THE COURT: And I presume that Judge Mosley after his many years of trial experience properly canvassed the Defendant about his right to testify or not to testify?

MR. SCHWARTZER: Absolutely, Your Honor. In fact, I would encourage you to read over the admonishment, because I think Judge Mosley went into even further detail with the Defendant because the Defendant is an attorney and wanted to stress his rights. So, I think this was even an extended admonishment by Judge Mosley.

That's all I have, Your Honor, unless you have any questions about collection of evidence or --

THE COURT: No, I think I've got it.
Mr. Collucci, I'll give you a couple minutes if there's anything you feel the burning need to tell me.

MR. COLLUCCI: The burning need. Well, first of the Defendant may not be entitled to a perfect trial, but he is entitled to a fair trial. And in this case when you have a defense that's not really a defense and you witnesses that can't even support the defense that you're putting forward, I -- you know, why have a trial at all? Why not just have a summary conviction? I mean, that's the way that this came down. Whatever the weight of the evidence is he did not get a fair trial. You still have to go through the process.

As far as working 30 to 40 hours with Mr. Centofanti, it's clear in the deposition and it's clear in Mr. Centofanti's testimony, and I think in all of the information we have about this case, Mr. Centofanti did not remember the shooting, what happened during the incident. Why you would do 30 or 40 hours worth of testimony and then put on a witness who doesn't recall the
specific event, doesn't make any sense to me. Except that I think Mr. Bloom wanted to put Mr. Centofanti on so he could further his self defense argument. And in his deposition he talks about demeanor being really important. He talks about Dr. Eisel and his poor demeanor. And yet he puts Mr. Centofanti -- well he doesn't put him on the stand, but he doesn't stop him, make a strong recommendation. It's in the deposition. He didn't make a strong recommendation either way.

THE COURT: He said that, yes.
MR. COLLUCCI: Yeah.
So, he puts him on the witness stand to be up there and say: I don't know. I don't remember. I don't -- I can't tell you. He puts Mr. Centofanti, who's on trial basically for his life up there to be evasive. And if you talk about demeanor, that was just not a good strategic call. And Mr. Luekins said: How far away from the witness stand can I keep him. That's what we need. I would have told him to stay away from the witness stand.

As far as the canvassing is concerned l'm just going to say one last thing. That -- the way that was handled is a struct -- in my analysis is a structural defect. You don't really have to have prejudice. It is -- prejudice should be presumed. There's that chronic case. There's other caselaw that talks about that. But that's a violation of his Fifth and Fourteenth Amendment rights.

Also basically he's giving away his -- he's telling the State exactly what he's going to do, and how he's going to proceed. And he's locked into that self defense and can't really make any strategic decisions based on the evidence presented during the trial. And that's my argument.

For those reasons we think that Mr. Bloom's representation fell below the Strickland standard and there was prejudice to Mr. Centofanti in this case. There are other issues in the writ I'm not going to go into all of those.

THE COURT: Right, I mean, I know that I'm going to have to, you know, go back again through it. You know, now that I'm more familiar with it to go back again through the arguments that were made and through some of the transcripts of, you know, at least portions of the trial as well as Mr. Bloom's statement.

MR. COLLUCCI: I would just direct you attention to one case and that's Giles versus California 128 Supreme Court -- US Supreme Court 2678. It talks about hearsay and some of the evidence in that case that's very -- that is dead on to this case basically, so --

THE COURT: Okay.
MR. COLLUCCI: Okay.
THE COURT: All right.
MR. COLLUCCI: Thank you very much Your Honor for your patience.
MR. SCHWARTZER: Your Honor, --
THE COURT: I know I'm going to regret saying this, but because I, you know, I mean, I guess the question is do you feel like -- I mean the issues that you want to raise they're raised in the petition right?

MR. COLLUCCI: Yes.
THE COURT: Okay. So, if I go back and read through those I'm going to be able to read it that way?

MR. COLLUCCI: And the points and authorities, which I know you've looked over.

THE COURT: Well, I have although it's -- it was a lot to look at.
MR. SCHWARTZER: 500 pages of petition should be enough for you, Your Honor. THE COURT: Okay.

All right, then I'm going to take it under advisement. I will try to get it out just as soon as possible. Thank you very much for your arguments today.

MR. COLLUCCI: Could we also request a copy of the transcript today?
THE COURT: Oh, sure. So, we'll have to go ahead and get that.
THE COURT RECORDER: There's no rush on it right?
THE COURT: No.
MR. COLLUCCI: No real rush.
THE COURT: I'm sure they'll have it before I have a ruling. Okay.
MR. COLLUCCI: Thank you very much, Your Honor.
THE COURT: Thank you.
[Proceeding concluded at 10:09 a.m.]

ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video recording in the above-entitled case to be best of my ability.


Court Recorder/Transcriber

THE COURT: Sorry. Who was Gina's mother?
MR. COLUCCI: Emeline Eisenman.
THE COURT: Eiseman?
MR. COLUCCI: Yes, E-I-S-E-N-M-A-N.
THE COURT: Okay. Thank you.
MR. COLUCCI: Uh-hum.
BY MR. COLUCCI:
Q You had contact with her for a couple years prior to the December 20, 2000 incident and you had no contact with her after. Is that correct?

A Yes.
Q And you wanted her called as a witness. Is that also correct?
A It was one of the witnesses that we had discussed calling was her, yes.
Q Okay. Did the State call her as a witness?
A No.
Q Did the State subpoena her?
A Yes.
Q Do you know if Mr. Bloom subpoenaed her?
A Yes; he did not subpoena her.
Q What was she going to testify to as far as you were concerned?
MR. SCHWARTZER: Objection to speculation.
MR. COLUCCI: I said as far as he's concerned. He's --
MR. SCHWARTZER: What's the foundation? How would he know what she was going to testify to?

MR. COLUCCI: I just laid it. Gina's mother, two years worth of contact.
MR. SCHWARTZER: I believe the testimony was you didn't have any contact

MR. COLUCCI: After, after.
MR. SCHWARTZER: So --
THE COURT: Well, I mean. What's his basis for thinking what -- go ahead and cover the foundation for it.

MR. COLUCCI: There's a lot of stuff in the writ about it, Your Honor, about what she would have testified to. So I wanted to just cover that.

THE COURT: Right. And what's his basis for knowing what she would have testified to? BY MR. COLUCCI:

Q Okay. What is the basis for your thinking that she would testify in way that was beneficial to you?

A One of the motions that Mr. Bloom had filed was a motion to admit prior acts of violence, I think drug use, I mean, there was a -- some motion he filed prior to the trial. In that motion -- and I --

Q The prior act related to --
A Gina.
Q Gina.
A Gina.
Q Gina, okay.
A Is -- in that motion said that we intend -- you know, we can question the mother, which is Emeline Eisenman, about these specific acts of violence, about the drug use, about the -- all these other things. So that was actually part of the record. I mean, there was more discussions that we had, but as far as the record, that's part of the record. It's in there.

Q And how about her contact with one of the other witnesses, Francisco Sanchez [phonetic]?

A Yes, during the Petrocelli hearing in December, Francisco, who was Gina's son from another relationship testified that, basically, Emeline had counseled him to lie about what had occurred on December $5^{\text {th }}$ and that's also part of the record. And it's --

Q And did he also testify on December $20^{\text {th }}-$ I mean, not December $20^{\text {th }}$, at the time of the trial about the December $20^{\text {th }}$ incident?

A Well, he gave multiple statements including --
MR. SCHWARTZER: Objection, nonresponsive.
THE COURT: Sustained.
THE WITNESS: Did he testify at the trial? Yes.
BY MR. COLUCCI:
Q Okay. Did he, in fact, give multiple statements regarding what he had observed on December -- the night of December $4^{\text {th }}$, the morning of December $5^{\text {th }}$ of 2000?

A Yes.
Q And were those statements contained in the discovery?
A No.
Q And by that, I mean discovery provided to the defense by the State?
A Not all of the statements and not all of the evidence of the statements. That was the subject of a pretrial motion that we filed that asked for the cassette -the -- at the Petrocelli hearing, the State that day produced a transcript of a interview that took place in San Diego where Emeline Eisenman was present with Christopher Laurent and they interviewed Keito [phonetic] Francisco. We were provided it that
day and we said we would like to get the tapes for that and that was the subject of a motion. In that --

Q Now, in the Petrocelli hearing, isn't it true that Keito [phonetic] admitted that he lied about you threatening Gina with a gun on December the $5^{\text {th }}$ of 2000?

A Yes.
Q Okay. And subsequent to that hearing, I guess three and a-half years passed, during that three and a-half year time period was Francisco Sanchez back in San Diego in the custody of Emeline Eisenman?

A And others, yes.
Q And others. And he was in the custody of the same people -- or the same person that had told him to lie the first time.

A Yes.
Q And were you concerned about whether or not his testimony, which was going to be elicited in March or April of 2004 had been tainted as the first testimony had been?

A Yes.
Q Did you express that concern to Mr. Bloom?
A Yes.
Q Mr. Bloom do anything about that?
A As far as I could tell, there was no effort to follow-up the motion to obtain the additional interviews, the tape recordings, and it doesn't look the defense ever went out to try to interview him separately. And between the Petrocelli hearing in December of 2001 and him testifying at trial sometime in March or April of 2004, it doesn't look like the State produced any additional subject matter on it as well. So really -- and there were a lot of -- there were a lot of issues left with the Petrocelli
hearing, not only about his testimony regarding the gun, but the threats and there were other issues that Judge Gibbons expressed on the record, I have concerns about this, and he was going to allow --

Q Did you want Mr. Bloom to subpoena and bring Emeline Eisenman in so that she could be questioned about the first incident where she had caused Keito [phonetic] to lie and whether -- and to determine whether or not she had, in fact, caused him to lie in the 2004 hearing?

A Yes.
Q And, nevertheless, he did not subpoena her.
A No; he didn't.
Q Was she available in 2004 in Las Vegas attending the trial?
A Yes.
Q And did there come a time when he advised you whether or not he was going to try to call her and in that regard made an effort to contact her?

A My understanding was the State had put her and other people that were going to be called as witnesses by the State, up at some hotel downtown and they released her from her subpoena and when Mr. Bloom came to the end of the defense case, Judge Mosley asked him, you know, do you have any more witnesses and he had said Mr. Franks and --

MR. SCHWARTZER: Objection, I think the record speaks for itself on this. BY MR. COLUCCI:

Q Okay. But the bottom line is was Ms. Eisenman available if Mr. Bloom had wanted to subpoena her.

A Yes.
Q Did you know where she was located during the trial?

A Did I? No.
Q No; did -- you didn't know if she was in town or not? You didn't see her?

A I was aware that she was in town but, like, where she was staying and the specifics, I didn't know and I didn't --

Q Do you know for a fact that she attended the trial?
A She was there for closing arguments as I can recall.
Q You physically saw her there?
A I believe so.
MR. COLUCCI: I have no further questions at time.
THE COURT: Okay.
MR. SCHWARTZER: Your Honor, do you mind taking a two-minute recess?
THE COURT: Sure. Let's take a couple minute break and then we'll do cross.

THE MARSHAL: All rise. The court is now in recess.
[Recess taken at 2:11 p.m.]
[Matter resumes at 2:21 p.m.]
THE MARSHAL: Be seated come to order.
THE COURT: All right. Go ahead with cross.

## CROSS-EXAMINATION

BY MR. SCHWARTZER:
Q Mr. Centofanti, you always had a Nevada attorney on this case; correct?

A I'm sorry? I didn't hear you.
Q You always had a Nevada attorney on this case?

A Yes.
Q So even when Mr. Bloom was on this case, you had a Special Public Defender there as well.

A Yes.
Q That's correct?
A That's correct.
Q And you said during the canvass period -- this is the 2004 before the trial, you said that Ms. Navarro was not there. Is that correct?

A On March $12^{\text {th }}$ I think it was, she wasn't there. I think it was Alzora --
THE COURT: Jackson.
THE WITNESS: -- Jackson from the Special Public Defenders. I think it's in the minutes. BY MR. SCHWARTZER:

Q So you did have Ms. Jackson at that hearing.
A She was present according to the minutes. I don't have a specific recollection of --

Q Do you have any --
A -- her.
Q I'm sorry.
A I don't have a specific recollection of, like, talking to her or seeing her. I'm going more from -- I looked at the minutes and I saw -- I mean, I knew Gloria wasn't there. I just wasn't sure who was there.

Q Do you have any reason to dispute the minutes?
A Yes.
Q What's the reason for disputing the minutes?

A If you look at the minutes for the trial, the dates that Ms. Navarro was at the Final Four, the minutes will tell you that she was actually at the trial. It was --

Q Okay.
A Yvette Mingo, Alzora Jackson again, and I believe, Elizabeth Lee McMann or someone like that. And where I get that from is the actual transcripts. If you compare the transcripts to the minutes --

Q Okay.
A -- the minutes aren't -- for some reason, the minutes aren't 100 percent on.

Q But you're not disputing the fact that there was a Special Public Defender at that March hearing where the thing that we're calling the canvass had occurred?

A You know? I don't -- I know Gloria wasn't there. I know Dan wasn't there. I know Allen was there. The minutes say that we had someone there. I'm sure Judge Mosley required it.

THE COURT: Are you disputing that Alzora Jackson was there that day?
THE WITNESS: I can't.
THE COURT: Okay.
BY MR. SCHWARTZER:
Q Now, you do recall Mr. Albregts doesn't remember you asking him to get back on the case. Is that correct?

A Do I recall his testimony today? Yes.
Q Now, you stated the reason why he was knocked off the case was because of a real estate issue. Is that correct?

A A request by the District Attorneys' Office to have him disqualified.

Q Isn't it true that the real estate issue was property that was in dispute between you and the victim in this case?

A Absolutely not.
Q Isn't it true that property was being used to fund your bail in this case?
A Was that property being used to fund my bail? I believe the property might have been used for collateral, but the proceeds were never used to fund my -to fund the bail. The proceeds were provided to the attorneys and they provided it to the court and -- no. No.

Q Was it used as collateral? Yes or no.
A Yes.
Q Okay.
A I believe the property was used as collateral.
Q In fact, from the time you got out of jail on bail to the time of the verdict, you were actually out of custody. Is that correct?

A Yes.
Q So you were out of custody for three years before the trial, give or take a few days.

A Give or take.
Q You were not limited in calling people during that period of time; were you?

A I don't understand your question. What do you mean?
Q Were you allowed to use the telephone when you were out of custody?
A Well, there were certain people I couldn't call.
Q Okay.
A But I could use the phone; correct.

Q You could have called other attorneys though; right?
A Yes.
Q So if you weren't happy with Mr. Bloom's representation, you could have called another attorney to represent you. Isn't that correct?

A And Idid.
Q What attorneys did you contact?
A I don't remember. There were discussions had about potentially obtaining --

THE COURT: What other attorneys did you call?
THE WITNESS: I don't recall the names, Your Honor. BY MR. SCHWARTZER:

Q Did you ever fire Mr. Bloom before the verdict?
A No.
Q But you don't dispute that you had the option to.
A Did I have the option to fire him? Yes.
Q You never -- you testified that you've never spoken to Lieutenant Franks. That correct?

A Correct.
Q Do you know a man by the name of Jim Thomas?
A Yes.
Q Do you know if Jim Thomas ever talked to Lieutenant Franks?
A Dol know? No; other than what I heard today.
Q But you wouldn't dispute the testimony that Lieutenant Franks gave today.

A I can't. I mean, like I said, other than what I heard today, I've -- it's not
something I have any knowledge of.
Q Okay. Specifically, you can't dispute his testimony that he did talk about your case with Mr. Thomas.

A If he says he did, then I suppose he did.
Q You were actually present, at least you were telephonically present, at the deposition of Mr. Allen Bloom. That's --

A For most of it.
Q Most of it. I'll stipulate there were a couple times that Mr. Centofanti was not in.

MR. COLUCCI: The phones cut out.
THE COURT: Okay.
BY MR. SCHWARTZER:
Q And that happened on April $23^{\text {rd }}, 2010$.
A Okay.
Q But you wouldn't dispute that?
A No.
Q Do you recall Mr. Bloom saying that you said that this was selfdefense?

A Do I recall his testimony about that? I seem to recall that.
Q In fact, he said that you actually used the word, and he quoted, selfdefense.

A Do I recall him saying that? I recall something along those lines; yeah.
Q Now, with the canvass that you were the shooter, it was pretty clear in this case that you were the shooter. Isn't that correct?

A Clear? I don't know what you mean by clear.

Q Well, there was no evidence of anyone else in the room besides you and the victim. Is that correct?

A I can't answer that question. I was -- I mean, I've maintained and I still maintain, I don't recall what occurred that night. So you're going to ask me questions about what occurred that night, I don't recall.

Q Okay. The test of -- you were at the trial; correct?
A Yes.
Q The testimony you heard at the trial, was there any evidence that anyone besides you or the victim were in the room together?

MR. COLUCCI: I have to object. I think the trial testimony will speak for itself. I don't know that he has to testify to that.

MR. SCHWARTZER: This is eventually going to put the prejudice of Strickland, Your Honor.

THE COURT: Well, all right. I mean, his recollection of what happened at the trial isn't necessary. But, go on.

MR. SCHWARTZER: So what --
THE COURT: Sorry. It's sustained.
MR. SCHWARTZER: Okay.
Could I approach, Your Honor?
THE COURT: Yeah, come on up. There's no jury. You can stand there and argue. I don't care.

MR. SCHWARTZER: I just need a --
THE COURT RECORDER; It's actually better if they do 'cause I can separate out their microphones.
[Bench conference -- begins]

MR. COLUCCI: We do have a fan -- we do have a fun club behind us.
THE COURT: Oh, okay.
MR. SCHWARTZER: I just wanted --
THE COURT: That's fine. All right. Just identify yourselves when you speak, then.

MR. SCHWARTZER: Mike Schwartzer for the DAs.
MR. COLUCCI: Speak softly. Your voice carries.
THE RECORDER: I can't hear when you whisper.
THE COURT: That's fine. Just talk.
MR. SCHWARTZER: Okay. I just want to know the parameters of what I can get into. Can I ask him about the fingerprints? Can I ask him about stuff like that?

THE COURT: Well, yeah. I mean, I guess you were asking him to characterize, you know, whether there was any such evidence at trial. I mean -MR. SCHWARTZER: Right.

THE COURT: -- his opinion about that isn't --
MR. SCHWARTZER: Correct.
THE COURT: I mean, I don't know what --
MR. COLUCCI: And the record speaks for itself.
THE COURT: -- you're trying to get to.
MR. COLUCCI: We [indiscernible] have his fingerprints. We know all these things. I don't know that we need to ask him if his fingerprints were on the magazine.

THE COURT: I mean, you can ask him, you know --
MR. SCHWARTZER: He's going to say he doesn't remember.
THE COURT: Well, I know, in terms of what happened that day but -- I mean,
you can ask him, well, you know -- yeah, I mean, you can ask him, well, aren't fingerprints on the gun yours or, you know, no one else's. I mean, you could ask him things like that.

MR. COLUCCI: Does it matter. He's already -- it's already been established. He's -- the jury's has --

THE COURT: Well, I mean, if he's trying to make the point that, you know, the -- one of your big arguments is that he had to acknowledge that he was the shooter. And he's saying, well [indiscernible] --

MR. SCHWARTZER: There's no dispute.
THE COURT: Yeah; I mean.
MR. SCHWARTZER: I guess, it's something I could reserve for argument. If that would make it [indiscernible].

THE COURT: Yeah; I mean, you can ask him, you know, if he has anything to say about --

MR. COLUCCI: [Indiscernible].
THE COURT: -- what else would have been presented or what would have been different if he hadn't acknowledged it, I guess.

MR. SCHWARTZER: Okay, okay. Thank you.
THE COURT: Uh-huh.
[Bench conference ends]
BY MR. SCHWARTZER:
Q Mr. Centofanti, there's no additional evidence that was presented -- that was not presented at trial that would indicate that there was anyone else in the room besides you and the Defendant -- the victim.

A Could you repeat that?

Q Sure. That was a bit confusing. I'm sorry.
You can't cite to any evidence that was not presented at trial that would indicate that there was someone besides you and the victim in the room during the December $20^{\text {th }}$ incident.

A I still don't think I understand the question.
THE COURT: Is there any evidence that wasn't presented at trial that could have shown someone else was in the room that you're aware of?

THE WITNESS: There might be but, I mean, I don't know.
THE COURT: Nothing you're aware of.
THE WITNESS: Nothing I'm aware of.
THE COURT: Okay. Go on.

## BY MR. SCHWARTZER:

Q Now, you said that you talked with Mr. Bloom about the battered spouse syndrome. Is that correct?

A Yes.
Q You understand that battered spouse syndrome is a partial defense.
A I -- if you say it is, it is. I'm not -- that's not something I'm really -- know a lot about.

Q Are you familiar that the battered spouse syndrome is something that's used with self-defense?

A Am laware of that? No.
Q Now, you just testified in the direct that when you -- let me rephrase that. At trial you said that you were told by Dr. Sessions that there was a hole in Gina's nose that was caused by drugs. Is that correct?

A I'll let the record speak for itself. Whatever I said, I said at the trial.

Q But you now acknowledge --
THE COURT: I don't believe you get to make objections when you're the witness.

THE WITNESS: Sorry, Your Honor.
THE COURT: You were asked a question. Please answer it.
THE WITNESS: Do I recall? I don't specifically recall that testimony at trial. I mean, if that's -- no. I mean, now -BY MR. SCHWARTZER:

Q All right. So you acknowledge that's -- you just acknowledged during direct that that's not the case anymore. Is that correct?

A Correct.
Q So if he did say that Gina had a hole in her nose caused by drugs or that Dr. Sessions told you of such, you lied under oath.

A Did I lie under oath about there being a hole in the hose? No.
THE COURT: Or about Dr. Sessions telling you there was a hole in her nose.
THE WITNESS: Well, as I sit here now, I -- that -- I guess, that that wasn't true based on the records and the testimony and all that. But at the time, I thought that that, you know, that was my understanding that that was true, so. It's kind of a hard question to answer. I mean, I now know. We got the records. We've looked through them. People's said it's not there.

MR. SCHWARTZER: It's not responsive, Your Honor. I'm going to ask -THE COURT: Okay. Thanks.
BY MR. SCHWARTZER:
Q Now, Mr. Colucci brought up the fact that you were impeached about a December $1^{\text {st }}$ and a December $4^{\text {th }}$ incident where you pick up your children. That's
correct.
A Yes.
Q Okay. In fact, the State actually brought in rebuttal witnesses to try to paint you as a liar with that -- in that regard.

A Yes.
Q Isn't it true that Mr. Bloom crossed those witnesses?
A Did he question them? Yes.
Q Isn't it true that the witnesses stated that they can't say for sure if they saw you three years beforehand?

A You know, I haven't reviewed that testimony. If that's what you say it says, I mean, I can't dispute it, what was said at the trial, but I know that there was some dispute about what their testimony was.

Q But you do acknowledge that Mr. Bloom did cross-examine and, in fact, tried to impeach those witnesses?

A Did he try to impeach them, did he cross-examine them? Yes.
Q Now, you stated that you were told that you had to testify in this case. Is that correct?

A Correct.
Q But you do remember the Judge admonishing you about your rights.
A Correct.
Q Do you recall the Judge saying, and I quote, it's 5A 41: I tell individuals that it's their decision as to whether or not to testify or not. It is absolutely is your decision but I command that attorneys advise you of them 'cause there's a lot more to this than meets the eye. Do you recall that?

A Do I recall those exact words? No. Do I recall being admonished?

Q Do you recall -- so you do recall the Judge said that this decision was ultimately up to you.

A I don't recall the exact words that were used. I know it was something that was covered during, you know, during the trial. I'm just trying to be honest.

Q And during the deposition of Mr. Bloom, do you recall Mr. Bloom specifically stating that you were adamant about testifying?

A Do I recall him saying that? Yes.
Q Do you recall him saying that he spent 30 to 40 hours prepping you for that testimony?

A I recall him saying that; yes.
Q Did you -- you testified that Mr. Bloom talked to you about diminished capacity. Is that correct?

A Yes.
Q And, ultimately, Mr. Bloom decided not to go with diminished capacity. Is that correct?

A It appears that's correct. That's what -- he did not pursue it at trial.
Q Are you aware of the state of law of diminished capacity in Nevada?
A When?
Q Two thousand -- during your trial.
A No.
MR. SCHWARTZER: Court's indulgence.
THE COURT: Uh-huh.
BY MR. SCHWARTZER:
Q Isn't it true that the -- Mr. Bloom put on 19 witnesses to support your

A If that's what he -- I mean, I don't know the number. As I sit here, I don't know the number. That's my answer to that.

Q It was a significant number though; correct?
A I wouldn't say it was a significant number.
Q Okay. He put on five experts. Is that correct?
A No.
Q He didn't put on Dr. Scott Frasier?
A Well, when you say put on, he had three people testify as experts and two people testify as general factors, people that weren't experts that didn't testify to anything in specifics.

Q So they didn't testify about their expertise in that general subject?
A That was the pretrial ruling. They -- that's what they agreed upon, him and Clark Peterson, that the two psychiatric experts were not going to testify that they examined me, that they talk to me, anything about me. They were just going to come in and testify in general in whatever their areas were. So they didn't offer any opinions with regards to me, where the other three experts were actually giving their opinions relative to the case. And I think the record will show that when --

Q But they rendered their opinion --
A They rendered --
Q -- about the general -- they generally rendered their opinion about their expertise. Is that correct?

A They testified to what they testified to within the parameters that the Court set and what the attorney -- the District Attorney and Mr. Bloom agreed to prior to the trial.

Q You actually did go under -- undergo a psychological evaluation. Is that correct? Yes or no, please.

A I don't know. How about that?
Q You were -- do you recall that Mr. Bloom said that Glenn Lipson actually evaluated you?

A Yeah; and I recall him testify to that not know what that meant because I don't know what -- I mean, this isn't my -- an evaluation, I mean, did I meet with the guy? Yes. Did I talk to him? Yes. Did I do certain things? Yes. Was that the evaluation? I don't know. It wasn't shared with me. The first time I heard about any of that testimony was during Mr. Bloom's deposition when he said that -- you know, the evaluation was done. I was -- I didn't know.

Q You admit he's a psychologist though, Mr. Lipson.
A You know, I don't -- I know one of them -- you know, I'm not sure what psychologist, psychiatrist. I'm not sure and that's the truth.

Q A mental health official.
A I don't know.
Q Are you comfortable with that?
A I mean, I don't recall what his qualifications were, what degrees he held, what his expertise was.

Q Okay. Fair enough.
THE COURT: Why'd you think you were meeting with him?
THE WITNESS: Why did I think I was meeting with Lipson?
THE COURT: Yes.
THE WITNESS: Was -- I was originally told that he was just going to have some discussions with me preliminarily and they didn't want to do much with it
because of the discovery things and like that. So I was just told you're going to meet with this guy, he's going to talk to you, he's going to talk to me and then I'm going to get back to you about what we're going to do further. So I mean, I --

THE COURT: And who told you that?
THE WITNESS: This would be -- this'd be Mr. Bloom.
THE COURT: And what did Bloom tell you about who Lipson was?
THE WITNESS: He just said it was an expert that he -- an expert witness that he had used in certain cases and he wasn't sure whether or not he was going to use him in our case or not. He just wanted to do some preliminary, you know -- I don't know how else to explain it.

THE COURT: Did he say what kind of expert he might be?
THE WITNESS: You know, he said he was an expert in -- after all these years, it was whatever it was. You know, he just said I'm going to have you meet with Glenn, I know Glenn from --

THE COURT: My question is, what area?
THE WITNESS: I -- it was either -- I don't know if it was -- it was either psychology, psychiatry factors. I mean, I don't remember.

THE COURT: Okay.
THE WITNESS: I just don't remember.
THE COURT: Okay.
THE WITNESS: I mean that's why I'm struggling with the answer, Your Honor.

THE COURT: That's fine. I appreciate that.
Go ahead, Mr. Schwartzer.
BY MR. SCHWARTZER:

Q So you just -- before we were talking about doctor -- or Mr. Lipson. You said that Bloom did not want to do a psychological -- or present a psychological evaluation at trial because that the State would be able to?

A No. In fact, it was --
Q It was just a yes or no.
A No. It's no.
Q Okay. You talked about -- I'm going to mispronounce the name, Emily [sic] Eiserman [sic]?

A Correct.
Q And that was Gina's mother.
A Correct.
Q And Gina is the woman that was killed in this case. Is that correct?
A Yes.
Q In fact, there's evidence that Ms. Eiserman [sic] wanted you in jail. Is that correct?

MR. COLUCCI: Are we talking about Emeline?

## BY MR. SCHWARTZER:

Q Emeline; yeah.
A If you're referring to the Petrocelli hearing testimony, yes, that's the testimony that was received by the Court.

Q So she was not favorable. She did not have a favorable opinion of you then.

A Well, we don't know because best I could tell, other than that reference in the Petrocelli hearing, there wasn't any other materials provided. We never got a statement from the DA's office. There was no discovery on her. There was no
witness statements. There was no anything.
Q So there's no -- but there's --
A No. So other than that one veiled reference in the Petrocelli hearing, there was no other discovery ever turned over, we never had a witness statement from her, we never had any discovery. There was nothing.

Q Okay.
A I mean, you're asking --
Q So you honestly think that the mother of the victim in this case, would have presented you with positive testimony. Is that what you're saying right now?

A Positive? I don't know if it would have been positive. Would it have been helpful? Based upon the pretrial motions that Mr. Bloom filed and he said that he was going to be able --

MR. SCHWARTZER: Nonresponsive, Your Honor. It was a yes or no question.

MR. COLUCCI: I think he's trying to answer.
THE COURT: If it's regarding it being helpful, potentially helpful, then it's responsive. Go on.

THE WITNESS: I mean, my understanding from the pretrial motions and the hearings and the discussions that were had on the record, it was my understand that the specific acts of violence that the District Attorney argued in closing that we weren't able to present, were suppose to have come in through Emeline Eisenman. And that was in the motions that we filed. That was on the record during the hearings and, ultimately, at closing that was one of the big things that the District Attorneys' Office pointed out; well, no one came in here and talked about violence in 1999 and 2000. And it was my understanding that that was one of the witnesses
that we were going to call to do that. So do I think that would have been helpful, or positive, or --

THE COURT: So you thought she could come and testify about some prior violence on the part of the victim?

THE WITNESS: Well, it wasn't that I thought that she was going to do that, we actually -- Mr. Bloom subpoenaed the records from the California courts and I guess there was something in there that she was actually present at those hearings, at those dates and stuff like that. So it wasn't just a matter of we think this is what's going to happen, she was there. And when her younger daughter came in and testified, she said further that Ms. --

THE COURT: I didn't ask about that.
THE WITNESS: Yeah, but I mean, you're saying as far as it being helpful and what she would have said, there was so much discussion on the record, in the openings, during the trial, in the pretrial about her specifically and what she was going to --

MR. SCHWARTZER: Your Honor, I think the record speaks for itself. I mean, I didn't -- there's no question posed. If Mr. Colucci wants to redirect, that's fine.

THE COURT: Okay. Go on. BY MR. SCHWARTZER:

Q You were talking about specific acts of violence; correct?
A Correct.
Q That Gina engaged in.
A Correct.
Q These acts of violence occurred when she was a juvenile. Is that correct?

A Some of them, yes.
Q Some of them.
A Correct. There were evidence of others that wasn't presented at trial.
Q Okay. But they were evidence provided at trial about Gina's history of violence when she was a juvenile. Is that correct?

A As a juvenile, yes.
Q And that came in though several witnesses that you presented -- that Mr. Bloom presented on your behalf. Is that correct?

A Yeah. That was part of the, I believe, the 19 witnesses that you -- in fact, I think the majority of the witnesses were for that specifically.

Q He also got some of that -- Mr. Bloom also got some testimony about Gina's violent past -- violent juvenile past from Lisa Eisenman. Is that correct?

A Her sister, yes. Who I think was five years old at the time, or six, or seven. I don't know what it was.

Q And the Court wasn't going to allow you to get into her drug past, if there was even a drug past. Is that correct?

A You know, l'd rely on whatever Judge Mosley's ruling was. I know there was a -- there was a motion on this, Mr. Schwartzer, and I'm not quite sure how that played out.

Q Okay.
A I just -- I know there was a motion specifically on it. I believe Mr. Peterson withdrew his objection and his exact statement was: I'd love to see how you guys are going to come in here and do this. And so, when we -- the motion was filed about the -- about what you just asked about and I believe the State withdrew their objection to it.

Q So you're saying right now, that the ruling in the case was that you were going to be able to -- that the Judge was going to allow evidence of drugs at trial.

A No; I just recall there being a motion and Mr. Peterson withdrawing his objection to it.

Q Okay.
A Because he was, like, bring it on. You know, if you guys -- if that's what you want to do, then I'm going to withdraw the objection. And if it involved the drugs, then it did. But if it didn't, then I'm -- my recollection is wrong.

Q Okay. But there was a court order not to bring in drug evidence. Is that correct?

A Well, they talked about the --
THE COURT: Yes or no.
THE WITNESS: I don't -- they talked about it at trial. So I mean, I don't know if there was a court order because it was -- there was discussions of it at trial. So I don't -- if you -- if there's a court order, there's a court order. BY MR. SCHWARTZER:

Q Okay.
A There were a lot of court orders that were not followed.
THE COURT: I think you've answered. Thanks.
BY MR. SCHWARTZER:
Q And you also talked about Keito's [phonetic] testimony. Is that correct?
A Correct.
Q And Keito [phonetic] is Gina's son from a previous relationship. Is that correct?

A Yes.

Q And he testified during the competency hearing that his grandmother, who is Emeline Eiserman [sic], told him to lie about the gun. Is that correct? Or something -- words of that such.

A More or less.
Q Okay. Is it true that Keito [phonetic] was cross-examined by Mr.
Bloom?
A Yes.
Q Is it true that Mr. Bloom actually brought up these statements that Keito [phonetic] made during the competency statement?

A Brought them up at trial?
Q Yes.
A Did he bring that up at trial? I believe he did.
Q So, in fact, Mr. Bloom cross-examined Keito [phonetic] about being coached, for a lack of a better word, by his grandmother.

A But only about the one issue. There were others.
MR. SCHWARTZER: That's all I have, Your Honor.
THE COURT: Thanks.
Redirect?
MR. COLUCCI: Nothing. I don't have any redirect, Your Honor.
THE COURT: Okay. Any other witnesses?
MR. COLUCCI: No other witnesses, Your Honor.
THE COURT: Anything for the State?
MR. SCHWARTZER: We'd only reserve the right to call Bloom as a rebuttal witness.

THE COURT: Are you saying you want to call him?

MR. SCHWARTZER: Could I have a second to talk it over -THE COURT: Yes; go ahead. Sure.

MR. COLUCCI: I thought that was a yes or no question.
THE COURT: It was.
[Colloquy between State counsel]
MR. SCHWARTZER: We'll rest, Your Honor.
THE COURT: Okay. All right. So understanding that I'm going to need to read the deposition as well as pertinent portions of the record that have been referred to, go ahead -- well, you know what? Let me -- I just have a couple quick questions before I --

MR. COLUCCI: Sure.
THE COURT: -- hear your argument.
MR. COLUCCI: And I want to make a suggestion too when you're done.
THE COURT: Okay. So this is -- and maybe just for my edification at this point, there was mention that there was a writ taken up that caused a multiple-year delay before the trial. What was that all about? Just in general terms; I don't want to reargue the whole writ.

MR. COLUCCI: No, no, no. Just, no. The State wanted to have a psych eval done on Mr. Centofanti.

THE COURT: Okay.
MR. SCHWARTZER: That's correct, Your Honor, but I would also note and I don't think Mr. Colucci will argue with me on this, is that there were also several continuances asked from both sides besides the writ.

MR. COLUCCI: That's correct also.
THE COURT: Right. And so --

MR. COLUCCI: But the Supreme Court took a long time.
THE COURT: The State wanted to do a psych eval and the District Judge denied it?

MR. SCHWARTZER: That's correct, Your Honor.
THE COURT: And the State took it up on a writ.
MR. COLUCCI: And the Supreme Court denied it.
THE COURT: The Supreme Court denied the -- ultimately, denied the writ. So they didn't get to do a psych eval.

MR. COLUCCI: Right.
MR. SCHWARTZER: That's correct, Your Honor.
THE COURT: A direct appeal was taken; correct?
MR. COLUCCI: Right.
THE COURT: Who represented him on the direct appeal?
MR. COLUCCI: I did.
THE COURT: Was this canvass issue raised on the direct appeal?
MR. COLUCCI: I do not believe so.
MR. SCHWARTZER: It was not, Your Honor. I have the order -- I have the order of affirmance with us.

THE COURT: Okay. All right. Those were my questions. Go ahead.
MR. COLUCCI: Do you want us to close now?
THE COURT: Yes.
MR. SCHWARTZER: Your Honor, could we approach? I'm -- know, we --
MS. NYIKOS: You don't need to approach. Just stand there.
THE COURT: Just argue. Tell me what you need to tell me.
MR. SCHWARTZER: I believe the State would actually want a waiver of any
conflict between having the person who does a post-conviction writ and the direct appeal, because according to the law of the case and Nevada statutes, you can't bring up cases -- I mean, you can't -- if -- you have to bring up a subject in the first chance you get. This is, obviously, Mr. Centofanti's first chance at saying postconviction counsel and during the direct appeal was ineffective.

THE COURT: Right. So since you're involved in these proceedings, it -- and, maybe not just because of that, but it appears that the petition doesn't raise an assertion that appellate counsel was ineffective and so --

MR. SCHWARTZER: If you want to do it outside the State's presence.
THE COURT: Well, no, I mean, given the time that's now passed, you may now be time-barred from raising --

MR. COLUCCI: We have discussed those issues. We've also discussed before and after the appeal the potential conflict. We have discussed that.

THE COURT: All right. And -- okay. Mr. --
MR. COLUCCI: But we have raised that issue in terms of the ineffective assistance of trial counsel.

THE COURT: Correct.
MR. COLUCCI: Okay.
THE COURT: Right. But, like, for example, I mean, the grounds -- you know, the one through five, I denied because they were issues that either were raised or could have been raised --

MR. COLUCCI: Right.
THE COURT: -- on the direct appeal.
MR. COLUCCI: Right.
THE COURT: Mr. Centofanti, you're aware that your counsel, given that he
was the appellate counsel and, apparently, you've discussed the fact with him that issues regarding possible ineffectiveness of appellate counsel have not been raised in this petition. You understand that?

THE DEFENDANT: Wow, I hate to say, here we go again with a canvass from the bench, but I mean, the disqualification, Your Honor, my understanding was we couldn't have raised it on the direct because of the state of the case law. I mean, we got a ruling -- a favorable ruling after the direct appeal but before it was finalized, so we couldn't raise that on direct appeal on the disqualification.

THE COURT: Right. Okay. Sorry. I'm not -- the disqualification -- well, I guess.

THE DEFENDANT: Well, you asked me what I discussed and that was one of the things that we discussed is that we didn't raise it on direct because the U.S. Supreme Court hadn't yet come out and talked about --

THE COURT: Okay. Stop.
THE DEFENDANT: Okay.
THE COURT: Did you discuss with Mr. Colucci potential conflicts of interest that he might have as having been your counsel on your direct appeal?

THE DEFENDANT: Yes.
THE COURT: And you -- did you agree to waive those conflicts after having that discussion?

THE DEFENDANT: Yes.
THE COURT: Okay. All right.
All right. So --
MR. COLUCCI: Here's my suggestion. My suggestion is, is that we give you time to read the documents. I'll provide you with the entire record. And I would like
to come back and close after you've had a chance to do that. That way, references to the record are not lost down the road.

THE COURT: Uh-hum.
MR. SCHWARTZER: There's some point of laws that we would want you to consider though. Well, I guess, if we were -- if you're going to have us back for argument, it could be raised then.

THE COURT: Okay. I'm trying to look at when I could put you on again for that argument.

MR. COLUCCI: Are we going to need a copy of the transcript from these proceedings for any reason?

THE COURT: I mean, you might want to have them to be able to argue.
MR. SCHWARTZER: I'm kind of confused as to why we can't make the argument now?

MR. COLUCCI: We could make the argument.
THE COURT: Okay. So here's the thing. In terms of when to put you on calendar, I mean, I would think it'll take a while to hear your arguments on this. It's more than just putting you on a regular morning calendar and I really have an ugly calendar for a while here. So I probably couldn't put you on until like in September.

MR. COLUCCI: It's going to take a while for the transcript to be prepared anyway.

THE COURT: And to get me the record and for me to realistically -- I mean, read the deposition won't take long but to the extent that I need to take a look at, you know, the arguments and cross-examinations and things during the trial, that's going to --

MR. COLUCCI: How do you want to handle the references to the record? I
mean, it's not going to be feasible for you to read the whole record. I know we make reference -- we've all gone back and forth and back and forth. Do you want a -once we get a copy of the transcript, do you want, like, citations to certain things in the transcript. For example, where Mr. Bloom says X, Y, Z see, you know, Volume 5 , page 22 , or something along those line.

THE COURT: Yeah; I mean, I made some notes from today. Some were specific citations and some were, you know, okay, opening statement or, you know, some of the things that it appears that I need to look at once I have that information.

MR. COLUCCI: I think the original record's at least eight volumes.
MR. SCHWARTZER: Yeah; it's eight volumes.
MR. COLUCCI: Right? So, it's large.
THE COURT: Well, I mean, I probably need to get a copy of the record. You know, I can't say that I will look at every page of the eight volumes but I will look at the parts that seem pertinent based on what's been presented to me.

In terms of coming back for argument -- there's just no time 'cause l'm in, like, I got trials for the next five weeks in my civil stack as well as other things already set on Fridays.

MR. COLUCCI: I'm going to think we're going to need 60 to 90 days anyway to get the transcripts and everything.

THE COURT: All right. So, l'm going to -- sounds like a really long time away, but I'm going to look at, like, Friday, September $24^{\text {th }}$.

MR. COLUCCI: Can we order the transcript of today's proceedings be done right away? I mean, can we make the order now to be prepared?

THE COURT: Sure.
MR. COLUCCI: Because this is on a court-appointment.

THE COURT: Of course.
MR. COLUCCI: In any event.
THE COURT: So let's do it September $24^{\text {th }}$ at 9:00 for argument and that means between now and then, l'll need to look at -- have and look at the record.

MR. COLUCCI: I'll provide the record to you within -- I won't be in town next week but the following week. l'll have them working on it while l'm gone so it'll be ready for you.

THE COURT: Okay.
MR. SCHWARTZER: Is it going to be the same as the appellate record?
MR. COLUCCI: Yeah.
MR. SCHWARTZER: I'm more than okay with that.
MR. COLUCCI: And if you have it already or if it's in the court file --
THE COURT: It would be in the Supreme Court record --
MR. COLUCCI: Yeah, maybe.
THE COURT: -- but not in ours.
MR. COLUCCI: Okay.
THE COURT: I don't think so anyway. I mean, there's some -- I mean, I think this -- I think the whole court file is what l've got here and it doesn't look to me --

MR. COLUCCI: The file on my desk --
THE COURT: -- to have those files in it.
MR. COLUCCI: -- is bigger than that.
MS. NYIKOS: No; I don't think you have the transcript.
THE COURT: Yeah. 'Cause I had them bring this up in case there was going to be anything I needed from it.

So I don't think that that stuff is in this record yet. Okay. So I will hear
argument from you on September $24^{\text {th }}$ unless that needs to be changed for any reason between now and then.
[Colloquy between Court and Court Clerk]
THE COURT: Nine o'clock. And so if you get me the record, and say, I mean, no later than two weeks from now.

MR. COLUCCI: That'd be good.
THE COURT: Shouldn't be a problem for you.
MR. COLUCCI: That'll be no problem.
THE COURT: We'll have to make the time to -- stick with that.
MR. COLUCCI: Do you -- maybe we can agree to a citation, a mutual citation
list --
THE COURT: That would be fine.
MR. COLUCCI: -- in the record.
THE COURT: Yeah, if you -- you know, of the things kind of referenced or the points that --

MR. COLUCCI: Right.
THE COURT: -- based on the arguments made that I need to look at, that would be helpful.

MR. COLUCCI: Okay.

THE COURT: You know, in addition to the notes I made here.
Okay.
MR. COLUCCI: Thank you very much.
THE COURT: Thank you.
[Proceeding concluded at 3:03 p.m.]

ATTEST: I hereby certify that I have truly and correctly transcribed the audio/visual recording in the above-entitled case.


Appellant's Appendix, V8lume 13, Page 168


FILED? Oct 19 10 os an 10

THE STATE OF NEVADA, Plaintiff,
vs.
ALFRED PAUL CENTOFANTI III, Defendant.

CASE\#: C172534
DEPT. VI


BEFORE THE HONORABLE ELISSA F. CADISH, DISTRICT COURT JUDGE FRIDAY, SEPTEMBER 24, 2010

TRANSCRIPT OF PROCEEDINGS EVIDENTIARY HEARING AND PETITION FOR WRIT OF HABEAS CORPUS

APPEARANCES:

For the State:
NOREEN C. NYIKOS, ESQ. Chief Deputy District Attorney MICHAEL SCHWARTZER, ESQ. Deputy District Attorney

For the Defendant:
CARMINE J. COLUCCI, ESQ.

RECORDED BY: JESSICA KIRKPATRICK, COURT RECORDER
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Friday, September 24, 2010 at 9:06 a.m.

THE COURT: All right. So, sort of recapping, we had our evidentiary hearing. I received the record as well as the deposition that was taken of Mr. Bloom. I have made good progress on reading it, but I'd be lying if I said I finished everything I wanted to look at. But, I certainly am more familiar with the facts than I was at the time of the hearing. And I'm going -- I'm just telling you now I'm going to need to take it under advisement after today's arguments to finish up looking at some of it. But, I think I understand the issues that are being raised though. And l'll spend some more time going through some of that.

First, I just want to ask a quick question before you kind of go. A lot of the evidence or at least it seemed like one of the major issues that was being focused on was this prior to the trial when Mr. Centofanti acknowledged that they were using a self defense theory and admitted that he was the shooter, I found minutes of that. But, in spite of my diligent search I'm unable to find any transcript of that proceeding. Is there one?

MR. COLLUCCI: I have one. I'd be happy to share it with you. It's littered with my notes, but I do think I have a clean one back at the office.

THE COURT: Because, I couldn't even find it like -- not only not in the record here, but I couldn't find it online. So, maybe I was just looking in the wrong place, or it's hard to go back that far. So, you know, if you --

MR. COLLUCCI: My information is March $12^{\text {th }}$ of 2004 --
THE COURT: Right.

MR. COLLUCCI: -- is the day of the canvassing. I do have a transcript of that. I don't know if it was made part of the record. It should have been, but I don't --

THE COURT: I mean, even if it's in Blackstone I could print it and not have to take your notes away from you. I just had trouble finding it. So, maybe I will try that again before I make you give that. But, I'll look again, because, you know, that was a big part of it. And I found the hearing and I found the minutes and then I couldn't find a transcript of what actually occurred. So, I'll look again.

MR. SCHWARTZER: Your Honor, the State has a clean copy without notes.

THE COURT: Oh, you do?
MR. SCHWARTZER: That -- it's up in my office, but I can provide it the Court.

THE COURT: If you can -- just, you know, after the hearing if you can just send a copy down that would be great.

MR. SCHWARTZER: Absolutely, Your Honor.
THE COURT: Okay, thanks.
MR. COLLUCCI: And I know you're ready to go, but I -- you know, if you needed additional time to read I wouldn't mind; that's up to you.

THE COURT: Well, no -- I mean, I'll -- I want to listen to the arguments that you have. You may be already aware I do have another matter on at 10, but --

MR. COLLUCCI: Right.

THE COURT: -- you know, if each of you gets a good, you know, a half hour, just like at the Court of Appeals, I think that ought kind of be enough to tell me your position.

MR. COLLUCCI: Except Judge Maupin when I went up to the Supreme Court, would always talk about something else. And then at the end he'd say: Well, l'll give you two minutes in rebuttal after the State presents their case.

THE COURT: Well, I'll let you present what you want. I'll let you know if I have questions. But, I'll let you go.

MR. COLLUCCI: Okay. I appreciate that. If you're ready?
THE COURT: I am; go ahead.
MR. COLLUCCI: Your Honor, this is our closing argument on the issue -issues present before the Court on the petition for habeas corpus. I know the Court's been provided with the entire record. And I just want to make sure the -- the Court has the petitioner's reply to the respondent's answer to the writ of habeas corpus?

THE COURT: I do.
MR. COLLUCCI: Okay, great, because there's a lot of material in there that I've summarized some of the same issues.

THE COURT: Okay.
MR. COLLUCCI: We understand this case is going to be considered by the Court under the Strickland standard. I want to talk about Mr. Bloom just very briefly. Mr. Bloom is -- was at the time of this trial a very experienced trial lawyer.

THE COURT: Right.

MR. COLLUCCI: Mr. Schwarter brought that he had over 100 murder trials, so that isn't an issue. In addition, Mr. Bloom in his deposition acknowledged that he had received all of the discovery from the District Attorney's Office. He had gotten all of -- he had also investigated the case to his standards quite thoroughly and had a lot of material at his disposal. In addition he did not lack funding for an investigator, because he was given private funds. And then ultimately the County --

THE COURT: Right.
MR. COLLUCCI: -- paid for the investigator.
In his deposition, and I don't think there's any dispute about this, because Mr. Albregts also mentioned it. Mr. Bloom was the architect of the defense in this case. He ran the show. So, --

THE COURT: 1 -- that is seems to be everybody's view.
MR. COLLUCCI: Okay. So, with all of that in mind Mr. Centofanti's issue is with the effective assistance of counsel under the Sixth and Fourteenth Amendment of the Constitution of the United States. As a Defendant in a criminal case he has the right to expect and have prepared a case by an attorney who conducted an adequate investigation and who made sound strategic decisions based upon adequate investigation and preparation. And that is measured against the Strickland standard, because Strickland talks about adequate investigation and preparation. And Mr. Centofanti, in this case we feel, had neither of those.

I've got so many notes here from so many transcripts. It was mentioned at the prior proceeding that Mr. Bloom presented 19 witnesses on Mr. Centofanti's behalf. And as this Court knows from your experience as a
trial lawyer and as a trial judge, the number of witnesses really is not that important. It's the quality of the witnesses and the credibility of the witnesses that's most important. The first issue that I would like to address is the issue of the selection of self defense.

Now, while Mr. Centofanti may have had some input into why self defense was chosen, self defense is a legal defense. And Mr. Centofanti had the right to confer and rely upon the advice of Mr. Bloom. And Mr. Bloom took a position with respect to certain things in this case where he didn't directly advise or tell, shall we say, the Defendant which -- whether to select self defense as a defense or whether to testify in the case. He kind of left a lot of that up to the Defendant. Or as he said, with all of his defendants he kind of takes that attitude: I'm going to give you --

THE COURT: As to testifying.
MR. COLLUCCI: As to testifying, but also as to self defense. Because he said from the beginning Mr. Centofanti wanted to testify and so, you know, this is kind of what we decided we were going to do.

So, I'm pointing out to the Court that I think there are two deficiencies in this self defense position. Number one, the choice of the defense is absolutely ludicrous in light of the forensic evidence and the witness statements in this case. This is not a self defense case. The Statute is clear. The jury instructions are clear. The caselaw is clear. Self defense requires certain things that just would not -- that were -- they were not present in this case. And I don't need to go through those. The Court is intimately aware of what they are.

The second thing is even after making a choice to go forward with self defense -- and I'm going to point out to you that in his deposition Mr. Bloom is very clear that he felt self defense was a good and viable defense. He said that on more than one occasion during the deposition. And I think Mr. Centofanti has the right to rely on that analysis by Mr. Bloom.

So, with that in mind even choosing the poorest defense possible in this case, Mr. Bloom was still unprepared to even present a -- any kind of support for that theory. It -- my notes and my representation to the Court is I think he made an incompetent presentation of that theory of defense. And I'll tell you the reasons why as we go through this based upon that and at the point where there are two canvasses -- attempted canvasses of Mr. Centofanti regarding him being the shooter in this case. The first canvass was in front of Judge Gibbons back in 2001. And that was denied -- the request was denied by Judge Gibbons --

THE COURT: Without prejudice, right.
MR. COLLUCCI: -- without prejudice, okay.
The second canvassing occurred on March $12^{\text {th }}$ of 2004 at page 64, which is a four-page page at pages 61 and 62. And that's the language that is involved in the canvass in this case, and it's pretty clear. The canvass in that case is pretty clear. And after some discussion with Mr. Bloom, the Judge -Judge Mosley asked Mr. -- he doesn't go through the regular guilty plea canvass talking about the elements of what needs to be proven. So, there's no -- there's no basic advice on the record that this is -- these are elements of the crime he's pleading to.

So, in addition to that -- and I would just send the Court to the State versus Freeze. And there's a multitude of cases regarding how pleas should be given and taken. He just says: Is that what you want to do, Mr. Centofanti? And the Judge -- and Mr. Centofanti says: On the advice of counsel.

Now, Mr. Bloom doesn't say: No, it's not on my advice. He basically tacitly agrees that it's on the advice of counsel and -- so at that point without Mr. Centofanti articulating any facts about that he remembers the shooting, how the shooting went down, none of that was in the record. And so, we just have on the advice of counsel he's going to acknowledge he's the shooter in this case.

And I think that it was deficient as a canvass. And it was deficient by doing it on the advice of counsel without Mr. Bloom speaking up saying we need more of this. The DA didn't even speak up and say we need more of this. And of course the Court didn't feel that he needed to hear more to accept that. So, that's where we are right now.

THE COURT: I mean, I understand -- I mean, it's certainly unusual to have had that conversation in advance of trial. But, having said that, what possible evidence or theory or argument could be made that he wasn't the shooter?

MR. COLLUCCI: Well, the thing is what it does. It does a couple things. It diminishes the State's burden of proof. And every defendant is entitled to have the State meet their burden of proof. That's a due process argument, a fair trial and due process where the State meets their burden. So, it diminished their burden of proof on that particular issue. And as the trial develops, I mean,
we now know what would have happened, but we wouldn't have known before the trial happened.

And I think the Hernandez case -- I think Judge Sally Loehrer goes through some things and says: You know, it's not a good idea to do this ahead of time because, you know, things can change during the trial. Theories can change during the trial. And basically by admitting he's the shooter really they're locked into a self defense, defense. And that's what Mr. Luekins was talking about.

The other thing is why did Mr. Bloom have Mr. Centofanti do that? I mean, we -- there was no concession from the State. There was no benefit to Mr. Centofanti. The only thing that I can think that's running through Mr. Bloom's mind -- and this is speculation and I'm trying to do the circumstantial decision making on this. But, I'm assuming that he thinks that in order for Mr . Centofanti to be able to present a self defense case with all of the nuisances of, you know, state of mind of the victim, state of mind of the Defendant, that Mr. Centofanti had to admit that he was the shooter and advise the Court about self defense.

And of course under the Petty case he doesn't have to do that to present a self defense case. There was no benefit to Mr. Centofanti to do that that I can glean from the record. And so I think that was it was ineffective to do that.

There was no objection by Mr. Bloom when the request was made for the canvassing so --

MR. SCHWARTZER: I'm going to object to that. That misstates the record.

MR. COLLUCCI: Well, there's no objection to the second canvassing.
There may have been a --
MR. SCHWARTZER: I'm going to object to that too. It's in the record.
MR. COLLUCCI: Hold on. There may have been a statement before the canvassing occurred, but after that I think Mr. Bloom -- and the record will be what it is -- he says, you know: I have no objection to going -- to proceeding this way. And he in fact -- well Mr. Centofanti did it on the advice of counsel. So, if there was an objection it was overridden by an acquiescence I would think. So, we have this defense, this self defense now.

And one of the other things in the case that I find interesting and I find all of these little clues that Mr. Bloom might have been the only person in the case to think self defense was a good defense. We see Mr. Peterson withdrawing a motion in limine and making the remark -- and I think this also in that March $12^{\text {th }}$ transcript -- that: I just can't wait to see, you know, how you're going to prove self defense in this case. And he goes on to articulate certain facts. So, we have that pretrial remark by Mr. Peterson and that definitely is in the record.

Also we have, as the trial starts, we have jurors who are, when they're given a little overview of the case, jurors who -- prospective jurors who say: We can't go for that because seven shots self defense doesn't, you know, we can't do it. And those people were excluded from the juror, but they did express their opinion. And I you know, -- okay, so that is what it is. That's a clue to Mr. -- to me that was a clue -- if I'm talking to a jury about a theory of defense or having a jury consider a theory of defense and they tell me that they can't believe it before I even present it, that's a pretty good indication.

One of the other things is at sentencing Judge Mosley also says that he can't believe the -- that was the defense in this case. He found it incredible. And I can't find that [indiscernible] now. Anyway it's in the transcript. Judge Mosley also remarks that he finds the defense incredible. I think that was -- that's a -- that's found in a transcript on March $4^{\text {th }}, 2005$. And that transcript was filed on May $2^{\text {nd }}$ of 2005.

So, we have those issues on the selection of the defense. Not only was the defense not a viable defense, so not a viable defense in my mind means it was no defense at all. And he had clues that that was going to play out.

Now, we have the issue of Stephen Franks. Stephen Franks as the Court knows was a Las Vegas Metropolitan Police Department Lieutenant. Bloom in his opening statement said that Lieutenant Franks was going to come in. But, prior to that in 2001, this trial was in 2004, in 2001 he told Judge Gibbons in response to the State's request for a list of experts that Franks was going to testify. And then on the same day he also told the Judge that he was going to have a meeting at lunch time with Franks. And that Franks -- he was going to talk to him about testifying. And then he came back I believe after lunch and told the Judge that Franks basically was still on board.

Okay, that is what it is. You heard from Franks. You know that he claims he never met Mr. Bloom, never talked to Mr. Bloom, never received any material from Mr. Bloom. Yet Mr. Bloom promised the jury that Lieutenant Franks would testify and testify about certain things that were pretty important, reactions to shootings when police officers react to shooting. And I
guess the analogy would be that's how civilians to some degree act during the shootings. And of course Franks never testified even though he was promised.

Lisa Demayo is another witness that was promised. Lisa Demayo is a blood spatter expert. She -- Bloom ultimately said that she didn't testify because it would have been redundant to Stuart James' testimony. And there were several other witnesses that Mr. Bloom promised that didn't testify.

And that just tells me and I hope it tells the Court that Mr. Bloom was not prepared to proceed. I mean, obviously he had not pre-trialed Mr. Franks -- Lieutenant Franks. And he obviously hadn't pre-trialed Lisa Demayo or he would have known that he didn't need either of them. He didn't need to promise in his opening statement that he would deliver those witnesses.

And I don't know what the Court wants to make about the conflict between Mr. Bloom's testimony and Mr. Franks' testimony, but that's for you to decide.

THE COURT: Mr. Bloom pretty much acknowledged that his investigator was the primary one that would have had communication with Lieutenant Franks.

MR. COLLUCCI: Yes, and I also asked him during the deposition, I said: Would you put a witness on that you hadn't talked to? No. Would you let your investigator make a decision about who you were going to call as a witness? No.

THE COURT: Right.
MR. COLLUCCI: And I think he ultimately -- I mean, if you carefully read it -- I think ultimately admitted that he had at least one conversation with Franks. I mean, that's what -- he did dance around the issue, yes, he did. I
mean, in my opinion he wouldn't say yes and he wouldn't say no. And I asked if he had any notes about it. And he didn't have any notes about a conversation with a witness that I would think would be extremely important to add credibility to your case if Lieutenant Franks was in fact going to be called.

But, here's the kicker, Judge, had he pre-trialed Lieutenant Franks, you heard what Lieutenant Franks would have said on the witness stand. He would not have helped the defense case. So, that to me tells me one of two things. Either he didn't pretrial. He didn't talk to the Lieutenant Franks ever or he was just unprepared and didn't know what Lieutenant Franks was going to say. And had he put Lieutenant Franks on the stand it would not have been a good thing. So, even though it's not prejudicial in that respect I think it still shows that he didn't know what his witnesses were going to say.

And now that leads me to Dr. Eisel and Mr. Trehan -- Trahin and Stuart James. And let's start with just Eisel, because I won't go in to all the testimony of each of the expert witnesses. But, I hate to acknowledge that the DA did a good job cross-examining Eisel. But, Eisel got up there and said: I don't know if it's 8 shots or 9 shots. And of course it was 7 shots. So, that was not a good thing. And what does that show?

Also he was befuddled. And I'm not making that word up. That's a word Mr. Bloom used in the deposition. Dr. Eisel was befuddled. And I think that's a -- I have the -- I'll find the reference to that I think. I think it's page 87 of the deposition. But, what does that tell you? That tells you again that on the next day or two when Eisel finally does take the witness stand he doesn't know any -- he is not very familiar with the case. And he couldn't possibly have been pre-trialed by Mr. Bloom unless he forgot there were 7 shots
between, you know, the day before and the day after. That tells me that Mr. Bloom didn't adequately prepare because Dr. Eisel had testified in other cases and apparently he had testified satisfactorily, and now he is befuddied. So, he did not help the defense case. In fact if anything he hurt the defense case.

And then finally at the end Becky Goettsch -- and I hope I'm pronouncing that right -- cross-examined Eisel I think in rebuttal. And I think she got him to basically acknowledge his -- that he had not retreated from his original statement about this is basically not a self defense case. It'd be hard to present this case as him -- as her threatening him.

And that brings me to another point where that information was turned over to the DA as part of discovery. I have no problem with that. But, I do have a problem with using an expert who is already impeached by his own words. So, that just opened the door.

And this case all -- it was a -- the defense case was very delicate. Everything had to go right for this case to go right. Even -- well I don't think it had a chance with the self defense, but let's just assume for a minute self defense was possible, anyone -- if anything went wrong that case was totally out the door.

So, I don't think Dr. Eisel was pre-trialed. I don't think he was prepared. I mean, how does your expert not know how many shots are fired. He's the pathologist was the alternate pathologist in this case. He'd worked with Bloom before. And I think Bloom just depended on the fact that he'd worked with him before. I'm trying to read between the lines. You know, we're -- we talk about speculation, but we also talk about circumstantial evidence. And that's what it is. You saw -- you read Eisel's testimony.

THE COURT: Just -- sorry, I'm just going to interrupt for a second. When -- and obviously l'll have to look at this, the actual verdict form that was given to the jury, what did it have as possibilities?

MR. COLLUCCI: I think it had all of the different possibilities. I think it had first, second, manslaughter and not guilty.

THE COURT: Okay. All right, go on.
MR. COLLUCCI: Okay. Let's talk about -- for a minute let's talk about Dr. Sessions. And this I think is really pretty important, because as this Court may agree with me I think in every trial there's an Ah-ha moment. And I hope the Court Report doesn't get angry at me. But, it's a moment where 12 people who don't know anybody are trying to figure out who's telling the truth. And when you finally can take something and prove that that person is not telling the truth I call that the Ah-ha moment. And in this case I think Dr. Sessions was the Ah-ha witness. And I want to try to find something here.

And again I'm going to direct your attention to this March 12, 2004 transcript. And it's at page 17, at pages 18 and 19. Mr. Bloom, when asked about certain discovery from Dr. Sessions, he says: Three days ago I got from Dr. Sessions, who did the rhinoplasty, the plastic surgeon, I received the handwritten notes. I was going to ask Becky. I -- I'm not sure if they -- he turned them over at that point or not. I have them. They are very cryptic. There's a lot of stuff. She had breast augmentation and other things that were done. Mostly they deal with that. The rhinoplasty has that note. I wasn't going to call Dr. Sessions to come into present it. I will give that to you. It shows the perforated septum. That's what it says.

THE COURT: You said that the record showed the perforated septum?

MR. COLLUCCI: He said the notes that he had in his possession showed the perforated septum. That is on page 17 at 19 , lines 13 and 14 .

Now, that raises two issues in my mind. One, did he turn that over to the State? But, the State certainly heard that representation, because this was a representation made to the Court during a give and take with the Court about certain discovery matters. And Mr. Bloom made that representation.

So, if the State had those notes, the State knew -- if Mr. Bloom is a -- first of all if Mr. Bloom is making an accurate representation, Mr. Centofanti hears it. So, that corroborates -- that would tend to corroborate Mr. Centofanti's hole in the nose testimony. It would also go against the questioning and the tactics of the State where they basically attempted to prove there was no hole in the nose. And then Dr. Sessions who they brought in, I'm sure after talking with him, to say there was no hole in the nose. So, was there a hole in the nose or wasn't there a hole in the nose?

If there was a hole in the nose shouldn't Mr. Bloom have impeached Dr. Sessions on the witness stand with that and used that as part of his closing argument. Because l'll tell you what, Mr. Peterson jammed the hole in the nose; he jammed that hard in closing argument. And he tied that to the credibility instruction and said: You know, you can disregard everything, but we have this Ah-ha moment. He didn't use those words. And he said: Here we have proof from the doctor right out of his mouth, one he didn't say it. And two, there was no hole. Well, here's the representation that -- the notes with the hole.

So, again was there adequate preparation by Mr. Bloom? Did he forget from March $14^{\text {th }}$ to the $7-$ March $12^{\text {th }}$ to the $15^{\text {th }}, 16^{\text {th }}$, or $17^{\text {th }}$ that there
was a record of the hole in the nose. Did he forget? I don't know. Was he not prepared? Did he not review those notes?

THE COURT: Do you not have the records?
MR. COLLUCCI: Pardon me?
THE COURT: Do you not have those records? The records, --
MR. COLLUCCI: The notes --
THE COURT: -- Dr. Session's record --
MR. COLLUCCI: I don't have Dr. Session's notes.
THE COURT: -- that were purportedly exchanged in discovery.
MR. COLLUCCI: There you go. I don't have them. There are things in my -- that have been provided to me by Mr. Bloom. And in his deposition he says I have thousands of pages of things on this case. I got what he gave me. The State -- I'm going to assume the State either has those notes or doesn't have those notes.

THE COURT: And they weren't put into evidence, they were just -MR. COLLUCCI: No.

THE COURT: -- questioned Dr. Sessions.
MR. COLLUCCI: Not that I know of, because every argument the State made included: There wasn't a hole in the nose. The doctor didn't tell Mr. Centofanti there was a hole in the nose. Instruction 29 credibility, Mr. Centofanti has no credibility because he lied about the hole in the nose. That's your ah ha moment as far as I'm concerned about this.

So, I don't know, Mr. Bloom could not have been properly prepared if he didn't do any of those things. And if he did he made a false -- another false representation to the court and basically a false representation to Mr .

Centofanti who relies on these things, gets up on the witness stand, tells the jury: Hey, there's a hole in her nose. The doctor told me that. As her concerned husband the doctor told me that. And the doctor gets up and says: No, I never said that. And if there are notes then there are notes. If there are no notes then Mr. Bloom wasn't prepared and I don't know why he'd make that representation to the Court. But, it was not a good thing.

That brings up why didn't Mr. Bloom ever contact Dr. Sessions? He discloses Dr. Sessions to the State. I think there's somewhere in this transcript that Mr. Peterson and Ms. Goettsch at some point spoke to Dr. Sessions. That's obvious, they called him as a witness. They made the effort to talk to Dr. Sessions, but with the record that shows the hole in the nose for some reason Mr. Bloom doesn't use that. And he elicits testimony from Mr. Centofanti during Mr. Centofanti's direct, leading him right into the hole in the nose and the drug use and the -- that was part of their bolstering the self defense argument, that she used drugs and became aggressive when she used drugs.

That does not make sense to me that a doctor, an expert, someone who could help your case or someone that could really hurt your case you don't bother to contact and interview. I think that was incredibly ineffective, especially since he is -- he really destroys the credibility of Mr. Centofanti in this case. So, I mean, all you have to do again is look at Mr. Peterson's closing argument in this case. And he hammers that point -- he hammers that point very, very, very hard. And Mr. Bloom admits during his deposition that he didn't contact Dr. Sessions for any reason.

He also says that he didn't take the medical records and review them with anyone else. Now, I know when I get medical records if I don't -I'm not a doctor. If I don't understand something in the records or can't read it I get a nurse practitioner or a doctor to look at the notes and to decipher them for me. I don't want to come in here and make a false representation that I somehow understand something that's not in the notes. And then have somebody get up there and say: Mr. Collucci stick to the law, because you don't know much about medicine and you can't read scribbly handwriting. Just look at mine.

So, what does that all do? That sets up Mr. Centofanti for crossexamination that I just dream of. I mean, this just killed Mr. Centofanti. Because, while Mr. Centofanti couldn't remember certain things, the shooting and certain things like that, he did remember his conversation with Dr. Sessions. And the conversation with Dr. Sessions became very, very important. He clearly testified against it. And the only thing that the jury could look at and say, okay I guess he remembers this; maybe he doesn't remember the shooting, gets destroyed. So, that destroyed his case.

And Mr. Luekins talked about that and talked about how that -how that fell below the standard. I think Mr. Centofanti had a right to rely on Mr . Bloom properly using the material that was furnished to him. But, in this case he did not.

And so, is there a prejudice element to this? Oh, God. I mean, where do I start with prejudice? One, it destroys Defendant's credibility. Two, it sets him up -- it basically sets him up to be -- to be untruthful. It undermines the theory of defense, because that's kind of based on certain things Mr.

Centofanti did. And I think that all of these things show that Mr. Bloom was not prepared to proceed to trial.

So, and on top of that he furnishes all the ammunition that the State would ever need on any of his experts to the State. Now, the other two experts aside from Dr. Eisel -- well there were more than two. But, the two I'm going to talk about Trahin and Stuart James. After giving their testimony and after the cross-examination they ultimately came back and said: You know, we can't dispute the State's theory of how this happened. And you probably only need to read a small portion of the last part of their cross-examination where they come back and say: Yeah, we just can't dispute, you know, the State's theory in this case. So, we have one befuddled expert, and we have two experts that aren't quite befuddled but they're not very helpful. And I think that totally undermines the case.

THE COURT: I'm going to need you to wrap it up.
MR. COLLUCCI: I have so much more, Judge.
THE COURT: You've been going over a half hour.
MR. COLLUCCI: I know, and I do apologize. There's -- let me see if I can just --

THE COURT: And I'm sure there are other things you want to get to, but obviously what's most important -- well at least what's on my mind as I think about this and, you know, perhaps there were errors made is, you know, look I mean, it's a pretty strong case. There frankly isn't going to be any dispute about who did the shooting here. And really it's going to come down to, you know, what's the exact crime? Is it going to be deliberate, premeditated, is it not going to be deliberate premeditated?

So, I guess, you know, self defense might have been problems with that theory, but I guess, you know, it's what I hear -- what I read Mr. Bloom saying is it was the best one I saw available. I don't know that it necessarily is a great defense, but it's the best one available. So, kind of -- I guess kind of address, you know, what would have been different in light of the strength of the State's case?

MR. COLLUCCI: Okay. Well, we -- you know, post the event, we have observations of catatonia. We have a multitude of witnesses talking about that.

THE COURT: Right, so --
MR. COLLUCCI: We have two --
THE COURT: So, that testimony was not presented?
MR. COLLUCCI: No, diminished capacity wasn't pursued. Mr. Luekins talked about that.

THE COURT: Right.
MR. COLLUCCI: Battered spouse was not pursued. Mr. Centofanti could have pursued that and also gotten a jury instruction on that. He would have been entitled to a jury instruction on the battered spouse under NRS 46.061 and NRS 200.200 and Boykins v. State, 116 Nevada 171. He would have been entitled to a jury instruction on that.

And one other issue, and I'm gonna -- I'll sit down. And I have other things if you would allow me to put some of these in writing I'd be happy to. Maybe you don't want to read anymore.

THE COURT: I've got a lot to read already.

MR. COLLUCCI: Mr. Albregts was -- and I know that the Court has already ruled on this issue. But, Mr. Albregts was disqualified through a motion by the District Attorney that was --

THE COURT: Right.
MR. COLLUCCI: -- where later they said they weren't really going to use him as witness.

THE COURT: Right.
MR. COLLUCCI: When I asked Mr. Bloom during the deposition what he thought of that, if he thought it was prosecutory misconduct if it was $a$, you know, a game playing type of move, he said yes.

THE COURT: Right.
MR. COLLUCCI: So, there are cases that say you're entitled to have the attorney of your choice. Mr. Albregts was his attorney. The only reason he didn't say on was because he was replaced -- he was disqualified and then replaced. And then, of course Mr. Centofanti didn't have money for two high priced lawyers, only one. And then he had to ask the County for money. So, he was denied the -- his choice of counsel by that. And we have some cases that address that. And l'd be happy to put that in writing for you.

I have some other issues but I will defer.
THE COURT: Okay. Thanks.
Mr. Schwartzer.
MR. SCHWARTZER: Your Honor, l'll just address -- first I want to address the Dr. Sessions thing before I address overall everything.

THE COURT: Uh-huh.

MR. SCHWARTZER: I mean, Dr. Sessions I think this is a giant red herring. Because, I think the key to that was did the doctor actually come out and tell Mr. Centofanti that Gina had -- the victim had a hole in her nose --

THE COURT: Right.
MR. SCHWARTZER: -- caused by drugs? In fact that's what the Defendant testified to that the doctor came out and told this to him. We even went over this in the evidentiary hearing. And the -- Mr. Centofanti still claims he didn't lie under oath about this. Well, Dr. Sessions testified that he didn't actually come out of the room and tell Mr. Centofanti this. This is important because it played into their self offense.

Mr. Bloom obviously clearly believed his client who said that this conversation occurred, and even when -- if you look at the deposition we even ask about the medical records. And Mr. Bloom says I understand that, you know, the medical records don't clearly spell out that there was a hole in her nose caused by drugs. But, I approached this with Mr. Centofanti and he adamantly told me that this conversation took place. So, it's -- this is a red herring to this whole issue. Because, the key to this is whether it was, you know, was Mr. Centofanti actually told this or not? And according to Mr. Centofanti he was. According to the doctor it didn't happen.

Going back over the Strickland versus Washington I think it's important to say -- to bring out the fact that if the fact finder believes a witness has lied about every -- about a material fact in this case you may disregard the person's entire testimony of that witness or portions of that testimony.

THE COURT: Right.

MR. SCHWARTZER: That would also apply to, you know, with Hargrove that you can't do bare naked assertions and receive relief from the bare naked assertions that aren't supported by the record.

I think it's pretty clear through evidentiary hearing which, you know, you heard that Mr. Centofanti was dancing around a lot of issues and wasn't telling the whole truth. Like he would -- you know, specifically when it comes down to what Dr. Sessions said and even go back to what he was saying with Dr. Lipson [phonetic]. We've been told that there's been a psychological examination by Dr. Lipson. And we asked Mr. Centofanti this and he says: You know, I -- did I meet the guy? Yes. Did I talk with him? Yes. Did I do certain things? Yes. Was there an evaluation? I don't know.

Are you telling me this lawyer, a man who's been a lawyer for ten years as a civil litigator, been called a skilled advocate by his boss during trial, a man who went through several attorneys before he went to Mr. Bloom. It's not just Albregts, but as you see in the petition it was Steve Wolfson, it was Harvey Gruber. There were several other attorneys that he decided to fire and go with another attorney. You're saying this person didn't know that he was sitting down with a psychologist and was going through a psychological examination? I find that hard to believe. And I think a lot of his testimony should be thrown out, because he's clearly not telling the full truth about these situations.

And therefore, when it comes down to a he said, she said story between him and Mr. Bloom I think we should believe the person who has 35 years of legal experience, who's gone through 50 to 100 murder trials, who's
done over a 100 jury trials, and most importantly has never had an ineffective assistance of counsel claim against him.

MR. COLLUCCI: I'm going to object to that. There's no evidence of that.
MR. SCHWARTZER: We asked him that. That's -- the deposition will speak for itself.

THE COURT: Okay. I'll go through that.
MR. SCHWARTZER: Also key with Strickland is that, you know, basically that it shouldn't be a 20/20 hindsight. District Court Judges should be highly differential to counsel's decision and scrutinizing in hindsight should not be 20/20.

Another thing that should come into play here is that there's several cases out there that the experience of the trial attorney should play into the reasonableness. And here we have a very experienced trial attorney. And we -- defense used an expert John Luekins, who I admit is a known trial attorney in town.

THE COURT: Right.
MR. SCHWARTZER: But, he's had 5 to 10 -- he's defended 5 to 10 murder cases. We have --

MR. COLLUCCI: In the DA's Office. I think he did 5 or 10 either in the DA's Office or out of the DA's Office. But, I'm sure he's been involved in many more than that.

THE COURT: Right, so he defended 5 to 10 and probably tried more as the prosecution.

MR. SCHWARTZER: He's defended 5 to 10 murder cases.
THE COURT: Okay.

MR. SCHWARTZER: Which is 40 less of the short end of what Mr.
Bloom did.
And also did not do a murder trial between the years of -- did not defend a murder trial between the years of 2000 and 2004 according to his testimony at the evidentiary hearing. So, during -- the expert who was supposed to talk about defending a murder trial during that period of time didn't actually conduct a murder trial during that period of time.

And even with that said, their own expert said, when asked: You know, what would you do in this case? He said: You would be -- if you were in a trial counsel you're in the hot seat no matter what. There's overwhelming evidence against the defendant here. So, no matter what you do you're on the hot seat. So, even the defense own expert admits and concedes that this is a extremely hard case to prove, specifically because the physical evidence there's no question that Mr. Centofanti is the shooter in this case.

Now, when it comes to self defense this is a strategic decision.
And it's strategic decision that Mr. Bloom said in his deposition he came about as kind of a team effort between him and Centofanti. Mr. Centofanti came up to him and said this was self defense. Mr. Bloom said he explored other defense options and eventually said, as Your Honor mentioned, that this is the best. Is it the greatest defense? No. But, this is the best defense available.

And this is something that the came up together with. And he put on several experts to try to prove this case. He used Dr. Eisel -- to as a pathologist to show that the bullets could have been consistent with a self defense argument. Now, they're making a big point that one of his earlier notes was this isn't consistent with self defense.

THE COURT: Right.
MR. SCHWARTZER: But, and if you just stop at the cross-examination, you're right; that's horrible. But you'll see during the redirect that Dr. Eisel talks about that was his initial thing in 2001. When he's gone over the documents and received more documents and did more testing and he decided to go off that position. With Trahin it's also similar -- excuse me, with Trahin it's also similar. Where they're saying: Yeah, Trahin said that it might be possible that the State's sequence of events occurred. But, he said anything is possible. I believe he used Michael Jackson's nose as an indication. Is it possible that Michael Jackson didn't have a nose job? Yes. But, is it likely? No. And that's basically what Trahin said. And that's -- that goes with Stuart James as well.

I mean, these are experts in a very non-finite field. So, of course other things are possible besides their theories. That's why we have these kind of boughs of experts. At the end of the day these experts side toward a self defense argument. And that's the argument that was presented to the Court.

Now, going on with Lieutenant Franks I think Your Honor brought this up that in -- during the deposition Bloom seems to indicate that Jim Thomas had the majority if not all of the contact with Lieutenant Franks. And Lieutenant Franks did not deny that he talked with Jim Thomas. Now, we don't know because it wasn't testified to, but Jim Thomas actually told Mr. Bloom.

The one thing that was mentioned in the deposition was there was a note in Mr. Bloom's file that said Jim Thomas talked to him in February, you know, a couple months before the trial and said that Lieutenant Keith --

Lieutenant Franks was still on board. Now, was Jim Thomas not telling him the truth? That might be true. We just don't know without the Jim Thomas testimony. Therefore, that's not -- this evidence isn't enough for the relief in this action.

And on top of that I think Your Honor, was pretty observant in the fact that this isn't prejudicial. They -- whatever happened with Lieutenant Franks the jury was told that he was going to testify. And then it ends after he told he wasn't going to testify because his wife's sick. We know his wife was sick. We don't know if that was the real reason or not.

And on top of that that is was mentioned on the record that what Lieutenant Franks would have eventually testified to was testified to by Scott Frasier and Dr. Glen Lipson. And that's -- that sometimes people don't remember firing more than one bullet, that sometime when you tell your brain to stop shooting you keep on shooting. So, that testimony was eventually covered.

Now, we're going -- now, Your Honor, you asked, you know, what other defenses were available? And they said battered spouse syndrome. And that's something their expert by the way said was not feasible in this situation. If you go under the evidentiary hearing John Luekins says that that's not a feasible defense here.

And now l'll tell you why it's not a feasible defense, because please look at Boykins v. State. There's three things you need for a battered spouse syndrome. You need the psychological torture in the beginning. I've seen no evidence of that so far in the record or even in the petition. You need two acts
of violence. We've only seen one act, -- self purported act of violence which was December $5^{\text {th }}$. It was a he said, she said story.

And a key which there's absolutely no evidence about, because after December $5^{\text {th }}$ there was a divorce, was that there has to be -- that the person who's doing this battered spouse has to ask for forgiveness and says that everything is okay. I'm doing this because I love you. There's no indication that that third element ever occurred. So, battered spouse syndrome since there is no evidence of that, and it was -- rightfully wasn't presented to the jury there was no reason to have that jury instruction. And Boykins $v$. State is 116 Nevada 171, 995 P 2d 474, 2000.

And with diminished capacity, just right off the bat the technical defense of diminished capacity is not available in Nevada. That's Miller v State, 112 Nevada 168, 911 P 2d 1183, 1996. I would also look at Crawford v. State. That it's you're either or you're not under the non-rule. But, I understand what the defense is really trying to get at is not diminished capacity but that this could come into the first degree murder and second degree murder.

And we just don't know because although they made a big point of saying you don't need a psychological evaluation to do a psychological defense, Mr. Luekins, the expert here said: I'd be uncomfortable doing a psychological defense without a psychological examination. And the record's pretty clear that the defense was trying really hard not to let the State do a psychological examination.

THE COURT: That went up on appeal during the case.

MR. SCHWARTZER: Correct, correct, Your Honor, and eventually ruled against the State.

THE COURT: Right.
MR. SCHWARTZER: But, during the deposition Mr. Bloom was pretty clear that there was a psychological examination. There was a general one done by Dr. Lipson, who was one of the experts who testified generally at the trial. He said that it had negative consequences. That the Defendant would dwell on things and eventually act in a grandiose fashion, which doesn't go with self defense, doesn't go with diminished capacity, and doesn't go with battered spouse syndrome.

In fact it plays into exactly what the State happened that here's a guy who had a divorce with a woman that he cared for or at least had jealousy issues with, had children who he saw his perfect life falling apart he's dwelling on it, dwelling on it, dwelling on it and that acts out in this grandiose fashion by shooting her 7 times when she's there to pick up her child. So, the psychological examination is -- the psychological examination would actually work into the State's theory.

And what's even more telling is your Court hasn't been provided with an additional psychological examination. If it was -- if psychological defense was such a good defense for the Defendant why hasn't that been done for the petition? You haven't seen anything positive for the psychological examination, anything positive would have occurred from it, that it would have diminished the first degree murder into a second degree murder. And so therefore, it's just a bare naked assertion that such a psychological defense would have had an affect on the jury.

And also it's pretty clear that although they use the self defense argument that Mr. Bloom also relied on lesser included instructions. And they you know, he did bring out that the EMT said that in her opinion he was acting catatonic. That he brought out the details in the murder. He brought out the fact that, you know, he wasn't talking to the police officers or talking to really anyone, and then argued at closing argument for second degree murder. And argued -- and provided the instructions, instruction 10 to, you know, the jury instructions and also brought up manslaughter which is instruction 21 and 22.

And on top of this the Defendant would not be prejudice because of the overwhelming evidence against him for first degree murder. The Supreme Court noted there was a voluminous amount of evidence against the Defendant. The -- their own expert testified that the physical evidence is pretty clear. There's no insanity defense. There's no someone else did it. There's really no heat of passion so there's no romance letter argument. I mean, here's a woman who's -- who came back from the gym, was going to pick up her child, and the divorce has been two weeks, and the Defendant decides to shoot her 7 times and hits her all 7 times.

Even the shooting itself where you have 3 shots point blank range to the face is an indication that this was premeditated and deliberate. On top of that the jury instruction for first degree murder separated premeditation, deliberation, because Mr. Blood wanted to make sure -- and he says this in the deposition that the jury really consider premeditation and really consider deliberation as separate elements for first degree murder.

Now, I want to talk a little bit about the admission that he was the shooter. I know Your Honor, has read the March $12^{\text {th }}$ 2004. And I understand that's important.

THE COURT: Yes.
MR. SCHWARTZER: In that -- I would -- you were cited to one, page 64. I would actually read pages 3 to 5 and pages 63 to 65 . There was clearly an in chambers conversation about this issue which unfortunately nothing's really been revealed about. But, I would note on the record that --

THE COURT: Oh, wait. So, they did go in chambers on this issue?
MR. SCHWARTZER: I think the record indicates that.
THE COURT: Okay.
MR. SCHWARTZER: That in fact Mr. Bloom says that they went in chambers in about this -- regarding this issue. But, he also says in this -- in the transcript in pages 63 to 65 that he basically objects. He says his position here is the State has no right to ask for it. But, clearly there is some type of resolution that occurred.

And this is calendar call. This is a couple days before the trial, so --
THE COURT: Right.
MR. SCHWARTZER: -- all the experts are set up. Everyone's ready -- we know this is going to be a self defense argument at this point --

THE COURT: Right.
MR. SCHWARTZER: -- because they called all their out of state witness in, they called their experts they're ready to go.

So, although the defense counsel says they-- in his opinion the state has no right to ask for this. They went ahead and admitted it. And the
reason for this -- and Mr. Peterson is pretty clear about this -- the reason for this is because the State was worried about a mistrial. The State was worried that they were going to make this whole self defense argument and then at that end of the day Mr. Centofanti was going to say that I never wanted to do the self defense argument.

It's very similar to that Jones $v$. State case that we talked about in the evidentiary hearing.

THE COURT: Right.
MR. SCHWARTZER: Where if you're going to admit some portion of guilt during the guilt phase you need to make sure that the Defendant's on board. Now, could it have been handled differently?

THE COURT: Well, the procedure set forth is you do it outside the presence of the State.

MR. SCHWARTZER: And I agree, but --
THE COURT: Because I've had to do it a couple times.
MR. SCHWARTZER: I agree it was mishandled. But, I don't think it was mishandled to the degree of unreasonableness. And more importantly I don't think it's mishandled in the way that it prejudiced the Defendant.

If they want to make a due process argument they should have made that at direct appeal. That was waived. Now, we're talking about specifically the defense counsel. And what we have in the transcripts is the defense counsel says: I don't think the State has a right to ask for it. But, clearly the Judge was expecting this to happen. And I -- the transcripts will speak for itself on this.

Now, going on about the defense testifying at trial, that Mr. Luekins said he was strongly advised against the Defendant testifying at trial. Browning v. State is pretty clear as is the law in Nevada and the US Supreme Court that it's ultimately up to the Defendant if he wants to testify or not. Mr. Bloom says he doesn't push one way or another, that he does pros and cons. And he gave the Defendant his pros. He gave the Defendant his cons. Defendant being a lawyer of ten years, a pretty -- an intelligent Defendant as compared to other of these types of murders decided that he wanted to testify.

They -- Mr. Bloom said that he spent 30 or 40 hours trying to prepare the Defendant. That the Defendant -- and I think you saw this in the evidentiary hearing was trying to work on some of the problems the Defendant would have testifying. Which is he wants to play lawyer, he wants to parse words, he wants to be -- he wants to not answer questions clearly and play games with examination. I think that was pretty clear during the evidentiary hearing that occurred as well.

So, they worked on that for 30 to 40 hours, which according -their own expert testified is a long period of time to prepare a witness. And at the end of the day his testimony -- he -- it was his decision to testify and he testified. And I don't see any other defense. If they were going to go for any defense I don't -- if they want to go with battery spouse syndrome, if they wanted to go with diminished capacity, I don't see any other way that this happens without the Defendant testifying if you want to have a realistic chance of an acquittal. So, I don't think it was prejudice as well.
with trial tactics; correct.
Q Okay. Do you recall Strickland saying that counsel must have wide latitude to make reasonable tactical decisions?

A Absolutely.
Q Do you recall Strickland talking about how no two counsels approach the -- excuse me, strike that. Do you recall in Strickland when it discusses that different counsels could have different approaches yet be equally effective?

A Yes.
Q I want to go over this case with you. Mr. Bloom himself has said that he's -- he has testified in a deposition that he's an attorney for 30 years. Would you say that's a reasonably long time to practice law?

A Yes.
Q He said that he's done over 100 jury trials. Is that -- has defended over 100 jury trials. Is that a significant amount of jury trials to defend?

A It's a lot.
Q He said that he's defended somewhere between 50 to 100 murder -open murder cases. Is that a substantial amount of murder cases?

A That's a substantial amount of murder cases.
Q How many murder cases have you tried?
A Have I tried?
Q Yeah.
A Either as prosecutor or defense?
Q As a defense attorney?
A Probably five to 10.
Q So he --

A Are you talking about the actual trial or acted as defense counsel?
Q Acted as defense counsel at trial.
A At trial?
Q At trial; correct.
A Okay; 'cause there's a substantial difference. As you know, most cases are resolved by way plea bargain.

Q So you --
A So if you mean just in the courtroom at trial in front of a jury, probably five to 10 .

Q So even on the small number you defended 40 less murder trials than Mr . Bloom. Is that a correct statement of fact?

A If he has in fact had 50 murder trials, that's correct. Your math is accurate.

Q Okay. Now, you say that self-defense was not a viable defense.
A Correct.
Q Are you aware that Mr. Centofanti adamantly stated that it was a self -that this was a self-defense case?

MR. COLUCCI: I'm going to object. This is actually speculation. It's what Bloom may have said in his deposition.

MR. SCHWARTZER: I'll rephrase, Your Honor.
MR. COLUCCI: But it's not an established fact.
THE COURT: Okay. All right. Rephrase it.
MR. COLUCCI: Thank you.
BY MR. SCHWARTZER:
Q Are you aware that Mr. Bloom said during his deposition that Mr.

Centofanti adamantly declared that this was self-defense?
A Yes.
Q You say that there should have been a psychological evaluation. Is that correct? Have you -- you previously testified to that.

A I don't think I said that there should have been a psychological evaluation. I said that there should have been serious consideration given to a psychological defense.

Q Can you do a --
A And there is a difference.
Q Can you do a psychological defense without a psychological evaluation?

A Yes.
Q Would that then open up the Defendant to a psychological evaluation by the State?

A It might have given them an opportunity to request it.
Q All right. Do you think Judge Mosley -- if there was a psychological evaluation done by the Defendant, do you think Judge Mosley would have granted --

MR. COLUCCI: Objection. Calls for speculation.
BY MR. SCHWARTZER:
Q In your experience with Judge Mosley?
MR. COLUCCI: Calls for speculation.
THE COURT: Overruled. I'm going to allow it. He mentioned several opinions already about how Judge Mosley would deal with things.

MR. COLUCCI: We just don't want Judge Mosley to read the transcript.
THE COURT: I can't be responsible for that.

THE WITNESS: I will say that there was certainly -- 'cause there are several levels to that question.

There would certainly have been a possibility that Judge -BY MR. SCHWARTZER:

Q Could I have the simple answer?
A Pardon me?
Q Could I just have the simple answer? Do you think it's likely that Judge Mosley would have granted a psychological evaluation if the Defendant had his own independent one?

A Well, but I -- are you saying that the Defendant did, in fact, have a psychological examination?

Q I'm not quite there yet, but I'm asking in your opinion if a psycho -- if a complicated psychological evaluation was conducted in order to do a psychological defense, do you think the State would have been able to do a psychological evaluation on the Defendant?

A Mosley would be inclined to grant that request --
Q Thank you.
A -- in my opinion --
Q That's fine, Mr. Lukens.
Are you aware that there was a general psychological evaluation conducted, at least according to Bloom?

A I'm going to say generally, yes. I am not aware of the full extent of what was done, or the number of resources that were contacted, or the amount of information that was supplied.

Q But you are aware that there was at least a preliminary type of
psychological evaluation conducted, at least according to Bloom?
A He made reference to that.
Q Okay. Do you recall -- you read the deposition; right, the April $23^{\text {rd }}$, 2010, deposition of Allen Bloom?

A Yes.
Q Do you recall him saying the initial psychological evaluation was negative? Yes or no.

A That's an absolutely meaningless statement.
Q Well, yes or no; do you --
A Negative --
Q -- recall him saying that?
A Negative for what?
Q Okay. Do you recall him saying he would take small -- and this is -- I'm quoting from the deposition.

A What page are you on?
Q I'm on page 184. This is Mr. Bloom speaking.
He would take small things and exaggerate it which was exactly what we did not want to present in this case 'cause the self-defense, you have to show that it's objectively reasonable.

Do you remember that statement?
A You're on page -- oh, wait. I was on 184.
Q It starts out with: It was a showing that he would make a mountain out of a mole hill.

A Yes; I remember that remark.
Q Okay.

A And I also remember that remark as a reason for not putting him on the stand.

Q Okay. Do you recall the next question Mr. Colucci asked which is -- or excuse me, that myself asked: So it was a strategic decision not to present a psychological evaluation to the jury?

A I remember that question, yes.
Q And do you remember Mr. Bloom's answer? That it was a strategic decision and that Mr. Centofanti was aware of it?

A No; I remember that but I am not parsing words. There is a substantial difference between a psychological evaluation and a psychological defense.

There's a huge difference there.
Q There's no question pending right now, Mr. Lukens.
A Pardon me?
Q There's no question pending right now.
A Okay.
Q You are aware of the holding in Browning v. State; correct, regarding defendants testifying at trial?

MR. COLUCCI: Maybe he could show him the case to refresh his memory. I mean, there's several Brown cases and --

THE WITNESS: Yeah.
MR. COLUCCI: -- cases with similar names. I'm not sure what he's referring

THE COURT: Sure.
MR. SCHWARTZER: I just have a synopsis.
MR. COLUCCI: Does he have the cite for it?

THE COURT: Okay.
MR. SCHWARTZER: I do have the cite.
THE COURT: You can ask him if he's aware of a case that says whatever you think it says.

MR. SCHWARTZER: Thank you, Your Honor.
BY MR. SCHWARTZER:
Q Are you aware of the statement that every criminal defendant is privileged to testify in his own defense or refuse to do so? Counsel may advise a defendant whether it was wise for him to testify but, ultimately, the decision lies with the defendant?

A That's been the law as long as I've been practicing law. I mean, that's why they canvass the defendant in open court. It's mandatory. So the answer's I am absolutely aware of that.

Q So you're aware that the ultimate decision to testify is the defendant's not the attorneys. Is that a correct statement of law?

A Oh; yeah, of course.
Q Are you aware of a case named Jones v. State, 110 Nevada, 730.
A [Jovial utterance].
THE COURT: Is that a no?
MR. SCHWARTZER: 1994.
MR. COLUCCI: I --
THE WITNESS: Mr. Schwartzer, just --
MR. COLUCCI: Judge, I have to object.
THE WITNESS: -- go ahead and share it with me.
MR. COLUCCI: This is like a quiz, you know. How many Jones cases are
there?
THE WITNESS: Yeah; there's a whole bunch so.
THE COURT: All right. All right, folks. Ms. Schwartzer, go ahead and explain what it says and then he can tell you if he remembers it. BY MR. SCHWARTZER:

Q Are you aware of a case out there that states that when counsel concedes a client's guilt during the guilt and innocent phase, that that's automatically ineffective assistance of counsel? And what the Jones v. State case says is there has to be a canvass to see if the Defendant would agree to admit some sort of guilt at trial.

A I may not only be aware of it, I may know --
MR. COLUCCI: I have to --
THE WITNESS: -- that's Dave Gibson's case; right?
MR. COLUCCI: Yes.
THE WITNESS: Yeah.
MR. COLUCCI: And I have to object, unless he wants to show him the case. He's paraphrasing what the case holds. It may or may not hold exactly what he says. The meaning may not be clear from what he says. There are some nuisances to that case and I don't agree with --

THE COURT: He can agree or disagree, I mean.
MR. COLUCCI: But I think the -- in all fairness, you need to show him the case if you're going to quote from the case. Do you know it says this, and then he reads it and then -- you know.

MR. SCHWARTZER: Well, l'll ask about the general holding.
THE WITNESS: No, I may know the trial lawyers who actually did that case,
so. I am familiar with that branch of the law.
BY MR. SCHWARTZER:
Q And you're familiar that the defense attorney can't admit guilt during the guilt and innocence phase of a trial without the Defendant's permission.

A It's not quite that simplistic, but the general answer is yes.
Q So if the State wanted to insure that there wouldn't be an ineffective assistance of counsel claim regarding the admission of guilt at trial by the defense counsel, would they -- would it be sound practice to ask for a plea canvass?

A As I read the portions of the transcript in this case --
Q Just a yes or no answer, Mr. Lukens.
A It cannot be answered as simplistically as you want.
Q Okay.
A If I were the prosecutor in this case, I would have had grave concerns as I'm trying this case. The same way that the prosecutors --

Q There's no question pending Mr. Lukens.
A What?
Q There's no -- I didn't ask you about your concerns if you were the prosecutors.

MR. COLUCCI: I think you should let him answer.
THE WITNESS: Don't I get to explain my answer?
MR. COLUCCI: He asked him a question and starts to get an opinion, then he says there's no question pending.

THE COURT: No, I mean he -- the question was just if it would be reasonable for the State to request a plea canvass -- or not a plea canvass but a canvass regarding an acknowledgement of guilt. Go ahead. Next question.

Q Would you let potential jurors dictate your trial strategy?
A Do they dictate it? Of course not.
Q Would you? Would you personally?
A Let them dictate it?
Q Yes.
A Of course not, but I would certainly take them into consideration.
Q Now, you testified about defense opening statement and you said that it's not a reasonable trial tactic to talk about experts that wouldn't -- to bring up experts that eventually would not testify, that that's not a sound approach.

A His opening --
Q Let me refresh your memory a little bit more. That you specifically said that brining up Lieutenant Franks in the opening statement --

A Bringing up -- oh, yes. Okay.
Q -- was a mistake because he didn't eventually testify.
A No he didn't -- never even talked to him.
Q Okay. Do you have personal knowledge on that subject?
A Yeah.
Q You talked to Mr. Bloom --
MR. COLUCCI: I have to object. That's not even relevant.
THE WITNESS: No; I talked to Whitey [phonetic].
THE COURT: Well, it is -- hold on. It is relevant.
THE WITNESS: I've known Whitey for 30 years.
THE COURT: Look, you're going to answer the questions that are asked.
Go.

Q Have you talked to Mr. Bloom about this subject?
A I have not talked to Mr. Bloom.
Q Have you talked to Mr. Franks?
A Yes.
Q That's the guy you're referring to as Whitey?
A Yes.
Q Do you know it -- do you know if Lieutenant Franks talked to a Jim
Thomas about this case?
A Yes.
Q Did he talk to a Jim Thomas about this case?
A He may have.
Q Okay. Now, if you knew an expert wasn't going to testify, I hear you say he was going to, would you try to explain to the jury why he wasn't going to testify?

A Yes.
Q And that would be a sound trial tactic in your opinion?
A It could be.
Q If you explain to the jury that an expert won't testify because his wife was very sick. Would that be a sound trial tactic?

A Are you speaking in the abstract or are you specifically speaking about Whitey and --

Q I'm going to go with abstract.
A -- so forth.
Q Hypothetically.
A So it's an abstract or in this particular --

THE COURT: Yes, that was his answer. It's an abstract.
THE WITNESS: I can't answer that. I don't know.
BY MR. SCHWARTZER:
Q Okay.
You read over the Defendant's testimony at trial; correct?
A Yes.
Q And the cross-examination and you also -- correct? The crossexamination as well? You reviewed Centofanti's cross-examination as well.

A Yes.
Q Did you -- and you reviewed Dr. Sessions' testimony. Is that correct?
A Yes.
Q Is it -- does it appear to you from the record that Mr. Centofanti lied under oath about what Dr. Sessions told him?

A Yes.
Q Is it a trial attorney's duty -- a defense attorney's duty to explore everything that the Defendant tells him, every single detail?

A The question you asked $m e$ in the abstract is impossible.
Q Okay. As a defense attorney, if your client told you several things, do you track down factual basis for all those things?

A No.
Q You also stated that you would have advised the Defendant not to testify in this case. Is that correct?

A It was a mistake to have him testify as he did. So the answer --
Q That's not the question though. You would --
MR. COLUCCI: He was about to give you the answer.

THE COURT: Go ahead and finish your answer.
THE WITNESS: Okay. Under the conditions as they existed in this case, I would have strongly recommended to him that he not testify.

BY MR. SCHWARTZER:
Q Okay. But if he ultimately wanted to testify, could he have testified?
A Well, of course. If he -- you also, as his attorney, have the obligation to tell him exactly what the Judge does from the bench when the Judge canvasses the Defendant.

Q Okay. Have you ever had a defendant testify in one of the cases that you were the defense attorney on?

A Yes.
Q How much -- can you approximate how much hours you work with a defendant to get him ready for the stand?

A I cannot answer that in the abstract.
Q Okay.
A Just --
Q That's fine.
A In the abstract, I can't.
Q Is 30 to 40 hours a significant period of time to prepare a witness to take the stand?

A Usually, yes.
Q Thank you.
Now, you talked about the experts in this case and you mentioned Trahin, Jimmy Trahin.

A Yes.

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Q And you said that Jimmy Trahin, during cross-examination, admitted that the shots could have been fired to the face first -- or to the head first. He eventually -- or to the body first.

A Right.
Q Excuse me, to the body first.
A Yes.
Q Which was the State's theory of the case.
A Yes.
Q Did he also say under cross-examination that anything was possible?
A $\quad$-- would you rephrase that?
Q Sure.
Did he specifically say it's possible that Michael Jackson didn't have a nose -- didn't have nose surgery but certainly unlikely?

A We deal with that all the time as trial lawyers. The question is, is it possible.

Q So during cross-examination when he admitted that the State's theory was possible, that's something that almost any expert or reconstructionist of a crime -- reconstructionist would have answered?

A Expert witnesses who are called upon to give opinions almost always will say that anything is possible, but it is the attorney's job to make it seem probable

Q Okay.
A -- rather than possible and to define the words. So the answer is yes.
Q Thank you.
Doctor -- you also talked about Dr. Eisele's testimony. Is that correct?

A Yes; we touched on it.
Q Now, you said that Dr. Eisele testified during cross-examination that he had a note that said that self-defense was going to be hard to prove or something like that.

A He had a note?
Q Well, during cross-examination, did Dr. Eisele admit that he had an opinion that self-defense was going to be tough to prove?

A He was asked about his report.
Q Okay.
A I mean, Clark grilled him on that report that he had issued, given to Mr. Bloom and Mr. Bloom had given to the District Attorney by way of discovery.

Q So at some point, he said: I'm not sure this fits with self-defense. Is that correct? On your review of the trial testimony.

A Yes.
Q Do you recall what happened immediately afterwards, when there was a redirect by Mr. Bloom?

A Mr. Bloom obviously tried to redirect him.
Q And didn't he say during that redirect that his opinion from that earlier note that this didn't fit self-defense has changed?

A Yes; I can see how you would read it that way.
Q Okay. Didn't he also explain that this was an initial observation and he has since gained further evidence in order to form his new opinion or his different opinion?

A He tried.
Q But he did say that in the testimony.

A Yes; he did.
Q Okay. Let's talk about the collection of evidence.
Did you see any bad faith by the Las Vegas Metropolitan Police
Department in this case?
A I'm sorry. Could you --
Q Did you see anything that you would characterize as bad faith by the Las Vegas Metropolitan Police Department in this case?

A Bad faith?
Q Correct.
A Or sloppy work? I didn't see any bad faith.
Q You just told --
A Bad faith is by definition intentional.
Q Okay. Did you see any bad faith?
A No.
Q Okay. Do you believe the shell casings were exculpatory in this case?
The missing shell casings.
A Yes.
Q They were exculpatory?
A I didn't say that.
Q Do you think they would be?
A You don't know.
Q There's no dispute that he fired the firearm seven times; correct?
A That's my understanding.
Q And that there were seven shots.
A Yes.

Q So the fact that they found two additional shell casings from the five they initially found, that would not be exculpatory.

A You don't know.
Q Okay. The keys; you mentioned that the keys were never recovered in this case; correct?

A That's not a correct statement.
Q Well, correct me.
A The keys were recovered by someone.
Q Okay.
A They weren't recovered by the police department.
Q Are you aware that Mr. Bloom filed a December $20^{\text {th }}, 2001$, motion to exclude evidence and dismiss charges against the Defendant?

A Yes.
Q Are you -- have you ever seen this document before?
A I'm aware of it.
Q Do you recall that he included the keys as one of the reasons why this case should be dismissed?

A Yes.
Q So he did file a pretrial motion regarding the loss of evidence.
A Yes.
Q The stationary bike was never recovered; correct?
The defense nor the State had access to the stationary bike.
A Correct; somebody recovered it.
Q Do you know there were photographs taken of the stationary bike?
A Yes.

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Q And those photographs showed blood on them; correct?
A Yes.
Q Isn't it true that the defense expert, Stuart James [phonetic], used that those photographs to help Defendant prove his case?

A He attempted.
Q You don't see -- do you find any bad faith in the loss of the stationary bike?

A I find no bad faith in the loss of the stationary bike. I saw no evidence of it. I don't know would I find or not but I saw no evidence of bad faith.

Q And you have no idea that the blood found on the bike was Defendant's or not.

A No; we do not know.
Q But there was no wounds on the Defendant. Is that correct?
A The pictures do not display any. If I --
Q It's most likely that the blood --
A But wait --
Q -- would be of Gina Centofanti.
A -- wait, wait. No; I need to clarify this.
THE COURT: Hold on.
THE WITNESS: 'Cause if I remember correctly, some period of time before this on the $5^{\text {th }}$ of December, the Defendant did in fact suffer a wound from which he bled. So without the bike, you don't know. BY MR. SCHWARTZER:

Q Okay.
A I mean, it's an unknown.

Q Okay. Considering -- you've seen the crime scene photos and you've heard several testimonies -- or read through several testimonies; correct?

A Yes.
Q Is it likely the blood was Gina Centofanti's?
MR. COLUCCI: Objection; that calls for speculation.
MR. SCHWARTZER: Based on what he's reviewed.
THE COURT: Sustained. Go on.
BY MR. SCHWARTZER:
Q In your 10 cases as a defense counsel, what was the most amount of experts you've used in a case?

A In my 10 homicide cases, or my -- as a prosecutor, or as a defense counsel or what?

Q Defense -- okay. As defense counsel, what's the most experts you've ever used in a murder case?

THE COURT: Just cases he's tried?
BY MR. SCHWARTZER:
Q Just cases you've tried.
A And you're limiting to those that I was defending rather than prosecuting?

Q Correct.
A 'Cause I probably used more experts than any attorney in the DA's office in the types of cases that I tried.

Q But as a defense attorney. I know -- as a defense attorney.
A Probably all of them would require the use of an expert in some way or another.

Q But how -- approximately how many? Or do you -- let me rephrase that. Do you recall the most amount of expert witnesses you've used as a defense attorney during a murder trial?

A Probably would have been four or five.
Q Four or five. And you'd find that'd be a significant number of experts for a defense attorney to use during a murder trial?

A The word significant is a matter of art. I mean, it's --
Q It's not typical.
A Probably not.
Q Presenting 19 witnesses total on the defense side, is that typical?
A I have no frame --
Q During the guilt phase.
A -- of reference on which to answer that. That's not a tremendous amount of witnesses. It's, you know, there have been cases where there's no witnesses presented on the defense side. So I don't know how to answer that.

Q Okay.
MR. SCHWARTZER: Court's indulgence for a second.
THE COURT: Yes.
MR. COLUCCI: I think she's been indulging us the whole time.
BY MR. SCHWARTZER:
Q Do you recall, just recently, Mr. Colucci questioned you about Clark Peterson's over the top presentation of what Dr. Sessions was going to come in and testify about?

A Yes; I remember that.
Q And it was about a paragraph long and it was -- you described it as over
the top.
A I don't think that was my description.
Q Okay.
Do you know if Mr. Bloom actually objected to that statement that Mr.
Colucci quoted?
A I seem to think he did.
Q He even said it was the nice play for the jury?
A Pardon me?
Q He even said it was a nice play for the jury.
A Okay.
Q You don't recall that or do you?
A I don't have a specific recollection of that.
Q Now, you stated that you would have considered diminished capacity.
Is that correct?
A Yes.
Q What do you consider when you think of diminished capacity, if you were the defense attorney in this case?

A Something in his mind was not functioning properly.
Q And how would that have been a defense?
A If the -- you're talking about the difference between first degree murder and second degree murder primarily. And your attempt would have been to avoid the conviction for first degree murder and convince the jury that this was second degree murder --

Q Okay.
A -- without the required premeditation and planning and any of that.

Q And that would have required a psychological evaluation.
A No.
Q What would that require?
A It would have required that type of defense.
Q What's included in that type of defense?
A Those things that would -- that you would demonstrate to the jury that could put an individual under such emotional stress and strain that their rationale mind ceases working in the way it normally does. If his intent was clearly to take this woman's life, why would he do it with his parents present upstairs? It --

Q You agree that premeditation and deliberation is something that can --
MR. COLUCCI: Objection. He was continuing his answer.
THE WITNESS: Of course, I do.
MR. SCHWARTZER: Oh, I'm sorry. I didn't know he was still talking.
THE WITNESS: I argue that all the time. It can be like [snaps fingers] that, the premeditation and deliberation. And it doesn't even have to be the premeditation and deliberation to end the person's life. I been a prosecutor long enough to know that.

BY MR. SCHWARTZER:
Q All right. This is a case where there's only two people in the room; the defendant and the victim. Correct? To your understanding of the case.

A That's an assumption that everybody made.
Q Okay.
A We do not know that.
Q Do you know if there were fingerprints found on the magazine of the gun that was fired?

A I believe that there were.
Q Do you know who the fingerprints of the magazine belonged to?
A I'm assuming they were his. He'd gotten the gun back that day and had to have loaded it that very day. So --

Q Is there a -- I'm sorry. Go ahead.
A So that would be consistent with the facts as they were --
Q Okay.
A -- developed, yes.
Q Is there any indication that anyone besides the Defendant shot Gina Centofanti?

A No.
Q So from the facts that we've seen -- that you've reviewed, it seems like the only people in the room would have been Gina Centofanti and the Defendant. Is that correct?

A Yes.
Q And isn't it true that the gun was fired seven times?
A Yes.
Q And isn't it true that Gina Centofanti was shot seven -- that she was actually hit seven times?

A Yes.
Q Isn't it true that several of those bullets came, according to the evidence, within six to 18 inches of her body -- or were fired from six to 18 inches from her body?

A Because of the stippling, the answer is yes.
Q This would have been a very difficult case to defend; correct?

A Yes.
Q In your expert opinion, what would have been a likely outcome of a jury trial in a case where those facts are presented?

MR. COLUCCI: Objection, that really calls for speculation.
MR. SCHWARTZER: I ask him as an expert.
MR. COLUCCI: And I don't think as an expert, he can tell you. That's beyond the realm of his expertise what a jury's going to do. Every jury's different. Every case is different.

MR. SCHWARTZER: He's had enough -- I mean, he's had enough experience with jury's that he can at least have an idea.

MR. COLUCCI: I don't think that's going to assist the Court in making a decision in this case. I think it's irrelevant actually.

THE COURT: Whether it would have made a difference?
MR. SCHWARTZER: It obviously goes to --
THE COURT: Certainly what I have to decide, but.
No, I'm going to overrule it. He can answer.
THE WITNESS: If you are asking me about the second prong of the Strickland case.

## BY MR. SCHWARTZER:

Q Yes.
A I'm assuming that -- if we cut to the chase, that's what you're asking me.
Q Absolutely.
A And my answer is this. The self-defense defense had no chance, zero.
Q Okay.
A I do not know whether a different defense might have had a different
outcome as to the degree of murder.
Q Well, let's put it this way. Besides the obvious facts that he shot the mother of his child, is there anything else that you see in the record that would support diminished capacity?

A Yes.
Q What would that be?
A Within the record, the first and foremost question is why with your parents upstairs?

Q Okay.
A Next is the number of shots, even to the placing of the shots. As she is down on the ground on her back clearly bleeding, clearly perhaps mortally wounded, why the actions to then go up and I think, as Clark aggressively stated, assassination shots --

Q Right. This is the State's theory of the case; correct?
A No. Yes -- I mean, 'cause you work within that. I mean, the State gets to go first. So you work within that. So you're asking me questions regarding a psychological defense, because that's wherein the questions in this case --

Q But the -- excuse --
A What?
Q Go ahead. I'm sorry.
A That's wherein the questions in this case lie. Why this, why that? There was some indication, for example, in his emotional state after the shooting. Why go next door to the neighbors? Why was he in that emotional state? Was that a contrived? Was that shock at what he had done?

Q Uh-huh.

A You don't know. That's wherein the question in this case lie.
Q Okay.
A They certainly don't lie in the psychical evidence.
Q Okay. So you're saying based on the fact that he shot Gina Centofanti seven times while his parents were upstairs, that would express to you concern about diminished capacity?

A It certainly raises the questions. Even as a prosecutor, because you wonder why does somebody do these things? Why does someone hurt or sexually molest a small child? Well, why can be extremely important in a case --

Q So the jury would want to know why too; correct?
A Absolutely.
Q So him testifying in any case would have been important.
A If that were the defense. This jury was clearly insulted by the selfdefense defense.

MR. SCHWARTZER: No further questions, Your Honor. [Colloquy between Court and Court Staff]

MR. COLUCCI: Your Honor, I only have a few questions for Mr. Lukens, but I am -- I'm sorry. I only have a few questions left for Mr. Lukens. It's 20 minutes to 12:00. I would like a few minutes to confer with Mr. Centofanti to make a decision whether or not to put him on the witness stand. So may we do that after lunch hour?

THE COURT: Uh-hum.
MR. COLUCCI: Okay. Thank you.
THE COURT: Yeah.
MR. COLUCCI: Okay.
THE COURT: So just go ahead with Mr. Lukens now.

MR. COLUCCI: Yes; thank you.
First of all, I'd like to direct the Court's attention just maybe to make a note that when Mr. Schwartzer was talking about how Mr. Bloom had basically rehabilitated Dr. Eisele, I want to point the Court's attention to Volume 5 of the Appellant's Appendix. That would be at page 24 and then it's a four-page document like this. It would be at page 90 . So Volume 5, big page 24, small page 90.

THE WITNESS: Is this something I need to see?
THE COURT: No.
MR. COLUCCI: No; this is not -- there's no question. I'm just directing the Court's attention to that spot because I can't impeach what he said without Dr. Eisele being here. Dr. Eisele, by the way, is dead and I think the State will stipulate to that. So we're kind of stuck with his testimony.

THE COURT: Okay.
MR. COLUCCI: Okay.

## REDIRECT EXAMINATION

BY MR. COLUCCI:
Q Mr. Lukens, in the material that you reviewed, were there any references to catatonia? That the Defendant was in a catatonic state?

A Yes.
Q Would that have raised a red flag with regard to a diminished capacity type of defense?

A It certainly needed to be explored.
THE COURT: Sorry. Where was there a reference to that?
MR. COLUCCI: It's -- I don't have the exact cite to it but | think the State will agree that there are references to catatonia. In fact, Officer Gogian, the responding
officer, put that in her report and also testified to that.
THE COURT: Okay. Go on.
MR. SCHWARTZER: There were some references. I think it's disputable.
THE WITNESS: It may be in Tommy Thowsen's report too.
THE COURT: I'm sure it's disputed, but I just -- okay. Go on.
MR. COLUCCI: l'll find it over the lunch hour, Judge.
THE COURT: Okay.
MR. SCHWARTZER: Well, I admit -- I'm sorry. I'll clarify. I admit that there's references and that there were certain witnesses that testified that way.

THE COURT: Right. No, that's all.
MR. SCHWARTZER: Just that it was disputed in the State's case.
THE COURT: Right.
BY MR. COLUCCI:
Q I asked you earlier if it was reasonable for -- to allow the Defendant to be canvassed as to being the shooter in a self-defense type case. Is that a reasonable defense tactic to, basically, give the State the proof for the elements -one of the elements of their charge without getting any kind of a benefit or concession back?

A I have never seen it done, ever. Even if -- I will tell you that even if I'm in front of Judge Mosley and he ordered that, I would have advised my client to say nothing other than upon the advice of counsel, I assert my rights under the Fifth Amendment.

Q Okay. And you're aware that in 2001 the same issue was raised in front of Judge Gibbons and Judge Gibbons denied the motion.

A Yeah; Judge Gibbons --

Q Judge Gibbons denied the motion without -- I think without prejudice.
A Right.
Q So l just want to make that clear.
Now, you were asked --
THE COURT: I'm sorry. I've got to interrupt. And I -- you know, I don't have the record to my knowledge and I haven't read it yet, clearly.

MR. COLUCCI: Well, I'm going to provide it to you, Judge. I'm putting it all together for you.

THE COURT: So my question is, when was this raised? How far in advance of trial?

MR. COLUCCI: Right before the trial.
THE COURT: Okay.
MR. COLUCCI: A few days before. Well, first it was raised in 2001. Then there was a three-year gap while the case was up on a writ. Then in 2004 the case was actually tried.

THE COURT: Right.
MR. COLUCCI: Okay. So it was raised in 2001; Judge Gibbons denied it without prejudice --

THE COURT: Uh-huh.
MR. COLUCCI: -- having concerns about Fifth Amendment issues.
THE COURT: Asking for a canvass to the extent that he's going to concede --
MR. COLUCCI: He's the shooter.
THE COURT: -- he did it, but assert self-defense.
MR. COLUCCI: Right.
MR. SCHWARTZER: He was going to concede that he was the shooter.

THE COURT: The shooter. Okay.
MR. COLUCCI: Correct; he was going to concede he was the shooter.
THE COURT: Okay.
MR. COLUCCI: And then in 2004, it was again raised by the State, the same issue, and this time after conferring with Mr. Bloom -- and I'm not even sure he actually technically --

THE COURT: Okay.
MR. COLUCCI: But okay.
THE COURT: I just want to know what's in the record right now.
MR. COLUCCI: Okay. Well, I was going to tell you but that's okay. I'Il direct you to it.

In 2004 it was also raised and at that time Mr. Bloom and Mr. Centofanti conferred, and that's in the record, and then Mr. Centofanti came back and said on the advice of counsel, l'm admitting I was the shooter.

THE COURT: And he said that with the State in the room?
MR. SCHWARTZER: Correct.
MR. COLUCCI: Yes.
MR. SCHWARTZER: Outside the presence of -- there was no jury yet. This is -- I believe this is outside the jury.

THE COURT: That's good.
MR. COLUCCI: Yeah.
THE COURT: Okay.
MR. COLUCCI: So okay.
THE COURT: It was done with the State present though?
MR. COLUCCI: Yes.

THE COURT: Okay.
MR. COLUCCI: Okay. So that's my problem.
THE COURT: Okay.
MR. COLUCCI: And that's what I'm trying to --
THE COURT: Right. Because, I mean, I've had to canvass a defendant who, basically, concedes second degree murder but not -- but disputes first degree murder and l've done that --

MR. COLUCCI: Right.
THE COURT: -- canvass in accordance with the Supreme Court decision.
MR. COLUCCI: That was -- and that's what happened in Jones, essentially.
THE COURT: Right. Outside the presence of the State.
Okay. Go on.
MR. COLUCCI: Okay. BY MR. COLUCCI:

Q You were asked about whether you thought it was a good trial tactic or reasonable trial tactic to make a statement to the jury -- to the judge and the jury as to why a witness wouldn't testify; correct?

A Yes.
Q You remember that?
Would it be a reasonable trial tactic and a reasonable tactic under any circumstances to lie to a judge and lie to a jury about a witness you never had under subpoena and never had spoken to and then give them a reason why he's not there? Would that be a reasonable tactic?

A That's just -- that's absurd.
Q So if Mr. Bloom said that -- I can't remember his name now. I just drew
a blank.
THE COURT: Dr. --
THE WITNESS: Whitey?
MR. COLUCCI: Franks. BY MR. COLUCCI:

Q If Mr. Bloom said that Franks was not available because his wife was ill and he refused to honor his subpoena, and that was not the truth, would that be a reasonable trial tactic?

A It's just -- no. As a matter of fact, I'm stumbling because l'm speechless that an attorney would do that.

Q You started to talk -- and I don't really want to beat this to death, let's just go through it as quickly as you possibly can, the difference between a psych eval and psych defense. Why do you not need one with the other?

A Because the psychological examination is not in and of itself going to be dispositive. The psychological happenings at and around that time can be substantial. So they are not the same thing.

For example, if you're going to present an insanity defense, which this was not and -- well, that wouldn't have been a very good defense either in this case because the facts don't support Mr. Centofanti being insane, but there is a substantial difference between a psychological evaluation or psychological testing and the psychological factors at play at the time of the offense.

Q And the diminished capacity defense would have helped to negate the premeditation and deliberation issues?

A Yes.
Q Which would establish first degree murder; correct?

A Yes.
MR. COLUCCI: I don't have anything else for Mr. Lukens.
THE COURT: Recross?
MR. SCHWARTZER: I do actually.
THE COURT: Go ahead.
MR. SCHWARTZER: I'll be quick, Your Honor.
THE COURT: Go ahead.
RECROSS EXAMINATION
BY MR. SCHWARTZER:
Q Now, you're saying you -- that you don't need a psychological evaluation to do a psychological defense; correct? That's what you just testified to.

A That's correct. But diminished capacity can also be if somebody is inebriated.

Q Okay.
A That's a diminished capacity.
Q Would some attorneys -- is it reasonable for a defense attorney to be uncomfortable putting on a psychological defense without a psychological evaluation?

MR. COLUCCI: And I think that calls for speculation. Some attorneys are more comfortable than others doing --

MR. SCHWARTZER: That's kind of my point.
MR. COLUCCI: -- things a certain way.
THE COURT: Overruled.
THE WITNESS: I would not put on a psychological defense without having a psychological evaluation. Whether I disclose that psychological evaluation to the

District Attorney or not is another question.
BY MR. SCHWARTZER:
Q Okay.
A If I -- because what you have to take into consideration is, if I'm going to use a psych eval --

Q Right.
A -- then in all likelihood, the DA's going to get a chance to do their own psych eval.

Q Of course.
A So who's going to have the better witness then? But that psych eval is not absolutely essential to the psychological defense.

Q So you would be comfortable going with a diminished capacity case without presenting a psychological expert to talk about the Defendant's state of mind?

A When you say, would I be comfortable, I wouldn't be comfortable as a defense attorney in this case regardless of what I had because the facts are so absolutely overwhelming. So to say I would be comfortable in doing that, no. You're on the hot seat in this case. You can't just walk in in a case like this with so little preparation.

Q Okay. Now, if the canvass -- I keep calling it a canvass. It's the admission of
-- that he was the shooter in this case.
A Okay.
Q If you were going to go with either a diminished capacity case or a selfdefense case, in either way Mr. Centofanti would be the shooter. Is that correct?

A I don't know. I can't say that for certain.
Q So a diminished -- I'm sorry.
A As a prosecutor, you know that one of your fears sometimes is, hey, I got this case nailed. I don't know what kind of defense they're going to put forth and that worries you up until the time of the defense's opening statement.

Q Okay.
A Assuming they give one. Because you -- that's probably one of the major advantages that defense has is they don't really have to say very much.

Q But going back to the question, if you were going to present a diminished capacity case in this case --

A Yes.
Q -- you would still have to admit that the Defendant was the -- you wouldn't have to admit maybe the way it was admitted, but it's at lease tacitly admitted that he's the shooter.

A Yes.
MR. SCHWARTZER: That's all I got, Your Honor.
THE WITNESS: I would -- to clarify, I would say the evidence would indicate that he is, whether he has a -- had a memory of it or not, I don't know. If -- you've reviewed his testimony at trial.

MR. COLUCCI: Mr. Lukens, one last question.

## FURTHER DIRECT EXAMINATION

BY MR. COLUCCI:
Q With respect to putting on a self-defense defense, would the Defendant have to take the witness stand in order to present self-defense as a defense?

A I'm --

Q I don't mean tactically; I mean legally if you know the answer.
A I imagine theoretically it's in some convoluted way it may be possible to do it without him taking the stand, but clearly not. No. You cannot claim selfdefense without taking the witness stand.

Q So once you admit that you --
A You know he's --
Q Once you admit you are the shooter and put forth self-defense, you are now boxed in pretty much tactically to taking the witness stand.

A Absolutely. I'll bet Clark Peterson was just salivating over that.
MR. COLUCCI: Okay. Thank you.
MR. SCHWARTZER: No further questions, Your Honor.
MR. COLUCCI: No further questions.
THE COURT: Thank you, sir.
THE WITNESS: Thank you, Your Honor.
THE COURT: All right. So we'll go ahead and take a break for lunch. We can see after lunch if the Defendant is going to testify and either way, l'll probably want some argument from you as to how the standard is or isn't met.

MR. COLUCCI: Okay.
THE COURT: So why don't we start up at 1:00, okay?
THE MARSHAL: All rise. The court is now in recess.
[Recess taken at 11:54 a.m.]
[Matter resumes at 1:08 p.m.]
THE MARSHAL: All rise. District Court Department 6 is back in session.
Please be seated; come to order.
MR. COLUCCI: We're ready to proceed. After further discussion with Mr.

Centofanti, Mr. Centofanti desires to take the witness stand so we're going to call him as a witness.

THE COURT: Okay. So he can stand there and be sworn in and he'll just sit there and testify.

MR. COLUCCI: Okay.

## ALFRED CENTOFANTI

[having been called as a witness and being first duly sworn, testified as follows:]
THE COURT CLERK: Please state your name and spell it for the record.
THE WITNESS: Alfred Centofanti, C-E-N-T-O-F-A-N-T-I.
THE MARSHAL: You can have a seat, sir.
MR. COLUCCI: May I proceed?
THE COURT: Yeah.

## DIRECT EXAMINATION

BY MR. COLUCCI:
Q Mr. Centofanti, are you acquainted with a gentleman by the name of Allen Bloom?

A Yes; lam.
Q How do you know Mr. Bloom?
A He was one of my defense attorneys at my criminal trial.
Q And when did that occur?
A The trial?
Q Yes.
A The trial was, I believe, in March and April of 2004.
Q And when did you retain Mr. Bloom?
A I believe it was sometime in June, July, August time frame of 2001.

Q Are you acquainted with a gentleman by the name of Dan Albregts?
A Yes; I am.
Q How do know Mr. Albregts?
A Mr. Albregts was my attorney before Mr. Bloom.
Q And how long did Mr. Albregts represent you?
A You know, as I sat here and watch him testify. I was trying to remember how long Dan was on the case, but my recollection was a short amount of time. I couldn't be more specific than, say, more than a few months.

Q Did he continue to help Mr. Bloom with your defense after that?
A I wouldn't disagree with what he said. You know, I originally -- he was retained to be my attorney at trial and once he was disqualified, other than just, like, what he said, you know, l'd see him on occasion. I'd go to his office and, you know, we would discuss certain matters, you know, related to the trial but nothing -- I wouldn't say even -- you know, like, he was giving me advice more than he was be a sounding board. My main attorney was in San Diego, so he wasn't out here a lot. And so --

Q And you say your main attorney, that would be Bloom?
A Yeah. And then, you know, Ms. -- Judge Navarro, the Honorable Judge Navarro, her role was -- well, you didn't ask me that question, but --

Q Okay. What was her role with respect to your defense?
A Well, my understanding was Phil Kohn, who at the time, and he might still be, was the head of the Special Public Defender's Office, was asked to be there in conjunction with the disqualification situation that the District Attorneys' Office had created with regards to Mr. Albregts.

So initially, Judge Gibbons, back in 2001, had appointed Phil Kohn to
actually be there at the disqualification hearings just in case Mr. Albregts was disqualified. When that disqualification -- or when the decision was made, I think in September or October of that year, then a further discussion was had with me as to who l'd like to have on my case for local counsel, and Judge Navarro's name was raised. And she became involved but her role changed over time. So there's no easy way to answer that question.

Q Was she appointed as your local counsel?
A You know what? I looked at the minutes 'cause l've looked at some things. She was -- I think Phil Kohn was appointed as -- Phil Kohn himself and his office and then eventually, he transitioned that to Ms. Navarro. She wasn't present at -- I mean, she wasn't there. I think there was a whole bunch of things that went on. She wasn't there. And then she was appointed and then --

Q Was the office appointed as local counsel?
A I believe so by Judge Gibbons. I know Dan had said it was Judge Mosley, but I'm pretty certain it was Judge Gibbons.

Q What did you understand her function to be as far as being local counsel?

A Well, in 2001 it seemed that she was a lot more actively involved in the case, but after 2001, almost not at all. I mean, I even remember just in the way to answer your question, when we were at trial in 2004, she left. I think her husband was, is, may be still is a District Attorney. They left for the Final Four. They got tickets for the Final Four. She was excited about that. We talked about it. She left for four, five, six days and we had I think it was three or four different Special Public Defenders who came in during the trial to assist. And I know that on some of the real -- and I don't know how else to characterize, just some of the real heavy pretrial

Q Okay.
With respect to the pretrial preparations, who was calling the shots on the case -- on your case?

A Oh I agree with Dan. It was Allen's show and he was running it. I mean, there was no, you know, there was no committee. It was, you know, Allen had -- you know, Allen had control of the case.

Q And with respect to the trial, did Ms. Navarro ever question any of the witnesses?

A No. In fact, during the trial, she was preparing for another trial that was immediately after that and we talked about it. And --

Q So she was just available as local counsel to answer any of Mr. Bloom's questions about procedure?

A I don't -- and, again, I don't mean to be demeaning, but the way it was explained to me is, you want a female sitting at the table with you. And that's basically what she felt too, I mean.

Q She didn't do the opening, she didn't do a closing for you.
A No opening, no closing, no examination of witnesses, no witness prep. I mean, she was basically there to form -- to have the function of, I am here as local counsel because it's required because you have San Diego counsel. He's pro hac vice - or however you say that. And she understood that as well. You know, she didn't -- you know, and she didn't attempt to do anything, you know. It wasn't --

Q Let's talk about the disqualification of Dan, then. With respect to the disqualification, he was disqualified because there was an apparent conflict of interest as he might have been called as a witness in your case. Is that the theory
the District Attorney got him disqualified on?
A I don't agree with that as a characterization. I'd say more accurately, the District Attorney canvassed me in open court whether or not I authorized Dan to file a pleading. And then they said in that pleading, that I had waived the attorneyclient privilege on three different instances and due to that fact, that Dan was going to be disqualified. I'm sorry, Your Honor, Mr. Albregts. And, you know, we both looked at each other, like, we had a July trial date. And this came up in June and we're like, what are they doing? And this evolved into this five or six month process where we spent time, effort, resources and all this fighting this.

And what it came down to was that I had sold property in San Diego. And I had called Dan and said, you know, I need to sell this property. This property's going into foreclosure and he said, well, you know, if you need to sell it, go ahead and sell it. And that turned into he was my attorney for purposes of the San Diego real estate deal and that he had given me legal advice and all this other stuff.

Q Were you in agreement with the disqualification?
A Absolutely not.
Q After the disqualification, did there come a time when the District Attorneys' Office informed you and Mr. Bloom that they were not going to call Mr. Albregts as a witness?

A Well, what had happened was Mr. Bloom filed a memorandum on a separate issue and I cannot, as I sit here, remember what it is. I mean, I guess I could look through my stuff, but what's important is in that memo, and I know we've got it in our stuff, he says everything I just said.

He said, look, we spent all this time, all this effort fighting this

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disqualification issue and now Mr. Laurent, on December $26^{\text {th }}$-- and why that date's important is we had a January $2^{\text {nd }}$ trial date -- comes back and says, oh, yeah; we 're not even going to -- yeah, we're not calling Mr. Albregts as a witness.

Q Is that 2001 or ' 02 ?
A 2001. So the original -- the trial date went from July to September to November but Judge Gibbons said January $2^{\text {nd }}$ is firm. That's a firm date and we're going to trial. And they came to us less than a week before trial and said Dan -- Mr. Albregts is not going to be a witness and, you know, ghee, I guess -- you know, that's it. I mean that was the end of that issue.

Q Did you discuss that with Mr. Albregts?
A Today -- well, I discussed it with him -- I discussed -- I asked the attorneys at the time what can we do about this? And at no point -- and I asked Dan this today, I said, Dan, correct me if I'm wrong, but I said, look, I apologize we brought you into this and that I appreciate you coming here, but let me ask you a question. At any point did you, Judge Navarro, or Allen Bloom ever advise me that I had a right to appeal that decision, the disqualification? And he said, you know what, you're right. We didn't. And I said that's --

MR. SCHWARTZER: Objection; hearsay, Your Honor.
THE COURT: Sustained.
MR. COLUCCI: He's already answered the question.
THE WITNESS: So -- well, the thing was that we had discussed it at the time in December and at no point had any of the attorneys involved in the case advised me that I had a right to challenge Judge Gibbons' ruling of the disqualification. Because, basically, the -- in taking the words of Mr. Bloom out of his own deposition, the bad faith actions of the State -- I mean, that's Mr. Bloom when you guys took his
deposition, you asked him the question: Do you think that this was done in bad faith? And he said: Yes; I do think it was in bad faith. I think the District Attorneys' Office had it out for my client, which was me, and that they did this just to harass him and there was no -- there was really no basis for it.

BY MR. COLUCCI:
Q Did you express a desire to Mr. Bloom or Mr. Albregts that you wanted Dan back -- Dan Albregts back in the case?

A I did but not in those words. I mean, it was difficult to decide how it was that we were supposed to proceed. Judge Gibbons had come down with a Judge Gibbons-kind-of ruling. He says, okay, what I'm going to do is, Mr. Albregts is still involved and he can still assist but he can't come to the courthouse and he can't come into the trial, but he's still available to assist you.

Well, that's all good and fine except I didn't have the money to keep paying Dan to be like an unpaid consultant, you know, to the trial. So when I asked about getting Dan back in, well, no; he's still involved. But I wanted him to try to the case. You know, and this was never -- you know, and I understand it's been -- now we're talking about events that are over nine years ago and everybody's recollection is going to be different. But mine's the same. And the thing is that I always wanted Dan as the attorney but nobody knew what to do, but nobody advised me that we could challenge that ruling 'cause that I would have said let's challenge this, 'cause this is, you know, there's no basis.

Q Okay.
A I'm sorry. I'm --
Q That's okay.
Prior to 2000, 2001 you had basically been practicing in the civil area;

A Correct.
Q And you were given Mr. Bloom's name by Merilee Wright. Is that right?
A Yes; correct.
Q And when did you actually meet Mr. Bloom?
A I'm going to -- based on -- I don't know if this is a proper answer, but I mean, I looked at the minutes and I saw when he appeared was sometime in June of 2001. So I'm assuming -- I know | talked to him on the phone and that's not meeting him and I think you're asking meeting him in person.

Q Uh-hum.
A But I think the first time I probably actually met him in person after the conversations on the phone, was in conjunction with whatever his appearance is on the record; right around that same time. If not that day, the day before or something like that.

Q Did you ever have a disagreement with Mr. Albregts about him -- about any of his representation on your behalf?

A No; me -- no; absolutely not.
Q Did you ever express to Mr. Bloom that you didn't want Dan Albregts as your attorney because he was part of the good old boy network?

A No.
Q If Mr. Bloom said that, would that be untrue?
A You know, I don't like to point fingers at people and say that he's telling -- I think that maybe in his recollection, because -- let me explain this just a little bit. I mean, when I read -- I actually didn't read his depo. I was at the depo telephonically. I don't know if Your Honor was aware of that, but I was actually
participating in the deposition telephonic. When I heard that, you know, Allen thought that I retained him a year or two after the incident occurred. That wasn't true. June of 2001 was within seven months of the incident. So llook at that statement by Mr. Bloom in that context. There was a lot of things in there factually and it's not his fault. It's just it's been nine years. He handles other cases. You know, everybody has done other things since then. So --

Q So my question to you is did you or did you not say: I don't want Dan Albregts as my attorney because he's part of the good old boy network?

A I did not say that. I don't even know what the good old boy network is in Vegas.

Q Okay. You were present when Mr. Bloom made his opening statement; correct?

A Yes.
Q Okay. In his statement Mr. Bloom mentions Lieutenant Franks.
A Correct.
Q Do you recall that?
A Yes.
Q Did you ever meet Lieutenant Franks?
A Today would be the first time I've ever set eyes on the man. I didn't think he existed.

Q Did Mr. Bloom make representations to you about whether or not Lieutenant Franks would testify on your behalf?

A Yes.
Q What representations did he make?
A Well, the representations are the same ones that are contained on the
record. We had a Petrocelli -- Petrochelli [phonetic] -- celli [phonetic] hearing back in December of 2001. And the DAs were complaining that Mr. Bloom wasn't complying with discovery. And they said we want to know who his experts were. And he gave an eloqent [phonetic] -- yeah; listen to me. I can't say eloquent -eloquent presentation on the record of who Mr. Franks was, what he was going to testify to, what his qualifications were and how it related to the defense that was going to be presented.

So that was the first time I had heard it as well on the record. Now, we discussed it afterwards. But in terms of actually being on the record -- and that wasn't the only time --

Q No --
A -- that he did that with the Court.
Q Right. I'm --
A There was multiple --
Q -- going to ask you about that right now.
Were you present on other occasions when Mr. Bloom told the Court that Lieutenant Franks was going to testify on your behalf?

A There was another motion that was made -- actually, the State was seeking to strike the defense witness list and I think the defense experts. And Judge Gibbons wasn't going to do that, but he was kind of upset and he said, look, you got to at least tell them who your experts are, what they're going to testify to and stuff like that and Franks was brought up again as one of those witnesses.

Q Did Allen make -- I'm sorry, did Mr. Bloom make representations that Lieutenant Franks was going to be a witness for you --

A Oh --

Q -- to the Court?
A Yes; to the Court, to me, to the District Attorney, I even believe to other people involved in the case.

Q And was the -- was one of the representations made in 2001?
A That's when it was made in 2001, the -- I mean, the initial representations.

Q Is that to Judge Gibbons?
A Yes.
Q And that --
A That should be on the record.
Q And that was during the Petrocelli hearing?
A You know, I just know it was in December of 2001 because we -- like I said, we had that January $2^{\text {nd }}$ trial date and Judge Gibbons was trying to get everything done and it was in that time frame. It might have been earlier than that, but I know for sure that if you look in the record, which -- yeah, if you look in the record, you're going to see that it's in there. We've got it in the writ as well. I believe we've quoted where it's at in the record.

Q Okay. Let's talk about self-defense for a minute. That was the main thrust of your defense at trial. Who -- how did the defense of self-defense come about as your defense of choice?

A Through discussions with the -- you know, with the attorneys that were involved in the case.

Q Through your discussions?
A Well --
Q How was it presented to you?

A When Mr. Bloom was retained, he came on and as he said in his deposition, he said: Well, I don't care what everyone else has done. I'm going to look at this thing from scratch. I'm going to start at the beginning and I'm going to come and talk to you about certain things.

So after he had done his review of, I guess, whatever you guys do to review criminal cases, he came out to Vegas, or when he was in Vegas, he would sit down with me and that's how it kind of evolved. You know, him telling me this -- you know, this would be the defense that we're going to pursue.

Q Now, did their come a time when you were canvassed and requested to admit that you were the shooter?

A Yes; I think there were three requests, three separate requests.
Q Do you recall when those were?
A Actually, I do. The first one was when Christopher Laurent was still the District Attorney on the case and he asked for it. Man, I hate to keep saying Petrocelli wrong, but he asked for it during the Petrocelli hearing. He just made an oral motion. He said --

Q Was that in 2001?
A That was in 2001. He -- I-- you know what? I think it was Ms. -- no. Somebody filed a written objection to it and I know it's part of the record. And in that they said that this can't happen because it would be per se ineffective assistance of counsel. We'd be advising our client to give up his right to remain silent. The judge would have to recuse himself and the trial would have to be continued. And that's actually in the pleadings that were filed.

Q That's a written opposition to the request to canvass you.
A Correct. And so Judge Gibbons said he'd consider it and then I think it
was raised again, like, December $26^{\text {th }}, 27^{\text {th }}$, somewhere in there, and then it was denied. And I think you got -- I heard earlier somewhere in here that it was denied without prejudice and that's my recollection as well.

But originally, when District Attorney Laurent asked for it, he said, well, it'll be outside the presence of the State and then we just want to make a record of it so that Mr. Centofanti can't claim later that his attorney went against what he said and they cited a whole bunch of cases and none of the those cases supported what he said. And I think Judge Gibbons looked at that and said, yeah, no, I'm denying this. But then it came up again prior to the trial with Judge Mosley, and I remember that specifically 'cause I said to Allen, I said, I thought we've already had a ruling on this. And he said, well --

MR. SCHWARTZER: Objection, hearsay.
THE COURT: Sustained.
THE WITNESS: Okay. It came up again, I think it was March; right before the trial started. Gloria wasn't there. Dan had not been there at all, but I know for sure Judge Navarro wasn't there. And it was told to me that I had to do this in order for us to proceed with the trial because of certain rulings or something that were made. And it all changed format.

MR. COLUCCI: Judge, could we approach for a second?
THE COURT: Yeah.
MR. COLUCCI: Please?
THE COURT RECORDER: Off the record?
MR. COLUCCI: Off the record.
THE COURT: Okay. [Bench conference -- not recorded]

THE COURT: Let's go on.
THE COURT RECORDER: We're on.
[Bench conference -- begins]
THE COURT: Okay.
MR. COLUCCI: Okay. My representation is, is that this issue of self-defense and the canvassing of the Defendant was discussed with the Defendant and questions were asked at the deposition about it and so any testimony by the Defendant is -- either shows an inconsistent statement or a consistent statement [indiscernible].

THE COURT: I mean, so --
MR. SCHWARTZER: [Indiscernible] sorry.
MR. COLUCCI: And the advice he's given is part of the ineffective assistance of counsel record.

MR. SCHWARTZER: Based on prior sworn testimony. This is in prior statements made by the [indiscernible] sworn to. There's no prior written documents [indiscernible].

MR. COLUCCI: He's sworn. Everybody's sworn. I don't know what the problem is. I mean --

MR. SCHWARTZER: Actually, that's true.
THE COURT: Okay. So he's saying -- if it's a prior inconsistent statement that is inconsistent with Bloom's testimony in his deposition --

MR. COLUCCI: And that's really [indiscernible] for you to decide.
THE COURT: Then that could be an exception.
MR. SCHWARTZER: But we're going into more detail than what was in the depositions. Several of these conversations that --

MR. COLUCCI: Well, but we had the --
MR. SCHWARTZER: -- to are now -- are stuff that wasn't brought up at deposition.

THE COURT: Right. I mean, now, you know, not having read the deposition -- you know, yeah, if he's going to say that he said something that's inconsistent with something he said in the deposition then, yes, that can be presented as an exception to the hearsay rule. But a prior consistent statement can only be used if it -- to rebut a allegation of recent fabrication or something along those lines --

MR. SCHWARTZER: Well, maybe --
THE COURT: -- and that's my only --
MR. SCHWARTZER: -- it helps that Mr. Colucci. I'm sorry. I didn't mean to talk over you Your Honor. Colucci -- Mr. Colucci cites to stuff in the deposition Mr. Bloom said this in the deposition.

MR. COLUCCI: I don't think --
MR. SCHWARTZER: This is --
MR. COLUCCI: I don't think we need to do that because it's the same as him being on the witness stand. We both had the opportunity to question and crossexamine.

THE COURT: Oh, no. You're right. Bloom's deposition is the same as if he came and testified --

MR. COLUCCI: So I don't see --
THE COURT: -- right in court.
MR. COLUCCI: -- why we're limited to saying what he said when he can -- if he wants to reserve rebuttal, let him bring him in.

THE COURT: You can present inconsistent -- prior inconsistent statements
the same as if he testified live in court. There's still a hearsay rule even for people who testify.

MR. COLUCCI: So a person claiming ineffective assistance of counsel can't say what advice he was given?

THE COURT: Okay.
MR. COLUCCI: See that's the whole --
THE COURT: Okay. So that --
MR. COLUCCI: And I'm not arguing --
THE COURT: Okay. Let me think about this. That's not -- it's really -- well, if it -- if what you're trying to present is a statement Bloom made that was bad advice, then you're not introducing it for the truth of the matter in the statement.

MR. COLUCCI: Exactly.
THE COURT: So then it wouldn't be hearsay if it's something like that.
MR. SCHWARTZER: I understand that.
MR. COLUCCI: That's why I didn't understand the hearsay objection.
THE COURT: Okay. Yeah, yeah. So -- I mean, if it's something along those lines, something that he said that was bad advice or improper advice, it's not being introduced for the truth of the matter so it would not be hearsay.

MR. COLUCCI: Okay.
THE COURT: That's correct. Sorry.
[Bench conference ends]
THE COURT: Go ahead.
MR. COLUCCI: So may I inquire in that area, Your Honor?
THE COURT: Yes.
MR. COLUCCI: Thank you.

BY MR. COLUCCI:
Q So you discussed with Mr. Bloom the issue of self-defense; correct?
A Correct.
Q And what were you told with respect to selecting self-defense as a defense in this case?

MR. SCHWARTZER: Objection. By whom?
BY MR. COLUCCI:
Q By Mr. Bloom.
A I don't understand the question. I mean, I don't --
Q Okay. Let me back up.
You discussed the use of self-defense with Mr. Bloom; correct?
A Not in the way I think you're describing. I mean, we never -- we never sat down and he said these are the elements, this is what we need to prove or anything like that. It was never a legal, you know, conversation. It was just that he had asked me certain questions that he thought might assist in preparing certain things. But, I mean, I'm not even sure today I know what all the, you know, the elements and stuff were. I mean, I don't if that's what you're asking me. We never had a discussion like, well, this -- you know, this is this and these are the elements and stuff like that.

Q Okay. So prior to you being canvassed the third time about whether or not you were the shooter and that that would trigger a self-defense defense, you're saying that you never had an in-depth conversation with Mr. Bloom regarding selfdefense?

A No and when the canvass came up, the Court -- I originally said no. And the Court was like, you know, I said to him, I ain't doing this. And he's -- they
said, okay, we'll take a recess. Go talk to your client.
And we went out and it was explained to me that if I did not proceed in the manner in which I was being instructed to, that they were -- you know, we weren't going to be allowed to present self-defense and the witnesses that they had subpoenaed, the out of state witness and all this, you know, the Judge isn't going to let us call all them. And, you know, you just need to do this kind of thing. I looked around, Gloria wasn't there. I mean, I apologize but I mean, that's how I refer to the attorneys. You know, Gloria wasn't there.

THE COURT: That's fine.
THE WITNESS: Dan wasn't there and --
THE COURT: So let me just understand. Whether you discussed the legal elements of self-defense or not, did you have a conversation about, you know, whether or not to rely on self-defense as your defense as a theory at trial?

THE WITNESS: Oh, sure we did. But that's why I was trying to clarify his question. Because, I mean, this was unique in a sense that due to the writ that was filed, this trial got delayed for three and a-half years. So there was a lot of time in between. I mean, we discussed a lot of different things and we did discussed that, yes. But, I mean, I guess I need some more direction in terms of like what exactly -I mean, and I apologize. I mean, I know we raised all these, you know, issues but it's hard to just say one yes or no to --

BY MR. COLUCCI:
Q Was the impact of admitting you were the shooting explained to you by Mr. Bloom? And by that I mean, was it explained to you what impact it would have on your defenses and what the State would have to prove in their case?

A No. And the reason why I can say no is that originally it was supposed
to be something -- it was supposed to be made part of the record that the DA wasn't there for and the record shows that not only was the DA present for the canvass, but they incorporated it into their opening statement. I remember sitting in court going, that's not what -- you know, not -- I mean, that's not what that was about. It wasn't about so the State --

Q Did they also incorporate it in their closing argument?
A You know, I might have it mistaken. It's in there and they were allowed to argue it. And I knew then, like I know now, I'm like, that wasn't good. I mean, that wasn't a good thing. I mean, it -- and they actually -- they made a big part of it of their closing statement was, well, we don't have to -- you know, we know who the shooter is 'cause basically -- and they went into this whole thing and I'm like, the whole point of that canvass when it was explained to me -- actually, it wasn't explained to me. It was the DA arguing it to the Judge was to preserve the record on appeal, that if somehow we switched up and went with something else or if I argued later on direct or now, or whatever, that somehow I didn't consent to selfdefense, they didn't want to give me that option. So that was supposed to preclude me from somehow doing some big bad thing later on saying, well, no, I never said that you could say that, you know. And it turned into -- what the record shows, I mean, they were --

Q Was it explained to you that by admitting you were the shooter that you essentially established one of the State's elements for their case? Was that explained to you before you were canvassed and made your statement?

A No. And, in fact, if you look at the opposition that we originally filed in December -- I think it was December $26^{\text {th }}$ of 2001, that's what was explained to me. And if you read that, it says conclusively, you know, this can't be allowed and here's
the three reasons why it can't. That's what was explained to me.
Q Did you discuss that with Mr. Bloom on -- during the March, 2004, canvass?

A Yeah; in the hallway. That's what we talked about and I was told, basically --

Q By whom?
A Bloom, I mean, by Allen. I mean, Allen was like, no, you're going -- you have to do this. I mean, I don't want to keep repeating myself.

Q And why did he say that? Why did he say you had to do this?
A For the reasons I said before; otherwise, the --
Q To establish self-defense?
A Well, that, but we weren't going to be able to call all these witnesses, all the over three and a-half years all these witnesses that they said that they found that were going to support this theory of defense. That if I didn't consent to this, that that somehow would, you know, the Judge would be, like, okay, now I'm not going to let you call these certain witnesses, you're not going to be able to present certain evidence, and that was never my understanding. But --

Q You've been in court and you've heard the plea canvasses that are given by the judges prior to taking a guilty plea in a case. Have you --

A Well --
Q This is a yes or no question. Have you heard some of those?
A Yes.
Q Okay. Were you given a full plea canvass prior to the time that you made the -- and I'm putting in quotes, the admission that you were the shooter?

> A No.

Q Did you sign anything acknowledging that you were advised of your rights -- advised of the rights you were waiving by admitting you were the shooter?

A No; I don't think I ever did. I don't recall being presented anything and I don't recall seeing anything, so.

Q Now, your position from the beginning of this case has been that you did not remember what happened on December $20^{\text {th }}$ of 2000 . Is that correct?

A Correct.
Q And yet you were asked to admit that you were the shooter. Is that correct?

A Correct.
Q And in your testimony at trial you were unable to recall being the shooter. Is that correct?

A Correct.
Q So to go back to the plea canvass right before the trial, you were asked to admit for the purposes of establishing one of the elements of the crime charged, an act that you had no recollection of. Is that correct?

A Correct.
Q And, in fact, your response to the inquiry about whether or not you were the shooter and the Judge asking you if you admit that you were you're the shooter, your response was: On the advice of my attorney, I admit that; something to that affect.

A That sounds --
Q Pretty close.
A Pretty close.
Q Okay. So it wasn't just a plain acknowledgment that you remembered
the incident.
A No.
Q Okay. Did you ever discuss with Mr. Bloom the possibility of the battered spouse defense? And I use the word defense; I know it's not a complete defense, but for the purposes of me questioning you about it, the spattered --

A Yes.
Q -- the battered spouse.
A The short answer to that is yes.
Q Okay. And did you agree or just -- first of all, did you discuss with him the pros and cons of using that as a defense?

A You know, not the pros and cons but a little bit of -- he had an expert that he intended upon using and we talked about that. There was somebody that he had in mind that he intended upon using.

Q Did you discuss it with him on more than one occasion?
A I believe so. Demetrius Heller [phonetic]. Just -- sorry, that's the name I seem to recall, Demetrius Heller [phonetic].

Q Did you ever meet Demetrius Heller [phonetic]?
A I don't even know if that person exists. And I'm not trying to be disrespectful, I just -- it's a name that he threw out there. I don't know if I have it right.

THE COURT: So is that a no; you never met him?
THE WITNESS: I think it's a her, Your Honor.
THE COURT: Her.
THE WITNESS: And I don't believe I never -- no, I never met a Demetrius Heller [phonetic].

THE COURT: Okay. This will go a lot faster if you answer the question.
THE WITNESS: Okay. I'm sorry.
BY MR. COLUCCI:
Q Did you have any input into the decision whether or not to use the battered spouse defense?

A I didn't have input on any of these decisions with regards to the defense.

Q Why not?
A It was explained to me that my input was to answer the questions that were asked. So --

Q Was Mr. Bloom a rather dominant person who knew how he wanted to do the trial?

A Yes.
Q And did he insist on certain things?
A Yes.
Q Did you rely on his expertise since you -- your previous work had mostly been civil work?

A Yes.
Q Okay. Let's talk about the impeachment issues.
Do you recall being questioned -- your testimony with respect to Virginia Centofanti's drug use?

A Yes.
Q And do you also recall being questioned about her plastic surgery?
A Yes.
Q And do you also recall testifying that you were told by Dr. Sessions that
she had a hole in her nose from drug use? Do you recall that?
A I recall reading it.
Q Okay. Do you, in fact, maintain to this day that that's the conversation you had with Dr. Sessions?

A No.
Q Okay. Do you know whether or not Mr. Bloom got the medical records from Dr. Session [sic]? From -- yes, Dr. Sessions.

A I understand that he did. That he did obtain --
Q Did you have a chance to look over those medical records?
A Did I?
Q Yes.
A I don't think I did. And if I did, I'm not a -- that's not my area of -reading medical records, I would have no business doing that.

Q Okay. Did you and Mr. Bloom have a discussion about what was contained in those medical records?

A You know what? I don't believe that we did. I really don't. I know that he had obtained the records and BATE stamped them and turned them over.

Q And when you say turned them over, do you know who he turned them over to?

A Discovery. He gave it as discovery. Everything he got, he stamped it and handed it over to the State.

Q Did he indicate to you that he was going to call Dr. Sessions for some reason?

A I never -- no. I don't recall him saying he was going to call Dr. Sessions.

Q Do you recall whether Dr. Sessions was on a witness list or not?
A You know as I sit here, I don't. I don't remember. I know the witness list evolved for both the State and the defense and whether he was on there, I have -- I don't -- | just don't remember.

Q So Mr. Bloom did not tell you that there was no -- there were no notations in the medical records regarding the supposed hole in Gina's nose?

A No.
Q Did he ever tell you that he had contacted Dr. Sessions?
A No.
Q Did you ever have a discussion with him about contacting Dr.
Sessions?
A After my testimony, yes. We -- | was -- I -- well, l'll let the record speak for itself.

Q Okay. There were other areas of impeachment that were used against you by the State that were provided by Mr. Bloom. Is that correct?

A That is correct.
Q Was one of the areas of impeachment the area of whether or not you had picked up your children on a particular evening?

A Yes.
Q Do you remember when that was, which evening we're talking about?
A There were two that were highlighted at trial. I think it was December $1^{\text {st }}$ and a December $4^{\text {th }}$ were the two days.

Q Did you pick the children up on December $1^{\text {stt }}$ ?
A Yes.
Q Okay. Where did you pick them up?

A Francisco, Keito [phonetic], the oldest child, he was at -- he's -- was at Safe Key which was -- it was a program after school up in Summerlin where he was allowed to stay after school. We paid -- I think we had to pay for that, or not. I don't even remember. But I know that I went and picked him up from Safe Key.

Q And how about Nicholas?
A And he was over a La Petit Academy which was a, like, for nursery school-age children.

Q And on December $4^{\text {th }}$ same thing? You went and picked up both children?

A Correct.
Q Except on December $4^{\text {th }}$ Nicholas was ill?
A Yes.
Q Okay. And where did you take Nicholas after picking him up on December $4^{\text {th }}$ ?

A Over to the -- it was an Urgent Care. I think it's Pueblo Medical Center, something like that. It was in -- I don't if it's still there. I mean, I haven't been in Summerlin now for a number of years, but there's a -- think that was the name of it.

Q Did you in fact, on both of those days, pick both of the children up?
A Yes.
Q And did you have to sign in or somehow get into the -- each of the schools to pick them up?

A Yeah; there was some procedure for each place that I had to do to pick them up.

Q And do you recall being impeached during your testimony about each of those incidents where records were produced that did not show that you picked the
children up on those days?
A Yes.
Q And can you explain why those records didn't show that?
A Well, my understanding is I don't think anybody every disputed that I picked up Keito, but there was no effort to get the Safe Key records. I don't know that those were ever obtained.

Q Do you remember witnesses coming in and testifying they don't remember seeing you at either of those locations?

A For the Safe Key, I mean, if that -- if that's what happened, that's what happened. I mean, on -- I know that witnesses came in and claimed that I had never picked any of the children up ever and I just knew that wasn't true, but I --

MR. SCHWARTZER: I object to that. I don't think -- I think that misstates testimony. I think the record should speak for itself on that.

THE COURT: That's fine. I'll have to look at the records.
MR. COLUCCI: That's fine.
BY MR. COLUCCI:
Q But you were impeached through the lack of the defense investigating those claims; correct?

A They called witnesses and produced documents; correct.
Q When you say they, the State?
A The State did; correct.
Q Mr. Bloom did not.
A You know what? I believe he might have produced those records to the State as well. I believe those -- they might have come from the defense.

MR. SCHWARTZER: Well, objection; speculation on that,Your Honor.

THE COURT: [Indiscernible].
MR. COLUCCI: Well, we could ask the defense if -- I mean, we could ask the State if they got the records.

THE COURT: You could when there's a witness on the stand.
MR. COLUCCI: Yes, thank you.
BY MR. COLUCCI:
Q Okay. There was a -- there was testimony in -- in at least in the deposition and elsewhere that you insisted on testifying on your behalf in the trial. Do you remember that?

A I do recall --
Q Is that --
A -- that in the deposition.
Q Is that true that you insisted on testifying in your own behalf?
A No; it is not true.
Q How did your taking the witness stand come about?
A At that particular point in the trial, I recall Mr. Bloom coming up and putting his hand on my shoulder and said: Are you ready? And he stood up and informed the Court that I was going to testify. And then the Court did the testify canvass. I don't know what the name of that is, but, I mean, they ask -- you know, they asked me all the -- or I don't know if they asked all the question they're supposed to, but there was some sort of discussion between me and Judge Mosley and that was it. I mean, there was no you're going to testify on this day after this witness or this. It was literally -- it was sprung on me like that. And I testified over two days because of the format of the trial

Q Before testifying, did you go through a mock trial testimony?

A You know, l've heard that. We didn't -- mock trial?
Q I don't mean mock trial. I mean like mock testimony where you were actually put through questioning by Mr. Bloom and possibly Mr. Albregts to prepare you to testify.

A Yes.
Q And you read Mr. Bloom's deposition; right?
A Correct.
Q Do you agree with his statement that you didn't change any of your answers from the time you did the mock trial -- mock testimony session and testified the same way at trial?

A Yes; I agree with that.
Q Did Mr. Bloom explain to you your right not to testify in this case? I know the Court did, but did Mr. Bloom?

A Yes. Did he explain to me the -- about the right to testify? Yes. But was --

Q The right to testify meaning, you also have the right not to testify.
A Okay. Yeah; did he explain that I had the right to testify? Yes.
THE COURT: And that includes your right not to testify.
THE WITNESS: Well, it wasn't quite put to me like that, but. BY MR. COLUCCI:

Q Explain to us what you mean by that?
A He -- you know, again, and it was just like with the canvass for the -- for being -- for admitting the self-defense. It was like you have to testify 'cause if you don't testify, then our whole defense is out, everything we been working on is out.

Q Who said that to you?

A Bloom. I mean, and it was never put to me like, well, is this something you want to do or you don't want to do? It was like, you know, you have the right to testify but you're going to testify, you know. And I don't know how else to explain that.

Q Did he explain to that you were, essentially, locked into testifying because of the self-defense you were using?

A That, yes. And we also talked about back in 2001 Judge Gibbons had said on the record, if -- it's in the record, he said, if the Defendant chooses to testify, my understanding is he doesn't have to and Judge Gibbons sided Petty[phonetic] versus State or something like that. He started citing cases and I know that we talked about that. And I was, like, that. Okay. I don't have to testify, great. You know what I mean? Because, you know, it wasn't something that --

THE COURT: What's the question?
MR. COLUCCI: I'll ask another one, Judge.
THE COURT: Thank you.
BY MR. COLUCCI:
Q Diminished capacity, did you discuss that with Mr. Bloom? Possibility of using a diminished capacity defense?

A Yes.
Q Okay. And what did he tell you about that?
A We discussed calling witnesses and experts and presenting evidence and pursuing that at trial.

Q Did you have any input into the decision whether that was going to be used as a defense or not?

A Other than input that would assist them in presenting that defense, you
know, I guess the background facts and documents, any evidence; things like that.
Q Did you rely on Mr. Bloom's advice whether or not that would be a viable defense?

A Yes.
Q Did you rely on Mr. Bloom's advice on whether or not self-defense would be a viable defense?

A Yes.
Q Did you discuss the issue of being catatonic on the night of the shooting on December the $20^{\text {th }}$ of 2000 ?

A We discussed the different witnesses and stuff that had supported that, yes.

Q Was that part of your discussion about -- included in the diminished capacity discussion?

A I believe so.
Q Did you discuss with Mr. Bloom the fact that it appeared that the police department didn't do a very good job of processing your home?

A Extensively; we actually talked about that quite a bit.
Q And what was your -- what were you discussions in that regard?
A The investigation techniques, the collection of evidence, there were multiple issues. There was trouble with the warrant and --

Q Was Franks going to help you on some of these issues?
A Yeah; that was one of the areas, I believe, that I was led to believe that Lieutenant Franks was going to come in and assist us with, the investigation and what was done to process the scene.

Q The exercise bike, that was -- that became an issue as far as what
evidence -- evidentiary value the exercise bike had. Is that correct?
A I believe for the -- some of the experts needed to -- would have liked to have -- or need that actually in order to perform their evaluations.

Q And did Stuart James [phonetic]? He was one of your experts.
A I believe so, yes.
Q He was your blood spatter expert?
A I believe so, yes.
Q And during the trial, did he not express it would have been nice to have the actual bike with the blood on it in order to formulate his opinions?

A I think you just paraphrased probably what he said.
Q And Virginia's keys and personal effects that were at the house on December the $20^{\text {th }}$ of 2000, they were never collected. They were not collected either; right?

A To the best of my knowledge, I don't believe they ever were.
Q With respect to the experts like Dr. Eisele, Dr. Trahin and Mr. Stuart James [phonetic], was there any problem getting funding to pay for those experts?

A Was there a problem?
Q Were the privately funded?
A You know, I know we filed a witness motion, I think that's what you call it, for funding and I know that Judge Gibbons -- part of the problem would be -- part of the problem became --

MR. SCHWARTZER: Objection, this is nonresponsive, Your Honor.
THE WITNESS: It is responsive if 1 could finish, I mean.
MR. COLUCCI: Well, I rephrase the question to direct his -BY MR. COLUCCI:

Q Isn't it true that part of the payment for the --
MR. COLUCCI: I'm trying to stay away from leading questions, part of the time at least.

THE COURT: Uh-huh.
BY MR. COLUCCI:
Q Isn't it true that some of the funding was private?
A Correct.
Q And you -- and a motion was filed and funds were granted by the Court to allow you court-appointed funds for experts.

A Correct.
Q And these three are not the only experts that Mr. Bloom hired; correct?
A That's true.
Q Okay. So funding was not a problem.
A It was and that's why we had to go to the Court to get the courtappointed --

Q But funds were provided.
A We weren't denied --
Q That's a yes or -- that's just a yes or no.
A Okay. Well, for the experts, no.
Q Now, did there come a time when you wanted to discuss with Mr.
Bloom some post-trial matters?
A Yes.
Q And were you able to reach Mr. Bloom?
A No.
Q Do you know when Mr. Bloom became unavailable to you?

A Immediately. I talked to him the day of the verdict and did not hear from him again until -- and I'm trying not to look down Your Honor 'cause I got the letter in front of me. In fact, I'll flip that over. He contacted me sometime in May while I was at the Clark County Detention Center.

Q More than seven days after the verdict in the case.
A Yes.
Q Now, you were given a short opportunity after the verdict to talk with Mr. Bloom in court. Is that correct?

A Yes.
Q And at that point did you discuss with him a possible motion for a new trial or appeal or any of those issues?

A We discussed whether or not we were going to allow the jury or Judge Mosley to sentence me and that's what I recall discussing with him and Ms. Navarro.

Q And that's it?
A That's about it.
Q There was a -- there was some issues raised in the deposition and in the supporting documents for the writ regarding the potential testimony of Emeline Eisenman. Do you recall that?

A Yes.
Q And there were some issues about what she would have been able to testify to. Is that correct?

A Yes.
Q How did you know her?
A That was Gina's mother.
Q And you had been --

ALFRED P. CENTOFANTI III

Electronically Filed Jan 242012 10:00 a.m.
vs.
Appellant, )
)
DOCKET NUMTBEERe K. Lififefichan
Clerk of Supreme Court
E.K. McDANIEL, WARDEN, ELY STATE PRISON

Respondent.

## APPELLANT'S APPENDIX, VOLUME XIII

ROCHELLE T. NGYUYEN, ESQ.
NGUYEN \& LAY
Nevada Bar Identification No. 8205
324 South Third Street
Las Vegas, Nevada 89101
(702) 383-3200

Clark County District Attorney
Regional Justice Center
200 Lewis Avenue, Third Floor
P.O. Box 552511

Las Vegas, Nevada 89155-2211

CATHERINE CORTEZ MASTO
Nevada Bar Identification No. 3926
Nevada Attorney General
100 North Carson Street
Carson City, Nevada 89701-4717
(702) 687-3538

Attorney for Appellant
ALFRED P. CENTOFANTI III

Attorney for Respondent E.K. McDANIEL, WARDEN NEVADA STATE PRISON

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THE STATE OF NEVADA,
Plaintiff,
CASE NO. C172534
DEPT. VI

ALFRED PAUL CENTOFANTI, III,
Defendant.

BEFORE THE HONORABLE ELISSA CADISH, DISTRICT COURT JUDGE FRIDAY, JULY 30, 2010

TRANSCRIPT OF PROCEEDINGS
STATE'S MOTION TO STRIKE DEFENDANT'S EXPERT/ EVIDENTIARY HEARING/ PETITION FOR WRIT OF HABEAS CORPUS

APPEARANCES:

For the Plaintiff:

For the Defendant:

MICHAEL J. SCHWARTZER, NOREEN C. NYIKOS, Deputy District Attorneys

CARMINE J. COLUCCI, ESQ.

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> FRIDAY, JULY 30, 2010, AT 9:09 A.M.

THE COURT: Good morning.
MR. COLUCCI: Good morning.
THE COURT: So before we get started, I suppose we ought to take up the State's motion to strike the defense experts. I read the motion. Do you want to add anything, Mr. Schwartzer?

MR. SCHWARTZER: I'll be very brief, Your Honor. I mean, basically, the gist of the motion is this, this is a very important decision. This is -- what trial counsel is asking -- what Carmine Colucci is asking you to do here, is he's asking you to overturn a decision made by 12 jury members after a 13-day trial that had three years to prepare for.

This is a decision that Strickland and the Nevada cases clearly show goes with the judge. Putting a defense expert, just another criminal defense attorney up there and say what he would have done differently or what he considers the community norms and replace the judge is improper I think under Strickland. And I think, as we show In Re: Mosley, the Supreme Court seems to think that really important decisions are something that the judge should decide.

And I also think there's a clear standard established by Strickland. Looking into the information the attorney had, and looking into the investigation the attorney did, the years of experience and as such, that provides Your Honor with the proper guidelines as stated in the first prong. Anything Mr. Lukens might say would be a matter of law and, therefore, not necessary for you.

Again, I will admit, though, I do believe that the discretion does lie with Your Honor. I don't think that it's automatically stricken.

THE COURT: Okay. Mr. Colucci?

MR. COLUCCI: Thank you, Your Honor.
In looking -- in researching this issue in response to the State's motion which was filed a couple of days ago, of course, I haven't had a chance to file a written response, but I did find the Brown case, Brown versus Brown. It's 110 Nevada, 846, and it does say: It is not unheard of in this state for an attorney to act as an expert witness at a post-conviction hearing, citing the Ford case, the Priscilla Ford case. If the attorney's expert testimony would assist the trier of fact, then it is admissible.

I think there's a different between admissible and between the weight to be given to the testimony of an expert witness. While this Court has been on the bench and has seen numerous criminal cases from the time you were appointed, the standard that we're looking at is a standard that would have been established in 2001, because that's when Mr. Bloom took the case over.

So Mr. Lukens was an attorney. He was a trial attorney who had tried cases in both the Public Defender's Office and in the District Attorneys' Office, as well as private practices. His practice during that time period encompassed a lot of criminal defense cases.

He's looked over all the material and I'm not going to argue what he's going to say, but I think it's a matter of weight because it's not a matter of law -- well, it may be a matter of law under Strickland, whether counsel's performance fell below the standard. But to talk about the custom and practice in our jurisdiction and the standard of practice for the attorneys in our jurisdiction during that time period, I think that Mr. Lukens' testimony would assist the trier of fact, which is you. And I know that your background is mainly civil but I know that you've done a lot of criminal work in the meantime. So that's basically the reason that l've suggested we

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use Mr. Lukens is to establish what the standard were 2001, 2004.
THE COURT: Anything further Mr. Schwartzer?
MR. SCHWARTZER: No, Your Honor.
THE COURT: Okay. All right. I'm going to deny the motion. I think that it's reasonable to present testimony of another professional practicing in the same area to discuss the standard of care and whether this fell below it. Of course, ultimately, it's my decision to make and to accept or reject his opinions. But I think it's reasonable just as I would hear from another doctor in a medical malpractice case. think it's reasonable to do that, so going to deny the motion.

Okay. With that, do you want to make any sort of an opening or sort of give a roadmap or you just want to go?

MR. COLUCCI: I'll make a very short statement.
One of the things I just want to say for the record is I know the Court -what the Court ruled on, the other issues brought up in the petition for postconviction relief and the supporting points and authorities was, with respect to the issues, not involving the ineffective assistance of counsel. I just want to put it on the record that we are not abandoning any of the issues by proceeding solely on the ineffective assistance of counsel argument.

I also would like to publish the deposition of Mr . Bloom. I have an original and a certified copy if the Court needs one or both. I will certainly file with the Court the original deposition.

THE COURT: Right. So file the original. Do you happen to have a manuscript?

MR. COLUCCI: You know what? If I don't, I will get you one. I do have one. I just don't think I brought it with me.

THE COURT: Just a copy for me to be able to take home and read.
MR. COLUCCI: Certainly.
THE COURT: All right. Put that, I guess, a Court exhibit.
MR. COLUCCI: Also, and I don't intend to do this a lot because if the Court needs -- I know the Court needs to read the deposition. So instead of asking a question and then citing somewhere in the record, if the Court needs a citation to somewhere in the record, if I could provide that at a later time so we're not breaking up, it's here, it's there, and I have to look for it if I don't have it at hand.

THE COURT: Okay.
MR. COLUCCI: All of the citations that I intend to put in the record will be citations to the Appellant's Appendix and I don't know if the Court has all of the Supreme Court briefs and transcripts and exhibits. If not, I'll furnish you the entire --

THE COURT: I would think so.
MR. COLUCCI: -- the entire set of that for your review if you need -- if it's needed.

THE COURT: Possibly, depending on what you present. If you're going to be referring to documents in that record, then probably going to need a set.

MR. COLUCCI: Okay. Probably some statements that were elicited at trial.
THE COURT: Okay.
MR. COLUCCI: And I would just direct the Court's attention to two cases and I don't know if I have the -- I think I do, but just in case I don't. The Means case and the Ennis case that talks about the burden of proof in this proceeding and that's -- l'll probably have to furnish the Court with those two cases as well to establish what our burden of proof is. And, of course, the Court has the Strickland case.

THE COURT: Right.

MR. COLUCCI: So with that preliminary information, I'm ready to go.
THE COURT: Is there anything you wanted to tell me?
MR. SCHWARTZER: Your Honor, I would just like to note for the record that we agree to stipulate to the deposition coming into you and having you read it instead of having a lot of testimony.

The State would like to reserve its right to use Bloom as a rebuttal witness to anything that may be testified to about what he said to one of these witnesses. It appears to me that the Defendant or another witness might testify to what Bloom has said and that was not covered in the deposition. So we would reserve that right in rebuttal.

On top of the that, we would also note that under the Hargrove case that any assertions made by the Defendant that are not supported anywhere else in the record are -- you can't -- cannot go towards Strickland and, therefore, they need Bloom -- they need testimony from Bloom or from someone besides Bloom to support his assertions. Excuse me.

THE COURT: Okay.
MR. SCHWARTZER: Unsupported assertions can't be allowed in Strickland is what I'm saying.

THE COURT: Okay.
All right. Well, I mean, with Mr. Bloom being in California, he's obviously beyond subpoena power, so.

MR. SCHWARTZER: Mr. Bloom has agreed to come if we call him though.
THE COURT: Oh, okay. All right.
Okay. Go ahead, Mr. Colucci.
First, is anyone invoking the exclusionary rule?

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MR. COLUCCI: Yes.
MR. SCHWARTZER: I will, Your Honor.
[Colloquy between Court and Court Clerk]
THE COURT: So once we start the testimony, if anybody in the room is a witness, they will need to remain outside until they testify.

All right. Go ahead.
MR. COLUCCI: And I did talk with Mr. Centofanti but I'll tell you right now, Mr. Centofanti is not going to be a witness. This is Mr. Centofanti's father.

THE COURT: Okay.
MR. COLUCCI: Marilee Wright, please.
THE MARSHAL: If you could, follow me. Step up into the box, remain standing, raise your right hand, face that young lady right there for me.

## MARILEE WRIGHT

[having been called as a witness and being first duly sworn, testified as follows:]
THE COURT CLERK: Please state your name and spell it for the record.
THE WITNESS: Marilee Wright, M-A-R-I-L-E-E, Wright, W-R-I-G-H-T.

## DIRECT EXAMINATION

BY MR. COLUCCI:
Q Ms. Wright, are you acquainted with an attorney by the name of Allen Bloom?

A Yes
Q How do you know Mr. Bloom?
A Allen dated my sister for many, many years.
MR. COLUCCI: May I approach the witness, Your Honor?
THE COURT: Yeah.

BY MR. COLUCCI:
Q Would you look at this photograph which is attached to the deposition as Exhibit 2. Is that an accurate depiction of what Mr. Bloom looks like?

A Yes; it is.
Q How long have you known Mr. Bloom?
A Probably thirty-some years.
Q Okay. And what's his profession?
A He's an attorney in San Diego.
Q Are you acquainted with Mr. Alfred Centofanti sitting next to me at counsel table?

A Yes; Iam.
Q How do you know Mr. Centofanti?
A He was my neighbor.
Q Okay. And how long have you known him?
A Probably 10 years, maybe 11.
Q And how would you characterize your relationship with Mr. Centofanti?
A He's a very, very dear friend and I love him very much. He's a good person.

Q Okay. Would you characterize your relationship as a romantic one?
A It is now.
Q Okay. Were you -- did you have any part in retaining Mr. Bloom's services?

A Idid.
Q Could you tell us what that was?
A As far as?

Q As far as --
A How did he come around?
Q -- introducing Mr. Bloom to Mr. Centofanti and what arrangements were made. Not -- you don't have to get into specific financial arrangements.

A Okay, okay. Something had happened within the proceedings or what not with Chip's attorney and he was --

Q And Chip is Mr. Centofanti?
A Oh.
Q That's his nickname?
A Yeah; correct.
Q Okay.
A Okay. And his attorney he had was somehow removed from the case and Chip was very -- or Mr. Centofanti was desperate to try to find someone that could help him. And we talked about it and I said, well, I have -- my sister -- I've known this attorney for a long time. He's a criminal attorney. Perhaps I can put you in touch with him and you guys can talk.

Q Do you know why -- first of all, do you know who Mr. Centofanti's attorney was prior to Mr. Bloom?

A I didn't at the time. I do now.
Q Do you know who it is?
A It was Dan Albregts.
Q And do you know -- I don't -- do you personally know why Mr. Albregts was removed from the case?

A I do now. I didn't know then.
Q Do you know why he was removed?
A Yes.
Q And why was that?
A A conflict of some sort.
Q Did you have an opportunity to meet Mr. Albregts at any time?
A No; only after the trial was over.
Q Did you have a discussion at any time prior to the completion of the trial whether Mr. Centofanti wanted to have Mr. Albregts reinstated in the case?
A I think -- I really can't recall. I think at some point that there was --
MR. SCHWARTZER: I object to speculation on this point, Your Honor.
THE WITNESS: Okay.
THE COURT: Sustained.
THE WITNESS: I'm just trying to recall. Can you ask me again?
BY MR. COLUCCI:
Q l'll ask you later --
A Okay.
Q -- and see if you remember any better than you do now.
A Okay.
Q During the course of the trial, were you present during any meetings between Mr. Bloom and Mr. Centofanti?
A Yes.
Q Okay. More than one?
A No.
Q Okay. Do you recall when that meeting occurred?
A Just at -- towards the end of the trial.
Q Okay. If Mr. Bloom stated that you'd had more than one meeting with
him and Mr. Centofanti, would that be true?
A That would not be true.
Q You've had discussions with Mr. Centofanti about Dan Albregts both before, during and after the trial. Is that correct?

A Yes.
Q And did he ever express to you that he wanted Mr. Albregts reinstated as his attorney?

A Yes; now that I think about it. Because when it turned out that what the conflict was supposedly going to be, when it finally flushed out that it wasn't going to be a conflict, it was like, why did they remove him in the first place then? So that's --

Q Were you ever privy to any conversations between Mr. Centofanti and Mr. Bloom wherein he requested Mr. Bloom to seek reinstatement of Mr. Albregts?

A No.
Q Because of your close personal relationship with Mr. Centofanti, would you come in here and testify falsely?

A Absolutely not.
MR. COLUCCI: No further questions.
THE COURT: Cross.
MR. SCHWARTZER: Briefly, Your Honor.

## CROSS-EXAMINATION

BY MR. SCHWARTZER:
Q You said you only had one meeting with Mr. Bloom and Mr. Centofanti?
A Correct.
Q And that was throughout the whole trial and before the trial?
A That's right.

Q So you don't have any personal knowledge, besides what happened in that meeting, between the conversations between Mr. Centofanti and Mr. Bloom?

A Idon't.
MR. SCHWARTZER: Thank you.
THE COURT: Anything further?
MR. COLUCCI: No; nothing further. Thank you, Your Honor.
THE COURT: Okay. Thanks, ma'am.
THE WITNESS: Thank you.
MR. COLUCCI: Steven Franks.
THE COURT: Okay.
THE MARSHAL: If you could, follow me. If you could, step up into the box, remain standing, raise your right hand, face that young lady right there for me.

## STEVE FRANKS

[having been called as a witness and being first duly sworn, testified as follows:]
THE COURT CLERK: Please state your name and spell it for the record.
THE WITNESS: Steve Franks, F-R-A-N-K-S.
THE COURT: And Steve. Sorry; S-T-E-V-E?
THE WITNESS: Yes, ma'am.
THE COURT: Thank you.

## DIRECT EXAMINATION

BY MR. COLUCCI:
Q Mr. Franks, what's your present occupation?
A I am happily retired from Metro police, sir.
Q So that would be your prior occupation would be with the Metropolitan Las Vegas Metropolitan Police Department?

A Yes, sir; 32 and a-half years.
Q What were your duties during those 32 and a-half years in a nutshell?
A Patrol, narcotics, SWAT, intelligence, financial crimes.
Q Okay. Did you have any -- did you develop any particular area of expertise during the time you were with Metro?

A Quite a few of them, sir; a lot of shootings, investigating shootings, financial and computer crimes.

Q During your time with Metro, did you develop any special knowledge about a phenomenon that occurs when officers fire their weapons multiple times during a time of high stress?

A Yes, sir.
Q And can you tell me what kind of expertise you have in that area?
A l've been on more than 10, fewer than 100, different shootings, police shootings. And from that and interviewing multiple officers, you get a feel and a real understanding for the psychological effects of stress and shootings.

Q And during your investigation, did you -- was it unusual for you to find that officers had, in the stressful situation, fired more rounds than they could account for?

A Yes, sir; it's quite common.
Q Have you ever met an attorney by the name of Allen Bloom?
A I don't recall ever meeting him, sir; not to say that I haven't met him but do not recall it.

MR. COLUCCI: Let me show you a picture and see if this -May I approach?

THE COURT: Yes.

BY MR. COLUCCI:
Q Do you recognize this gentleman? His picture is at Exhibit 2 in the deposition.

A No, sir; I don't recognize him.
Q Do you recall every speaking to a gentleman by the name of Allen Bloom on the telephone regarding this case?

A No, sir; I don't recall that.
Q Do you ever recall receiving or sending any correspondence to someone by the name of Allen Bloom -- an attorney by the name of Allen Bloom regarding this case?

A No, sir; I don't.
Q Were you ever provided materials to review from anyone regarding this case?

A No, sir.
Q So it'd be safe to say you were never contacted by Mr. Bloom to act as an expert in this case?

A No, sir.
Q Never received a subpoena?
A No, sir.
Q Never retained?
A No, sir.
Q And did you ever express to anybody that you refused to testify as a witness in this case if called?

A No, sir.
Q So if Mr. Bloom made representations about speaking to you, retaining
you and hiring you to testify in this case, those statements would be false; would they not?

A That's true, sir.
MR. COLUCCI: No further questions.
THE COURT: Cross?

## CROSS-EXAMINATION

BY MR. SCHWARTZER:
Q Mr. Franks, are you familiar with a gentleman by the name of Jim
Thomas?
A Yes, sir.
Q How do you know Mr. Thomas?
A We worked together with Metro police. He retired then became a private investigator and we've kept in contact over the years.

Q Do you have a friendship with Mr. Thomas?
A Yeah; I do, sir.
Q Mr. Thomas ever talk to you about the Alfred Centofanti case?
A Yes, sir.
Q What did he mention to you about the Alfred Centofanti case?
A Just rough facts and circumstances of the case and asked me the same question the defense counsel asked on panic shooting.

Q Okay. So you gave Mr. Thomas your opinion on shootings, shootings in general.

A Hypothetical situations. Yes, sir; I did.
Q Did you give him any specific opinions on the Centofanti case itself?
A No, sir. No, sir; I did not.

Q Okay. Let me ask you this. When you did the study on Metro officers that have fired their firearm more times than they remember, what was usually their hit rate?

MR. COLUCCI: Objection; that goes way beyond the scope. What we've tried to establish is merely the truth of the statements made by Mr. Bloom in the deposition. We're not -- we didn't go into any technical discussion.

MR. SCHWARTZER: This goes to the prejudice prong. They're saying that they were prejudiced by Mr. Franks not testifying at trial.

THE COURT: Overruled. BY MR. SCHWARTZER:

Q How many times when the officer hit in a high stress situation when they're firing their --

A It's rare that they hit, sir.
Q It's rare that they hit.
A Yes, sir.
Q What would be the percentage if you had to approximate?
A The ones that I can recall, and we worked the numbers up, it was about 15 percent hit ratio.

Q Do you know how many time Mr. Centofanti fired his firearm in this case?

A No, sir.
Q If I told you he fired his firearm seven times and hit all seven times, would you provide a favorable testimony?

MR. COLUCCI: Objection, that calls for speculation.
MR. SCHWARTZER: It's a hypothetical and goes to prejudice.

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MR. COLUCCI: Would you have provided favorable testimony?
MR. SCHWARTZER: Again, it goes to the prejudice.
MR. COLUCCI: How does he know what's favorable and not favorable in the case?

THE COURT: All right. So rephrase the question.
MR. SCHWARTZER: Sure.
BY MR. SCHWARTZER:
Q What would have been your opinion in a situation where an individual fires seven times and hits seven times?

A The person who was hit was either locked down and couldn't move and the other guy was next to Wyatt Earp as far as shooting.

Q Would you consider that person in a high panic situation?
MR. COLUCCI: Objection, calls for speculation.
MR. SCHWARTZER: Again, goes to the prejudice prong.
THE COURT: Well --
MR. SCHWARTZER: If you're in --
THE COURT: It's up to him if he would know or have an opinion. BY MR. SCHWARTZER:

Q Would you have an opinion that a person who hit -- fires a gun seven times and hits seven times, is it possible if you're in a high stress situation?

A Possible but highly improbable.
Q What would be your opinion in such a shooting? .
A It just simply couldn't happen unless the person was still and it was all contact wounds; like, stuff the gun right in a person and empty it. That's the only way I could see it happening.

Q And I hate to bring this up, but in -- your wife was sick for a period of time. Is that correct?

A Yes, sir; stage four colon cancer.
Q I'm sorry to hear that. Was she sick in 2004?
A She -- we had -- what was it, probably three, four years where we had surgeries, multiple surgeries, chemotherapy and she was on the road to recover I believe at that time, sir.

MR. SCHWARTZER: No further questions, Your Honor.
THE COURT: Okay. Redirect?
MR. COLUCCI: Yes, very briefly.

## REDIRECT EXAMINATION

BY MR. COLUCCI:
Q Accuracy in a shooting situation depends on a lot of different factors. Is that correct?

A Quite true.
Q Distance from the target, time and other circumstances. Is that correct?
A Yes, sir.
Q Type of gun.
A Yes, sir.
Q Okay. So the opinion that you gave the Deputy District Attorney about shoot seven times, hit seven times, there are other factors that would go into that equation. Is that true?

A Yes, sir.
MR. COLUCCI: I have nothing further.
THE COURT: Anything further?

MR. SCHWARTZER: Nothing further, Your Honor.
THE COURT: Okay. Thanks.
THE WITNESS: Am I subject to recall?
MR. COLUCCI: No.
MR. SCHWARTZER: No, Your Honor.
THE COURT: No. You're all done. Thank you.
THE WITNESS: Thank you very much.
MR. COLUCCI: Dan Albregts, please.
THE MARSHAL: If you could please, step up into the box, remain standing, raise your right hand, face that young lady right there.

## DAN ALBREGTS

[having been called as a witness and being first duly sworn, testified as follows:]
THE COURT CLERK: Please state your name and spell it for the record.
THE WITNESS: Dan Albregts, A-L-B-R-E-G-T-S.

## DIRECT EXAMINATION

BY MR. COLUCCI:
Q Mr. Albregts, what's your occupation?
A I am an attorney.
Q And where do you practice?
A Primarily in state and federal court in Las Vegas, Nevada.
Q How long have you been in practice?
A I've been in private practice since 1993. I've been practicing law since 1987.

Q All that time in Las Vegas?
A No; from 1987 to 1990 I was with the Colorado State Public Defender's

Office. In 1990 to 1993 I was with the Federal Public Defender's Office here in Las Vegas and then l've been in private practice since then.

Q And is your practice primarily criminal?
A Yes; primarily criminal defense.
Q Okay. You're acquainted with Mr. Centofanti?
A lam.
Q How do you know Mr. Centofanti?
A I met Mr. Centofanti and I don't remember the year, but it would have been when he retained me to represent him in his criminal case.

Q Would between 2002 -- I mean, 2000 and 2001 sound right?
A Yes; if that's -- yeah, whatever the dates were. I don't have an independent recollection but that sounds right; yes.

Q Okay. And did you represent him in his -- in this criminal case?
A I did until I was disqualified.
Q Why were you disqualified?
A You know, it's been a long time ago. There was an issue with some property in San Diego. The District Attorneys' Office indicated that as a result of what had transpired with the property, that I could potentially be a witness in the case and because of that potential, they asked the judge to disqualify me and the judge agreed and did so.

Q Did they later back off that position?
A I don't know that they later backed off. They later indicated I wasn't going to be a witness in the case. And I don't remember when that was, but I recall it being -- my recollection was well before trial, but I don't have the specific date when that was.

Q Did you have an opportunity to discuss, after the District Attorneys' Office had agreed not to call you as a witness, did you have any discussions with Mr . Bloom or Mr. Centofanti about coming back on the case?

A You know, honestly as I sit here, I don't recall one way or the other. We may have but I don't recall. I know that I -- Mr. Bloom never asked me to come back on the case.

Q Did you continue to assist Mr. Bloom with Mr. Centofanti's defense?
A I did not. My recollection is that shortly after -- when I was disqualified and Mr. Bloom came on the case, there was times where he'd be in the office and we'd chat about the case but after a period of time, and I don't know how much, it wasn't a long period of time, I pretty much never saw him again. I mean he didn't ever come back to -- he was not working out of my office locally. He was working somewhere else. We just never met or spoke about the case.

Q Do you know if the Special Public Defender was appointed to assist Mr. Bloom as local counsel?

A Yes; that's my recollection is that Judge Mosley is pretty firm in his desire to have local counsel when there's out of town counsel on cases in his courtroom and I -- it wasn't going to be me. I wasn't retained to do that and so I think the Public Defender's Office was appointed. And I think as I sit here, my recollection is it was Gloria Navarro who's now a federal judge.

Q During the time that you assisted Mr. Bloom to whatever degree, how was -- how -- who was in charge? Was Mr. Bloom in charge of the case?

A Yeah; absolutely. You know, I would be -- I would do the same thing if I was the lead lawyer but he -- absolutely. And I don't know that I would even characterize my discussions with him as assistance necessarily. It was more just

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chatting about the case in general. But I would definitely characterize Mr. Bloom as
-- at least in -- from my perspective he was the person in charge in the case, yes.
And I mean, if you're asking if -- in terms of Ms. Navarro versus him, I would say absolutely it would be Allen.

Q Okay. So you have some experience noting the interplay between Ms. Navarro and -- Judge Navarro and Mr. Bloom?

A Yeah; I was aware of some of the interplay and my recollection was it was clearly Mr. Bloom who was calling the shots.

Q And do you have any idea what Gloria's -- sorry, Ms. Navarro's -- Judge Navarro, what her function was with respect to helping Mr. Bloom in this case?

A I don't have any specific knowledge other than in discussing it with them, and I -- my understanding was her role was minimal. I didn't attend the trial but I didn't get the impression in discussing it that she had much of a role at all.

Q And is it your position today that as far as the -- running this case, Mr. Bloom was the one who made the strategic decisions in this case?

A That would be my belief; absolutely.
Q Did you know that he had put you down on a witness list as a potential witness in this case?

A I did not.
Q Do you recall in -- sometime in 2004 that Mr. Centofanti came to your office?

A As I sit here, he may have. After Mr. Bloom was his attorney? You know, I vaguely remember him coming to my office; yes.

Q Would he come by periodically to discuss his case with you?
A You know, I believe he would on occasion; yeah. I mean we had a

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pretty cordial relationship I think.
Q Did he seek your advice on certain decisions or certain events that had happened during the course of the case being processed prior to trial?

A You know, I don't know if seeking my advice --I mean, we would discuss various aspects but as I sit here, I don't have any specific recollection one way or the other. He may have. I mean that is something that he would do periodically throughout the case so it wouldn't surprise me.

Q Did he ever indicate to you that he didn't want you to return as his attorney on the case?

A Not that I recall.
Q Did he ever tell you that he did not want you to act as co-counsel in the case?

A Not that I recall.
Q Did you ever have any kind of a falling out with Mr. Centofanti about your representation?

A Not that I recall.
Q I'll take all those answers as no.
A Yeah; I mean I -- that's something that would have stuck out in my head if we would have, and I don't recall him ever -- it was always to me a cordial relationship.

Q Cordial professional relationship?
A Yes; absolutely.
MR. COLUCCI: I have no further questions.
THE COURT: Cross.

## CROSS-EXAMINATION

BY MR. SCHWARTZER:
Q Just to clarify, Mr. Centofanti -- you don't recall Mr. Centofanti ever asking you to get back on the case?

A I don't recall -- yes, Mr. Centofanti --
Q After you were disqualified.
A Right.
Q You said during the course of Mr . Bloom's representation of Mr . Centofanti, you would actually talk about the details of the case with Mr. Centofanti?

A I don't know that we'd talk about details, but we would -- I recall on occasion he would stop by and we would chat about it, yes.

Q Do you recall any concern he had with Mr. Bloom's representation during those talks?

A I don't have any specific recollection --
Q That's fine.
A $\quad-$ of instances of it, but.
Q How long have you known Judge Gloria Navarro?
A Still getting my arms around judge, but -- and the reason why is l've known her since about -- I think it was 1991 when I was in the Federal Defender's Office, she was hired as a clerk, a law clerk. I think she was either in law school or just getting out of law school. In fact, my recollection was she was out of law school and was probably studying for the bar and that's when I first met her.

Q Okay.
A So it's going on 20 years.
Q So she's been a lawyer at least 10 years by 2001 or around 10 years by 2001?

A Yeah; something like that. She passed the bar I think in '92 or somewhere around that time.

Q Have you seen her performances in court before?
A Not to any extent to be able to talk about it, no. I mean, other than --
Q Have you had conversations with her about issues of law?
A Boy, not that 1 --
MR. COLUCCI: I'm going to object. I think he's asking for improper opinion from this witness; basically, expert opinion if he's going to try to rate her performance or her legal knowledge.

MR. SCHWARTZER: I was just going to ask him his lay opinion on her advocacy skills, which I think a lay witness can give an opinion if he has personal knowledge. I'm just trying to establish a foundation right now. If he doesn't have a foundation, I won't ask it.

THE COURT: Okay. Based on his --
MR. COLUCCI: I think that's an expert opinion.
THE COURT: -- observations.
MR. COLUCCI: I think that's an expert opinion. He still has to --
THE COURT: It is.
MR. COLUCCI: -- to analyze it and make a decision --
THE COURT: It is an expert opinion.
MR. COLUCCI: -- and rate it.
THE COURT: All right. Sustained.
MR. COLUCCI: Thank you.
THE WITNESS: Thank you. I do have to practice in front of her eventually. THE COURT: Yes.

THE WITNESS: I'm sorry.
BY MR. SCHWARTZER:
Q Are you aware that Mr. Centofanti in his petition has accused you of ineffective assistance of counsel?

A Yeah; I think I was aware of that. I think I discussed that with Mr. Colucci.

Q Did Mr. Centofanti ever tell you what occurred during that night in December $20^{\text {th }}, 2000$ ?

MR. COLUCCI: I'm going to object. That's beyond the -- way beyond the scope of what we're doing.

MR. SCHWARTZER: Goes to prejudice. They -- on one of their claims is Mr. Albregts was ineffective in his assistance of counsel.

THE COURT: So -- sorry, where are you going with this?
MR. SCHWARTZER: I'm just going to ask him if Mr. Centofanti presented a defense -- asked to present a certain defense; self-defense, specifically.

THE COURT: Okay. Overruled.
THE WITNESS: Does the attorney-client -- are those issues --
THE COURT: I presume by the -- well, has he -- is he bringing an ineffective assistance claim? Is he claiming Mr. Albregts was ineffective?

MR. COLUCCI: Your Honor, I'd have to confer with my client for a minute to discuss that.
[Pause in proceedings]
MR. COLUCCI: Mr. Centofanti is not going to waive except on the issue of disqualification, which is the only issue mentioned in the petition.

MR. SCHWARTZER: I would strenuously object that if you're claiming
someone's ineffective assistance of counsel that they can -- that they're limited to a scope that the Defendant lays out.

THE COURT: So --
MR. COLUCCI: I think it's limited by the scope of what's in the petition and what's in the points and authorities, not anything else.

THE COURT: Well, okay. He's -- is he claiming that Mr. Albregts was ineffective with respect to the disqualification issue? I mean, is part of his claim that this attorney was ineffective?

MR. COLUCCI: With respect solely to the disqualification issue.
MR. SCHWARTZER: I also think there's other pretrial things that he said in the petition that he was ineffective with. If Your Honor would like to take some time to review the petition.

THE COURT: Okay. I'm going to need to look at specific parts of it. I'm not going to read all 58 pages of it right this second. So if you have something to point me to. I mean, if he's asserting, you know, ineffectiveness, we need to look at to --

MR. SCHWARTZER: I would agree with Mr. Colucci that he -- I'm sorry, Your Honor.

THE COURT: -- what extent there's been a waiver.
MR. SCHWARTZER: I didn't mean to speak over you.
THE COURT: Go ahead.
MR. SCHWARTZER: I would agree with Mr. Colucci that he has specifically argued ineffective assistance of counsel based on the disqualification. I also -- it's my recollection that there's also pretrial issues as well. Obviously there's no trial issues --

THE COURT: Right; he wasn't there.

MR. SCHWARTZER: -- because he was off the case by that point.
THE COURT: So let me see if I can find that section.
MS. HOFFMAN: But even with just that singular issue, I think he waives attorney-client privilege.

MR. COLUCCI: Not as to everything.
[Pause in proceedings]
MR. COLUCCI: Your Honor, I will put on the record, l've just had a little short conversation with Mr. Centofanti --

THE COURT: Uh-huh.
MR. COLUCCI: -- who is now willing to withdraw any allegation of ineffective assistance of counsel --

MR. SCHWARTZER: That's awfully convenient of him.
MR. COLUCCI: -- with respect to Mr. Albregts.
THE COURT: Okay.
MR. SCHWARTZER: I would note that he did it after I asked the question as well.

THE COURT: I understand that, but, okay. I guess, obviously, I'm still going to allow him to talk about the disqualification issue because it's still an issue in the case, regardless if he's making a claim against him. But l'm not going to find a waiver in general of the attorney-client privilege outside the issue of disqualification.

MR. SCHWARTZER: I'd just note the objection for the record.
THE COURT: Yes.
MR. SCHWARTZER: No further questions.
THE COURT: Okay. Any redirect?
MR. COLUCCI: I have no further questions.

THE COURT: Thanks, Mr. Albregts.
THE WITNESS: Thank you.
MR. COLUCCI: If we could take a very short break, I have two witnesses left; one is Mr. Lukens, who I need to speak to as I indicated in chambers, and possibly Mr. Centofanti. We'll make that decision shortly.

THE COURT: Okay. All right. We'll take a short break
MR. COLUCCI: Thank you very much.
[Recess was taken at 9:52 a.m.]
[Case recalled at 10:04 a.m.]
THE MARSHAL: Department 6 is back in session. Please be seated, come to order.

THE COURT: Let's go ahead and swear in the next witness.

## JOHN LUKENS

[having been called as a witness and being first duly sworn, testified as follows:]
THE COURT CLERK: Please state your name and spell it for the record.
THE WITNESS: My name is John Lukens, L-U-K-E-N-S.
THE COURT CLERK: Thank you.

## DIRECT EXAMINATION

BY MR. COLUCCI:
Q Mr. Lukens, how are you presently employed?
A I teach high school.
Q Where's that?
A Lake Mead Christian Academy.
Q And what do you teach?
A I teach biology, government and forensics.

Q Forensics --
A Forensics meaning --
Q Forensics in high school.
A -- criminal forensics, amateur CSIs.
Q Wish they had that when I was in school.
What's your educational background?
A I have a high school degree and then a bachelor's of science with a major in zoology and a minor in chemistry. Then I graduated from the University of Idaho School of Law.

MR. COLUCCI: May I approach the witness, please?
THE COURT: Yes.
BY MR. COLUCCI:
Q I know this says speaker's biography but is this essentially your resume?

A Yes.
Q Shortened version?
A I've never -- I never really had to do a resume, but when I would speak publically, this was my speaker's biography. So, a little bit of my history.

MR. COLUCCI: I'm going to move to have this admitted.
THE COURT: Any objection?
MR. SCHWARTZER: I won't object, Your Honor.
THE COURT: It's admitted with -- Defense Exhibit 201.
DEFENSE EXHIBIT 201 ADMITTED
BY MR. COLUCCI:
Q Can you -- okay, so you told us your educational background. You
have a law degree. When did you start practicing law?
A I passed the bar in Idaho in 1973. I passed the bar in the State of Nevada in 1975.

Q And when you passed the bar in 1975, did you begin practicing here?
A Idid.
Q Where did you begin practicing?
A My first -- probably isn't practicing, but I was a law clerk for the Eighth Judicial District Court to begin with, and then I began at the Clark County Public Defenders' Office.

Q How long were you at the Clark County Public Defender's Office?
A Probably somewhere in the neighborhood of two years, or thereabouts.
Q And what type of work did you do over there?
A Exclusively criminal defense.
Q Did you do trial work?
A Yes.
Q Did you represent Kimble Dutton?
A Yes.
Q And did you -- after your stint in the Public Defender's Office, where did you go?

A I went into private practice and the name of the firm was Mills, Galliher, Lukens, Gibson and Schwartzer.

Q That must have been a long time ago.
A That was a very long time ago.
Q And how long were you in private practice?
A Just at that time?

Q At that time.
A Probably eight years.
Q During that time, did you do any criminal work?
A Yes.
Q Criminal defense?
A Yes.
Q And did -- and after you left private practice after that eight year stint, where'd you go?

A Clark County District Attorneys' Office.
Q How long were you there?
A Probably in excess of 10 years.
Q And while you were there, what type of work did you do?
A Exclusively criminal prosecutions.
Q Did you rise to the level of chief deputy while you were there?
A Yes.
Q Were you head of a sexual assault unit?
A I was head of the sexual assault unit, child abuse unit. We prosecuted child homicides and then I also -- towards the end, I was on the major violators unit.

Q And what did you do in the major violators unit?
A Prosecuted exclusively -- well, almost exclusively murder cases.
Q And how long were you on the major violators unit?
A Couple a years, maybe; a year and a-half, thereabouts.
Q Did you do any trial training work in the DA's office while you were there?

A Idid.

Q And what type of trial training work did you do?
A Working with prosecutors on how to prosecute.
Q Did you teach trial tactics?
A Yes.
Q And advocacy skills?
A Yes.
Q And any of those deputies that -- any prominent deputies stick out in your mind as to who you trained?

A There are three that I like to think I had some small part of their development; would have been Teresa Lowry, Abbi Silver and Gary Guymon.

Q Okay. Were you practicing in the criminal law area between 2000 and 2004?

A Yes.
Q. Did you have occasion to do -- defend any murder cases during that time?

A No.
Q Did you defend Karen Morris during that time?
A The name is familiar but I don't have a specific recollection.
Q Okay. Are you still engaged in work in the criminal law area?
A Aside from teaching forensics, the answer would be no.
Q Are you familiar with the 1984 Supreme Court decision in Strickland versus Washington?

A Intimately.
Q Okay. And are you familiar with the Nevada case Warden versus Lyons, the case that adopted the Strickland standard in Nevada?

A Yes.
Q And you understand the prongs that are required to be established in order to establish the ineffective assistance of counsel in a particular case. Is that true?

A Yes.
Q Okay. Now, did you review various materials related to the 2004 murder trial of Mr. Centofanti?

A Idid.
Q Tell us what materials you looked at?
A May I refer to them?
Q Please.
A $\quad 1$ reviewed the opening statements given by the District Attorney in the case. I reviewed an expert report prepared by Jimmy L. Trahin, I believe is how is name is pronounced. I reviewed the direct and cross-examination of a Dr. Eisele. Is that how you -- it's --

Q Eisele.
A Eisele. I reviewed the post-mortem toxicology reports. I reviewed the resume of Jimmy L. Trahin. I briefly read a pleading prepared by you on some of the points and authorities. I read the deposition of Allen R. Bloom. I read the testimony of Jimmy Trahin. I read Mr. Bloom's -- the transcript of Mr. Bloom's opening to the jury. I read the coroner's report. I glanced at the Strickland opinion. I read the CV of Dr. Eisele. I read the examination of Dr. Sessions. I read the testimony of Mr. Simms. I read Mr. Centofanti's testimony. I read the initial police report of Tommy Thowsen -- Detective Tommy Thowsen who was the lead homicide investigator on the case. I read the report of the blood stain analysis from James
and Associates.
Q That would be the blood stain report of James Stuart [phonetic]?
A Yes.
And then I glanced at your post-conviction brief, your petition.
Q Did you --
A And then --
Q I'm sorry.
A And then there were additional materials that I also reviewed. I requested some additional materials from your office. I read some of the preliminary defense discovery and then I requested the crime scene photographs from your office and I reviewed those.

Q Did you also review the cross-examination of Dr. Eisele?
A Yes.
Q And after reviewing this material, were you also allowed to come to my office and review the boxes and boxes of what purported to be discovery from both the defense and the State?

A Yes.
Q And were you authorized to take from there any other additional items that you thought might be necessary in order to help you form you opinion?

A Yes; to my knowledge, you gave me complete access to everything that you had.

Q Okay. After your review of these materials, were you able to formulate an opinion as to Mr. Bloom's performance in this case?

A Yes.
Q What is that opinion?

A If I were to use an attorney's performance as an example of what not to do in a felony criminal trial, it would be Mr. Bloom's performance in this case.

Q And can you give me kind of the basis for that opinion?
A Beyond obtaining experts to testify on behalf of the defense, his performance was absolutely abysmal.

Q Okay. Can you be -- let's be a -- let's try to get specific here. What about with regard to his pretrial preparation?

A There were two things in that area that struck me; one is the absolute lack of pretrial preparation on his part and the other was an incredible error that locked-in an absolutely untenable defense and handed the case to the DAs on a platter.

Q Okay. Let's talk about the lack of preparation. Can you elaborate on that?

MR. SCHWARTZER: I'm going to object to this. This is all speculation. What does he know -- what does Mr. Lukens know about Mr. Bloom's actual pretrial preparation?

THE COURT: Right. So lay some foundation.
MR. SCHWARTZER: He just has the documents that were filed with the Court.

MR. COLUCCI: Okay. BY MR. COLUCCI:

Q Mr. Lukens, can you tell us why you feel that Mr. Bloom did not conduct adequate pretrial preparation?

A Your deposition was -- of Mr. Bloom was fairly thorough in asking him --
Q Are you rating my performance now on the deposition?

A No. Mr. Colucci, we've known each other --
Q I'm sorry.
A -- for so long.
Q I'm sorry. I'm sorry. I don't mean to add levity to this, but.
A No; I understand.
Q Okay. So, okay.
A Okay. From your deposition of him, you were able to elicit with good specificity the things that he did do, but the things that he did not do were glaring.

Q And what things would those have been?
A The primary things of interviewing or talking to witnesses that just simply were not done.

THE COURT: And sorry. Mr. Bloom testified that he didn't do those things?
THE WITNESS: Well, to a certain -- in the deposition --
MR. SCHWARTZER: I object to this as well. I don't recall any questions where he specifically went over every witness, and did you talk to this witness. In fact, my testimony -- my specific recollection of the deposition's quite different.

THE COURT: Okay. So what is it that -- how do you know that he didn't interview or talk to the witnesses?

BY MR. COLUCCI:
Q Why don't we start with Dr. Eisele? Okay?
A Okay. Dr. Eisele submitted a report as the expert retained by the defense that was in essence contradictory to that defense. When Mr. Colucci questioned Mr. Bloom regarding his communication with Dr. Eisele, it was -- it's apparent that the communication between the time that Dr. Eisele issued that report and the time that he testified was minimal, if it ever occurred. Because why would
you put Dr. Eisele on the witness stand when he has issued a report contradicting the theory of the defense?

Q Which was?
A Self-defense was what the theory of the defense was laid out by Mr. Bloom in his opening statement. So it's obvious, as far as that aspect of it goes. Also, since interviewing or talking to other witnesses that would have dealt with what certainly would have been a more viable defense than self-defense

Q Would battered spouse have been a more viable defense? I know it's not a complete defense, but would it have been an important issue to raise based on the facts as you understand them in this case?

A The District Attorney, Mr. Schwartzer, would say, well, that's speculation and it absolutely would be because there was no investigation of it. So you don't know because it's not done, because it was never there.

Q Based on the facts of this case as you know them, using the two predicate events, the December $5^{\text {th }}$ domestic battery and the December $1^{\text {st }}$ battery, would that have triggered in your mind, if you were preparing this case, to at least investigate the possibility of the battered spouse defense?

MR. SCHWARTZER: I'm going to object that he didn't investigate the battered spouse. We -- there's been no testimony that Mr. Bloom didn't actually investigate this.

MR. COLUCCI: Well, I'm just asking if he would. I didn't say he didn't.
THE COURT: Well, how is it relevant unless he didn't?
MR. COLUCCI: Well, you're going to see the deposition. You're going to find out what Mr. Bloom did and didn't do, so.

THE COURT: And he testified about --

MR. SCHWARTZER: There was no --
THE COURT: He testified about whether he did or didn't investigate that?
MR. COLUCCI: He certainly didn't use it and I don't recall him saying that he investigated that.

MR. SCHWARTZER: The question was never posed to him. That would be my recollection.

THE COURT: I'm going to have to read -- I'm going to overrule the objection and allow him to answer the question but, obviously, l'm going to have to read the deposition of Bloom.

THE WITNESS: It was, from the materials that I observed, not anything that was pursued. But the battered spouse syndrome would, in my mind, not have been the major thrust of any viable defense in this case for several reasons. BY MR. COLUCCI:

Q Okay. I think you've just answered the main question.
Now, with respect to the self-defense defense, do you think that that, based on the information you have in front of you, do you think that that would have been a viable defense?

A Never.
Q And why not?
A If one is going to defend a murder case, there are only generally two ways in which you can defend the murder case; one is through the physical evidence, the other is through a psychological-type of evidence. In this case, the physical evidence was so absolutely overwhelmingly inconsistent with self-defense, that it was not viable. There were no legitimate questions concerning the physical aspects of the evidence in this case.

There are huge, huge questions concerning the psychological evidence that may have been present in this case. I would --

Q And what defenses would that have triggered?
A Whether it would --
Q Should have triggered?
A Whether it would have been a defense of diminished capacity or something along that nature, you don't know because it was clearly never explored. For example, some of the questions in this case that were never asked, never explored: Why does a man unquestionably --

MR. SCHWARTZER: Well, object as to the speculation of what was explored and what was not explored. There's no personal knowledge.

THE COURT: Okay. So, again, how do you know that it wasn't explored?
THE WITNESS: There is absolutely no evidence that it was explored. There were no witnesses during any of the discovery, any of the notes, anything to indicate that that type of defense was even considered. It's just -- it's simply not there.

THE COURT: Okay. So what do you think --
MR. COLUCCI: Was it mentioned in his -- I'm sorry.
THE COURT: What do you think should have been explored that wasn't?
THE WITNESS: The defense of self-defense in this case was absolutely not viable. If you were going to defend it, the manner in which you would have to do it would be on some sort of psychological basis. The questions on the psychological end were huge. Why does a man shoot his wife, mother of his small infant, seven times with his parents in the same house? That's a question that nobody even asked or was it explored. Nobody --

MR. SCHWARTZER: I'm going to, again, object to the speculation on this. In
fact, I think in the deposition a psychological evaluation did take place, a general one at least.

THE WITNESS: The --
MR. SCHWARTZER: So there is facts out there that there was stuff like this explored. This is pure speculation.

THE WITNESS: One of the things --
THE COURT: Hold on. I'm the one who rules on the law in here.
THE WITNESS: I know.
THE COURT: All right. I guess, you know, the problem is that, obviously, Mr. Bloom's deposition testimony is key to all of this and I haven't had an opportunity to read it yet, which obviously I will. So in this context and with me being the one to ultimately rule, l'm going to let him testify. But, obviously, ultimately there's got to be evidence that he didn't explore it, and then that it was below the standard of care to not explore it, and then that that was prejudicial to not have done so.

MR. COLUCCI: Or below the standard not to use it.
THE COURT: Right; either. So I'll have to look at that. I'm going to overrule the objection at this point, based on that understanding that I'm going to have to look and see if there is evidence of that or not.

THE WITNESS: There is evidence in the record that indicates that the District Attorney was very concerned about that as a potential defense. BY MR. COLUCCI:

Q And why do you say that?
A The District Attorney filed a motion in this case to require Mr. Centofanti to undergo a psychological exam. And if -- the District Attorney would not have made that request if they were not concerned about that aspect of the defense. It
was clear that they didn't even need to worry about that aspect of the defense because the District Attorney filed a motion, which was absolutely brilliant on their part, that Mr. Bloom just -- he allowed his client to essentially be locked-in to a selfdefense by an inquiry from Judge Mosley where essentially they said: Are you going to say that you were, in fact, the shooter here and that it was a self-defense type of defense? And Mr. Centofanti, with his attorney sitting beside him, essentially acknowledged that.

Q Was that a reasonable choice? Was that a reasonable action on the part of Mr. Bloom to allow that?

A It was quite frankly idiotic. I can --
Q Was it below the standard of care for --
A Oh --
Q -- a competent attorney, even a marginally competent attorney, to allow that inquiry?

MR. SCHWARTZER: That calls for an opinion of law -- a matter of law and I don't think that's in his expertise.

THE COURT: Overruled. He's giving an opinion about the standard of care. Go ahead.

THE WITNESS: Clearly and I will speculate the District Attorney's -BY MR. COLUCCI:

Q Don't --
A -- did handsprings after that ruling. Sorry. That was speculation.
THE COURT: Okay. So that's stricken. Go on.
THE WITNESS: Okay.
THE COURT: Answer the actual question that was asked.

THE WITNESS: The answer's yes, clearly it was.

BY MR. COLUCCI:
Q Was, under the facts as you know, was self-defense a viable defense at all?

A No.
Q And when you say that the District Attorney put the defense in a box, what do you mean?

A That means the defense had nothing -- they had no choice. He had to go forward with that defense as his defense.

Q What was the --
A He let the District Attorney dictate what his defense was going to be in this case.

Q And is that a proper defense tactic?
A Absolutely not.
Q Was that a reasonable defense tactic?
A No; not in this case.
Q Were you aware that three perspective jurors had basically advised Judge Mosley during jury selection that they could not sit on the jury?

MR. SCHWARTZER: Objection to relevancy; three potential jurors. It has no meaning in this case.

MR. COLUCCI: It's part of the facts that he considers in formulating his opinion.

MR. SCHWARTZER: Did you read the -- I'm --
THE COURT: Hold --
MR. SCHWARTZER: -- sorry, Your Honor. Voir dire?

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THE COURT: Hold on. Okay?
Did these people become jurors in the case?
MR. COLUCCI: They did not.
THE COURT: Okay. So what's the point?
MR. COLUCCI: The point is is that when Judge Mosley told them what the case was about and that the facts of the case involved the Defendant shooting his wife seven times; four in the back, three in the head and that self-defense was going to be the defense, they said: Can't do it. We can't sit as unbiased jurors. I think that should have raised a red flag in Mr. Bloom's --

MR. SCHWARTZER: If I can also --
MR. COLUCCI: -- head.
MR. SCHWARTZER: If I could also add something. I'm not sure, and I might have missed this. Did he go over the voir dire? Was that one of the documents he actually reviewed?

THE COURT: Did you review transcript of voir dire?
THE WITNESS: I did not.
BY MR. COLUCCI:
Q Okay. Did you review the deposition where this is discussed?
A Yes.
Q Did you review the points and authorities where this is discussed?
A I do not remember it from the points and authorities?
Q Do you remember it from the deposition?
A Yes.
Q Okay.
Would that have raised --

THE COURT: All right. If, in the deposition, it was acknowledged that that happened, then he can give his opinion about it. Go on.

MR. SCHWARTZER: Thank you, Your Honor.
BY MR. COLUCCI:
Q Mr. Lukens, if you had been the defense attorney in this -- well, strike that. Would that fall below the standard of care where you have potential jurors already begging off the case because they can't believe the proposed defense prior to taking any testimony? Would that have raised a red flag that you might have considered changing your defense or modifying your presentation in some way?

A The reason I'm hesitating is that I have to take into account who the trial judge was at that time and whether or -- and having known Judge Mosley for, what, 25 years, whether or not he would at that point in time allow me to deviate me from a defense that I had already assured him that we were going to follow.

I don't know, Mr. Colucci. I can't answer that with any specificity because every now and -- Judge Mosley may have taken the position that: Counsel, you told me this was a self-defense case. I am not going to let you introduce evidence as to any other type of defense 'cause you've already locked yourself in. That's -- Judge Mosley can do things like that. So I don't know. It may have been too late by then to have abandoned what was an idiotic defense.

Q So in other words, by the choice of that defense, even though the jurors had expressed potential disbelief before hearing any of the evidence, the defense was still locked in to self-defense?

A Yeah; but that's a classic example of how idiotic this defense was from coming out of the gate.

Q What about Mr. Bloom's opening statement? You read that.

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A Uhh.
Q Okay. Let me ask you some specific questions about that. In his opening statement he mentions various witnesses some of which were not produced. Is that a reasonable trial tactic?

A The people that sit in that box over there aren't real fond of defense attorneys to begin with. And they know that they man sitting next to the defense attorney is charged with a really serious crime. Those people in that box look at your credibility a scants almost to begin with. So when you tell them things in the opening statement that are simply not true, your credibility as an attorney goes down the drain. So any chance that a juror may have to identify with you as somebody who's trying to do his constitutionally sworn duty is done. You're toast. During the --

Q In your experience do jurors usually hold the attorneys feet to the fire as far as their statements in opening and closing?

A Oh absolutely. The studies are voluminous when jurors begin to make up their minds. You can lose your jury trial at an opening statement just like that [snaps fingers]. And Mr. Blooms opening statement was just -- there were so many egregious errors that it's -- it was shocking. I --

Q What kind of egregious errors?
A Well, when you told me about it --
Q Don't --
A When you told me about it in conversation, I would have said: No, not really; that couldn't have happened. But then when I read that opening statement -first of all there's a strategy to a trial and then there are tactics in the trial and they are on different levels.

His strategy on some of these things was just inane. For example, he

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has -- there's a victim in this case. She's a tiny woman. She's a young mother. Just saying that, wherein do you think the jury's sympathy lies? And then he goes on to trash this woman in almost every way that he can. He trashes her morals. He tells the jury that there is evidence of drug and alcohol abuse, of which there is none in the record by the way. The toxicology reports were not -- came back that she was clean. And not only that, I believe one of the things that I didn't list here was that her hair was tested. The tox screen from the pathologist was just on her blood. Well, hair -- if you test the hair, it shows a longer history and even that was clean and he knew that, but he trashes her on that. And then he blatantly misrepresents to the jury that her plastic surgeon is going to come in and say that she had a hole in her nose --

MR. SCHWARTZER: Objection; facts not in evidence. He never said that the doctor was going to come in and testify during opening statement.

THE WITNESS: It's in the opening statement. It's in --
THE COURT: Sir, you're not the attorney here.
MR. COLUCCI: And to tell you the truth, Your Honor, I don't recall whether it is or not at this point in time.

MR. SCHWARTZER: I believe they tested -- he was going to testify that the Defendant was going to say that he was told by a doctor that there was a hole in his [sic] nose not that the doctor was going to come in and testify.

THE COURT: Okay. Unless --
MR. COLUCCI: So let me just retract so we don't --
THE COURT: Okay.
MR. COLUCCI: -- have to go through the --
THE COURT: Right. Go ahead.

MR. COLUCCI: -- search process.

## BY MR. COLUCCI:

Q During the -- and the opening statement, obviously, speaks for itself. The Judge can look at the opening statement at her leisure.

In the opening statement does Bloom make mention of that fact that evidence will be presented to the jury that the -- that Gina Centofanti had a hole in her nose from drug use?

A Yes.
Q And was that a true statement?
A No.
Q Okay.
A As a matter of fact the reason -- the medical records were obtained by him and supplied to the District Attorney and those medical records belied his statement to the jury. If he had bothered to read those records that he turned -- that he subpoenaed, that he turned over to the DA, he would have --

Q In reviewing his deposition, he stated that he did read those records. Is that true?

A That's what he said.
Q And he also stated in his deposition that he didn't expect Dr. Sessions, the plastic surgeon, to testify any differently than what was in his records. Is that what he said?

A That's what he said.
Q And if that was his expectation then, I guess the logical conclusion is that he expected Dr. Sessions to say there was no hole in his [sic] nose; correct?

A No.

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Q And was it a reasonable --
A. He didn't read the records.

Q Was it a reasonable trial tactic to have your client take the witness stand and talk about the hole in her nose and talk about the drug use when you have absolute proof that there was no drug use and there was no hole in the nose? Is that a reasonable trial tactic?

A It's absurd.
Q Did it help the defense?
A No. As a matter of fact, it wasn't even neutral. It was incredibly harmful to the defense.

Q Would the word devastating cover?
A Absolutely.
Q Okay. And you read the testimony of Mr. Centofanti who was impeached by the testimony of Dr. Sessions; correct?

A Yes.
Q Was it reasonable to not contact Dr. -- was it reasonable for the defense not to have contacted Dr. Sessions after listing Dr. Sessions as a witness on his own witness list?

A Of course, I mean, that's one -- the lack of preparation, you -- I was asked earlier about the lack of preparation. And that's just an example of it. It's a small example of it.

Q Now, would it have been reasonable preparation, whether there was a notation there was drug use or where a hole in the nose, would it have been reasonable and expected of a defense lawyer to contact the author of those medical records to verify that information?

A Absolutely.
Q Okay. And let's talk about Mr. Trahin for a second. Was Mr. Trahin a defense expert?

A Yes.
Q And did he --
THE COURT: Would you spell that name?
MR. COLUCCI: T-R-A-H-I-N, I believe.
THE COURT: Okay. Go ahead.
BY MR. COLUCCI:
Q Was Mr. Trahin a defense expert?
A Yes.
Q And do you recall what he was called for?
A To deal with the order of the gunshot wounds, a little bit on the crime scene itself. He was a retired police officer I believe.

Q Did you review his diagrams?
A Yes.
Q Were you able to make any sense out of those diagrams?
A Some, but very little.
Q Okay. And those diagrams were used by Mr. Bloom in his presentation to the jury?

A Yes.
Q And his preparation for his case?
A Yes.
Q And he also had Mr. Trahin testify during the trial; correct?
A Yes.

Q And he testified about the order -- what he perceived to be the order of shots; correct?

A Yes.
Q And on the defense -- during the defense direct, he testified that the head shots didn't necessarily come first; correct?

A Yes.
Q And then when he was cross-examined by the District Attorney, he ultimately stated that he could not contest that the head shots were last.

A Right. Yeah; absolutely correct.
Q And if the head shots were first, according to Dr. Simms and Dr. Eisele, if the head shots were first, she would have dropped and that would have been each and every shot was fatal.

A Yes; I all three head shots were fatal.
Q So from a forensic standpoint, was it possible --
A Let me rephrase that because a shot can be fatal but not immediately incapacitating. The three head shots were not only fatal, but they were immediately incapacitating.

Q Why do you say that?
A Well, because you --
MR. SCHWARTZER: I'm going to object to that. That he -- that's definitely not within his realm of knowledge.

THE COURT: Is that just your opinion or is that based on some information presented in the record?

THE WITNESS: It's based upon the information that's in the record. And from the autopsy report, it's clear.

MR. COLUCCI: And Dr. Simms, perhaps?
THE WITNESS: Yeah; every physician. It's clear that those shots are immediately incapacitating. It's a mortal wound to the brain.

THE COURT: That's what a Dr. Simms testified to. All right. So, obviously, I'm not getting Mr. Lukens testimony about whether those would or wouldn't be incapacitating.

MR. SCHWARTZER: Thank you, Your Honor.
THE COURT: Go on.
BY MR. COLUCCI:
Q Okay. With that understanding, with that knowledge -- well, let's go back. If you reviewed Dr. Simms' report, the coroner's report, you would have had information regarding the lethality of each of the three shots to the head; correct?

A You couldn't miss it.
Q Okay. And with that information, would you have put on a self-defense case?

A No, no.
Q Okay. Let's move on a little bit here to the collection of evidence. Did you review the reports regarding the collection and preservation of evidence --

A Yeah.
Q -- as part of your review?
A Yes.
Q And did you see certain reports by Las Vegas Metropolitan Police Department CSIs as far as the collection of evidence at the crime scene?

A If I were the DA in this case, I'd have gone nuts.
Q I guess that's a yes or no question.

A The collection of evidence was shoddy at best.
Q Okay.
A How could you --
Q And what do you base that on?
A Well, you knew the number of gunshot wounds. The shell casings -- if the gun's fired seven times, there should be seven shell casings.

Q How many shell cases were collected?
A Five. l--
Q And was there a stationary bike that was involved?
A Yes; it had a blood smear on it and the --
Q Would you consider the blood smear to be an important piece of evidence in this case?

A If, for some outlandish reason, I was going to claim a self-defense in this case, perhaps -- but it was so obviously not self-defense, 1-- 'cause the blood smear on the bike, when she was found, her body was near there and the blood smear was not a blood spatter. It was a smear which means that it came in contact with her as she was going down. It was not preserved. Had you wanted to try to present a self-defense, it could have been very important.

Q Was it an error for the police department not to have collected the bike as part of their collection and preservation of evidence?

A The answer to that is yes, clearly, because at that time, although Mr. Centofanti didn't appear to have any wounds, you're not sure if the blood on that bike was, in fact, the victims or Mr. Centofanti's or from some other source previously. Because that blood on the bike, since it was a smear, may have dried sooner than any of the pooled blood. So there's several reasons why that could
have been important.
Q Okay. And if you assess that that blood smear would have bolstered your case, would it have been important to collect and preserve the bike, from a defense standpoint?

A Certainly.
Q Okay. Let's talk about the keys that were found on the dining room table. Okay? Were those keys collected by the police department?

A No.
Q And do you have a -- do you know -- do you feel that those keys would have been an important piece of evidence for the defense to have preserved?

A Since they were not and since it's an unknown, I cannot legitimately say yes they would have been, because we don't know.

Q If you're -- if part of your defense was that she somehow got into the house without the Defendant realizing it, would that set of keys have been important?

A We don't know that she didn't have a key to the house. It's unknown. If
--

Q And it's unknown because the police failed to collect?
A Even the District Attorney would have liked to have those keys. Because if there were not a key to the house, and there were -- did he let her in? Did he welcome her in? Did he -- you don't -- it's an unknown and it shouldn't have been an unknown. So that's the best answer I can give.

Q Should the defense have at least sought to retrieve the keys and test the keys to see if they fit the door.

A I can't imagine them not. I mean, it just --

Q But in this case this -- the material you read, they did not.
A They didn't do it.
Q Okay. And what about the missing shell casings? Why would those have been important?

A Not only just that they're missing, but where were they recovered from? How did you document where they were recovered from? From where those shell casings may have been recovered from would give you information as to where the weapon was when it was fired. You have an automatic weapon. The shell casings are going to be ejected out this side if it's facing this way. If it's the other way around, they're going to be ejected out the other side. To not have them deprives you of information that may be useful, or it may be crucial, or it may be a never mind but you don't know because you don't have it.

Q Okay. Let's just briefly go back to his experts. You were asked -- or there was an objection raised about you speculating about certain things. Were you able to form an opinion about whether there was adequate pretrial preparation based upon the performance of the experts during their trial testimony?

A Yes.
Q And what was your opinion on that?
A Not only was it poor, in my opinion, it wasn't even done.
Q Is it a good --
MR. SCHWARTZER: Objection, speculation.
BY MR. COLUCCI:
Q Is it a good --
THE COURT: Well --
MR. COLUCCI: Sorry.

MR. SCHWARTZER: He has no idea if there was pretrial preparation done with the experts.

THE COURT: Well, sustained. He can testify about what came out during the trial or what was said.

MR. COLUCCI: Well, the Court can also review the transcript to see the performance. Okay.

THE COURT: Uh-huh.
BY MR. COLUCCI:
Q You reviewed the Defendant's testimony during the trial; correct?
A Yes.
Q And if -- and I'm going to give you a hypothetical, but this is a
hypothetical based on facts in the case. If there was mock trial preparation prior to trial where the Defendant testified similar to the way he testified at trial, would you feel it was reasonable to put the Defendant on the witness stand?

MR. SCHWARTZER: Objection. That's not his choice. I mean, the case law is pretty specific that it's not the attorney's choice to put the defendant on the stand or not.

MR. COLUCCI: That's a legal argument. My question is would he have put him on the stand. Would he have allowed him to take the stand? I know it's --

THE WITNESS: Would I have made a recommendation?
MR. COLUCCI: -- ultimately the defendant's -- okay. With that understanding

THE COURT: Rephrase it in terms of a recommendation.
MR. SCHWARTZER: Thank you, Your honor.
BY MR. COLUCCI:

Q Would you have recommended that he take the witness stand?
A Absolutely not.
Q Why not?
A My recommendation would have been you don't get anywhere near this witness stand. I say that for two reasons.

Q Okay.
A If you want to know what those reasons are.
Q Yes, go ahead and give me the two reasons.
A First of all, the nature of his testimony made him appear on the witness stand, at least from reading it, that he was disingenuous on the witness stand. He was asked questions that he should have known the answer to but he chose a safe harbor of: I don't remember.

Secondly, and I do take this from a combination of witness statements regarding Mr. Centofanti's personality and Mr. Bloom's testimony during the deposition. His personality was not such that you would want him on the witness stand.

Q Okay. You read -- when you read the cross-examination by Mr. Peterson of Mr. Centofanti, there were questions asked such as: Do you believe that to be true to the same degree that you believe you're innocent in this case; something along those lines. Do you remember reading that?

A Yeah.
Q is that a proper question?
A No; it was --
Q Would you have objected to that question?
A It was very amateurish. I cannot tell you whether I would have objected
to it or not because I don't know the tonality of the voices that were being used so I don't -- I can't say the tactics of it right then.

Q For that specific question. But you know Mr. Peterson --
A Ido.
Q -- was pretty much over the -- well -- you know he was pretty much over the top. You could tell from the tone of some of his other questions.

A Well, that's one of -- when I worked with Clark, that was one of the things that I use to work with him on his toning it down because he had a tendency to be overly aggressive.

Q And do you remember the question he asked Mr. Centofanti about Dr. Sessions? Do you know where Dr. Sessions is? Do you know he's on a plane right now coming back to say there was no hole in the nose? Do you recall that question?

A Yes.
Q Is that a proper question?
A Technically, it's not proper but, again, I may have let him go on 'cause Clark may have been looking like an idiot at that time.

Q Okay. I'm going to kind of get to the end here. Was it a -- was it -based on what you know about this case, was it a reasonable tactical choice not to pursue a diminished capacity defense in this case?

A No; I mean, as obvious as it was that self-defense was not a viable defense, if there is a defense to this case, it is that one.

Q And finally, was it a reasonable tactical decision to not contact Dr. Sessions prior -- after having your client testify?

A It's inexplicable as to why that wasn't done.

Q In your opinion, did the inadequate preparation by Mr. Bloom play directly into the hands of the District Attorney?

A Oh, the District Attorney could not have scripted the defense any better if they had written it themselves. It was --

Q Based on the performance of Mr. Bloom, do you think Mr. Centofanti got a fair trial?

A He never had a chance at a viable defense.
Q Were the defense witnesses put on -- selected and put on the witness stand by Mr. Bloom reasonable choices to bolster the self-defense, even if selfdefense had been viable?

A No.
Q And do you recall reading in Mr. Bloom's deposition, when I asked him about whether self-defense was a viable defense in this case, that he said: Yes; it was. Absolutely, I think was the word he used. Do you recall that?

Q Ido.
MR. COLUCCI: No further questions.
MR. COLUCCI: Cross?
MR. SCHWARTZER: Thank you, Your Honor.

## CROSS-EXAMINATION

BY MR. SCHWARTZER:
Q Mr. Lukens, you were in the prosecution office for 10 years?
A Yes.
Q So you went through dozens and dozens of trials?
A Yeah.
Q How would you characterize your style?

A How would I characterize my style?
Q Yeah; your trial -- your style at trial?
THE COURT: As a prosecutor?
BY MR. SCHWARTZER:
Q As a prosecutor.
A I will explain my answer. When I was a federal judicial law clerk, one of the most renown trial lawyers on the west coast was trying a case in front of my judge. My judge was an absolutely brilliant man. And so when I took notes during the trial, I was in awe of this particular attorney. And so I was taking notes on the manner in which he was trying the case. And he didn't miss a trick. He came over during a recess and said: What are you doing? I said: I'm taking notes on the way you're trying your case. And with a twinkle in his eye he looked at me and he said: You should save those notes because if you ever have this judge, this plaintiff, this defendant and this set of facts, those notes will be invaluable to you.

Q That doesn't answer the question. What would be your style?
A That exactly answers my question. I cannot tell you because it would depend upon the parties before the court. It depends on my jury. It depends on my judge. I would have a different style trying a case before Judge Mosley than I would Jim Bixler, or Dave Barker, or David Wall.

Q Well, for example, you said Clark Peterson's very over the top; correct? MR. COLUCCI: I think I said that.

MR. SCHWARTZER: I believe he did as well.
THE COURT: I think he agreed.
THE WITNESS: Clark was very aggressive, yes.
BY MR. SCHWARTZER:

Q He was very aggressive. He's -- are you familiar with a prosecutor by the name of Pam Weckerly?

A No.
Q Okay. But there are other attorneys that are a little bit more confined, a little bit more -- I would say studious, for lack of a better word. Is that correct? Less over the top.

A Sure. Everybody has a general basic style.
Q And both types of prosecution could be effective. Is that correct?
A There is no set style that is always effective or always or always ineffective.

Q So with the defense attorneys, they're different -- everyone has a different style; correct?

A Absolutely.
Q And your style and Clarence Darryl's style could be different but they could be equally effective.

A Yes.
Q You said you read over Strickland. Is that correct?
A Yes.
Q Do you recall the quote, tactical decisions are virtually unchallengeable absent extraordinary circumstances?

A I understand the decisions that a trial lawyer makes on tactics both before and, more importantly, even during the trial. As a matter of fact, remember --

Q Well, do you -- that doesn't answer the question. Do you recall that statement in Strickland?

A I recall the statement in the way -- manner in which Strickland deals

