noon, July 9, 1980. (place of incarceration to be nearest defendant's place of employment.)
- (11) You will receive psychological counseling as required by your probation supervisor.
- (12) You will make full restitution within one year of this date.
- (13) You will have no interest, directly or indirectly, with any checking accounts.
- (14) You will pay the cost of this prosecution in the amount of \$ 20.00.

\* 60 days probation as to CTC 80-1547 MMANO, to run concurrently with CRC 80-465 CFANO.

Defendant is advised of right to appeal.

You are hereby placed on notice that the Court may at any time rescind or modify any of the conditions of your probation, or may extend the period of probation as authorized by law, or may discharge you from further supervision; and that if you violate any of the conditions of your probation, you may be arrested and the Court may revoke your probation and impose any sentence which it might have imposed before placing you on probation.

It is further ordered that when you have reported to the Probation Officer and have been instructed as to the conditions of probation, you shall be released from custody if you are in custody and if you are at liberty on bond, the sureties thereon shall stand discharged from liability.

It is further ordered that the Clerk of this Court file this order in his office, record the same in the Minutes of the Court, and forthwith provide certified copies of same to the Probation Officer for his use in compliance with the requirements of law.

DONE AND ORDERED IN OPEN COURT, this the 2nd day of July, 19 80.

cc: Sheriff

STATE OF FLORIDA - PINELLAS COUNTY

I acknowledge receipt of a certified copy of this order and the conditions have been explained to me.

Date: \_\_\_\_\_

Instructed by: \_\_\_\_\_

Original: Court  
Copies: Probation  
File



14 June 84  
JANE E. BLAKER  
Clerk of Circuit Court  
Deputy Clerk

DC-900A  
Rev. 7/78  
087

EXHIBIT C

COPY

DISTRICT COURT

FILED

CLARK COUNTY, NEVADA JUN 18 10 28 AM '04

\* \* \* \*

*Shirley S. Thompson*  
CLERK

STATE OF NEVADA,

Plaintiff,

vs.

ALFRED P. CENTOFANTI III,

Defendant.

Case No. C172534

Dept. XIV

REPORTER'S TRANSCRIPT  
OF  
JURY TRIAL

-BEFORE THE HONORABLE DONALD M. MOSLEY

DISTRICT JUDGE

Taken on Tuesday, March 16, 2004

At 1:30 p.m.

APPEARANCES:

For the State:

BECKY GOETTSCH, ESQ.

CLARK PETERSON, ESQ.

Deputy District Attorneys

For the Defendant:

HOWARD BLOOM, ESQ.

GLORIA M. NAVARRO, ESQ.

Special public Defender

Reported by: Maureen Schorn, CCR No. 496, RPR

1 case until the entire thing is over.

2 Would you be able to make sure to follow the  
3 law and not reach any decision until you heard everything  
4 on the case, and the Judge gave the law in this case?

5 PROSPECTIVE JUROR SALAS: Yes.

6 MR. BLOOM: Thank you very much. Pass  
7 for cause, Your Honor.

8 THE COURT: Thank you. The Defense  
9 counsel may exercise the first peremptory challenge.

10 MR. BLOOM: Your Honor, we would ask  
11 the Court to thank and excuse Juror No. 3, Mrs. Alley.

12 THE COURT: Thank you very much, ma'am.

13 THE CLERK: Badge No. 285, Caren Barrs,  
14 B-a-r-r-s.

15 THE COURT: Is it Miss or Mrs. Barrs?

16 PROSPECTIVE JUROR BARRS: Mrs.

17 THE COURT: Mrs. Barrs, do you know of  
18 any reason why you could not serve as a fair juror in this  
19 particular case?

20 PROSPECTIVE JUROR BARRS: No.

21 THE COURT: Have you served as a juror  
22 before?

23 PROSPECTIVE JUROR BARRS: No, I  
24 haven't.

25 THE COURT: Are you or any of your

1 close friends or relatives involved in law enforcement, or  
2 have you been in the past?

3 PROSPECTIVE JUROR BARRS: My husband  
4 works for Prison Health Services. He's the booking  
5 medication nurse at the Clark County Detention Center.

6 THE COURT: How long has he been  
7 involved in that kind of work?

8 PROSPECTIVE JUROR BARRS: He's been  
9 there almost five years now.

10 THE COURT: You have occasion to  
11 discuss his work with him, I take it, from time to time?

12 PROSPECTIVE JUROR BARRS: Occasionally.

13 THE COURT: Do you think when this  
14 matter is resolved and you have an opportunity to speak  
15 with him about it, you would feel a compunction to explain  
16 or justify your verdict to him?

17 PROSPECTIVE JUROR BARRS: Absolutely  
18 not.

19 THE COURT: Do you think his employment  
20 and your obvious relationship with him would have any  
21 effect on your view of this case?

22 PROSPECTIVE JUROR BARRS: No.

23 THE COURT: Do you think you can be a  
24 fair juror?

25 PROSPECTIVE JUROR BARRS: Yes.



1 THE COURT: Have you or a close friend  
2 or family member ever been a victim of crime?

3 PROSPECTIVE JUROR BARRS: No.

4 THE COURT: Will you follow all the  
5 instructions of the Court on the law, even though they may  
6 differ from your personal conceptions of what the law  
7 ought to be?

8 PROSPECTIVE JUROR BARRS: Yes, I will.

9 THE COURT: A person who is accused of  
10 committing a crime is presumed to be innocent in a  
11 criminal trial. Do you understand and agree with that?

12 PROSPECTIVE JUROR BARRS: Yes, I do.

13 THE COURT: Are you aware that the  
14 defendant does not have to take the stand and testify or  
15 offer any evidence if he chooses not to, and you can still  
16 find him not guilty? That's because the burden is upon  
17 the State to prove his guilt beyond a reasonable doubt.

18 PROSPECTIVE JUROR BARRS: Yes.

19 THE COURT: Have you or a close friend  
20 or family member ever been involved in the criminal  
21 justice process, either in prosecuting a case, or as a  
22 witness, or as a defendant?

23 PROSPECTIVE JUROR BARRS: My son is  
24 incarcerated in New York State on a burglary charge.

25 THE COURT: As we speak?

1 PROSPECTIVE JUROR BARRS: Yes.

2 THE COURT: New York City?

3 PROSPECTIVE JUROR BARRS: New York  
4 State.

5 THE COURT: How old is your son?

6 PROSPECTIVE JUROR BARRS: He's 34.

7 THE COURT: And he moved to New York at  
8 some point?

9 PROSPECTIVE JUROR BARRS: No. I'm  
10 originally from New York State, and we moved out here and  
11 he and his other brother stayed in New York state. One  
12 son came out here with us.

13 THE COURT: When the situation occurred  
14 that led to his prosecution, were you here?

15 PROSPECTIVE JUROR BARRS: No. I was in  
16 New York State at that time.

17 THE COURT: Do you have some idea of  
18 what was alleged and the factual scenario?

19 PROSPECTIVE JUROR BARRS: Yes.

20 THE COURT: As you look at it at this  
21 juncture, do you feel that he was treated fairly, or  
22 perhaps not?

23 PROSPECTIVE JUROR BARRS: He was  
24 treated fairly. |

25 THE COURT: Of course, it was a

1 difficult situation?

2 PROSPECTIVE JUROR BARRS: Yes, it was.

3 THE COURT: Do you think that  
4 notwithstanding that situation, that you can objectively  
5 evaluate this case?

6 PROSPECTIVE JUROR BARRS: Yes, I do.

7 THE COURT: And you say a burglary?

8 PROSPECTIVE JUROR BARRS: Yes.

9 THE COURT: What did that involve?

10 PROSPECTIVE JUROR BARRS: My son and  
11 two other of his friends entered a house. There was an  
12 older lady in the house at the time. They didn't know she  
13 was there and they attempted to steal -- an aunt of one of  
14 the other boys, attempted to steal some of her jewelery.

15 THE COURT: Have you ever been, or do  
16 you know anyone who has ever been a victim of domestic  
17 violence?

18 PROSPECTIVE JUROR BARRS: Yes.

19 THE COURT: Tell me about that.

20 PROSPECTIVE JUROR BARRS: My mother by  
21 my stepfather.

22 THE COURT: Were you living in the home  
23 at the time?

24 PROSPECTIVE JUROR BARRS: Yes, I was.  
25 I was five.

1 THE COURT: What length of time are we  
2 talking about? Five years old through eight years or  
3 something?

4 PROSPECTIVE JUROR BARRS: Probably five  
5 through six, because he was killed in an accident shortly  
6 after that.

7 THE COURT: So during this  
8 year-and-a-half, two years, whatever, you observed  
9 violence orchestrated against your mother?

10 PROSPECTIVE JUROR BARRS: I did, but I  
11 vaguely remember it.

12 THE COURT: Do you think that would  
13 have any bearing on your view of this case?

14 PROSPECTIVE JUROR BARRS: No, I don't.

15 THE COURT: Have you or someone you  
16 know ever been accused of domestic violence, other than  
17 the stepfather?

18 PROSPECTIVE JUROR BARRS: No one else,  
19 no.

20 THE COURT: Tell us, please, of your  
21 employment, your marital status, the number of children  
22 you may have, and how long you've lived in Clark County.

23 PROSPECTIVE JUROR BARRS: I've been in  
24 Clark County a little over six years. I'm a Hospice nurse  
25 and case manager, home care supervisor. I have three

1 sons, one that lives here who is 27. The other two are in  
2 New York State, and one is 38, and the other is 34.

3 THE COURT: And, of course, you've  
4 indicated this position with the one son. Are either of  
5 the others or their wives involved in a law-related  
6 occupation?

7 PROSPECTIVE JUROR BARRS: No.

8 THE COURT: And how long have you been  
9 with your current employment?

10 PROSPECTIVE JUROR BARRS: I have been  
11 with the Hospice three-and-a-half years now.

12 THE COURT: Any other employment on  
13 your part here in Clark County?

14 PROSPECTIVE JUROR BARRS: Yes. I was a  
15 health and wellness director of an assisted living home,  
16 and I also worked in an ICU unit at one of our main  
17 hospitals here in the city.

18 THE COURT: Are you a nurse?

19 PROSPECTIVE JUROR BARRS: I am.

20 THE COURT: A Registered Nurse?

21 PROSPECTIVE JUROR BARRS: LPN.

22 THE COURT: And your husband's  
23 occupation?

24 PROSPECTIVE JUROR BARRS: He is a  
25 nurse, an LPN in the prison health services.

1 THE COURT: In Clark County what other  
2 work has he done?

3 PROSPECTIVE JUROR BARRS: In Clark  
4 County he worked as a security guard at one of the local  
5 casinos.

6 THE COURT: And you moved from New York  
7 when you came here?

8 PROSPECTIVE JUROR BARRS: From New York  
9 State, yes.

10 THE COURT: Were you employed there?

11 PROSPECTIVE JUROR BARRS: Yes.

12 THE COURT: Tell me about that, please?

13 PROSPECTIVE JUROR BARRS: I have been a  
14 nurse for 37 years, and I was employed in a hospital in  
15 New York State, and also in three other hospitals in New  
16 York State.

17 THE COURT: Any work outside of that  
18 area?

19 PROSPECTIVE JUROR BARRS: I owned and  
20 operated dog kennels for about ten years on my own. It's  
21 more of a hobby.

22 THE COURT: Before you got involved in  
23 nursing?

24 PROSPECTIVE JUROR BARRS: During the  
25 same time?

1 THE COURT: There was a commercial  
2 aspect to this?

3 PROSPECTIVE JUROR BARRS: Yes, it was.

4 THE COURT: You grew up in what city in  
5 New York?

6 PROSPECTIVE JUROR BARRS: Owasco, New  
7 York. It's a very small farming community in New York  
8 State.

9 THE COURT: Is that upper New York?

10 PROSPECTIVE JUROR BARRS: It's near  
11 Syracuse, New York.

12 THE COURT: Did you meet your husband  
13 in New York?

14 PROSPECTIVE JUROR BARRS: Yes, I did.

15 THE COURT: What kind of work was he  
16 doing?

17 PROSPECTIVE JUROR BARRS: At that time  
18 he was a news room supervisor in a newspaper.

19 THE COURT: And then from that point to  
20 his nursing, was there another occupation or two?

21 PROSPECTIVE JUROR BARRS: Yes. He  
22 worked security in one of the local hospitals that I  
23 worked in.

24 THE COURT: Is that where you met?

25 PROSPECTIVE JUROR BARRS: Yes, it is.

1 THE COURT: Have you any prejudice as  
2 to the nature of the charge in this case?

3 PROSPECTIVE JUROR BARRS: No. I have  
4 not.

5 THE COURT: Do you know any of the  
6 other prospective jurors?

7 PROSPECTIVE JUROR BARRS: No, I don't.

8 THE COURT: Have you any racial  
9 prejudice?

10 PROSPECTIVE JUROR BARRS: No.

11 THE COURT: Do you understand that an  
12 Information is a mere accusation and not evidence, that  
13 the Defendant is presumed to be innocent until proven  
14 guilty, and that the State has the burden of proving the  
15 defendant's guilt beyond a reasonable doubt?

16 PROSPECTIVE JUROR BARRS: Yes.

17 THE COURT: If you were charged with an  
18 offense similar to the one that's alleged in this case, or  
19 if you were prosecuting this case, would you want 12  
20 individuals such as yourself to be on your jury?

21 PROSPECTIVE JUROR BARRS: Yes, I would.

22 THE COURT: Do you know of any reason  
23 at all why you could not be completely fair and completely  
24 impartial in hearing this matter?

25 PROSPECTIVE JUROR BARRS: No.



1 THE COURT: Mrs. Barrs, these  
2 proceedings may be conducted in two segments. First, the  
3 jury will determine if the defendant is guilty.  
4 Punishment would not be considered at that time.

5 Second, if the jury finds the defendant  
6 guilty of first degree murder, then the law of this state  
7 requires that the jury set the punishment. I would set a  
8 date for a hearing on the subject of punishment; do you  
9 understand?

10 PROSPECTIVE JUROR BARRS: Yes.

11 THE COURT: In the State of Nevada  
12 under these circumstances, there are two possible forms of  
13 punishment that the jury may consider; life imprisonment  
14 without the possibility of parole, or life imprisonment or  
15 a term of 50 years with the possibility of parole.

16 Do you understand that?

17 PROSPECTIVE JUROR BARRS: Yes.

18 THE COURT: In your present state of  
19 mind, could you consider fairly both possible forms of  
20 punishment and select the one that you feel is most  
21 appropriate?

22 PROSPECTIVE JUROR BARRS: Yes, I could.

23 THE COURT: Are there questions from  
24 the State?

25 MR. PETERSON: Thank you, Judge.

1           Mrs. Barrs, have you or any of your sons  
2 ever been divorced?

3                   PROSPECTIVE JUROR BARRS: No.

4           MR. PETERSON: As a nurse, understand  
5 that there's going to be probably some medical testimony  
6 in this case, and you have to confine yourself to the  
7 testimony that's presented in court.

8           You can't go and consult any of the text you  
9 may have or resources you have; do you understand that?

10                   PROSPECTIVE JUROR BARRS: I understand.

11           MR. PETERSON: Have you had hiring and  
12 firing authority in any of your many jobs?

13                   PROSPECTIVE JUROR BARRS: Yes, I have.

14           MR. PETERSON: How do you feel like in  
15 making those decisions?

16                   PROSPECTIVE JUROR BARRS: It's  
17 necessary and I have no problem with that.

18           MR. PETERSON: In the incident  
19 involving your son in New York, were you called on to be a  
20 witness to assist either the Prosecution or the Defense in  
21 that matter?

22                   PROSPECTIVE JUROR BARRS: No, I wasn't.

23           MR. PETERSON: You answered with some  
24 enthusiasm, I thought, when the Judge asked do you  
25 think -- if you were either charged, either the defendant

1 or the State in this case, could you be fair. And you  
2 answered like you had something there you wanted to say.

3 What is it that made you answer in that way?

4 PROSPECTIVE JUROR BARRS: Over the  
5 years when I've worked with the public I've had to deal  
6 with several different conflicting opportunities. And  
7 I've always prided myself to be extremely fair, and to  
8 look at both sides equally.

9 It's something that I wanted done for me if  
10 I'm in that position, and I've always tried to give that  
11 back to other people.

12 MR. PETERSON: Thank you, ma'am. Pass  
13 for cause, Judge.

14 THE COURT: Thank you.

15 Defense counsel?

16 MR. BLOOM: Thank you, Your Honor.  
17 Good afternoon, Mrs. Barrs.

18 In this case there is going to be the  
19 presentation of considerable graphic evidence, photographs  
20 of the death, the deceased Virginia Centofanti. Ask a  
21 couple questions with regard to the impact of graphic  
22 evidence.

23 You would be directed if you are a juror on  
24 this case to look at that evidence for the evidentiary  
25 value it has, because it will have evidence to help us

1 understand what happened.

2 But not allow the emotional response of  
3 seeing a dead woman and seeing her shot and seeing blood  
4 and things like that that will be depicted in a  
5 photograph, and not allow that to well up in you such an  
6 emotional response that your emotions would cloud your  
7 objectivity, cloud your ability to look at it for  
8 evidentiary value of what's being presented.

9 Do you think you can do that?

10 PROSPECTIVE JUROR BARRS: Yes, I do.

11 MR. BLOOM: Have you seen in your  
12 experience as a nurse circumstances of some rather graphic  
13 or dramatic injuries?

14 PROSPECTIVE JUROR BARRS: I've had  
15 several occasions to be called to the emergency room to  
16 work in the emergency room when they were short when I was  
17 at the hospital, and we had quite number of domestic  
18 violence cases come in that needed to be treated.

19 MR. BLOOM: Domestic violence or any  
20 other kind of violence? Have you seen gunshot injuries?

21 PROSPECTIVE JUROR BARRS: Yes, I have.

22 MR. BLOOM: Could you please tell me  
23 the difference between Registered Nurse, RN, and the LPN  
24 designation?

25 PROSPECTIVE JUROR BARRS: A Registered

1 Nurse has probably a year more education up to a Master's  
2 Degree. An LPN, I, for instance, had two years of  
3 schooling instead of the three to four years.

4 Basically, we are governed by this in  
5 different states under what we can do according to law  
6 under an RN's scope of practice. And, basically, an RN  
7 earns more money and they also do more supervising and  
8 more directorship type things.

9 MR. BLOOM: Your position puts you in  
10 contact with patients, am I correct?

11 PROSPECTIVE JUROR BARRS: Very much so.

12 MR. BLOOM: You mentioned that your  
13 mother was a victim of domestic violence when you were a  
14 child. That can have long ranging impacts. Do you think  
15 it will impact you in this case?

16 PROSPECTIVE JUROR BARRS: No, I don't.

17 MR. BLOOM: You never even said  
18 anything about whether or not the allegation was domestic  
19 violence against a woman or against a man. Do you believe  
20 there could be a situation where there could be some  
21 domestic violence against a man?

22 PROSPECTIVE JUROR BARRS: Yes, I do.

23 MR. BLOOM: You've made some very  
24 important decisions in your life, but you have -- from my  
25 notes here have not served an a juror before?

1 PROSPECTIVE JUROR BARRS: I have not.

2 MR. BLOOM: Do you believe in this case  
3 considering the many experiences you had in your life, and  
4 the questions were put regarding hiring and firing, those  
5 are important decisions as well?

6 Do you think this decision as you were  
7 sitting on a jury involving Mr. Centofanti that it would  
8 be one of the most important decisions you would be making  
9 in your life?

10 PROSPECTIVE JUROR BARRS: Oh,  
11 definitely.

12 MR. BLOOM: You mentioned that  
13 sometimes you treat people who have been the victim of  
14 domestic violence.

15 Would there be anything about that  
16 experience that might cause you to set it aside and look  
17 at the evidence we presented in this courtroom, as the  
18 Judge said what happens in this courtroom.

19 Would you be able to do that?

20 PROSPECTIVE JUROR BARRS: I think I  
21 could.

22 MR. BLOOM: Pass for cause, Your Honor.  
23 Thank you very much.

24 THE COURT: Counsel approach the bench,  
25 please.

1 ROC  
2 CARMINE J. COLUCCI, ESQ.  
3 CARMINE J. COLUCCI, CHTD.  
4 Nevada Bar #000881  
5 629 South Sixth Street  
6 Las Vegas, Nevada 89101  
7 (702) 384-1274  
8 Attorney for Defendant,  
9 ALFRED P. CENTOFANTI III

*Shirley B. Dargatzis*  
JUN 29 9 15 AM '04

FILED

DISTRICT COURT  
CLARK COUNTY, NEVADA

10 STATE OF NEVADA,

11 Plaintiff,

12 vs.

13 ALFRED P. CENTOFANTI III,

14 Defendant.  
15

CASE NO. C172534

DEPT NO. XIV

Date of Hearing: 7/8/04


Time of Hearing: 9AM

16 RECEIPT OF COPY

17 RECEIPT OF A COPY of MOTION FOR NEW TRIAL is hereby acknowledged  
18 this 29 day of June, 2004.

19 DAVID ROGER  
20 DISTRICT ATTORNEY

21 BY

  
22 Clark Petersen, Esq.  
23 Nevada Bar No. 006088  
24 Becky Goettsch, Esq.  
25 Nevada Bar No. 006316  
26 200 South Third Street  
27 Las Vegas, Nevada 89155  
28 Attorney for Plaintiff

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*Shirley B. Pangione*  
CLERK

1 0001  
2 DAVID ROGER  
3 Clark County District Attorney  
4 Nevada Bar #002781  
5 BECKY GOETTSCH  
6 Chief Deputy District Attorney  
7 Nevada Bar #006316  
8 200 South Third Street  
9 Las Vegas, Nevada 89155-2212  
10 (702) 455-4711  
11 Attorney for Plaintiff

7 DISTRICT COURT  
8 CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA, )

10 Plaintiff, )

Case No. C172534

11 -vs- )

Dept No. XIV

12 ALFRED PAUL CENTOFANTI, III., )  
13 #1730535 )

14 Defendant. )

15 EX PARTE MOTION AND ORDER TO JURY COMMISSIONER TO RELEASE JUROR  
16 INFORMATION FOR JUROR NUMBER THREE IN STATE OF NEVADA V. ALFRED  
17 PAUL CENTOFANTI, III.

18 Upon the ex parte application of THE STATE OF NEVADA, Plaintiff, by DAVID  
19 ROGER, District Attorney, through BECKY GOETTSCH, Chief Deputy District Attorney,  
20 and good cause appearing therefore,

21 POINTS AND AUTHORITIES

22 Between March 15, 2004, and April 15, 2004, this case proceeded to jury trial in  
23 Department XIV of the Eighth Judicial District Court. The jury deliberated over the course  
24 of two (2) days and returned a verdict of guilty of First Degree Murder on April 15, 2004.  
25 Juror number 3 seated on this jury was Caren Barrs of 4141 Swenson Street, Las Vegas,  
26 Clark County, Nevada. After the conviction the jurors were apparently investigated by the  
27 defense and it was learned that Ms. Barrs had in fact been convicted of a felony in Pinellas  
28

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1 County, Florida in 1980. This was a felony conviction for Obtaining Property in Return for  
2 Worthless Check. Pursuant to Florida law, after of a period of twenty (20) years a felon's  
3 Civil Rights are restored. This statute also exists in Nevada.

4 The State then conducted its own investigation into the juror's felony conviction and  
5 learned that the juror had disclosed her felony conviction when she called into the jury  
6 commissioner and answered the questions on the telephonic information system. Upon  
7 receipt of her jury summons she called in as instructed and disclosed that she did have a  
8 felony conviction. She also disclosed this information on her questionnaire to the jury  
9 commissioner. The Jury Commissioner or their representative inquired with this potential  
10 juror as to whether or not she had any felony convictions in Nevada. Upon a negative  
11 response the Jury Commissioner or representative indicated to Ms. Barrs that she should in  
12 fact show up in court. When she arrived in court she assumed that all parties were aware of  
13 her prior felony conviction and did not offer the information during the jury selection  
14 process.

15 The defense has brought a motion for a new trial based on jury misconduct alleging  
16 the defendant is entitled to a new trial due to the fact a juror on the case was a convicted  
17 felon. In order to properly defend against the Motion for a New Trial, the State is seeking  
18 the release of the information provided to the Jury Commissioner by juror Caren Barrs.

#### 19 CONCLUSION

20 Based upon forgoing, the State requests that the Court order the Jury Commissioner to  
21 release any information provided to the jury commissioner by juror number 3, identified as  
22 Caren Barrs.

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DATED this 6<sup>th</sup> day of August, 2004.

DAVID ROGER  
Clark County District Attorney  
Nevada Bar # 002781

BECKY GOETTSCHE  
Chief Deputy District Attorney  
Nevada Bar #006316

I hereby certify that service of State's Ex Parte Request, was made this 4th day of August, 2004, by facsimile transmission to:

BY M. Warner  
Employee of the District Attorney's Office

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OPPS

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FILED

AUG 10 2 24 PM '04

*Shirley W. Longman*  
CLERK

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,  
Plaintiff,

-vs-

ALFRED PAUL CENTOFANTI, III.,  
#1730535

Defendant.

CASE NO: C172534

DEPT NO: XIV

STATE'S OPPOSITION TO DEFENDANT'S MOTION FOR NEW TRIAL

DATE OF HEARING: 08/12/04  
TIME OF HEARING: 9:00 A.M.

COMES NOW, the State of Nevada, by DAVID ROGER, District Attorney, through  
BECKY GOETTSCH, Chief Deputy District Attorney, and hereby submits the attached  
Points and Authorities in Opposition to Defendant's Motion For New Trial.

This Opposition is made and based upon all the papers and pleadings on file herein,  
the attached points and authorities in support hereof, and oral argument at the time of  
hearing, if deemed necessary by this Honorable Court.

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POINTS AND AUTHORITIESSTATEMENT OF FACTS

Jury trial in this case commenced on March 15, 2004. Jury selection spanned approximately two trial days. The jury venire was composed of individuals who were summoned by the Jury Commissioner and asked to call in to confirm their report time. Clark County resident Caren Barrs received her jury summons and immediately called to inform the Jury Commissioner that she was a convicted felon from 1980 in Florida for a charge that amounted to "bad checks." She was not able to talk to a live person at that time and provided the commissioner with information via the telephonic information system. When she was quizzed regarding prior felony convictions, she pushed the button indicating she was a convicted felon.

When she actually did talk to a Jury Commissioner representative, she disclosed her felon status along with the fact the conviction dated back to 1980 and that her civil rights had been restored. The Jury Commissioner told her to report for jury duty. Ms. Barrs did so and disclosed, once again, her felony conviction in writing. Ms. Barrs was later chosen to sit on the jury. See attached affidavit of Caren Barrs.

The trial lasted approximately one month after in excess of 40 witnesses were called. Some of the testimony became repetitive and tangential by the nature of the defense. On a few limited occasions during the course of the trial, two individuals were allegedly seen by others "sleeping" or at least having their eyes closed during trial. No objection was made by the defense. Neither party, nor the bailiff, nor the Court noticed any "sleeping behavior" warranting comment or admonition.

In addition, Juror No. 5, was a young man traveling from out of town to serve jury duty on a daily basis. On one occasion, he wore a T-shirt to trial which was believed to be advertising a local band. On the T-shirt were the words "Do you know what a murderer looks like?" One juror found the T-shirt inappropriate and told the young man to change his clothes, cover it up, etc. See attached affidavits collectively. She also brought it to the attention of the bailiff. Neither party was made aware of the T-shirt during the trial.

1 On April 16, 2004, the jury in the above-entitled case found the defendant guilty of  
2 First Degree Murder. The jury was polled and all jurors concurred in the vote. The  
3 defendant hired a new attorney who filed a Motion for a New Trial based on juror  
4 misconduct, on June 28, 2004, well after the statutory time period for filing a Motion for  
5 New Trial. Specifically, the defendant argues that one juror was previously convicted of a  
6 felony and did not disclose the information to the parties, that one juror conducted an  
7 independent firearm experiment, that one juror wore a t-shirt, halfway through trial, that  
8 stated "Do you know what a murderer looks like?" and lastly, that two jurors were sleeping  
9 during the trial, all of which denied him a fair trial.

10 **I. THE DEFENDANT'S MOTION IS UNTIMELY AND SHOULD BE**  
11 **DENIED BASED ON JURISDICTIONAL GROUNDS.**

12 The Court may grant a new trial to a defendant if required as a matter of law or  
13 upon the discovery of newly discovered evidence. NRS 176.515. A motion based on newly  
14 discovered evidence must be made within two (2) years after a finding of guilt. However, a  
15 motion for new trial based on any grounds other than newly discovered evidence must be  
16 made within seven (7) days after verdict. NRS 176.515.

17 The Defendant is seeking a new trial based on reasons other than newly discovered  
18 evidence. Therefore, the defendant was required by statute to file his motion for a new trial  
19 within seven days. The verdict was received on April 16, 2004. The Motion was due on  
20 April 23, 2004. The Defendant's Motion for a New Trial was filed on June 28, 2004,  
21 approximately two months too late. NRS 176.515. There is no basis for the untimeliness of  
22 the Defendant's motion and therefore, the Defendant's motion should be denied.

23 The case law interpreting NRS 176.515 interprets this deadline strictly. In  
24 Depasquale v. State, 106 Nev. 843, 803 P.2d 218 (1990), the Defendant was convicted of  
25 first degree murder and sentenced to death. Eight (8) days after the final verdict, he filed a  
26 motion for a new trial. The District Court declined to hear the motion due to its  
27 untimeliness. On appeal, the Nevada Supreme Court held that since the Defendant missed  
28 the seven (7) day deadline imposed by NRS 176.515 by filing his motion for new trial eight

1 (8) days after the completion of the proceedings, the District Court did not err in failing to  
2 hear the motion.

3 In fact, this Court lacks jurisdiction if a motion for a new trial is not timely filed. The  
4 language of NRS 176.515 is taken verbatim from Federal Rule of Criminal Procedure 33.  
5 The Nevada Supreme Court has relied on Rule 33 in interpreting NRS 176.515. The time  
6 limits in Rule 33 have been held to be jurisdictional. If a motion is not timely filed, the  
7 Court lacks power to consider it. U.S. v. Dukes, 727 F.2d 34, 38 (2<sup>nd</sup> Cir. 1987). Since the  
8 Defendant's Motion is late, the Court similarly lacks jurisdiction to consider the Motion.

9 Furthermore, NRS 176.515 specifically states, "A motion for a new trial based on any  
10 other grounds must be made within 7 days after verdict or finding of guilt *or within such*  
11 *further time as the Court may fix during the 7 day period.*" (emphasis added). The statute  
12 does allow for an extension of time of the seven (7) days if the Court so grants an extension,  
13 however, the Legislature was clear that this *request* for an extension must take place during  
14 the seven (7) day period. The Defense did not ask for an extension of time. Furthermore,  
15 there is no valid reason for extending the time in this case. Therefore, the Defendant's  
16 motion remains untimely and should be dismissed.

17 **II. THE DEFENDANT'S REQUEST FOR A NEW TRIAL FAILS**  
18 **ON ITS MERITS**

19 The granting of a new trial is within the trial court's discretion and will not be  
20 reversed on appeal absent abuse. Sanborn v. State, 107 Nev. 399 (1991). The Defendant  
21 argues that he is deserving of a new trial as a matter of law based on juror misconduct. The  
22 analysis of these issues must be 1) did any misconduct occur; and 2) if there was  
23 misconduct, is it sufficiently or prejudicial to the defendant to justify a new trial. Meyer v.  
24 State, 80 P.3d 447 457 (2003).

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1 A. THE DEFENDANT IS NOT ENTITLED TO A NEW TRIAL BASED ON A  
2 PRIOR FELONY CONVICTION OF CAREN BARRS BECAUSE HER  
3 CIVIL RIGHTS HAVE BEEN RESTORED, ENTITLING HER TO SERVE  
4 ON A JURY, AND SHE DID NOT COMMIT MISCONDUCT DURING  
5 VOIR DIRE.

6 1. CAREN BARRS IS QUALIFIED TO SIT ON A JURY BECAUSE  
7 HER CIVIL RIGHTS HAVE BEEN RESTORED

8 Defendant cites NRS 6.010 for the proposition that Caren Bars is not qualified to  
9 serve on a jury. This justification for a new trial must fail because she was in fact qualified  
10 to sit on the jury. NRS 6.010 reads:

11 Except as otherwise provided in this section, every qualified  
12 elector of the State, whether registered or not, who has sufficient  
13 knowledge of the English language, and who has not been  
14 convicted of treason, a felony, or other infamous crime, and who  
15 is not rendered incapable by reason of physical or mental  
16 infirmity, is a qualified juror of the county in which he resides.  
17 A person who has been convicted of a felony is not a qualified  
18 juror of the county in which he resides until his civil rights to  
19 serve as a juror has been restored pursuant to NRS 176A.850,  
20 179.285, 213.090, 213.155 or 213.157.

21 Defendant conveniently fails to cite NRS 213.157 which reads in pertinent part:

22 1. Except as otherwise provided in subsection 2, a person  
23 convicted of a felony in the State of Nevada who has served his  
24 sentence and has been released from prison:

25 (a) Is immediately restored to the following civil rights:

- 26 (1) The right to vote; and  
27 (2) The right to serve as a juror in a civil action.

28 (c) Six years after the date of his release from prison, is  
restored to the right to serve in a criminal action.

Of course, since the felony conviction was in Florida and not Nevada, the Court must look to  
Florida law to see if Florida automatically restores a person's civil rights after completion of  
sentence.

Fla. Stat. § 940.05 (2004), states:

Any person who has been convicted of a felony may be entitled  
to the restoration of all the rights of citizenship enjoyed by him  
or her prior to conviction if the person has:

- (1) Received a full pardon from the board of pardons;  
(2) Served the maximum term of the sentence imposed upon  
him or her;

or

(3) Been granted his or her final release by the Parole  
Commission.

1 In State v. Haden, 370 So. 2d 849, 851 (Fla. App. 1979), referring to Fla. Stat. § 940.05, the  
2 Florida court explained:

3 On September 10, 1975, certain Rules of Executive Clemency of  
4 Florida were promulgated which were effective November 1,  
5 1975. Included therein were two provisions material to this case.  
6 By Section 9 of the Rules it was provided that 'A. When a  
7 person receives final release from the Florida Parole and  
8 Probation Commission, Department of Offender Rehabilitation  
9 or county jail, his civil rights shall be automatically reinstated,  
except the right to possess or own a firearm shall be specifically  
withheld.'

Under that provision of the clemency rules, restoration of civil  
rights would be automatic following completion of service of  
sentence by one who so completed his sentence on or after  
November 1, 1975.

10 Caren Barrs' Judgment of Conviction was filed on July 10, 1980, and she was sentenced to  
11 four (4) years probation. Her civil rights were, therefore, automatically restored sometime in  
12 1984. Consequently, she was qualified to serve on the jury.

13 2. **MS. BARRS DID NOT COMMIT MISCONDUCT DURING VOIR  
DIRE**

14 Even if she was ultimately qualified to sit as a juror, the issue becomes whether she  
15 committed misconduct by failing to inform the parties of the conviction during voir dire.  
16 Whether Caren Barrs' failure to mention her prior felony warrants a new trial is a two step  
17 inquiry. The first inquiry is whether there was "misconduct." To constitute misconduct, the  
18 failure of a juror to answer a question touching upon potentially prejudicial information must  
19 amount to an "intentional concealment." Canada v. State, 113 Nev. 938, 941, 944 P.2d 781,  
20 783 (1997); Lopez v. State, 105 Nev. 68, 89, 769 P.2d 1276, 1290 (1989); Hale v. Riverboat  
21 Casino, 100 Nev. 299, 305, 682 P.2d 190, 193 (1984). As the United States Supreme Court  
22 has stated, "To invalidate the result of a three-week trial because of a juror's mistaken,  
23 though honest response to a question, is to insist on something closer to perfection than our  
24 judicial system can be expected to give." Hale, 100 Nev. at 306, 682 P.2d at 194, quoting  
25 McDonough Power Equipment v. Greenwood, 104 S.Ct. 845, 850 (1984).

26 In the attached affidavit, Caren Barrs explained that she believed she did disclose her  
27 prior felony conviction. She entered the appropriate data via telephone and in person and  
28 was told to appear for jury duty. She also wrote the information down on the Jury



1 Commissioner information sheet. There has been no "intentional concealment" on her part,  
2 and it is not juror misconduct. *See Echavarria v. State*, 108 Nev. 734, 740 (1992) (failure to  
3 disclose assault by juror was not intentional because juror considered it a "fight" not an  
4 assault where he was a victim).

5 The second inquiry (if intentional concealment is found by the court) is whether the  
6 misconduct amounted to harmless or prejudicial error. *Canada*, 113 Nev. at 941, 944 P.2d at  
7 783, *citing Geary v. State*, 110 Nev. 261, 265, 871 P.2d 927, 930 (1994) vacated on other  
8 grounds by *Geary v. State*, 112 Nev. 1434, 930 P.2d 719 (1996); *see also, Hale*, 100 Nev. at  
9 306, 682 P.2d at 194. "A new trial must be granted unless it appears, beyond a reasonable  
10 doubt, that no prejudice has resulted." *Canada*, 113 Nev. at 941, 944 P.2d at 783, *quoting*  
11 *Lane v. State*, 110 Nev. 1156, 1163, 881 P.2d 1358, 1362-64 (1994). Not every incident of  
12 misconduct justifies a new trial. *Meyer v. State*, 80 P.3d 447 453 (2003). Factors to be  
13 considered when determining whether juror misconduct constituted harmless error include  
14 "whether the issue of innocence or guilt is close, the quantity and character of the error, and  
15 the gravity of the crime charged." *Canada*, 113 Nev. at 941, 944 P.2d at 783, *quoting*  
16 *Rowbottom v. State*, 105 Nev. 472, 486, 779 P.2d 934, 943 (1989).

17 The character of the error made by Caren Barr is minimal. It's a crime that occurred  
18 more than twenty years ago. The crime was for obtaining property in return for a worthless  
19 check. Her civil rights had been restored and she was allowed to regain her right to vote as  
20 well as her nursing license. Most importantly however, Ms. Barrs told the Jury  
21 Commissioner on more than one occasion about the felony conviction. She did not  
22 intentionally conceal the conviction. In fact, the Jury Commissioner told her to appear for  
23 jury service and she did so.

24 In addition, there is absolutely no prejudice to the defendant. Normally, a juror's  
25 prior conviction for any crime would be prejudicial to the State and not the Defendant. Also,  
26 Defendant had no problem with Caren Barr being on the jury in light of the fact her son is  
27 currently in prison in New York, having served eighteen years of incarceration, which she  
28 did disclose during voir dire. The question of guilt or innocence was not so close in this case

1 that a twenty year old worthless check conviction for one juror would prejudice the  
2 defendant.

3 Most importantly, however, it is well established that the fact a juror on voir dire,  
4 concealed bias or prejudice, and thereafter was sworn and served, does not constitute the  
5 type of misconduct covered by the statute for a new trial. Such misconduct that warrants a  
6 new trial is only that which occurs after the jury has been impaneled and sworn. State v.  
7 Marks, 15 Nev. 33 (1880); State v. Harvey, 62 Nev. 287, 290 (1944)(noting that legislative  
8 intent dictates that a subsequently discovered ground for challenge of a juror cannot be used  
9 as grounds for a new trial and judicial construction to avoid the harshness of the rule would  
10 be improper).

11 **B. JOSHUA WHEELER DID NOT CONDUCT FIREARM TESTING OR USE**  
12 **ANY INAPPROPRIATE EVIDENCE TO REACH A VERDICT**

13 The defendant next asserts that Juror Wheeler committed misconduct by conducting  
14 an experiment with a gun in order to evaluate the evidence. First, it must be established that  
15 Joshua Wheeler even conducted an inappropriate test, reenactment, or experiment; and  
16 therefore, committed misconduct. Although the defendant's investigator indicates that such  
17 an experiment was conducted, the attached affidavit shows that Mr. Wheeler did not conduct  
18 any test or experiment regarding a 9 mm murder weapon. Mr. Wheeler did at some point  
19 during the pendency of the trial have an opportunity to shoot a .357 Magnum with his father  
20 as part of his everyday life. There is nothing inappropriate about a juror going about living  
21 his daily life and using his daily experiences and common sense to deliberate and reach a  
22 conclusion.

23 It should also be noted that Mr. Wheeler never considered the shooting with his father  
24 to be an experiment or a test. He never discussed it with anyone in the jury room and never  
25 even discussed firearms experience with the other jurors, which is indicative of how Mr.  
26 Wheeler treated the experience of shooting with his father as a nonissue in the case or  
27 deliberations.

28 Even if we assume however, that Joshua Wheeler's did something wrong in shooting  
the .357, it does not inherently warrant a new trial. Whether it warrants a new trial requires

1 the District Court to look at two issues: What evidence can the Court consider in setting  
2 aside a verdict; and whether the defendant was prejudiced.

3 "Not every incidence of juror misconduct requires the granting of a motion for a new  
4 trial." Meyer v. State, 119 Nev. Adv. Rep. 61, 80 P.3d 447, 454 (2003), quoting Barker v.  
5 State, 95 Nev. 309, 313, 594 P.2d 719, 721 (1979). "Each case turns on its own facts, and on  
6 the degree and pervasiveness of the prejudicial influence." Meyer, 80 P.3d at 454, quoting  
7 United States v. Paneras, 222 F.3d 406, 411 (7<sup>th</sup> Cir. 2000).

8 NRS 50.065 states in pertinent part:

9 2. Upon an inquiry into the validity of a verdict or indictment:

10 (a) A juror shall not testify concerning the effect of anything  
11 upon his or any other juror's mind or emotions as influencing  
12 him to assent to or dissent from the verdict or indictment or  
concerning his mental processes in connection therewith.

(b) The affidavit or evidence of any statement by a juror  
indicating an effect of this kind is inadmissible for any purpose.

13 However, where the misconduct involves extrinsic information or contact with the jury, juror  
14 affidavits or testimony establishing the fact that the jury received the information or was  
15 contacted are permitted. Meyer, 80 P.2d at 454. A motion for a new trial may only be  
16 premised upon juror misconduct where such misconduct is readily ascertainable from  
17 objective facts and overt conduct without regard to the state of mind and mental processes of  
18 any juror. Id. The District Court's factual inquiry is limited to determining the extent to  
19 which jurors were exposed to the extrinsic evidence. Id. at 456.

20 If Juror Wheeler told the jury, "I went out and conducted a test and this is the result  
21 and this means he's guilty," that would be an extrinsic effect on a jury and subject to proof  
22 via affidavit. However if Juror Wheeler happened to have a life experience that he may or  
23 may not have used in his own mind to form an opinion, such as "it would be impossible for it  
24 to come on a target all six times in under four seconds even. It would be real tough," he has  
25 not committed misconduct. But most importantly, his statements regarding this is simply not  
26 admissible to impeach a verdict as it gets into his mental processes. The latter reflects the  
27 situation at bar.  
28

1 This conclusion is confirmed by Meyer v. State, 80 P.3d at 447. On this case, the  
2 defendant was convicted of sexual assault of his estranged wife. The victim later recanted.  
3 At issue were raised bumps on the victim's scalp and an issue arose as to whether the bumps  
4 were from abusive hair pulling or Accutane medication. During deliberations one juror  
5 discussed how the bumps were similar to hair pulling she had seen in her work with  
6 domestic violence victims. Another consulted a PDR regarding the medication. Defendant  
7 brought a new trial based on juror misconduct. *See also Barker v. Nevada*, 95 Nev. 309, 311  
8 (1979) (fact foreperson reported to jury effects if heroin on body was harmless error).

9 The appellate court found no misconduct on the part of a juror using her every day  
10 experience with domestic violence victims. This is similar to Mr. Wheeler shooting with his  
11 father. The court went on to find that consulting the PDR, and relaying it to other jurors,  
12 was prejudicial misconduct. In the case at bar, however, Mr. Wheeler never even discussed  
13 shooting experience with other jurors. Therefore, any impeachment of the verdict by Josh  
14 Wheeler's mental processes is impermissible.

15 Furthermore, **Prejudice is shown whenever there is a reasonable probability or**  
16 **likelihood that the juror misconduct affected the verdict.** Id. at 454. A conclusive  
17 presumption of prejudice applies only in the most egregious cases, such as jury tampering.

18 However, other types of extrinsic material, such as media  
19 reports, including television stories or newspaper articles,  
20 generally do not raise a presumption of prejudice. *Jurors'*  
21 *exposure to extraneous information via independent research or*  
22 *improper experiment is likewise unlikely to raise a presumption*  
23 *of prejudice.* In these cases, the extrinsic information must be  
24 analyzed in the context of the trial as a whole to determine if  
25 there is a reasonable probability that the information affected the  
26 verdict.

27 Id. at 456. To determine whether there is a reasonable probability that juror misconduct  
28 affected a verdict, a court may consider a number of factors.

For example, a court may look at how the material was  
introduced to the jury (third-party contact, media source,  
independent research, etc.), the length of time it was discussed by  
the jury, and the timing of its introduction (beginning, shortly  
before verdict, after verdict, etc.) Other factors include whether  
the information was ambiguous, vague, or specific in content;  
whether it was cumulative of other evidence adduced at trial;

whether it involved a material or collateral issue; or whether it involved inadmissible evidence (background of the parties, insurance, prior bad acts, etc.). *In addition, a court must consider the extrinsic influence in light of the trial as a whole and the weight of evidence.*

Id. See also United States v. Rogers, 121 F.3d 12, 17 (1st Cir. 1997) (Use of dictionary by juror not prejudicial per se).

There does not appear to be any evidence that Joshua Wheeler even *discussed* his shooting *experience* with other jurors, let alone the performance of any sort of test or experiment. See attached affidavits. It should also be noted that it was uncontroverted in this case, by both the defense and prosecution experts, that there were two separate shooting "moments" at the murder scene due to the fact one set of shell casings were between the end table and the end of the couch and the other set of shell casings were near the body, by the fireplace and exercise bike. Even the defense expert said that the shooting took place in two parts, or the shots were separated by a pause, and it appeared that the defendant "followed" the victim around the coffee table, all of which supports a first degree murder conviction regardless of how fast the defendant could empty the gun, which is allegedly the nature of Juror Wheeler's alleged experiment. In light of that overwhelming evidence, no evidence of self-defense as put forth by the defendant, the fact none of Juror Wheeler's experiences regarding guns was brought to the deliberations, Mr. Wheeler's shooting a .357 with his father is of no consequence and does not justify a new trial.

**C. THE DEFENDANT IS NOT ENTITLED TO A NEW TRIAL DUE TO A SHIRT WORN BY A JUROR**

The defendant alleges that one of the jurors wore a t-shirt to trial, during the evidence portion, stating, "Do you know what a Murderer looks like?" or something similar. One juror, later to be elected the jury foreperson, noticed the t-shirt and pointed it out to the bailiff and to the juror that it was not appropriate. The juror then apparently made efforts to conceal it during trial. Neither party noticed it during the trial and no record was made regarding any shirts worn by jurors. There is no evidence the shirt was made for the trial or

1 that the juror was making any comment on the evidence. The t-shirt appeared older and  
2 pertained to a local band. See attached affidavits.

3 It is inconceivable how this fact could warrant a new trial and an undoing of months  
4 of time and expense by our Courts. A juror's clothing choice does not constitute misconduct  
5 absent a finding that the clothing reflects a preconceived opinion or is otherwise  
6 inappropriate for Court. The defense cites no authority to the contrary and there is  
7 absolutely no authority for the defense's position that a juror's clothing choice warrants a  
8 new trial.

9 This is especially true since no record was made at the time it was worn and no  
10 inquiry was made as to the Juror intent, if any. There is no misconduct in a juror wearing  
11 whatever he or she wants to Court. There is now no method of inquiry as to what the juror  
12 meant by the shirt, if it affected what he was thinking about the case or how it factored in to  
13 his deliberations if at all. To make such an inquiry of the juror at this time is inadmissible  
14 intrinsic juror testimony precluded by NRS 50.065, as discussed *supra*.

15 **D. THE DEFENDANT IS NOT ENTITLED TO A NEW TRIAL DUE TO A**  
16 **ALLEGED SLEEPING BY JURORS**

17 The defendant must first establish misconduct: i.e. that the jurors were sleeping  
18 during the trial. In his moving papers, the defendant specifically accuses Joshua Wheeler of  
19 sleeping. He denies ever falling asleep during trial. There is some evidence that Juror no. 7,  
20 Chris Kelly, did nod off a few isolated times during the trial. The juror sitting next to him,  
21 Matt Adams, indicated that he nudged him immediately each time and Juror Kelly then woke  
22 up. These were during times when the evidence was becoming tedious and repetitive per the  
23 juror's own opinion. See affidavit of Juror Adams. There is no evidence that this juror  
24 missed critical portions of testimony or had trouble participating in deliberations because he  
25 missed evidence due to sleeping. See attached affidavits.

26 If our American justice system is going to grant a new trial every time a juror nods off  
27 during trial, there will never be a case tried to verdict. Cases uniformly decline to order a  
28 new trial in absence of convincing proof jurors were actually asleep during material portions

1 of testimony. Hasson v. Ford Motor Co., 32 Cal.3d 388, 411 (1982). It is inconceivable that  
2 the nodding off on a limited basis over a month long trial has somehow prejudiced the  
3 defendant to the point of needing a new trial. Cf. Geary v. State, 110 Nev. 261, 264 (1994)  
4 (fact juror wrote brief note to daughter during trial but testified she did not miss evidence  
5 and participated fully in deliberations did not warrant new trial); Callegari v. Maurer, 4  
6 Cal.App.2d 178, 184 (1935) (fact juror slept during trial is not grounds for disturbing verdict  
7 if it does not appear that sleep was for such a length of time or at such a stage of trial to  
8 affect ability to fairly consider case).

9 It should also be noted that the defense did not raise an issue during trial regarding  
10 juror inattentiveness even though he sat closest to the jury. See Rivera v. United States, 295  
11 F.3d 461 (5th Cir. 2002) (defendant waived misconduct claim based on jurors sleeping when  
12 it was not raised until after verdict). There was no record made, no objection lodged and no  
13 call for an admonition by the judge. As a result, this issue was not preserved as it is virtually  
14 impossible now to determine, assuming arguendo that anyone was sleeping, when it took  
15 place, by who or how long.

16 The United State Supreme Court has addressed the danger to the administration of  
17 justice when jurors are allowed to later comment upon the sanctity of deliberations to  
18 impeach their verdict:

19 Let it once be established that verdicts solemnly made and  
20 publicly returned into court can be attacked and set aside on the  
21 testimony of those who took party in their publication and all  
22 verdicts could be, and many would be followed by an inquiry in  
23 the hope of discovering something which might invalidate a  
24 finding. Jurors would be harassed and beset by the defeated  
25 party in an effort to secure from them evidence of the facts which  
might establish misconduct sufficient to set aside a verdict. If  
evidence thus secured could be thus used, the result would be to  
make what was intended to be a private deliberation, the constant  
subject of public investigation - to the destruction of all  
frankness and freedom of discussion and conference.

26 McDonald v. Pless, 238 U.S. 264, 267-68 (1915).

27 This is exactly what has occurred in this case. After a conviction of First Degree  
28 Murder, the defense has hired an investigator to fish for any slight or perceived inappropriate

1 behavior on anyone's part. This cannot justify the flushing of months of judicial resources,  
2 nor does any of it prejudice the fair trial of the defendant, nor is it fair to jurors. The Court  
3 summed it up best by stating:

4 Allegations of juror misconduct, incompetency, or inattentive-  
5 ness raised for the first time in days, weeks, or months after the  
6 verdict, seriously disrupt the finality of the process. Moreover,  
7 full and frank discussion in the jury room, juror's willingness to  
8 return an unpopular verdict, and the community's trust in a  
system that relies on the decisions of lay people would all be  
undermined by a barrage of post-verdict scrutiny of juror  
conduct.

9 Tanner v. United States, 483 U.S. 107, 121 (1983).

### 10 CONCLUSION

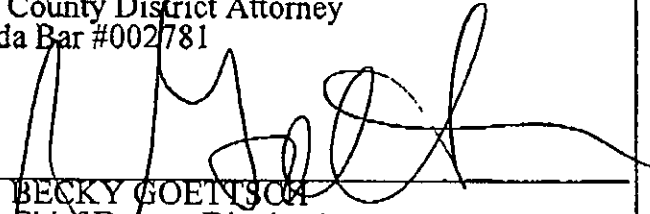
11 For all of the foregoing reasons, including the untimely nature of the motion, the  
12 Defendant's Motion for a New Trial should be denied.

13 DATED this 10<sup>th</sup> day of August, 2004.

14 Respectfully submitted,

15 DAVID ROGER  
16 Clark County District Attorney  
Nevada Bar #002781

17 BY

18   
19 BECKY GOETSCH  
20 Chief Deputy District Attorney  
Nevada Bar #006316

### 21 CERTIFICATE OF FACSIMILE TRANSMISSION

22 I hereby certify that service of State's Opposition, was made this 10<sup>th</sup> day of  
23 August, 2004, by facsimile transmission to:

24 CARMINE COLUUCI, ESQ.

25  
26 BY M. Warner  
27 Employee of the District Attorney's Office  
28



AFFIDAVIT

STATE OF NEVADA }  
COUNTY OF CLARK } ss:

JOSH WHEELER, being first duly sworn, deposes and says:

1. That I am a resident of Clark County, Nevada and that I served as a juror in State of Nevada v. Alfred P. Centofanti, III., Case No. C172534.

2. That during the evidence portion of the trial I had an opportunity to shoot a .357 Magnum gun with my father. This was an activity we had done before.

3. That I did not shoot the .357 to conduct any experiments or reenactments or test fires of the evidence that was presented in the trial.

4. That I never mentioned shooting the .357 Magnum to the other jurors during deliberations.

5. That I did speak with an investigator for the defense and was aware that it was tape recorded.

6. That during the interview with the defense investigator I was asked if anyone conducted any experiments and I replied "No."

7. That during the interview with the defense investigator I was asked if anyone drew any diagrams regarding the evidence and I replied "No."

8. That none of my shooting experience was addressed or brought up during deliberations.

9. That during the evidence portion of the trial I was aware that another juror had worn a t-shirt that others thought was improper. The shirt appeared old and the controversial writing was on the back of the shirt near the belt.

10. That the other juror's clothing had no bearing or effect on my verdict.

11. That I did not sleep during the evidence portion of the trial.

12. That I was aware that on one occasion another juror did fall asleep but he was awakened by other jurors immediately.

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1 13. That this occurred during the end of the trial when no new material was being  
2 presented.

3 14. That at no time during deliberations did any juror indicate that they had missed  
4 evidence or were unable to deliberate because they were sleeping.

5 I declare under penalty of perjury under the law of the State of Nevada that the  
6 foregoing is true and correct.

7  
8 Executed on

8/6/04  
(Date)

Josh Wheeler  
JOSH WHEELER

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28 BG/mmw

AFFIDAVIT

STATE OF NEVADA }  
COUNTY OF CLARK } ss:

EMILY CARLSEN, being first duly sworn, deposes and says:

1. That I am a resident of Clark County, Nevada and that I served as a juror in State of Nevada v. Alfred P. Centofanti, III., Case No. C172534.

2. That neither before nor during deliberation did any juror discuss conducting any test, experiment, or reenactment regarding the evidence.

3. That juror Wheeler never mentioned during deliberation any experience shooting a weapon.

4. That my verdict was not affected by any clothes worn by any other juror during the trial.

5. That during the trial I was not aware of whether other jurors may or may not have been sleeping during the course of the trial.

6. That at no time during deliberations did any juror indicate that they had missed evidence or were unable to deliberate because they were sleeping.

I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

Executed on 7/6/04  
(Date)

Emily Carlsen  
EMILY CARLSEN

BG/mmww

AFFIDAVIT

STATE OF NEVADA }  
COUNTY OF CLARK } ss:

ALAN MILLER, being first duly sworn, deposes and says:

1. That I am a resident of Clark County, Nevada and that I served as a juror in State of Nevada v. Alfred P. Centofanti, III., Case No. C172534.

2. That neither before nor during deliberation did any juror discuss conducting any test, experiment, or reenactment regarding the evidence.

3. That juror Wheeler never mentioned during deliberation any experience shooting a weapon.

4. That my verdict was not affected by any clothes worn by any other juror during the trial. I was aware of Juror Kelly wearing a shirt with writing others found inappropriate but the controversial writing was in small print and not visible unless viewed in close proximity.

5. That during the trial I was not aware of whether other jurors may or may not have been sleeping during the course of the trial.

6. That at no time during deliberations did any juror indicate that they had missed evidence or were unable to deliberate because they were sleeping.

I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

Executed on

8/6/04  
(Date)

  
ALAN MILLER

BG/mmw

AFFIDAVIT

STATE OF NEVADA }  
COUNTY OF CLARK } ss:

MATT ADAMS, being first duly sworn, deposes and says:

1. That I am a resident of Clark County, Nevada and that I served as a juror in State of Nevada v. Alfred P. Centofanti, III., Case No. C172534.

2. That neither before nor during deliberation did any juror discuss conducting any test, experiment, or reenactment regarding the evidence.

3. That juror Wheeler never mentioned during deliberation any experience shooting a weapon.

4. That my verdict was not affected by any clothes worn by any other juror during the trial.

5. That during the evidence portion of the trial, I did notice that one other juror was nodding off and I immediately nudged him to wake him up.

6. That this occurred during repetitive portions of the trial and there was no indication that he had missed critical evidence or that his sleeping deprived him of the ability to participate in a meaningful way in deliberations.

6. That at no time during deliberations did any juror indicate that they had missed evidence or were unable to deliberate because they were sleeping.

I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

Executed on

8/6/04  
(Date)

MATT ADAMS

AFFIDAVIT

STATE OF NEVADA }  
COUNTY OF CLARK } ss:

DENORIO  
PAUL ~~DENARIO~~, being first duly sworn, deposes and says:

1. That I am a resident of Clark County, Nevada and that I served as a juror in State of Nevada v. Alfred P. Centofanti, III, Case No. C172534.

2. That neither before nor during deliberation did any juror discuss conducting any test, experiment, or reenactment regarding the evidence.

3. That juror Wheeler never mentioned during deliberation any experience shooting a weapon.

4. That my verdict was not affected by any clothes worn by any other juror during the trial.

5. That during the trial I was not aware of whether other jurors may or may not have been sleeping during the course of the trial.

6. That at no time during deliberations did any juror indicate that they had missed evidence or were unable to deliberate because they were sleeping.

I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

Executed on

8/6/04  
(Date)

Paul Denorio  
~~PAUL DENARIO~~ DENORIO

BG/mmw

AFFIDAVIT

STATE OF NEVADA  
COUNTY OF CLARK } ss:

NANCY GORDINIER, being first duly sworn, deposes and says:

1. That I am a resident of Clark County, Nevada and that I served as a juror in State of Nevada v. Alfred P. Centofanti, III., Case No. C172534.

2. That neither before nor during deliberation did any juror discuss conducting any test, experiment, or reenactment regarding the evidence.

3. That juror Wheeler never mentioned during deliberation any experience shooting a weapon.

4. That my verdict was not affected by any clothes worn by any other juror during the trial.

6. That I did notice another juror wearing a shirt with writing I found inappropriate and informed the bailiff and told the juror to remove the shirt or turn it inside out.

7. That during the trial I was not aware of whether other jurors may or may not have been sleeping during the course of the trial.

8. That at no time during deliberations did any juror indicate that they had missed evidence or were unable to deliberate because they were sleeping.

I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

Executed on

(Date)

NANCY GORDINIER

BG/mmw

AFFIDAVIT

STATE OF NEVADA  
COUNTY OF CLARK

} ss:

RICARDO SMYTHE, being first duly sworn, deposes and says:

1. That I am a resident of Clark County, Nevada and that I served as a juror in State of Nevada v. Alfred P. Centofanti, III., Case No. C172534.

2. That neither before nor during deliberation did any juror discuss conducting any test, experiment, or reenactment regarding the evidence.

3. That juror Wheeler never mentioned during deliberation any experience shooting a weapon.

4. That my verdict was not affected by any clothes worn by any other juror during the trial.

5. That during the trial I was not aware of whether other jurors may or may not have been sleeping during the course of the trial.

6. That at no time during deliberations did any juror indicate that they had missed evidence or were unable to deliberate because they were sleeping.

I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

Executed on

8-05-04  
(Date)

  
RICARDO SMYTHE

BG/mmw



AFFIDAVIT

STATE OF NEVADA }  
COUNTY OF CLARK } ss:

JAMES OWENS, being first duly sworn, deposes and says:

1. That I am a resident of Clark County, Nevada and that I served as a juror in State of Nevada v. Alfred P. Centofanti, III., Case No. C172534.

2. That neither before nor during deliberation did any juror discuss conducting any test, experiment, or reenactment regarding the evidence.

3. That juror Wheeler never mentioned during deliberation any experience shooting a weapon.

4. That my verdict was not affected by any clothes worn by any other juror during the trial.

5. That during the trial I was not aware of whether other jurors may or may not have been sleeping during the course of the trial.

6. That at no time during deliberations did any juror indicate that they had missed evidence or were unable to deliberate because they were sleeping.

I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

Executed on

5 August 2004  
(Date)

JAMES OWENS

BG/mmww

IN THE SUPREME COURT OF THE STATE OF NEVADA

ALFRED P. CENTOFANTI III, )  
)  
)  
Appellant, )  
)  
vs. )  
)  
E.K. McDANIEL, WARDEN, )  
ELY STATE PRISON )  
)  
Respondent. )  
\_\_\_\_\_ )

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APPELLANT'S APPENDIX, VOLUME VIII

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DISTRICT COURT

CLARK COUNTY, NEVADA  
**FILED IN OPEN COURT**  
**JUN 25 2004**

THE STATE OF NEVADA,

Plaintiff,

vs.

ALFRED P. CENTOFANTI, III,

Defendant.

**SHIRLEY B. PARRAGUIRRE, CLERK**  
**BY ) MELISSA SWINN**

**DEPUTY**

No. C172534  
Dept. No. XIV

**COPY**

OPENING STATEMENT EXCERPTS

REPORTER'S TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE DONALD M. MOSLEY

March 17, 2004  
4:40 p.m.  
Department XIV

APPEARANCES:

For the State:  
MR. CLARK PETERSON  
MS. BECKY GOETTSCHE  
Deputy District Attorneys

For the Defendant:  
MR. ALAN BLOOM  
MS. GLORIA NAVARRO  
Attorneys-at-Law

Reported by: |  
Joseph A. D'Amato  
Nevada CCR #17

1 THE COURT: All right. The State may begin  
2 their opening remarks.

3 MS. GOETTSCH: Thank you, Your Honor.

4 Good afternoon, Ladies and Gentlemen, on  
5 December 20, 2000, Doctor Larry Simms, a forensic  
6 pathologist and medical examiner with the Clark County  
7 Coroner's Office had an occasion to do an autopsy on the  
8 body of 25 year old Virginia Centofanti.

9 He will come into this courtroom and he will  
10 testify about what he found on that day on the body of Ms.  
11 Centofanti. He will tell you that he initially found a  
12 gunshot wound and an entry bullet wound into her left  
13 breast. This bullet grazed her ribs and lodged and was  
14 retrieved from her diaphragm.

15 He found a corresponding gunshot wound,  
16 which probably grazed her left arm and went into her  
17 breast. He found two other bullet wounds on her left arm.  
18 One was into the deltoid area of her left arm and another  
19 one was on the back of her arm.

20 These caused a compound fracture of her  
21 humerus. These bullets were also retrieved from her body.  
22 He also found that Ms. Centofanti had a thru-and-thru  
23 gunshot wound to her right finger. He believes that this  
24 bullet continued on into other parts of her body.

25 He found yet another gunshot wound in her

1 left lower back. He will tell you that this bullet went  
2 near her vertebrae in her back, was lodged in her bowel,  
3 was recovered from her bowel and also severed her aorta  
4 which caused her to bleed massively, internally.

5 He then continued on to the head of Ms.  
6 Centofanti and he will tell you that he found an entry  
7 wound into her right forehead. This bullet was recovered  
8 from her brain.

9 He found yet another gunshot wound into her  
10 right eye. This bullet was also recovered from her brain.  
11 And he found a last gunshot wound into her mouth which  
12 knocked out her teeth and this bullet was also recovered  
13 from her brain.

14 He will also tell you that there was  
15 stippling present and associated with probably the gunshot  
16 wound to her mouth. He will tell you that stippling  
17 indicates that the gunshot wound that she sustained to her  
18 mouth, occurred very close to her mouth, less than two  
19 feet, probably closer to six to 18 inches away from her  
20 mouth.

21 Doctor Simms will tell you he's been working  
22 as a forensic pathologist and medical examiner for over 24  
23 years. He conducted over 3,500 autopsies, in excess of  
24 that, and he's had numerous experiences investigating the  
25 circumstances surrounding violent death.

1           He will tell you as a result of that he  
2 reached some conclusions about the nature of the injuries  
3 to Ms. Centofanti. He will tell you that he views these  
4 gunshots in two different groupings.

5           There is a set of gunshots to her head and  
6 there's a set of shots to her body. He can tell you that  
7 the shots to her body would have immediately incapacitated  
8 her and would have eventually killed her.

9           They would have been fatal wounds.

10          He can he can also tell you that the shots  
11 to the body came first. He cannot tell you which one of  
12 the seven shots was 1, 2, 3, 4, et cetera, but he can tell  
13 you that the body shots -- because of certain evidence he  
14 found on the body came first.

15          He can tell you that the body shots were  
16 indicative that Ms. Centofanti was turning away and moving  
17 away from her shooter when she sustained the shots to her  
18 body.

19          He can tell you that those shots to the head  
20 came last. He can tell you that the shots to her head  
21 came -- will show was stationary, when she was not  
22 moving -- and he can tell you that at least one of the  
23 shots to her head came at very close range.

24          Most importantly, he can tell you that,  
25 within a reasonable degree of medical and forensic

1 certainty, the shots to the head were very focused,  
2 assassination-type shots.

3 He will also tell you that as part of his  
4 routine practice as a medical examiner that he conducts a  
5 toxicology test on the blood of anyone who he conducts an  
6 autopsy on. He tests that person's blood for alcohol and  
7 drugs, both legal and illegal.

8 He will tell you that the toxicology results  
9 of Ms. Centofanti showed she was completely clean. She  
10 was not under the influence of drugs, not under the  
11 influence of alcohol when she died.

12 He will also tell you that as part of his  
13 routine practice he weighs and measures her body. He will  
14 tell you Ms. Centofanti was five foot, three inches tall  
15 and weighed in at a whopping 117 pounds.

16 Ladies and Gentlemen, the evidence will show  
17 you that the Defendant is the one who shot and killed  
18 Gina, Gina Centofanti on December 20, 2000, and this is  
19 how this 25 year old woman in the prime of her life wound  
20 up on the autopsy table on that day in December.

21 Who was Ms. Centofanti?

22 Virginia Centofanti grew up as Virginia  
23 Ramos Eisenmann in San Diego. Her father figure or the  
24 person she knew as her father died when she was young.  
25 She was raised by her mother and grew up with her siblings

1 in San Diego.

2 Her friends and family referred to her as  
3 Gina.

4 You're going to hear some evidence that Gina  
5 had kind of a rough time growing up. She grew up in a  
6 rough neighborhood of San Diego. She ran with a rough  
7 crowd.

8 She did some drugs, she drank some alcohol,  
9 got into some trouble when she was 15, 16 year's old. She  
10 also had a child when she was 15.

11 His name is Francisco Sanchez. His family  
12 refers to him as Quito; that's his nickname. You'll hear  
13 from him during the course of this trial.

14 But you'll also hear that by the time Gina  
15 was in her early 20's she was on the right track. She  
16 wasn't doing drugs. She was being a good mother to Qito.  
17 She was doing the best she can -- could, and she had  
18 gotten herself a job at a copy store in downtown San  
19 Diego.

20 While she was working there she met an  
21 attorney, the Defendant. Something else that the evidence  
22 will show, if you haven't noticed already, Virginia  
23 Centofanti was a very beautiful, vivacious young woman.

24 Certainly the Defendant took her in right  
25 away.

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1           The Defendant was seven years older than  
2 Gina and they began to date. Even at that time you will  
3 hear that there was kind of a dark side to their  
4 relationship, as far as the Defendant was quite  
5 possessive, quit jealous and very persistent in pursuing  
6 her.

7           But they worked that out. It wasn't a big  
8 problem and they eventually married and moved to Las Vegas  
9 in 1999.

10          Things were good at first. The Defendant  
11 had gotten himself a job at a law firm in town here. Gina  
12 was working on her career. She got a job with security  
13 link which was a company that was selling security systems  
14 to residential homes.

15          They bought themselves a house in a nice  
16 Summerlin neighborhood. The Defendant leased her a BMW  
17 and the Defendant bought her some plastic surgery to  
18 improve herself, and by late 1999 Gina found out she was  
19 pregnant.

20          By July 2000 Gina gave birth to their son,  
21 Nicholas Centofanti, and when you look at the life, in  
22 July 2000 -- the Defendant had crafted himself a very nice  
23 life. He had a good job as a lawyer. He had a beautiful  
24 house, they had nice cars, a beautiful new son and most  
25 importantly, he had a young, vivacious, dynamic, trophy

007



1 wife.

2 But you will also hear and the evidence will  
3 show that the dark side that was always present was  
4 starting to fester to the surface of this otherwise  
5 seemingly idyllic life.

6 After the baby was born Gina went on with  
7 her career. She got a new job at place called Eagle  
8 Centry. This was in the same line of work as security,  
9 security systems to homes and businesses, and you'll hear  
10 this was kind of a fun, dynamic kind of start-up company  
11 and the people who worked there were all young and single  
12 and they were salespeople there.

13 They were very outgoing. They spent a lot  
14 of time together. They described their work environment  
15 as a family.

16 You'll hear that Gina Centofanti fit into  
17 this environment very well. She did very well at this  
18 job. She was making good money. She was considered a  
19 real go-getter in her new job there.

20 She also liked to go out with these people  
21 who she worked with. They were her friends. She was  
22 going out at night and, rightly or wrongly, she  
23 progressively started to grow out of love with the  
24 Defendant.

25 The Defendant continued to be possessive of

1 her, obsessive with her. He would call her frequently.  
2 "Where are you at, what are you going, who are you going  
3 out with?" "Can I go to lunch with you? Can I go to the  
4 gym with you?"

5 Although Gina tolerated this, it was  
6 starting to weigh heavily on her. Throughout the Fall of  
7 2000 the evidence will show that this marriage was in  
8 trouble. In fact, by November of 2000 Gina had made it  
9 known she was thinking about getting a divorce.

10 In fact, at Thanksgiving dinner in 2000 she  
11 told her best friend, Tricia Miller, "I'm thinking about  
12 getting a divorce."

13 Tricia will tell you "I was really shocked.  
14 I thought they had kind to have this perfect life. I  
15 didn't know she was unhappy."

16 She talked to Gina about it and the  
17 Defendant doesn't understand this thought. Gina also  
18 broached the subject with the Defendant.

19 "Look, I'm not happy. I want out."

20 You will hear that the Defendant told her  
21 "I'll kill you before I give you a divorce."

22 He began to get more jealous. He monitored  
23 her work, called her. He missed his own work. He accused  
24 her of having an affair, staying out too late, working too  
25 hard.

1           As things are apt to do, evidence will show  
2 that things really boiled over on December 5th of 2000.  
3 You will hear that on the night of December 4th Gina and  
4 her co-workers went out to TGI Friday's after work. They  
5 were celebrating an account.

6           She didn't want to go home to the Defendant.  
7 She didn't want to be in the house. She wound up staying  
8 out very late.

9           She sleeps in the next morning, gets up  
10 around 10:00 o'clock, realizes "I'm missing a meeting that  
11 I'm supposed to be at."

12           She gets up and starts getting ready. The  
13 Defendant hadn't gone to work that day. He was livid she  
14 had been out all night. A fight ensues. He starts to  
15 accuse her of having an affair with her boss, which her  
16 boss will testify that that's not the situation they were  
17 in, and he gets on the phone and he's going to call her  
18 boss.

19           Gina is embarrassed. They fight over the  
20 phone. Gina is unable to get the phone away from him so  
21 she picks up a picture frame and bops him over the head  
22 with it. The glass breaks. He gets a cut on his head.

23           This infuriates the Defendant. He  
24 immediately goes over to his nightstand, pulls open the  
25 drawer and takes out his nine millimeter Ruger. He puts

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1 it to her head and he pulls the trigger, click, click,  
2 click. Nothing happened.

3 But he tells her "Beg for your life. I'm  
4 going to kill you, the kids and myself."

5 Gina is terrified. There is a struggle over  
6 the gun. Turns out that the Defendant, for some reason  
7 that will become clear to you, calls his boss, a lady by  
8 the name of Eva Cisneros, who is the manager of a firm  
9 here in town called Cisneros & Associates.

10 He starts to say "My wife has these  
11 problems."

12 Mrs. Cisneros doesn't know what to do so she  
13 gives the Defendant a number for an employee assistance  
14 program that's part of their firm, and they call -- the  
15 Defendant calls the employee assistance program, winds up  
16 getting connected to a social worker in New York City.

17 And at that point he gets on the phone and  
18 says "My wife has a drug and alcohol problem, you got to  
19 help her."

20 You will hear from the social worker who  
21 will tell you that he said "If your wife has a problem she  
22 needs to ask for the intervention herself. We often times  
23 find that when spouses ask for intervention on behalf of  
24 another spouse there may be an ulterior motive for that."

25 The Defendant puts Gina on the phone. You

1 will hear from Mark Smith that social worker from New York  
2 City who is going to fly in here and testify, what he  
3 heard from Virginia Centofanti that night and what  
4 prompted him and scared him to the point that he  
5 immediately got on the phone to Las Vegas Metro Police and  
6 said "Get police out there right now."

7 The police were called and they arrived at  
8 the scene. They will tell you when they arrived Gina  
9 appeared to be in fear of her life. She was crying, she  
10 was trembling, shaking. She was grabbing onto the  
11 officers.

12 You will hear about that investigation and  
13 how the officers asked Ms. Centofanti what happened and  
14 she told them exactly what happened. He put a gun to her  
15 head and he pulled the trigger and it didn't fire.

16 You will also hear about how the officers  
17 approached the Defendant and he asked them "Am I going to  
18 jail?"

19 The officer says "maybe."

20 And his response is, cool, calm and  
21 collected: "How can I help myself?"

22 "Tell us what happened."

23 He proceeds then to tell them that Gina hit  
24 him with a picture frame. The officer then says what  
25 about this gun. Yeah, the gun.

1 Now what? "She pointed that at me."

2 You will also hear at this point -- you will  
3 also hear that the officers were in somewhat of a dilemma.  
4 Under the Domestic Violence Laws in the State of Nevada  
5 they had to arrest somebody. It's mandatory that when  
6 they are called to a domestic violence call somebody has  
7 to be arrested and removed from the scene.

8 They had conflicting stories about what  
9 happened with the gun, but Gina fully admitted "I hit him  
10 with the picture frame. He was trying to call my boss."

11 The Defendant had a cut on his head and the  
12 Defendant was saying how she hit him with this picture  
13 frame and you'll hear that after everything was sorted out  
14 Gina Centofanti was arrested for battery domestic violence  
15 that night.

16 But you'll also hear from the officers that  
17 they were concerned about the situation and as a result  
18 they took into safekeeping -- they took into evidence with  
19 them three guns, including the nine millimeter Ruger that  
20 was used, a .38 caliber Taurus that Gina kept in her glove  
21 box for protection when she went out on sales calls and a  
22 shotgun they kept in the house. The officers will tell  
23 you their impressions and that they took these guns into  
24 evidence.

25 You'll also hear that Ms. Centofanti went to

1 jail. She never made her first court appearance on that  
2 charge because she was dead by then. You will hear she  
3 started to make arrangements. She made up her mind at  
4 this point. "There's no maybe. I'm getting a divorce,  
5 I'm getting out."

6 She called her mother and her sister in San  
7 Diego and she called her friend Tricia Miller and they  
8 made arrangements to get her an apartment. You'll also  
9 hear from Sergeant Winslow, an officer with 20 some years  
10 experience that responded to the battery domestic violence  
11 call, and he will tell you that he told her "Look, you  
12 need to get out of here. Whatever you do, just get out.  
13 Leave what you have to leave but get out now."

14 He gave her his cellphone number and says  
15 "If you want to go back to get your clothes or whatever,  
16 you call me and I'll escort you. Don't try to go back  
17 there alone."

18 On December 6th Gina did exactly that. She  
19 had Tricia Miller drive her to a gas station where she met  
20 Sergeant Winslow and had Sergeant Winslow return her to  
21 the house to get a few of her belongings.

22 You will also hear from Tricia Miller. That  
23 the night of the domestic violence she had an occasion to  
24 call the Defendant, because there was some concern about  
25 Quito, because the Defendant was going to be home with

1 both Nicholas and Quito and Trish wanted to call and say  
2 "Is Quito okay?"

3 Quito witnessed part of the domestic  
4 violence.

5 She will tell you what the Defendant told  
6 her that night. He told her "I'm still in love with you.  
7 I don't know why she's doing this to me" and he also  
8 recounted part of the events of that domestic violence  
9 incident and said to her "Who do you think they are going  
10 to believe? I'm a lawyer."

11 Trish drove her -- Gina to Sergeant Winslow  
12 to get her clothes and she will tell you that during that  
13 ride in the car Gina was trembling, nervous and scared.

14 Meanwhile, after the domestic violence  
15 incident, the Defendant proceeds to go to court where he's  
16 familiar and get a temporary protection order against her.  
17 He writes something down -- he's very afraid of Gina --  
18 and it's a Restraining Order that Gina cannot contact him.

19 But meanwhile he proceeds to call her  
20 repeatedly, four or five times an hour. "Why are you not  
21 up yet? Why are you doing this to me?" Even though he's  
22 the one that sought out the TPO.

23 Clearly Gina has made up her mind at this  
24 point and she decides I want a divorce. I'm getting out  
25 of here. She's taking Sergeant Winslow's advice.



1           The Defendant says "Fine. You want a  
2 divorce. I'm a lawyer. I'm going to get a lawyer and  
3 we're going to get this divorce final immediately."

4           Between the days of December 11, 12 and 13,  
5 the Defendant did just that. He got himself a lawyer.  
6 They got the papers signed.

7           Gina did not contest anything. She said "I  
8 don't want the house. I don't want anything. I'm just  
9 moving on."

10          She even agreed at that point to give the  
11 Defendant custody of the baby as long as she got  
12 visitation and the divorce became final on December 13.  
13 At this point Gina Centofanti moved on.

14          She got an apartment on the other side of  
15 town. She went on with her work. He visited -- she  
16 visited Nicholas. She sent Quito to San Diego with her  
17 mother until the holidays. She made plans to go home for  
18 Christmas.

19          She appeared relieved to people at work and  
20 to her friends and she wanted to take Nicholas home with  
21 her for Christmas and she also started to act on a  
22 relationship with another guy. She was moving on.

23          However, the Defendant does not move on.  
24 You will hear that the Defendant became more obsessive.  
25 He started to watch Gina. He reported on her comings and

1 goings.

2 He called her, he called her family, her  
3 friends. He talked incessantly about her. Any subject  
4 that would come up at work with his friends, he would  
5 revert it right back to Gina, asking about her trust  
6 account, and you'll also hear that his family.

7 His parents moved out here from the East  
8 Coast to live with him and help take care of Nicholas, but  
9 most importantly, he talked about Gina to others and their  
10 relationship.

11 You will hear he started to go on this smear  
12 campaign that started with his call to Eva Cisneros on the  
13 5th. He would tell anybody who would listen "She's a bad  
14 mother. She is sleeping with everybody in town. She's  
15 doing drugs. She's doing alcohol. I can't believe it."

16 He continued to paint her in the worst  
17 light and himself in the best light.

18 MR. BLOOM: Excuse me. May we approach?

19 THE COURT: You may, yes

20 (DISCUSSION OFF THE RECORD)

21 THE COURT: Continue, please.

22 MS. GOETTSCH: Thank you.

23 As you'll hear, the Defendant is very  
24 distraught by what's happening in his life, but he is  
25 still able to function, make general decisions on a daily

1 basis, including trying very hard to get his guns back  
2 from Metro police.

3 You will hear that on the 14th of December,  
4 the day after the divorce was final, he starts to call  
5 Metro firearms unit. A person by the name of Sharon Zwick  
6 will testify he leaves a message on that day inquiring  
7 about his guns. She wasn't able to get back to him. He  
8 calls back on the 15th.

9 She pulls the paperwork, finally makes  
10 contact on the 8th of December. She explained to the  
11 Defendant at that time she needs to go through a  
12 background check before, and kind of investigate the  
13 situation before she's able to give guns back.

14 She will tell you there was very much a  
15 sense of urgency with the Defendant. He wanted his guns  
16 back promptly and that certainly he didn't care so much  
17 about the Taurus, didn't really care about the shotgun,  
18 but he really wanted that nine-millimeter back.

19 December 19th, you'll hear on the evening of  
20 December 19th, the Defendant was looking for Gina.

21 He wound up calling her sister Lisa in San  
22 Diego asking "Where is Gina? Have you seen her, talked to  
23 her?"

24 They have a discussion at that time and the  
25 Defendant makes an interesting comment to Lisa. He says

1 "Be a good mom to Quito."

2                   Ironically, coincidentally, Gina didn't go  
3 home to her apartment that night. The night of December  
4 19th you will hear was the first night she spent the night  
5 with another man. December 20, the Defendant goes to work  
6 that day. He is sitting at his desk.

7                   At approximately 10 a.m., you'll hear from  
8 his co-worker who came in and said the office was a mess,  
9 papers all over which was very unusual for him, but during  
10 this time he is also calling Sharon Zwick without getting  
11 his gun released.

12                   Sharon Zwick will tell you at that  
13 particular time she asked him about the domestic violence  
14 that was pending and said "Are you guys living together?  
15 What's going on with with you and Gina Centofanti."

16                   He says "We're divorced. She's moved out."  
17 Sharon Zwick will tell you at that point she approved the  
18 guns for release. At 11:40 a.m. the Defendant drives over  
19 to the impound evidence vault, if you will, and picks up  
20 his gun, including the nine millimeter Ruger.

21                   Gina had also gone to work that day and at  
22 some point the Defendant had left her a message on her  
23 voice mail at work, insuring that she was going to come  
24 over on Wednesday night, December 20, to pick up Nicholas.  
25 That was her visitation.

1 His message was confirming that she was  
2 going to do just that. Approximately 3:30 p.m. Gina calls  
3 Tricia Miller. They make plans to meet Trish's parents  
4 for dinner that night because her parents were from  
5 out-of-state. She never met them before. They were going  
6 to get together. She tells Trish "I'm going to get  
7 Nicholas and he's coming with me. I'm going to go work  
8 out."

9 Around 4:00 o'clock late afternoon you'll  
10 hear that the Defendant was at a hearing for his work.  
11 You will hear from one of his colleagues that there was a  
12 discussion about him getting help for obsessive love. She  
13 was giving him some self-help books about getting over  
14 this type of a situation.

15 She will tell you that when they walked to  
16 their car the Defendant got kind of worried and said "I  
17 want to show you something." He opened up his briefcase.  
18 She walks over and he gets a funny look on his face and he  
19 says "Never mind."

20 The Defendant goes home.

21 Approximately 6:00 p.m. Gina calls Trish  
22 again. "I'm done working out I have to get Nicholas."

23 "You ought to be done at Harrahs at seven.  
24 What are you doing?" Gina realizes that she may not be  
25 able to make it.

1 A phone call is made to the Defendant in  
2 which she attempts to r schedule her visitation with  
3 Nicholas.

4 Maybe can I get him on Thursday night as  
5 opposed to Wednesday night. I'm running late.

6 You will hear Gina called Trish back, said  
7 "Chip is being a jerk."

8 Chip is a nickname the Defendant went by.

9 "I'm going to go and get Nicholas, but I'll  
10 be down there. I'll meet you for dinner, 7:00 p.m.

11 These times are confirmed by a 911 call log  
12 as well as cellphone records that at seven o'clock p.m. at  
13 the Defendant's home he used to shared with Gina  
14 Centofanti, 8720 Wintry Garden Avenue, there is a 911  
15 disconnect, meaning someone called 911 and they hung up.

16 At approximately this time Eva Cisneros,  
17 his boss, is once again contacted. At 7:01 p.m. 911 calls  
18 back as per standard protocol. "Is everything okay?"  
19 They get the answering machine. "Pick up the phone. Is  
20 everything okay?"

21 No one answers. Officers are on the way.  
22 At that point officers are dispatched to 8720 Wintry  
23 Garden Avenue. Approximately 7:03 p.m. Trish calls Gina  
24 again, basically saying where are you? No one answers  
25 Gina's phone.

1           At 7:05 p.m., a 911 call is finally received  
2 from Camille Centofanti, who is the Defendant's mother,  
3 who was staying with them at the time. She says to them  
4 "Send help. My daughter-in-law has been shot."

5           And when the 911 operator says who shot her?  
6 She says "I can't talk now," and she hangs up the phone.

7           Between 7:05 and 7:17, the Defendant is  
8 taken over to his neighbor's house at 8716 Wintry Garden  
9 Avenue. This is the home of Mark and MeriLee Wright.

10           First, Camille Centofanti is the house  
11 saying "Chip shot Gina" and she's carrying the baby. Few  
12 minutes later, the Defendant and his father arrive at the  
13 Wright's house with a gun, the nine millimeter Ruger  
14 wrapped in a towel. At 7:17 the first officer arrives.  
15 At 7:45 lawyers arrive on the scene and at 8:11 homicide  
16 arrives on the scene.

17           You will hear about the investigation into  
18 the death of Gina Centofanti and what transpired next.  
19 You will hear from Tiffany Higone (phonetic). She will  
20 tell you when she pulled up at the address she was  
21 initially called in to 8716 Wintry Garden, the house  
22 belonging to the Wrights.

23           She went in there and she was told that Chip  
24 just shot Gina. She will tell you that the Defendant was  
25 sitting on the floor next to the gun in the entry of this

1 house. She will tell you she kicked the gun away from  
2 him; took the Defendant into custody.

3 She will tell you that she immediately ran  
4 next door to the house that belonged to the Defendant and  
5 that used to belong to Gina Centofanti and at that point  
6 she found the lifeless body of Gina Centofanti laying on  
7 the floor.

8 You will also hear from the Crime Scene  
9 Analyst in this case, Robbie Dahn. She was the Crime  
10 Scene Analyst that was primarily in charge of collecting  
11 all the evidence and photographing the crime scene.

12 She will tell you that she arrived on the  
13 scene and saw Gina Centofanti in her workout clothes in  
14 this position on the floor. She will tell you that it  
15 appeared that Ms. Centofanti lay where she fell after she  
16 fell from the gunshot wounds.

17 She will tell you there was no signs of a  
18 struggle in the house other than one chair had been tipped  
19 over. She will tell you that she found Gina's purse on  
20 the table and a temporary Protective Order against Gina  
21 that had long expired on the table right where no one  
22 could miss it.

23 She will tell you that she found shell  
24 casings, two casings back here in the back of the couch.  
25 You'll also hear circumstances where two shell casings



1        were found in the couch.

2                She also found shell casings right along  
3        this wall and one right by Gina's head. She will tell you  
4        that she found blood smeared on the seat of the exercise  
5        bike.

6                She will tell you that she impounded the  
7        murder weapon, the nine millimeter Ruger that the  
8        Defendant had gotten hold of at 11:40 that morning. She  
9        will tell you that there was one bullet left in the  
10       chamber, one bullet left in the magazine.

11               She will tell you that she immediately took  
12       pictures of the Defendant, that this is how the Defendant  
13       appeared on that night; that he was not disheveled, not  
14       injured. His shirt wasn't have wasn't even untucked.

15               You will also hear some other forensic  
16       evidence that took place in the investigation of this  
17       case. This includes Edward Gunther. He is a fingerprint  
18       expert. He does fingerprint analysis.

19               He will tell you that he reviewed the  
20       nine-millimeter Ruger for any fingerprints. He will tell  
21       you that the defendant's fingerprints were on teh Ruger  
22       and there was no evidence that Gina Centofanti's  
23       fingerprints was on that gun.

24               You will hear from Thomas Wall. He is a DNA  
25       expert. He will tell you that he also reviewed the murder

1 weapon and that there was backslash of blood on the  
2 muzzle of the gun, if you will, blood that had come back  
3 onto the weapon and that blood, unequivocally, belongs to  
4 Gina Centofanti.

5 You will hear from James Krylo. He's a  
6 firearms expert. He will talk to you a little bit more  
7 about the stippling and that he tested this particular  
8 murder weapon and he will tell you that stippling on this  
9 gun occurs when the gun is fired at skin less than two  
10 feet away, probably closer between six and 18 inches from  
11 the face when this gun is fired.

12 He will tell you that only one gun was  
13 involved in this scene. You will also hear from Randall  
14 McLaughlin. He's also a Crime Scene Analyst. He has  
15 special expertise in blood spatter evidence.

16 He will tell you he was there that night.  
17 He saw the scene and he later had a chance to sit down  
18 with the pictures that were taken and look at the blood  
19 spatter. He will interpret some of that spatter for you.

20 He will tell you that there is no evidence  
21 that Gina Centofanti was upright when the shots to the  
22 head occurred. He will tell you this spatter right in  
23 here by the bike indicates that her head was very close to  
24 that bike when she sustained the gunshot wounds that she  
25 did.

1           You will also hear from homicide detectives  
2 that were responsible for this investigation, Thomas  
3 Thowsen as well as James LaRochelle. They will tell you  
4 what they did in their investigation, who they talked to,  
5 who they interviewed to get to investigate this case.

6           You will not hear that Gina had a gun. You  
7 will not hear that Gina had any sort of weapon that night.  
8 The evidence will show that there was no struggle, there  
9 was no forced entry.

10          There was no evidence in their investigation  
11 that the Defendant had been involved in a fight. It will  
12 tell you there is no evidence that the Defendant and his  
13 ex-wife were arguing or fighting before there were  
14 gunshots.

15          In fact, the evidence will show that Gina  
16 Centofanti was moving and turning away from her shooter  
17 when she was killed.

18          Most most importantly, the evidence will  
19 show in this case that the Defendant shot seven times and  
20 never missed once.

21          At the close of evidence the evidence will  
22 show you, beyond a reasonable doubt, that the Defendant  
23 willfully, deliberately, and premeditatedly killed his  
24 ex-wife, Gina Centofanti.

25          I am confident that at the close of evidence

1 you will find him guilty of First Degree Murder. Thank  
2 you.

3 THE COURT: Thank you. Mr. Bloom?

4 MR. BLOOM: Thank you, Your Honor. In terms  
5 of the time are we going to go until about 5:30 or 5:45?

6 THE COURT: We'll go as long as it is  
7 necessary.

8 MR. BLOOM: Thank you very much.

9 An opening statement, Ladies and Gentlemen,  
10 is meant to be a road map of where we expect the evidence  
11 will go in the case. It's not meant to be argument at  
12 this time.

13 I'm going to try to lay an outline for you  
14 of what I expect the evidence will show. Before every  
15 time I make a statement I'm not going to say the evidence  
16 will show such and such, but that's really what I'm trying  
17 to show you, tell you right now.

18 My comments now over probably the next 40  
19 minutes or so are going to be what I believe the evidence  
20 will show in this case.

21 I'm going to start at a different point than  
22 where the prosecution started because I think this case  
23 starts at a different point, the evidence will show.

24 | Nine year old Quito Sanchez never had a home  
25 with his mom until Chip Centofanti -- his name is Alfred,  
' |

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1 the III. His dad is Alfred, Junior. They are both Chips,  
2 Big Chip, Little Chip -- he never had a home until Chip  
3 Centofanti and Gina Centofanti met, got together and got  
4 married.

5 Chip brought Quito in their into their  
6 house. Quito was at their house on December 5th, 2000.  
7 Two distinct dates. Two incidents, December 5th and  
8 December 20th. Quito had been raised by his grandmother  
9 in San Diego most of the time in his life.

10 Gina had him when she was 15 or 16, yet  
11 Quito witnessed the events in some part of what happened  
12 on December 5th. I'd like to describe for you the events  
13 that occurred on December 5th.

14 Nicholas, now a little over two, was at that  
15 point four months old. That's the baby Gina and Chip had  
16 together. He had kind of an asthmatic problem.

17 On the night of December 4 he had a bad  
18 attack. Chip was taking care of his baby and taking care  
19 of Quito and Gina was nowhere to be found. That evening  
20 they had to take -- Chip had to take the baby to an  
21 emergency room for treatment.

22 There were lots of calls between Chip and  
23 Gina's phone number. "Where are you ? Come and help."  
24 He's a new father. It's true, he brought in nine year old  
25 Quito, not his boy, into his house to make him one of his

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1 family members.

2 In terms of all the things going on with a  
3 new parent, Chip is four months a parent as of that time.  
4 The baby is ill and they go to the emergency room and get  
5 some treatment for the child.

6 They have to get some medicine and they  
7 bring the baby home and most of that evening he has to  
8 care for young Nicholas. He calls a number of occasions  
9 of "Where are you, Gina? Where are you?"

10 To say he was frantic or upset is very true.  
11 Gina never showed up. He slept with both the baby and  
12 Quito that night, woke up in the middle of the night to  
13 administer the medication and Gina came home, stumbling  
14 drunk at about 7:00 a.m. actually it was a little earlier  
15 than that.

16 She passed out. She actually went into the  
17 room kind of drunk and took the baby and put the baby down  
18 on the floor on a blanket and tried to lie down with the  
19 baby. She passed out. He picks up Nicholas, puts him  
20 back in the crib next to his bed.

21 His parents, by the way, are not there yet.  
22 His parents, Chip and Camille, will play a part of what  
23 happened in this case. They aren't there. They still  
24 live in Massachusetts. They are in transit.

25 They are moving from an area outside of

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1 Boston. They are driving at the time. They are not there  
2 on that evening on December 4th, the morning of December  
3 5th.

4 That next morning Gina wakes up. Her  
5 cellphone is ringing and ringing. She finally wakes up.  
6 Chip is finally upset. "Where were you last night?" He's  
7 upset -- "The baby wasn't taken care of. What's going  
8 on?"

9 She's smelling of alcohol, she's still  
10 smelling of alcohol.

11 By the way, when the police officers come  
12 and they will come a little bit later after this domestic  
13 violence incident. The officers still smell alcohol on  
14 her, even though it's hours later. He's yelling at her.

15 You'll decide whether you think it's  
16 understandable or not when he says to her "Where the hell  
17 were you? What's going on?"

18 She's making phone calls and she's making  
19 appointments and things. "Were you out drinking?"

20 He accuses her of going out and having sex  
21 and messing around with somebody.

22 Mostly he's upset about "How come you  
23 weren't home?" She denies any of the relationship of  
24 having sex. We now know those accusations are absolutely  
25 correct.

030

1           A witness by the name of Steve Shula will  
2 come in. He's one of the co-workers. He said that very  
3 fact, that, prior to December 5th, he in fact did have  
4 sexual relations with -- and he calls it kind of  
5 recreational, with Gina. They had it after December 5th  
6 and before December 5th. He doesn't know that for sure.

7           Chip doesn't know that for sure as of that  
8 point. He knows his wife wasn't there. She's nowhere  
9 around and the baby is sick.

10           During the conversation that's happened --  
11 speed through them a little bit here -- you'll hear the  
12 evidence yourself -- during that time she gets a couple of  
13 phone calls and finally he says "What's going on with that  
14 phone? Who is on the phone? We'll see who is calling  
15 you. Are these people you were with?"

16           He starts to grab the phone. She doesn't  
17 want him to listen to who that is pressing the redial  
18 button on the phone or checking out the display of who --  
19 of who it was that called. She struggles over the phone  
20 and they start to fight over the phone.

21           He grabs the phone from her and starts to  
22 push the button and walk away. They are in an upstairs  
23 bedroom of their house. Two-story house, nice house  
24 Wintry Garden, and kind of a nice neighborhood.

25           He grabs the phone and turns away from her.

031



1 Next thing he knows he's down on the ground. He's been  
2 knocked to the ground.

3 That picture frame she grabbed off the  
4 counter or off a table area like this has smacked him in  
5 the head and knocked him to the ground. He's cut,  
6 bleeding. Glass is everywhere.

7 Quito, a nine year old, is watching his mom  
8 do this. He turns around and sees her digging into the  
9 nightstand at the table and coming out with this weapon,  
10 with a nine-millimeter gun that they have.

11 She's taking it and turns around and starts  
12 pointing it to him and he stops. He comes at her. He  
13 grabs her. He pulls the gun, he lays down, he's trying --  
14 she fights him. They are struggling.

15 She is a small person, but in a moment I'm  
16 going to tell you about the ferocity and the rage and the  
17 violence that that small person can show and manifest.  
18 Right now I'll go back to that night when that time of the  
19 struggle with the gun.

20 She has the gun in her hand. He feels it  
21 pointed and he hears the click. He ultimately takes the  
22 gun from her.

23 First, he puts it in a place up high where  
24 nobody can get at it, away from Quito and away from her.  
25 They are talking and they are screaming at each other.

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1 Finally things are calming down.

2 "What are you doing, what are you doing?"

3 She cries. He says "That's it. You're out.  
4 I'm not going to be with you anymore."

5 She breaks down. She starts to cry. "I'm  
6 sorry. I shouldn't have grabbed the phone. I didn't  
7 mean to grab the gun."

8 I don't care. He does not want to call the  
9 police on her, though he's injured, because he knows  
10 exactly what Ms. Goettsch says. If the police come  
11 somebody will be arrested and he doesn't want it to be his  
12 wife.

13 He calls miss because, Eva Cisneros, because  
14 he knows there's some counselor that they work with and  
15 she puts him in touch with Mark Smith who he calls.

16 He tells Mark Smith "My wife has problems.  
17 My wife needs therapy because she has agreed, I'll talk to  
18 somebody."

19 Mark Smith says "I have to get it from her  
20 directly."

21 He voluntarily hands her the phone, never  
22 once tries to in any way prevent Mark Smith from talking  
23 to her. She takes the phone into the other room and tells  
24 a version of the story that that says he came at her and  
25 attacked her and he's trying to kill her.

033

1           The police -- Mark Smith ultimately calls  
2 the police and the police come. Two officers, Officer  
3 Laurencio and McGregor, and ultimately another officer by  
4 the name of Winslow shows up as well.

5           Now, this is not the first time there has  
6 been a domestic violence involving Gina and Chip. Three  
7 days before, December 2nd, they are in an argument again  
8 because she's home very late. "What's going on?"

9           And she's literally tackles him and knocks  
10 him down. At that point she says "I'll get therapy."

11           He says "Look, this cannot continue."

12           Chip Centofanti is a conservative kind of  
13 guy in terms of wanting a family and having a  
14 relationship, but even he does not want to be in a  
15 situation even if it is going to break up a family with  
16 his new baby Nicholas, just four months, but he will not  
17 tolerate a situation of this violence.

18           She says she will get therapy, under the  
19 understanding, the condition that if it happens again,  
20 that's it. It's over.

21           December 5th it happens again. Even then he  
22 doesn't want to call the police on her but the police  
23 arrive. Officers Laurencio and McGregor and Sergeant  
24 Winslow. They see the -- they see, how do they handle the  
25 arrest?

034

1           They put Gina in one area and they take Chip  
2           and put him in another area. His shirt is ripped off.  
3           They ultimately find the shirt. It's ripped off.

4           He's bleeding. He's bleeding on the back,  
5           scratched there, bleeding on the arm. There's glass all  
6           over the house. He's bleeding on the rug -- from burns on  
7           his legs, rug burns from the struggle. They make a  
8           decision in this case as to whether or not they should  
9           arrest someone and they arrest Gina Centofanti.

10           Now, later on at various testimonies they  
11           are asked by the prosecution "Isn't it correct that the  
12           reason why you arrested Gina and didn't arrest Chip was  
13           because you're only concerned about somebody being home  
14           for the baby?"

15           Their answer is very straight.

16           "No. We arrested Gina because when we  
17           talked to her and when we saw the injuries it was clear  
18           she has inflicted the injury on Chip and he didn't on  
19           her."

20           Though she did have a little cut lip, not a  
21           cut lip, a little swollen lip which she said she got  
22           during the struggle. They also -- so the question was  
23           "But you left him, Chip, home, because you're taking care  
24           of the baby?"

25           "No."

035

1           The officers say "We did not have cause, we  
2 did not have probable cause to arrest Chip so we didn't  
3 arrest him. We arrested her because we did have cause to  
4 arrest her. And we took her into custody."

5           Now, before they left, though, they  
6 attempted to find out about the gun. Ms. Goettsch  
7 presented to you a statement of Gina's version of the gun,  
8 who had the gun.

9           Gina said "He had the gun. He pointed it at  
10 me. I took it away from him."

11          The same police officers asked him "What  
12 about the gun? Was there a gun?"

13          He said "Yes. She had the gun. She pointed  
14 it at me. And I took it away from her."

15          When the officers got both of those  
16 statements they went to Gina and said "Okay. You took the  
17 gun away from him. Where is the gun?"

18          She said "Probably in the kitchen, maybe in  
19 the kitchen." She didn't know.

20          They went to Chip and asked him "Okay, I  
21 took the gun away from her after she pointed it at you.  
22 Where is the gun?"

23          He said "It's on top of the counter above  
24 the range in the kitchen up high where I put it so she  
25 couldn't get to it."

036

1           Sure enough, the police officers went in  
2 there, exactly the spot where he said he had taken the gun  
3 from her and found the gun. Exactly where he said it was.

4           You will decide, based upon the evidence,  
5 you'll make a decision as to whether or not she had that  
6 gun.

7           The evidence will show that Chip Centofanti  
8 said "That's it." He was absolutely petrified at that  
9 point. This woman was not the woman he had married.

10          They had met some several years before and  
11 the relationship was good. She was kind of messing around  
12 on him when they first went out.

13          He actually saw a boyfriend of hers when  
14 they were together and he sat down with him and said  
15 "What's going on? Are you going with Gina or not going  
16 with Gina?"

17          She found out he found out. She apologized  
18 and said "I want to be with you."

19          The relationship was good, but there -- it  
20 was a lot of information about Gina that had come out, but  
21 by the time December 5th -- let me go back to December  
22 5th. Let me finish with what happened right at that  
23 point.

24          |           Right at that point after December 5th,  
25 after the police arrested Gina, he is very, very afraid  
|

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1 and scared and very shaken.

2 He is so shaken that he asks the help of  
3 Mark Wright. You saw the picture of his next door  
4 neighbor's house. He asked Mark Wright to take him down  
5 to the police station. "I can't go to the courts, I can't  
6 drive myself."

7 Mark will tell you he sees Chip visibly  
8 shaken and upset. Goes down and gets an immediate  
9 temporary Protective Order against her. It is served on  
10 her that night -- against her. It is served that night  
11 on her at the jail.

12 He doesn't wait until two days or weeks go  
13 by. He says -- he says that's it and he gets a Protective  
14 Order. Despite the fact it's served on her that night at  
15 the jail she calls them on a number of occasions in  
16 violation of the Order, and between December 5th and  
17 December 20th a couple of events happen with regards to  
18 Chip wanting out of that relationship.

19 I'm going to get to those in just a minute,  
20 but I think it's appropriate at this time to tell you what  
21 the evidence will show about Gina and her background I  
22 think it's appropriate.

23 Now Chip spends the next 20 days very, very  
24 much afraid of that little person. She is just a little  
25 person. I think the evidence will show the good cause for

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1       that fear.

2                   Chip learns over a course of time during  
3       their relationship, over the several years before happened  
4       that Gina has quite a history. To characterize it as  
5       growing up in a rough neighborhood is not accurate.

6                   She grew up in a rather middle class  
7       neighborhood, but it does have some gaps in it. She chose  
8       to participate in those gangs and the violence that went  
9       with it. Chip found this out kind of slowly.

10                   For example, her own mother would talk to  
11       Chip and say "You know, I don't think this thing is going  
12       to last long. Everybody in the family is taking odds on  
13       how long your marriage is going to be, because Gina is  
14       very wild."

15                   "What do you mean wild?"

16                   "Well, did she tell you what she tried to do  
17       back when she was 16?"

18                   What Gina tried to do when she was 16, what  
19       she did when she was 16 was try to -- one day it was a  
20       particularly graphic day for her. She tried to kill  
21       somebody. She was a gangbanger. She was a member of a  
22       gang. Her nickname was Fly Girl, southside gang in  
23       Escondido, a city in northern San Diego County.

24                   She had run with the gang for a while. One  
25       day when she was about 15 and 16 years of age she took a

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1 van and she tried to run over a guy, Adrian Medina.

2 He will tell you that the van she was  
3 driving almost killed him, but for -- it ran him over,  
4 knocked him down and and and ran over his leg. He was  
5 bruised, but not dead.

6 She did so because he was running after  
7 another friend of her's, a co-gang member of her's, and  
8 she was trying to kill him. She was brought to juvenile  
9 court for that but not yet.

10 Two hours later that same day Gina is  
11 walking around -- she's walking around and she sees --  
12 happens to be standing by Lori Brown who is a crossing  
13 guard in northern San Diego county.

14 He's a crossing guard for kids. About time  
15 for kids to get out of school. You know how they have  
16 those chairs on the curb. Gina decides to steal the chair  
17 and Lori says "Excuse me, that's my chair. Excuse me."

18 Gina, in response to that, picks up that  
19 chair and starts to bludgeon Lori with it. She's wanted  
20 now for the attempt murder, assault and a second assault  
21 against the crossing guard.

22 Gary Floyd, a sheriff's officer in San  
23 Diego, several hours later, tries to arrest her. He  
24 tracks her down and he starts to effect the arrest.

25 This little person so resistant, is so

1 resistant to that arrest, that Gary Floyd says it's one of  
2 the most vile persons he's ever arrested in his long  
3 career, the most violent person he's ever seen, that his  
4 attempt to arrest her is so resisted by her that he  
5 literally has to -- in trying to get the cuffs on her ends  
6 up breaking her arm.

7 He says "It's like she was whacked out on  
8 PCP."

9 We'll talk about her delusion in just a  
10 second.

11 Two days later she's in juvenile hall.  
12 She's observed clubbing a girl with the very cast put on  
13 her hand, on her arm that had to be put there when she  
14 was -- had her arm broken by the officer. This is the  
15 violence and the rage you will see is in -- and the  
16 strength that is in this little person.

17 She knows it has a lot to do with using  
18 drugs and she makes that admission to various juvenile  
19 authorities.

20 Chip finds out about this, not because he  
21 went out to check out juvenile records, but because it  
22 gradually comes out.

23 Her mother tells Chip "You know her history"  
24 and she says -- he talks to her. "What about this?"

25 Gina said "That was in the past. That's not

1 me now."

2 To be perfectly frank, it doesn't look like  
3 her because she was a different person at at that point it  
4 seemed. He finds stuff out. The way a relationship does  
5 and goes is up on and cycles through -- you find  
6 information in various ways.

7 One thing Chip finds out is a very extensive  
8 drug use and this history of crystal methamphetamine on  
9 Gina. One of the occasions, she wants to have a nose job  
10 to become more attractive.

11 She goes to the plastic surgeon to get the  
12 procedure and the surgeon comes out and talks to Chip. He  
13 says "We also have a problem here. She has her septum  
14 which is so deteriorated, that it has holes in it because  
15 of all the drug use. We'd have to do that as well."

16 Information comes to Chip about this  
17 background and she again says "That's a long time ago.  
18 I'm not involved with that. I don't do that kind of  
19 thing" and so forth.

20 Her mother sits down with Camille and big  
21 Chip, his father, during the time they are having the  
22 rehearsal dinner. It's like she's not quite trying to  
23 break it up, but for whatever the reason, she's saying "Do  
24 you know the history of Gina. Did she tell you about the  
25 story that she tried to kill somebody when she was in a

1 gang and used drugs?"

2 The information about Gina becomes more and  
3 more known to Chip over the course of time. That does not  
4 stop him from wanting to be with her. This is not how she  
5 displays as of that time.

6 People can change. He thinks that this  
7 change has really happened within her. He probably never  
8 would have come to any other conclusion regarding that if  
9 there hadn't culminated on this event on December 5th when  
10 she pulled a gun and tried to shoot him twice.

11 But for the fact she didn't know how to load  
12 the chamber he would have been dead. That's not the first  
13 time he saw some changes in her behavior.

14 This idea of Gina wanting to be with the  
15 baby is -- the evidence will show that that's very much  
16 not the situation.

17 Evidence will show that she very much didn't  
18 want to be with the baby. Maybe it's similar to the way  
19 she didn't want to be with Quito, her younger son, but it  
20 seems as if almost from the point that she was pregnant  
21 with --

22 MR. PETERSON: May we approach?

23 THE COURT: You may.

24 (Discussion off the record.)

25 THE COURT: Proceed.

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1 MR. BLOOM: We have different views about  
2 the evidence. I represent Mr. Centofanti.

3 To make it clear what I'm trying to tell you  
4 is what I believe from the witness stand you will hear  
5 what the evidence is: There is a picture shown of Gina  
6 holding the baby.

7 In fact, it was not long after that that she  
8 was on the phone making business calls and making business  
9 arrangements. There's nothing wrong with a young mom  
10 being very interested in her business and so forth.

11 My point is what I think the evidence will  
12 show is that there was a very big change coming on in  
13 Gina, even before that December 5th and December 3rd  
14 incident where she knocked Chip down.

15 That change had a lot to do with the fear  
16 that Chip felt about her. He knew that if she's going out  
17 all night, drinking all night, not wanting to spend time  
18 with him and not wanting to spend time with the child,  
19 that's very different than the reason -- the feelings that  
20 he had towards her when he didn't have fear of her.

21 He didn't have fear of her early on when she  
22 seemed family-oriented and not using a lot of alcohol and  
23 not going out all night. All of a sudden now her behavior  
24 changes. T

25 hat effects him enormously. All that

1 history, though, of her with the violence and clubbing the  
2 person and the officer trying to arrest her and the broken  
3 arm, where does that fit in?

4 It fits in by the time she tries to kill him  
5 on December 5th he becomes petrified of her. Any claims,  
6 any assertion that he was anxious, obsessed with her,  
7 upset with her and there was some of that going on, quite  
8 admittedly, when your wife is going out on you and coming  
9 home drunk 7:00 o'clock in the morning, he felt upset.

10 You'll decide if that's obsessive or if  
11 that's reasonable. We know from Steve Shula in fact she  
12 was having sex. His suspicions were correct.

13 You'll decide if his conduct was obsessive,  
14 possessive, as described by Ms. Goettsch, or rather a  
15 reasonable response to the fact your wife is out drinking  
16 all night, especially when you have a brand new baby.

17 Were those calls about jealousy or were  
18 those calls about "How come you're not here with your  
19 family?"

20 Nonetheless, if there was any issue about  
21 obsessiveness or jealousy, by the time of December, before  
22 December 5th, they are all gone as of that time, because  
23 on December 5th, after this incident, when she tries to  
24 kill him, he says "That's it. I don't want anything  
25 else."

1           He gets the Restraining Order, files for the  
2 divorce, himself. This person who supposedly says "I  
3 won't ever give you a divorce" or something like that,  
4 files for it on his own. He requests and obtains custody  
5 of Nicholas and yes, he feels sad about losing Quito and  
6 not having Quito in his family.

7           Of course, when he gets sent back, the nine  
8 year old gets sent back to California, because Gina  
9 doesn't want to be with him at that point either, he does  
10 call the family and say "Be a good mom to Quito," because  
11 he knows Gina is not going to be a mom to Quito. And Chip  
12 cares for Quito very much.

13           In fact on the night of December 5th on that  
14 DV incident, at that time Quito is watching and he sees  
15 it. Chip says to Quito "You shouldn't be in the middle of  
16 this. You're not going to school today. Here's five  
17 dollars. Ride your bike over to the Burge King." Just so  
18 he won't be around.

19           Of course he comes back and he sees the  
20 police there anyway, but that's how Chip feels about Quito  
21 and why he calls the family and says "Be a good parent to  
22 him."

23           Between the December 5th and December 20th  
24 time it was a combination of events going on in your life.  
25 Imagine, you're a 32 year old man, just had a baby. First

1 child. Your wife -- he's Catholic, very committed to a  
2 relationship, very committed to family, very upset at  
3 losing his family. He thinks it's a very bad break for  
4 young Nicholas for there to be a divorce. The kid is  
5 dealt a bad set of cards. He loves his son.

6 MR. PETERSON: I'm sorry.

7 THE COURT: Counsel, you're arguing at this  
8 point.

9 MR. BLOOM: I apologize. The judge is  
10 right. I'm not supposed to argue.

11 Let me step back. Tell you what the facts  
12 are going to show. I would think you'll see evidence of  
13 that. I apologize.

14 The evidence will show that he very much --  
15 it was very hard to be with his son in those next 15 days.  
16 Explore what happened in those next 15 days, the days  
17 between the 5th and the 20th.

18 He files -- gets the Restraining Order,  
19 files for the divorce, files requesting custody of his son  
20 and he asks for and obtains the right to have him at home,  
21 because he is going to have the baby.

22 Gina has to pay child support. Not much  
23 equity in the home. She is supposed to pay child support,  
24 because he's going to be the primary caregiver.

25 His parents have finally have arrived. They



1 get a call that night and they are very upset.

2 On the 5th they are on the road. Be there  
3 as quick as I can. MeriLee and Mark Wright see how very  
4 upset Chip is after she, Gina, has tried to kill him.

5 There are other witnesses who see that and  
6 see how upset he is. The parents arrive about two days  
7 later, on the 6th, very late on the 6th, early morning of  
8 the 7th.

9 They see a young man who is caring for his  
10 infant, dealing with the loss of his wife and having a  
11 divorce and they also see a man very afraid. They see  
12 that on a number of occasions throughout those next 15  
13 days. Chip's life goes on. He does miss some work. He  
14 talks to people about what's going on.

15 They are coming in to tell you they did not  
16 believe him to be talking about what happened with jibe in  
17 some obsessive way. He appeared upset. He wasn't angry  
18 at her and he wasn't obsessing over the loss of  
19 relationship. He felt more sad about the loss of Nicholas  
20 having a family.

21 The evidence will show -- maybe only, maybe  
22 only in Las Vegas could this happen, in 11 days all of  
23 that divorce is final. Even quicker than that, maybe it  
24 happens to be one of the ladies who works in this  
25 courthouse who sees his papers come across her desk, Kathy

1 Prock is that person, and she sees the divorce papers come  
2 across on the 13th and she happens to know Chip, because  
3 she worked with him at Cisneros.

4 She calls him. It's not usual you would see  
5 your own friend's divorce papers coming through your Desk.  
6 She talks to them. Her evidence will be -- her  
7 conversation with him was pretty much like most people  
8 that saw Chip. He was okay with it. It wasn't the  
9 happiest time of his life, but neither was it a terribly  
10 upset time. He seemed pretty much like the old Chip,  
11 happy and friendly person.

12 Other witnesses will say very much the same  
13 thing. They didn't -- they didn't go and tap everybody on  
14 the shoulder and speak to team. He also had this very  
15 very real fear.

16 He's getting calls back from the family  
17 about how she's twisted this around to say he tried to  
18 shoot her. He has seen she is now no longer the person  
19 she never was. That rage he saw on December 5th was never  
20 any kind of person he had ever seen before. It wasn't the  
21 Gina he married or had courted or had loved. That image  
22 didn't leave him.

23 On the day of December 20th, the very day of  
24 the shooting, he happens to be late in that afternoon at a  
25 meeting with a lot of different people and several

1 different people saw him there at this big meeting.  
2 Something at a Court Reporter's office where the  
3 statements are depositions were being taken of a large  
4 group of people of which Chip had one of the small pieces  
5 in that litigation and he was there in a room where  
6 somebody called a special master, which is like a judge  
7 for that type of hearing.

8           You'll hear from that judge or special  
9 master. It's very close to Christmas and he will remember  
10 it for a variety of reasons, one of which he came in with  
11 a Santa Clause suit on. That night he had to leave that  
12 special master hearing and go to a special event he does  
13 for kids. He decides I'll wear the Santa Clause suit to  
14 this thing on December 20th.

15           He saw Chip there and talked with him. Chip  
16 seemed just fine. He talked about appropriate things,  
17 some sports. Other people were there and said very much  
18 the same thing. One person, another attorney, didn't know  
19 him that well, but knew him occasionally and talked to  
20 them several different times. They had a conversation  
21 just as normal as could be.

22           She says after she heard, interesting to  
23 note, her name is Laurie Sidemann. She says "I'm  
24 wondering when you were going to call me. I took some  
25 notes."

1                   When we talked to her recently, when my  
2 investigator went and talked to her, what did you see, do  
3 you remember this happening, she said "I was wondering  
4 when you were going to call me. I took some notes that  
5 day about my observations of Chip. They were, my notes --  
6 I figured after I heard about" -- it was heavily  
7 publicized, the shooting.

8                   She heard about it and it was -- everybody  
9 of course was talking about it. After she saw it on the  
10 news she decided to write some notes about her contact  
11 with Chip few days before. He was fine, regular, normal,  
12 not obsessive.

13                   What happened on December 20th? On December  
14 20th was was a day Chip was -- it was a Wednesday that  
15 Chip was supposed -- Gina was supposed to have her  
16 visitation.

17                   She had every time -- in the two times  
18 beforehand she had attempted to avoid the visitation or  
19 change it. This time Chip made some plans to go out that  
20 evening. She made number of calls that evening about,  
21 that day, not to him, but to his parents at his house and  
22 the calls went back and forth from the parents and so  
23 forth about what's going on on?

24                   When Gina would call up and say "I don't  
25 want to come. Can I change the time?" It was on again

1 off again, on again off again.

2 Finally Chip comes home at about 5:30 and by  
3 that time his plans had dropped out because the girl he  
4 was going out with had a cold. There wasn't any plans to  
5 go out. When Gina called it was "Can I get out of it?"

6 "No. This is your night to be with your  
7 baby. You're supposed to be here. Fuck you. And hang  
8 up.

9 She calls Trish Miller and says "Trish, Chip  
10 is being a jerk about this. I have to go pick up the  
11 baby."

12 She storms over to pick up the baby. Now,  
13 we know several different things. I can't tell you what  
14 her mind was when she got out of the car. You can get  
15 some information for how she parked the car in the wrong  
16 direction, on the street pointed the wrong way, half way  
17 up onto the curb, as if you will that evidence shows she  
18 was angry and storming out and getting out.

19 She comes into the house, doesn't ring the  
20 door bell. She bursts into the house and it's not her  
21 house anymore and she is not supposed to be there. Chip  
22 that day had gotten the gun back from the police.

23 They were in a bag, sitting inside the  
24 house. He had come home a fairly short time before. The  
25 first thing he notes about her being in there -- one

1 second, please. I'm going to put this away because this  
2 is pretty much the way the room lays out.

3 THE COURT: Mr. Bailiff.

4 Proceed.

5 MR. BLOOM: I put it up like this on purpose  
6 even though the words will make it hard for you to  
7 understand.

8 This is the layout of the house. Front door  
9 over here, she entered in this direction from here. The  
10 stairway leading up to the second floor is over here. The  
11 master bedroom right above this room.

12 This is the kitchen area to the left. You  
13 enter this way, living room. You enter from here. The  
14 street is over here. Her car was parked up on the curb up  
15 on the sidewalk in front of the house. She storms into  
16 the front door from over here. First thing Chip sees is  
17 her coming into it is room. He's watching t.v. The bag  
18 with the guns over here.

19 Now, in the next two minutes an event will  
20 occur which will change everybody's life in this whole  
21 case ending in her death, Gina's death, Chip having shot  
22 her. The details of that two minutes are -- or three  
23 minutes is going to be difficult to recover. Only thing  
24 he remembers is this enormous argument. Seeing a rage of  
25 a person that was more violent than he had ever seen in

1 his life; moreso than had been two weeks before when she  
2 tried to kill him, and her coming at him and a  
3 recollection of hearing shots and if he had any clear  
4 thought of what's happened is that if she gets past him,  
5 then she's going to kill the baby and the parents, his  
6 parents upstairs.

7 Next thing he knows he's outside in a police  
8 car. Maybe an hour or so later or more, being touched on  
9 the shoulder by a person by the name of Janine, a lawyer,  
10 co-worker of his that his mom or his dad called or that  
11 somebody called, I think the mom called Cisneros who  
12 called Janens Much and she comes out at some point.

13 An hour later he is absolutely catatonic.  
14 The officer Gogean who comes and sees him standing there  
15 on the floor with a gun on the stair nearby at the next  
16 door house, he had no idea how he got there.

17 She will say, Office Gogean will say in a  
18 written see in a written report he was catatonic,  
19 non-resonsibe, not aware of what's going on at all.

20 The fear that he had walking in and how  
21 violent she appeared and what she -- what he thought was  
22 going to happen is all going to be up to you to decide  
23 about the issue of whether this prosecution can prove  
24 there was no self-defense.

25 It's been talked about seven shots. The

1 evidence will show we're talking about 2.7 seconds, that  
2 that weapon can be fired seven times in less than three  
3 seconds.

4 You're not going to be alone, though, in  
5 deciding the events that happened during those three  
6 seconds and the few moments that happened beforehand.  
7 Because you're going to have the assistance of a variety  
8 right of experts. Doctor Simms is just one.

9 Doctor Simms, in fact, will say, even though  
10 he does concludes as it was established in the power point  
11 presentation by the prosecution that these shots, the  
12 shots to the face and so forth are what's consistent with  
13 or of the type of some type, an assassination-type shot.

14 He's also going to say he can't rule out the  
15 fact that she was upright at the time of those shots.  
16 Now, the prosecution presenting evidence or will present  
17 evidence and talk to you about what evidence they are  
18 going to present of one theory of how the shooting  
19 occurred to her body, and then when she's on the ground,  
20 to the head shots.

21 You're going to hear from a number of  
22 experts from the defense. We won't get to present those  
23 until after the prosecution has completed their evidence.  
24 But you'll hear from several different people. One of  
25 whom is doctor John Eisele. Doctor John Eisele is a



1 forensic pathologist out of San Diego county and northern  
2 California who has worked and been the chief pathologist  
3 for several different counties and he will tell you that  
4 Doctor Simms is right to stay he can't rule out the fact  
5 that the shots were of the kind, of, were administered in  
6 a pattern described by the prosecution, but it's equally  
7 as possible from the evidence that, in fact, Gina was  
8 upright at the time of all the shots.

9 A person by the name of Jimmy Traheen will  
10 come in. He is a man who drew this diagram, created this  
11 diagram. He is an ex police officer in San Diego who  
12 has -- no -- ex police officer in Los Angeles, excuse me,  
13 who does the shooting reconstructions for San Diego, for  
14 Los Angeles District Attorney's Office.

15 He has been a police officer, was a police  
16 officer for many years and now is in private practice, in  
17 private practice in terms of doing reconstruction. He  
18 created these diagrams. When he went out to the house on  
19 Wintry Garden, he made measurements of the house, of the  
20 room and then he lays down the -- measures the distances  
21 and so forth, that he takes himself.

22 Then he lays out the location with tape and  
23 everything else of exactly where it is, then he brings in  
24 a figure into the house and we'll have the pictures to  
25 show you and he brings a probe to show the angle of each

1 of the shots so he can determine the shots, because he's  
2 able, based upon some of the autopsy information, to make  
3 a determination on the scientific proof of how she was  
4 shot.

5 Two different theories. Talking about the  
6 head shots. The face shots, was it a situation where she  
7 was dropped to the ground and while she's on the ground  
8 Mr. Centofanti comes over and shoots her?

9 Mr. Traheen will tell you that he can't rule  
10 out that as a possibility, but believes it is not  
11 indicative of most of the evidence that is there for two  
12 primary reasons: First, the angle of the shots into the  
13 body, there's one, into the head, one shot which goes  
14 straight in and there's two shots which are at an upright  
15 angle.

16 If Gina was down on the ground receiving  
17 those shots she's down here like this, the shot comes  
18 straight down, the shooter could have been over and fired  
19 that shot. We know that the gun is close to the body, but  
20 then in order to create the upward angle the person would  
21 have to shoot and they get down and change the angle of  
22 the gun. So it's no longer down. It's like this and like  
23 that.

24 An improbable circumstance says Mr. Traheen.  
25 Not how people usually shoot. Doesn't make sense one

1 would do that and change the angle. We know the angles  
2 are the entries.

3 What does make sense from those shots that  
4 she was very close to that weapon. Does that mean she was  
5 attacking him?

6 Mr. Traheen will say he can't read into the  
7 minds of what the people are doing.

8 But that evidence is consistent with her  
9 having come at home and being that close to the muzzle.  
10 What happens with gunshot is not only does the bullet  
11 expel out of the muzzle, but the gunpowder gets fired and  
12 it fires out afterwards, too.

13 It doesn't have much weight to it. It drops  
14 down pretty quick but in a short distance of 12, 18, 20  
15 inches or so, probably under 24. It has impact like a  
16 gunshot. It's like bird shot, lighter than that, but  
17 that's the area it creates that stippling that you see  
18 indicating that she was very close to the weapon, but  
19 there is indication of her coming at him and firing that  
20 way.

21 The aim of the shot is more consistent, says  
22 Mr. Traheen, with a situation where Chip has the weapon  
23 and she is standing and coming at him and she is shot and  
24 she is shot here and her head goes back and she starts to  
25 drop and the shots, remember, it takes 2.7 seconds to fire

1 off seven rounds, let alone three, and the gun goes off  
2 and her head goes back and that explains the angles of the  
3 shots.

4 Now, seven shots. Let's talk about seven  
5 shots before I go on. Before I finish with Mr. Traheen's  
6 statements, seven shots in 2.7 seconds. You'll hear the  
7 testimony from Lt. Steve Franks of Las Vegas Metro. Lt.  
8 Franks is a very, very experienced officer with regards to  
9 shooting.

10 He is the person who for years went to every  
11 officer involved shooting that Metro had in Las Vegas. He  
12 will tell you that his experience is that people just  
13 don't have -- these are trained officers -- don't have  
14 any idea how many times they shot or how quickly they  
15 shoot. They shoot until somebody stops being a threat.

16 He will tell you officers many many times  
17 will write out their statements when they are doing the  
18 post shooting event, write out their statements and today  
19 will say "I fired one time."

20 "How do you explain your gun is empty?"

21 They don't even know they fired that many  
22 times. Seven shots caused a hush in everyone as those  
23 charges were read. Lt. Franks will talk to you about the  
24 firing power of that weapon, how quickly it can be fired  
25 and how even trained police officers trained to shoot in

1 bursts of three will empty their gun or fire some  
2 indeterminate amount and not know, not realize they even  
3 did it.

4           You're talking about a very, very short  
5 period of time. Chip Centofanti had -- for both of them  
6 to get the gun, to own the gun they they had to go to this  
7 class. They went to the class at Bob Irwin's Gun Shop on  
8 Tropicana and they completed some classes. Gina was  
9 certified to own a gun and as you already heard she had a  
10 gun in her BMW on December 5th, and they had another  
11 weapon, they were joint owners and so forth. Each had a  
12 weapon.

13           Back to Jim Traheen and tell you one more  
14 important piece of of evidence as to whether Gina was  
15 lying on the ground at the time of the shooting, not the  
16 angle of the wounds spoke to her being upright, there is  
17 another, stippling on her arm.

18           That means the gun must have been close to  
19 that.

20           She only had one bleeding wound. The only  
21 thru-and-thru wound here. Bleeding wound is not correct.  
22 Only one wound which is bloodletting.

23           The other wounds made through and through on  
24 any of the other shots, that was through her finger.

25           Counting the number of bullets fired and the

1 number of injuries she suffered it is clear this wound  
2 must be part of -- this bullet that created that must be  
3 part of one of the other bullet that entered the body.

4 The stippling here shows the stippling on  
5 the face and shows her hand was -- must have been at her  
6 face at that point. Moving down in a -- in an aggressive  
7 move or in a defensive move.

8 Mr. Traheen will say "I can't tell," but he  
9 can tell this injury is linked to this. This injury is a  
10 bloodletting injury.

11 What has not been told to you is that there  
12 is blood found at the scene, not just the area her body  
13 resides, but some four to five feet off the ground in this  
14 area over here near the fireplace, down on the ground as  
15 if she was shot down on the ground.

16 If this is the only source of bloodletting  
17 that could create that type of blood spatter, that type of  
18 blood residue on the wall, four to five feet off the  
19 ground, she would have had to have been down on the  
20 ground, her hand like this and somehow move the hand up  
21 creating -- flicking off the blood into the position it  
22 was found up on the wall.

23 That is not consistent with that injury.

24 What is consistent is she was upright at the  
25 time she was shot, leaving her high enough to create that.

1           You'll have to decipher that physical  
2 evidence to make a determination of whether or not there  
3 was, if that explosion that happened during that assault,  
4 whether or not she was down on the ground or upright.  
5 That's the physical evidence you'll see.

6           You'll see some more physical evidence,  
7 because the statement that on this exercise bike over  
8 here; the statement this exercise bike over here has blood  
9 on it is correct.

10           The government did not take that exercise  
11 bike in to evidence.

12           Though we don't have the benefit of looking  
13 at it in any preserved state; but the blood spatter people  
14 who will come in and explain to you, one by the name of  
15 Stewart James who is an internationally known blood  
16 spatter expert, and a person by the name of Lisa DeMeo who  
17 is a 20 year police officer criminalist and blood spatter  
18 expert out of San Diego, California.

19           Mr. James happens to have his office in  
20 Florida. He's a person who -- he has testified on behalf  
21 of the countries of Great Britain, many many countries  
22 throughout the world on reconstructing matters, will tell  
23 you that that blood which is on that exercise machine is  
24 not at all limited to just her being shot on the ground,  
25 but that there are several different ways, mechanisms they